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THE RIGHT OF SANCTUARY

Its Origins in Western Europe

and

Its Development in England.

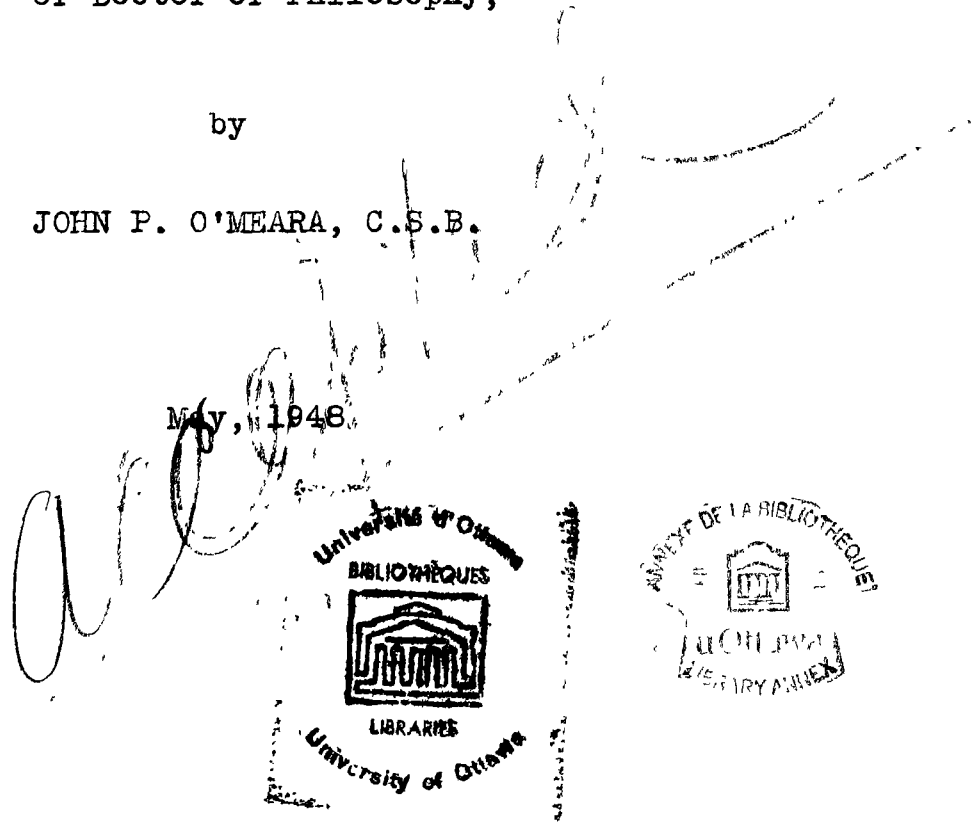
A Thesis

submitted to the History Department in the  
Graduate School of the Faculty of Arts at  
the University of Ottawa, in partial ful-  
fillment of the requirements for the degree  
of Doctor of Philosophy,

by

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ABBREVIATIONS USED IN THIS THESIS

- C.J.            Justinian Code, ed. Paulus Krueger, Berlin, 1880
- C.S.E.L.       Corpus Scriptorum Ecclesiasticorum Latinorum,  
Vienna, 1866 et seqq.
- C.T.            Theodosian Code, ed. Theodore Mommsen and Paul M.  
Meyer, Berlin, 1905.
- H.L.            Hefele, C.J., Conciliengeschichte, trad, franç.  
par H. Leclercq, Paris, 1907 et suiv.
- Mansi          Mansi, Joannes Dominicus, Sacrorum Conciliorum Nova  
et Amplissima Collectio, Paris, 1903, et seqq.
- M.G.H.        Monumenta Germaniae Historica. Whenever reference  
is made to the edition originating with Pertz  
the key, '(folio)', is indicated. Otherwise  
references are to the later edition originating  
with Waitz.
- F.L.            Patrologiae Latinae Cursus Completus, Migne.

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## C H A P T E R I

### THE RIGHT OF SANCTUARY

#### A. What it is.

The two expressions, the right of asylum and the right of sanctuary, are interchangeable. In England the expression, the right of sanctuary, has from early times been consecrated by usage.<sup>1</sup> Le Bras defines asylum as follows: "Asile ou asyle. Lieu de refuge dans lequel personnes et choses (ou, pour le moins, certaines personnes, certaines choses) sont à l'abri de toute contrainte ou saisie, par l'effet d'un privilège, de la coutume ou de la loi."<sup>2</sup>

It is, therefore, essentially a 'local' privilege, one which is attached to a place, or, at least, associated with some visible symbol. This privilege may be found within a country as we see it in the king's peace of old England or the protection which a member of the English house of parliament might find if he were to remain in the actual house

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1. Trenholme, Norman Maclaren, The Right of Sanctuary in England, in University of Missouri Studies, Vol. I, no.5, 1903, p.11, n.2.

2. Le Bras, Gabriel, sous le mot, Asile, dans le Dictionnaire d'Histoire et Géographie Ecclésiastiques. Vol.IV, c.1035

of parliament.<sup>1</sup> In contrast to this we find this privilege in the extraterritoriality of embassies and the prerogative of sovereign states by which they refuse to give up to repressive justice a refugee from another state except after a process of extradition.

However, our concern is primarily with religious asylum. It is a local immunity by which certain places are freed of burdens and common obligations. For our purposes, accordingly, the following definition is more precise. It considers the subject from the viewpoint of the right involved. "Le droit d'asile consiste dans une espèce de protection, de sécurité, dont jouissent certains criminels ou accusés, en vertu de laquelle ceux qui se réfugient dans les églises ou autres lieux sacrés, sont inviolables, ne peuvent <sup>plus</sup> être saisis par le bras séculier qu'avec le consentement, la permission préalable de l'autorité ecclésiastique."<sup>2</sup> This definition takes account of the canon law of 1918 but if one modifies in his thinking the possibility of permission for withdrawal he will have a clearer idea of medieval sanctuary though the definition as it stands is susceptible of application.

One cannot be too rigid in giving an historical definition of sanctuary for it will, as a living institution,

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1. *Encyclopedia Britannica*, 14th ed., under the word Asylum, Vol. 19, p.930.

2. Choupin, L., Immunités Ecclésiastiques, dans le *Dictionnaire Apologétique de la Foi Catholique*, Vol.II, c. 617.

vary with time and place and circumstances. That such an institution will cut across the lines of daily contact in any society is quite obvious. It clearly follows, therefore, that it will raise many delicate questions requiring careful handling if the institution is to exist, especially in better organized states.

B. Manner of treatment.

It is, perhaps, a sad but, nevertheless, true fact that most of history is lost to us as soon as it has been made. Hence, it is little wonder that the historian rejoices when he finds two accounts of the same event. If he finds a third his joy knows no bounds. The reader of secondary history may, in his own way, be even more grateful to find a number of works on the same subject. He knows, before he begins, that no historian can represent to him the past in all its originality. And because different relations of the same story, without any need of a deliberate purpose to that effect, introduce new shafts of light on the same subject, a wise reader will give every account of the past the attention that he can spare. However, the writer of a thesis must have a more precise end in view. The present writer offers the following considerations by way of introduction to what he has in mind in undertaking this work.

For practical purposes the institution of sanctuary was lost to the English speaking world with the protestant

revolt in England. It is true that one can trace vestiges of it almost down to our own time but the mature institution, with its full force as a completely developed and effective element in everyday living, ends about the middle of the sixteenth century. Other parts of western christendom enjoyed it somewhat longer though in an ever more restricted form.

The almost simultaneous demise of the institution with the birth of the English Church has had a twofold result on minds of the English speaking world. First of all, because the institution in point of time seems rather remote to the modern mind, there is a tendency to consider it as something of an oddity which enjoyed its life by some inexplicable quirk of history. This results sometimes in a semi-romantic attitude which views the institution as one of those things which might be found in the land of 'never, never' where all difficulties could be solved by a mere wave of a wand. Yet, in fact, its development was very much the product of serious circumstances.

In the second place, because the right of sanctuary in the Middle Ages was inevitably connected with the church, there was for a long time a tendency on the part of English writers to view the institution as one which they had to minimize if not to discredit.<sup>1</sup> It must be remembered that one is

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1. Pegge, Samuel, A Sketch of the History of Asylum, in Archaeologia, Vol. VIII, 1875, pp. 1-44. The author assumes an apologetic tone for even speaking of the subject.

dealing with a very real, and, in its time, a very vital institution. It is not, nor was it, a curiosity. It is not the exclusive property of any one nation.<sup>1</sup> It is not a subject that is necessarily bounded by the Catholic forms of asylum though, under Catholicism, it probably had its most successful and best influence.

The works that have appeared thus far on English sanctuary, with all their apparent merits, have this in common that they ignore, save for a casual notice, the origins of sanctuary. Taking notice of a few scattered laws in the anglo-saxon period and even fewer incidents they hurriedly pass on to the better documented period of the thirteenth century. Whatever may be said of this, one point remains true, namely, that at that later time the institution had reached a vigorous growth. There was little if any subsequent growth. The new factor when it did appear was opposition. Thus, the present writer hopes to present the institution in its natural background, to explain more carefully its genesis. There is a problem when we find so little to indicate the canonical development of the continent during the anglo-saxon period yet, at a not much later period, find a casual acceptance of sanctuary in the broad outlines in which the continent had it.

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1. Timbal, Pierre - Duclaux de Martin, Le Droit d'Asile, Paris, 1939, p.1.  
Westermarck, Edward, under the word Asylum, in Encyclopaedia of Religion and Ethics, ed. by James Hastings, Edinburgh, 1909, Vol. II, pp.161-164.

The institution's antecedents will be traced that it may be clearly distinguished from ancient forms. Following its progress through the late Empire, its development in France until the time of Gratian's Decretum and the Decretals of Gregory IX, which round out the institution, will be discussed. Then, it is possible to examine its origins and development in England. The writer feels that a unity is preserved in this way for when the continent is left, at the time of the Decretals, the great age of development is past. One can conclude a discussion of sanctuary in England but to begin there is to assume too many premises.

Another problem is that of the chartered sanctuaries in England. That they enjoyed special privileges in virtue of their charters is patent. Nevertheless, the origin of these privileges is not quite clear. It is hoped that the treatment of this point will indicate a rather tenable theory.

Finally, an attempt to measure English practice by the gauge of sanctuary law as found in the Corpus Iuris Canonici will be a guiding theme. In treating of this subject constant contact with matters of law is inevitable. Still, the present writer wishes to excuse himself from some of the precisions of the pure legal historian. He has taken the point of view of the common man living within the framework of law.

C. Literature of the field.

The review of the secondary sources of the field is confined to French and English works.

It comes as a bit of a surprise to discover how little has been written on this subject by English authors. One can read a discussion of the Jewish cities of refuge.<sup>1</sup> Passing note is taken of various pagan forms and other obscure manifestations of asylum, but among English writers even the subject of sanctuary in England itself has hardly been treated. The broader aspects of asylum's previous history has been the work of continental scholars.

Cox, writing in 1910, could say of Mr. Mazzinghi's<sup>2</sup> work that "it has up till now remained the only English book dealing exclusively with sanctuaries. It is doing no injustice to that work to say, notwithstanding its obvious research, that the treatment is scanty and at times inaccurate."<sup>3</sup>

In his own book Cox makes no pretense to be exhaustive though his work probably represents one of the best full scale attempts to treat of the subject in regard to England. However, his method has been one of anecdotal description, drawing upon various documents for instances, and does not presume to treat of the subject after the manner of its historical evolution.

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1. Bissell, Allen Page, Law of Asylum in Israel, doctoral thesis, Leipzig, 1884.

2. Mazzinghi, Thomas John de', Sanctuaries, Stafford, 1887.

3. Cox, J. Charles, The Sanctuaries and Sanctuary Seekers of Medieval England, London, 1911, p.vii.

Perhaps the best attempt to outline the development of the institution in England is Trenholme's brochure on sanctuaries printed in the first volume of "University of Missouri Studies".<sup>1</sup> Again this work slights the origins of sanctuary.

An article that can be overlooked by no student of the subject is that of André Réville, l'Abjuratio regni; histoire d'une institution anglaise.<sup>2</sup> A study which should probably now be consigned to oblivion is that of Dr. Samuel Pegge, A Sketch of the History of Asylum.<sup>3</sup> A fairly numerous group of shorter papers published in various places complete so far as the present writer can ascertain the English literature on the subject. Among these the work of Isobel D. Thornley<sup>4</sup> deserves mention though it is characterized by an a priori hostile attitude to the subject.

In French the three principal works on the subject are those of Henri Wallon<sup>5</sup>, Charles de Beaurepaire,<sup>6</sup> and Pierre Timbal.<sup>7</sup> The first two of these authors have traced the evolution of the institution but lack some of the precision of modern historical studies. The work, par excellence,

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1. Trenholme, Norman M., The Right of Sanctuary in England, op.cit.

2. dans Revue Historique, September, 1892, Vol.L, pp.1-42.

3. In Archaeologia, Vol.VIII, 1875, pp. 1-44.

4. The Destruction of Sanctuary, in Tudor Studies, ed. by R.W. Seton-Watson, Toronto, 1924, pp. 182-207

5. Wallon, Henri, Du Droit d'Asyle, Paris, 1837.

6. Beaurepaire, Charles de, Essai sur l'asile religieux dans l'Empire romain et la monarchie française, dans Bibliothèque de l'école de Chartes, 1853-1854, t.IV, pp.351-375, 573-591: t.V, pp.151-175, 341-359.

7. Timbal, Pierre, Duclaux de Martin, Le Droit d'Asile, op.cit.

is that of Pierre Timbal. He has adopted the thesis that the right of christian asylum has developed from the intercession of the clergy. Following the institution closely as it passed from the late Roman Empire into the barbarian world he has explored its every implication in France.

The regulation of asylum by the Roman Emperors forms the subject of a special study by Martroye.<sup>1</sup> Two other major articles by Le Bras<sup>2</sup> and Misserey<sup>3</sup> complete the outstanding French works dealing exclusively with the topic.

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1. Martroye, F., L'Asile et la Législation Impériale du IV<sup>e</sup> au VI<sup>e</sup> siècle, dans Mémoires de la Société Nationale des Antiquaires de France, 8th series, t.V, 1918, pp. 159-246.
  2. Le Bras, Gabriel, Asile, dans Dictionnaire d'Histoire et de Géographie Ecclésiastiques, 1930, t.IV, cc.1035-1047.
  3. Misserey, L.R., Asile en Occident, dans Dictionnaire de Droit Canonique, 1934, t.I, cc.1089-1104.

## C H A P T E R    I I

### BEGINNINGS

#### A.    Early antecedents.

That there were asylums in pre-christian times is so well known that the inevitable tendency is to assume a convenient historical link between them and christian asylum. Resemblances cannot be denied, but there are vital distinctions between christian asylum and the historical precedents of asylum. To make these distinctions clear a treatment of the antecedent asylums is necessary.

#### 1. Jewish Cities of Refuge.

The most fertile soil for the development of asylum is a condition in which the political development of the particular state is not sufficiently advanced to provide for the enforcement of its laws to the extent that it can guarantee the peace and security of each citizen. Under such circumstances the law of private vengeance steps into the picture. Such was the condition of the Jewish people at the time of the Mosaic law. Moses gave them a body of legal regulations which was a

model for the age but provided no judiciary and police power sufficient to eliminate all need of private action when an injustice occurred between private parties. The cities of refuge were founded to control this custom too deeply rooted to be destroyed.<sup>1</sup>

The crime of murder is considered a private offense punishable according to the law of revenge.<sup>2</sup> The obligation of restoring the balance of justice rests on the nearest relative or the heir of the victim.<sup>3</sup> Hence, we read in the Book of Numbers:

If any man strike with iron, and he die that was struck: he shall be guilty of murder, and he himself shall die.

If he throw a stone, and he that is struck die: he shall be punished in the same manner.

If he that is struck with wood die: he shall be revenged by the blood of him that struck him.

The kinsman of him that was slain, shall kill the murderer: as soon as he apprehendeth him, he shall kill him.

If through hatred any one push a man, or fling anything at him with ill design: or being his enemy, strike him with his hand and he die: the striker shall be guilty of murder: the kinsman of him that was slain as soon as he findeth him, shall kill him.<sup>4</sup>

Defile not the land of your habitation, *which is stained* with the blood of the innocent: neither can it otherwise be expiated, but by his

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1. Wallon, op.cit., p.4.

2. Timbal, op.cit., p.10.

3. Bissell, op.cit., p.52. "Murder is not merely an offense against the family and society as with the Greeks, but also a crime against God, a 'crimen laesae divinae majestatis'." In this connection note below the prohibition against taking money as a compensation for blood.

4. Numbers, XXXV,16-21; See also Exodus, XXI,12, Deuteronomy, XIX, 2-13.

blood that hath shed the blood of another.  
And thus shall your possession be cleansed,  
myself abiding with you. For I am the Lord  
that dwell among the children of Israel.<sup>1</sup>

However, the law of Moses envisaged the possibility of unpremeditated murder. It was in this connection that the cities of refuge were devised. They were a method of meeting the lack of a far flung police system especially in a society to which violence was not uncommon. Thus in the Book of Numbers:

And among the cities, which you shall give to the the Levites, six shall be separated for refuge to fugitives, that he who hath shed blood may flee to them: and besides these there shall be other forty-two cities. . .<sup>2</sup>

The Lord said to Moses:  
Speak to the children of Israel, and thou shalt say to them: When you shall have passed over the Jordan into the land of Chanaan,

Determine what cities shall be for the refuge of fugitives, who have shed blood against their will.

And when the figitive shall be in them, the kinsman of him that is slain may not have power to kill him, until he stand before the multitude, and his cause be judged.

And of those cities, that are separated for the refuge of fugitives,  
Three shall be beyond the Jordan, and three in the land of Chanaan,  
As well for the children of Israel as for strangers and sojourners, that ~~he~~may flee to them, who hath shed blood against his will.<sup>3</sup>

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1. Numbers, XXXV, 33,34.
  2. Ibid. XXXV, 6.
  3. Ibid. XXXV, 9-15.

If through hatred any one push a man, or fling any thing at him with ill design:

Or being his enemy, strike him with his hand, and he die: the striker shall be guilty of murder: the kinsman of him that was slain as soon as he findeth him, shall kill him.

But if by chance medley, and without hatred, And enmity, he do any of these things, And this be proved in the hearing of the people, and the cause be debated between him that struck, and the next of kin:

The innocent shall be delivered from the hand of the revenger, and shall be brought back by sentence into the city, to which he had fled, and he shall abide there until the death of the high priest, that is anointed with the holy oil.

If the murderer be found without the limits of the cities that are appointed for the banished,

and be struck by him that is the avenger of blood: he shall not be guilty that killed him.

For the fugitive ought to have stayed in the city until the death of the high priest: and after he is dead, then shall the manslayer return to his own country.

These things shall be perpetual, and for an ordinance in all your dwellings. <sup>1</sup>

You shall not take money of him that is guilty of blood, but he shall die forthwith.<sup>2</sup>

Moses himself set aside three of the six cities of refuge in the first territory occupied by the Jews east of the Jordan: "Bosor in the wilderness, which is situate in the plains of the tribe of Ruben: and Ramoth in Galaad, which is in the tribe of Gad: and Golan in Basan, which is in the tribe of Manasses."<sup>3</sup> Moses also ordered that after

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1. Ibid., XXXV, 20-29.

2. Ibid., XXXV, 31.

3. Deuteronomy, IV, 41-43.

the Jews had crossed the Jordan into the land of Chanaan that they found three more of the cities of refuge.<sup>1</sup> This last provision was fulfilled by Josue; "And they appointed Cedus in Galilee or Mount Nephtali, and Sichem in mount Ephraim, and Cariath-Arbe, the same is Hebron in the mountain of Juda."<sup>2</sup>

In Deuteronomy the people are commanded to pave diligently the way and to divide the whole province of the land equally into three parts so that he who is forced to flee for manslaughter may have near at hand whither to escape.<sup>3</sup> It thus developed that a culprit could reach a city of refuge from any part of the territory without covering more than thirty miles, or, in other words, without making more than a day's journey by foot.<sup>4</sup>

Various tests outline the procedure which was to be followed in dealing with the refugees:

And when he shall flee to one of these cities: he shall stand before the gate of the city, and shall speak to the ancients of that city, such things as prove him innocent: and so shall they receive him, and give him a place to dwell in.

And when the avenger of blood shall pursue him, they shall not deliver him into his hands, because he slew his neighbor unawares, and is not proved to have been his enemy two or three days before.

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1. Ibid., XIX, 1, 2. Numbers, XXXV, 14.

2. Josue, XX, 7.

3. Deuteronomy, XIX, 3.

4. Timbal, op. cit., p. 11.

And he shall dwell in that city, till he stand before judgment to give an account of his fact, and till the death of the high priest, who shall be at that time: then shall the manslayer return, and go into his own city and house from whence he fled.<sup>1</sup>

It is clear from the long quotation given above from the Book of Numbers that the refugee is tried before the people of the place of the murder. If he is judged guilty of premeditation he is abandoned to the exercise of justice at the hands of the kinsman of him whose blood was shed, and he shall die.<sup>2</sup> If he is acquitted he is brought back to the city of refuge to which he had fled and there he must live until the death of the high priest in office at that time.

If these texts were the only indications of asylum in Israel we could easily conclude that the Hebrew institution was simply a territorial one without influence on christian asylum which was founded on the respect due to holy places dedicated to God. However, we read in the Book of Exodus:

He that striketh a man with a will to kill him, shall be put to death.

But he that did not lie in wait for him, but God delivered him into his hands: I will appoint thee a place to which he must flee.

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1. Josue, XX, 4-6.

2. Deuteronomy, XIX, 12.

If a man kill his neighbour on set purpose  
and by lying in wait for him: thou shalt take  
him away from my altar, that he may die.<sup>1</sup>

There seems to be, in this instance, an implied recourse to the asylum of a holy place, at least, for the involuntary homicide. Besides, we have several other examples of refuge in the temple. Joab who killed Abner and Amasa, generals of the armies of Israel and Juda, fled to the altar in the temple.<sup>2</sup> Solomon alleging as his reason the fact that Joab had slain two men, "just and better than himself: and slew them with the sword, my father David not knowing it," ordered him to be killed at the foot of the altar. This might give some ground to the idea that there was a general law of asylum for the temple to which this was a particular exception since the murders were deliberate.

When Adonias who had aspired to the throne was surprised by Solomon's being anointed king while his father, David, still lived, he fled to the altar. Before he would leave he demanded that king Solomon swear "that he will not kill his servant with the sword."<sup>3</sup> Solomon's only answer was: "If he be a good man, there shall not so much as one hair of

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1. Exodus, XXI, 12-14.

2. III Kings, II, 28-34. II Kings, III, 27, and XX, 10.

3. III Kings, I, 51.

his head fall to the ground: but if evil be found in him , he shall die."<sup>1</sup> The high priest Joiada, having had Joas recognized as king, ordered the captains and chiefs of the army: "Take her (Athalia) forth without the precinct of the temple, and when she is without let her be killed with the sword. For the priest commanded that she should not be killed in the house of the Lord."<sup>2</sup> These cases are obscure and it seems quite likely that the flight to the temple was inspired by the notion that the sanctity of the place might secure more lenient treatment for the refugee. The very fact that Athalia was killed outside the temple indicates this reverence without the necessity of positing any law or custom of asylum.

The following hypothesis would seem tenable. At the time of the wandering in the desert it was easy to reach the Tabernacle which the Jews carried with them.<sup>3</sup> In their new and stable home the Jewish people have a more advanced organization which entails a more detailed regulation of murder which is no longer a purely private offense.<sup>4</sup> In the Promised Land worship is centralized at Jerusalem and the temple. Thus a place of asylum is not so accessible and the cities of refuge take over that function.<sup>5</sup> They benefit one crime only, involuntary homicide.<sup>6</sup>

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1. III Kings, I, 52.            2. II Paralipomenon, XXIII, 14

3. Bissell, op. cit. p. 63    4. Timbal, op. cit. p. 10.

5. Bissell, op. cit., p. 64. Bissell entertains the possibility of the Temple's having retained a character of asylum even after the settlement of the promised land. However, he takes account of the lack of instances. Eodem loco, p. 74.

6. Beaurepaire, op. cit., dans Bibliothèque de l'École des Chartes, t. IV, series III, 1853, p. 354, n. 5.

The Jewish people were able in this way, to meet a need of justice which we sometimes handle by the varying degrees of our manslaughter charges. "Les homicides involontaires étaient innocents, mais ils devaient être ôtés de devant les yeux des parents du mort."<sup>1</sup> To forestall the possibility of flight to the pagan nations about them the cities of refuge were serviceable.<sup>2</sup>

Timbal adduces as a clinching argument for the territorial nature of Jewish asylum the fact that their slaves did not enjoy this privilege.<sup>3</sup> To the present writer the point seems to have but little force. However, the interpretation that the generally good treatment given to slaves of the Jews eliminated the need of asylum for the slaves seems consonant with the texts relating to the cities of refuge and the whole background of Jewish laws<sup>4</sup> Foreigners and the slaves of foreigners did enjoy asylum.<sup>5</sup>

The Jewish cities of refuge, it is concluded, were territorial asylums. They were not based on the fundamental reverence for sacred places that characterizes a true religious asylum. Their function was limited to one case, that of involuntary manslaughter. It is to this form of asylum

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1. Montesquieu, De l'Esprit des Lois, Bk.XXV,c.3, dans Oeuvres Complètes, éd. par Edouard Laboulaye, Paris,1877,Vol.5,p.164.
  2. Beaurepaire, op.cit., eodem loco.
  3. Timbal, op.cit., p.12.
  4. Wallon, Op.cit., p.5.
  5. Numbers, XXXV, 15. Deuteronomy, XXIII, 15, 16.

that Josephus refers.<sup>1</sup> While they met a social need that sanctuary in its long history has often provided, in their own formal basis and spirit they do not represent a prototype of christian asylum. At no time did they pose an absolute barrier to the operation of justice. In spite of the divine wisdom we see in them they cannot, except, possibly, in some external similarities be regarded as the source of christian asylum. "Telle était être l'oeuvre du divin législateur. Il n'établit point la grâce contre la loi, il l'établit dans la loi."<sup>2</sup>

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1. Josephus, Jewish Antiquities, trans. by H. St. J. Thackeray, New York, 1930, Bk. IV, p. 559.

2. Wallon, op. cit., p. 6.



The deceitful false Aegisthus, slayer of his famous sire."<sup>1</sup>

With such consecration of blood vengeance it is not surprising to find among the Greeks a system of asylum to set some bounds of space and time to the prosecution of family feuds and the gratification of private revenge. Caillemer thinks that at first all temples likely enjoyed privileges of asylum. Then, in the presence of abuses they were limited so that only a relatively small number retained the privilege at the classical period.<sup>2</sup>

Caillemer, also, distinguishes between a sacred quality belonging to all temples which gave a refugee a particular claim on his pursuer's mercy and a strict right of asylum which checked the action of the pursuer. Oftentimes it is difficult to distinguish the two as found in the sources.<sup>3</sup> The numerous references throw a great deal of light on the nature and workings of Greek asylum, but it is difficult to disengage from them any legal pattern. If a legal coherence is not immediately evident it must be remembered that Greece was an area of many city-states and not an integrated empire. If the religious element does

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1. Ibid., i, 293.

2. Caillemer, C., *Asyilia*, dans *Dictionnaire des Antiquités Grecques et Romaines*, Paris, 1877, t. I, pt. I, p. 505.  
See, also, the article in *Smith's Dictionary of Greek and Roman Antiquities*, London, 1890, *Asyilia*, pp. 234-236.

3. Caillemer, C., op. cit., p. 506. Bissell, A. P., op. cit., p. 30.

not always present the same even tone that will be seen in christian asylum it must be recalled that one is in the midst of a polytheistic society.

The principal temples of Greece have enjoyed this right of asylum: that of Diana at Ephesus; of Minerva at Athens: of Aesculapius at Epidaurus; of Poseidon at Taenarus; of Apollo at Miletus; of Aesculapius at Pergamum ...etc...<sup>1</sup>

Just as history tends to dwell on the exception and thereby often gives a key to the rule so, too, one finds information about Greek asylum in numerous examples of its violation. Thus, Antony after the battle of Philippi dragged Patronus from the temple of Diana at Ephesus because he had had a share in the plot against Caesar.<sup>2</sup> During the Mithradatic wars there was a wholesale violation of asylums at the order of that same barbarian warrior. The Ephesians tore away the fugitives, who had taken refuge in the temple of Artemis and were clasping the images of the goddess and slew them. The Pergameans shot with arrows those who had fled to the temple of Aesculapius, while they were still clinging to the gods' statues. "The citizens of Tralles, in order to avoid the appearance of blood-guiltiness, hired a

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1. Josephus, *Antiquities*, XV, 4, 1. Pausanias, *Description of Greece*, I, 20, trans. by Arthur R. Shilleto, London, 1886, Vol. I, p. 38; *Ibid.*, II, 27, Vol. I, p. 145. Thucydides, *Peloponnesian Wars*, 128, trans. by B. Jowett, Oxford, 1881, Vol. I, p. 79. Tacitus, *Annals*, II, 61-63, trans. by C.H. Moore, London, 1931, Vol. **II**, pp. 619-623; *Ibid.*, IV, 14, Vol. **III**, p. 27.

2. Appian, *Roman History*, (*Civil Wars*), V, 4, trans. by Horace White, London, 1912, Vol. **IV**, p. 381.

savage monster named Theophilus of Paphlagonia to do the work. He conducted the victims to the temple of Concord, and there murdered them, chopping off the hands of some who were embracing the sacred images."<sup>1</sup>

Antony under the influence of Cleopatra dragged her brothers from the temple of Artemis at Ephesus and put them to death.<sup>2</sup> At a much earlier period the ever pursued Pactyas was forcibly taken from the temple of Athene Poliuchos by the Chians and delivered up to be taken under guard to Cyrus. For this sacrilege the Chians received Atarneus. It is curious to note the consciousness of guilt manifested by the fact that for a long time the Chians neither used barley-meal grown in this region of Atarneus, for pouring out in sacrifice to any god, or baked cakes for offering of the corn which grew there, but all the produce of this land was excluded from every kind of sacred service."<sup>3</sup> The Argives in a battle with the Spartans under Cleomenes were badly worsted, most of them perishing in the battle and the remnants of the Argive force fleeing for refuge to their sacred grove at Argos. Having been promised quarter they came out but finding that they had been deceived they took refuge again only to have the

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1. Ibid., (Mithradatic Wars) XII, 4, Vol. II, p. 279.

2. Dion Cassius, Roman History, XLVIII, 24, trans. by Earnest Cary, London, 1917, Vol. V, p. 269.

3. Herodotus, History, I, 157-161, trans. by G.C. Macaulay, London, 1890, Vol. I, pp. 78-80. Cf. V, 46.

grove and themselves set on fire.<sup>1</sup> The number of refugees was reckoned at five thousand.<sup>2</sup>

Pausanias gives more evidence of Spartan violation of asylum in an attack on the Messenians in which the Spartans killed all they took in the unprotected town of Amphea even those they found "sitting as suppliants at the temples and altars of the gods."<sup>3</sup>

A rather unusual example of violation of asylum is one that took place in Aegila in Laconia where there was a temple of Demeter. "There Aristomenes and his soldiers, knowing that the women were keeping a festival to Demeter, wished to seize them: but as these women inspired by the goddess made a bold defense, most of the Messenians received wounds with the swords which they used to sacrifice the victims and the sharp pointed spits on which they stuck their meat to roast it. And Aristomenes they struck with their torches and took him alive. However, he escaped the same night to Messenia. They say that Archimadea, the priestess of Demeter, had the guilt of letting him escape. But she did not let him go for money, but was an old sweetheart of his, and made out that Aristomenes had escaped by burning his bonds."<sup>4</sup>

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1. Pausanias, op.cit., II,20, Vol.I, p.129

2. Ibid. III, 4, p. 175.

3. Ibid. IV, 5, p. 237.

4. Ibid. IV, 17, p.260.

An instance of violation of asylum being strongly but ineffectually urged is also given by Pausanias. The people of Zancle were blockaded by land by the Messenians and by sea by the people of Rhegium. After their fort had been taken they fled for refuge to the altars of the gods and to the temples. "Anaxilas, however, urged on the Messenians to slay the suppliants, though they prayed hard for quarter, and to enslave the rest together with their women and children. But Gorgus and Manticlus begged that Anaxilas would not compel them, who had been shamefully treated by their fellow-countrymen, to act with equal cruelty to Greeks. And after that they took the people of Zancle from the altars, and having mutually given and received pledges dwelt together as one people."<sup>1</sup> There is also an instance of the Thebans, in the Phocian war, setting a temple and the Phocian fugitives within on fire.<sup>2</sup>

An especially sacrilegious violation of asylum was found in Sparta about 220 B.C. A discontented political faction, unwilling to accept the decision of the multitude, determined to murder the Ephors. For this purpose they corrupted some of the younger men. "It was an ancestral custom that, at a certain sacrifice, all citizens of military age should join fully armed in a procession to the temple of Athene of the Brazen-house, while the Ephors remained in the

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1. Pausanias, op.cit.,IV,23, p.274.

2. Ibid. X, 35, Vol.II, p.287.

sacred precinct and completed the sacrifice. As the young men therefore were conducting the procession, some of them suddenly fell upon the Ephors, while they were engaged with the sacrifice, and slew them. The enormity of this crime will be made apparent by remembering that the sanctity of this temple was such, that it gave a safe asylum even to criminals condemned to death; whereas its privileges were now by the cruelty of these audacious men treated with such contempt, that the whole of the Ephors were butchered round the altar and the table of the goddess."<sup>1</sup>

The most famous case of the violation of asylum at Athens was associated with the attempt on the part of Cylon to make himself ruler of the state. Cylon had acted on the basis of an ambiguous oracle which had advised him to seize the Acropolis at the greatest festival of Zeus. Cylon and his companions, the attempt having failed, were besieged in the temple on the Acropolis. Being in great distress from want of food and water he and his brother escaped. "...the rest, being hard pressed, and some of them ready to die of hunger, sat as suppliants at the altar which is in the Acropolis. When the Athenians, to whose charge the guard had been committed, saw them dying in the temple, they bade them rise, promising to do them no harm, and then led them away and put them to death. They even slew them in the very presence of

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1. Polybius, Histories, IV, 35, trans. by Evelyn S. Shuckburgh, London, 1889, Vol. I. p. 310.

the awful goddesses at whose altars, in passing by, they had sought refuge." The murderers and their descendants were held to be accursed. The incident had repercussions in the Peloponnesian wars when the Spartans urged the presence of some of these descendants in Athens as a cause for displeasure.<sup>1</sup>

Pausanias, the great Spartan general, died as a result of the violation of the **asylum** of Athens of the Brazen House. After a long delay due to the lack of sufficient evidence to definitely convict Pausanias of conspiring with the Persians definite information was obtained. Sensing his approaching arrest Pausanias took refuge with Athene. Because of the inclement weather he went into a little house belonging to the temple. His pursuers took off the roof of the house, walled up the place and left him to die of starvation. Just before he died they brought him out that he might not die in the holy place.<sup>2</sup>

Thucydides relates an incident from the civil war in Corcyra in which some of the citizens rather than go to sea with the Athenians fled to the temples. It seems like an ancient form of draft-dodging. However, once the internal war had been decided in favor of one faction a wholesale violation of asylum took place to the loss of the vanquished group.<sup>3</sup>

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1. Thucydides, op.cit., I, 126, Vol. I., pp. 77-79. Cf. Pausanias, op.cit., VII, 25, Vol. II, p. 53.

2. Ibid. I, 134, p. 84.

3. Ibid. III, 75-81, pp. 218-221.

Livy, in spite of his casual attitude towards asylums, seems to tell with some feeling how Menippus fell on certain soldiers at Delium "while the soldiers were wandering around completely at ease, some going to see the temple and the grove, some strolling along the shore unarmed" when they were "in a shrine and sacred grove, of so religious a character, and under the law of sanctuary which protects these temples which the Greeks call 'asylums'."<sup>1</sup>

The Jewish people did not respect the asylums of their pagan neighbors. Thus, Jonathan when he took the city of Azotus did not spare the temple of Dagon therein nor the refugees within the temple. He burnt the temple and those who had taken refuge in it.<sup>2</sup>

It is readily seen even from the violations of asylum cited that the Greeks did not care to directly violate an asylum by the simple extraction of the refugee. They did not want to have his fate and the wrath of the gods on their hands. Hence, the walling up of a sanctuary, the setting fire to another, the promise of safety in other cases, and starvation to force the pursued from his security.

However, there are many examples of formal observance of asylum. Strabo describes Troezen as sacred to Poseidon, after whom it was <sup>once</sup> called Poseidonia and tells us that off its harbour lies Calauria, Here was an "asylum sacred to

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1. Livy, History, XXXV, 51.

2. Josephus, Antiquities, op.cit., XIII, 4, Vol. VII, p. 275.

Poseidon; and they say that this god made an exchange with Leto, giving her Delos for Calauria, and also with Apollo, giving him Pytho for Taenarum. ...'For thee it is the same thing to possess Delos or Calauria, most holy Pytho or windy Taenarum.' "" There was a sort of amphyctionic league connected with this temple and the worship of this god was so prevalent among the Greeks that even the Macedonians, whose power already extended as far as the temple, "in a way preserved its inviolability, and were afraid to drag away the suppliants who fled for refuge to Calauria; indeed, Archaias, with soldiers, did not venture to do violence even to Demosthenes, although he had been ordered by Antipater to bring him alive, both him and all other orators he could find that were under similar charge, but tried to persuade (underlining mine) him; he could not persuade him, however, and Demosthenes forestalled him by suiciding with poison."<sup>1</sup>

The pursuer will, sometimes, allege the unworthiness of the suppliant or some divine sign of approval to justify his conduct. Thus, when Creusa realises that Ion is her son she leaves the sanctuary and Ion cries:

Seize her! ---she hath been driven god-distraught  
To leave the carven altar! Bind her arms.<sup>2</sup>

Andromache is openly tricked into leaving the sanctuary by

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1. Strabo, Geography, VIII,6, 14, trans. by Horace L. Jones, London, 1924, Vol.III, p.173.
  2. Euripides, Ion, 1399-1403, trans. by Arthur S. Way, London, 1912, Vol.IV, p. 135.

being allowed to believe that she might thus save the life of her son.<sup>1</sup> Once she is aware of the ruse the pursuer still feels obliged to justify himself by reference to the ambiguous phrase that he used.

The remarkable thing in the Greek world is the extent to which asylum was respected. Our examples for the most part deal with important people of the day. It would seem that if the privilege held good for these with their powerful opponents that the weak, the conquered, the slave must have benefitted in, at least, a like degree.

One of the earlier Cleopatras before embarking on the ventures of war apparently felt some security in sending "the greater part of her wealth and her grandsons and her testament to Cos for safe keeping"<sup>2</sup> in the temple of Aesculapius.

Some horsemen rode up to Agesilaus after one of the battles of the Theban War and told him that "eighty of the enemy still armed, had taken shelter in the temple of Athena, and asked what they should do. And he, although he had received many wounds, nevertheless did not forget the deity, but ordered them to allow these men to go away whithersoever they wished, and would permit them to commit no wrong."<sup>3</sup> In his eulogy of Agesilaus, Xenophon says, "Agesilaus respected temples, even

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1. Euripides, Andromache, 400-440, eodem loco, Vol. II, pp. 447-49

2. Josephus, Antiquities, op. cit., XIII, 13, Vol. 7, p. 401.

3. Xenophon, Hellenica, IV, 3, 20, trans. by Carleton L. Brownson  
London, 1918, Vol. I, p. 503.

such as were situated in the territory of an enemy; thinking it was proper to make the gods allies, not less in a hostile than a friendly country. He offered no violence to suppliants at the altars of the gods, even though they were his enemies; thinking that it was absurd to call those who stole from temples sacrilegious and to regard those who dragged suppliants from the altars of gods as pious."<sup>1</sup>

Themistocles, too, when being pursued all over the Greek world was able to take refuge with the household gods at the hearth of Admettus, a man whom he had opposed vigorously before and from whom he would not expect a warm welcome.<sup>2</sup> Antony, after the battle of Philippi, while he held Patronus, yet pardoned the others who had fled to the temple at Ephesus.<sup>3</sup> The ferocious Mithridates, when he laid siege to Patara, began to cut down a grove dedicated to Latona to get material for his machines. However, he stopped when he was warned in a dream to spare the sacred trees.<sup>4</sup>

An unusual case is that of Periander who had despatched three hundred sons of the chief men of Corcyra to Alyattes at Sardis to be made eunuchs; "and when the Corinthians who were conducting the boys had put into Samos, the Samians being informed of the story and for what purpose they were being con-

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1. Xenophon, Agesilaus, c.11, Minor Works trans. by Rev. J.C. Watson, London, 1891, p. 39.

2. Nepos, Cornelius, Themistocles, c.8, trans. by John C. Rolfe, London, 1929, p.401

3. Appian, Roman History, op.cit., (Civil Wars), V,4, Vol.IV, p. 381

4. Ibid., (~~Mithradatic~~ Mithradatic Wars) IV,27, Vol.II, p.287.

ducted to Sardis, first instructed the boys to lay hold of the temple of Artemis, and then they refused to permit the Corinthians to drag the suppliants away from the temple: and as the Corinthians cut the boys off from supplies of food, the Samians made a festival, which they celebrate even to the present time in the same manner: for when night came on, as long as the boys were suppliants they arranged dances of maidens and youths, and in arranging the dances they made it a rule of the festival that sweet cakes of sesame and honey should be carried, in order that the Corcyrean boys might snatch them and so have support; and this went on so long that at last the Corinthians who had charge of the boys departed and went away; as for the boys, the Samians carried them back to Corcyra."<sup>1</sup>

At another time the Roman ambassadors, Caius Popilius, Caius Decimus and Caius Hastilius, having sailed from Chalcis with three quinqueremes arrived at Delos, and found there forty Macedonian barks, and five quinqueremes belonging to king Eumenes. The Romans were at war with the Macedonians. Still "the sacred character of the temple and the island secured all parties from injury; so that the Roman and Macedonian seamen, and those of Eumenes, used to meet promiscuously in the temple, a truce being imposed by the religious feeling which the place inspired."<sup>2</sup>

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1. Herodotus, op.cit., III,48, Vol.I, pp.233-234.

2. Livy, History, XLIV, 29.

Another instance in which the power of a fleet was held in check gives some hint of a legal procedure being attached to an asylum. Perseus and Evander, his faithful supporter, were sheltered at Samothrace. Though their cause was all but lost the Romans could not prevail upon them to surrender to their fleet. Finally, a Roman addressed "the general assembly of the Samothracians, 'People of Samothrace, our good hosts; is the account which we have heard true or false, that this island is sacred and the entire soil holy and inviolable?' They all agreed in asserting the supposed sanctity of the place; whereupon he proceeded thus: 'Why, then, has a murderer, stained with the blood of King Eumenes, presumed to profane it? And though, previous to every sacrifice, a proclamation forbids all who have not pure hands to assist at the sacred rites, will you, nevertheless, suffer your holy places to be polluted by an assassin, who bears the marks of blood on his person?' The story of King Eumenes having been nearly murdered by Evander at Delphi, was now well known by report through all the cities of Greece. The Samothracians, therefore, besides the consideration of their being themselves, as well as the temple and the whole island in the power of the Romans, were convinced that the censure thrown on them was not unjust, and therefore sent Theondas, their chief magistrate, whom they style king to Perseus, to acquaint him that Evander the Cretan was accused of murder; that they had a mode of trial established among them, by the practice of their ancestors, concerning such

as were charged with bringing impure hands into the consecrated precincts of the temple. If Evander was confident that he was innocent of the capital charge made against him, let him come forth, and stand trial; but, if he would not venture to undergo inquiry, let him free the temple from profanation, and provide for his own safety."<sup>1</sup>

Perseus was against any such trial for a conviction would redound against him and fearful of the Samothracians, in the event of Evander's escape, he killed him. The revulsion of feeling against him was now so great at his having defiled with blood two of the most venerable sanctuaries in the world that his few remaining followers gave themselves up. He himself despairing of further safety there also surrendered.

Pausanias relates how the general with whom he shared his name took refuge in the temple of the Alean Athene at Tegea. "This temple was from time immemorial venerated throughout the Peloponnese, and afforded safety to all suppliants, as was shown by the Lacedaemonians to Pausanias, and earlier still to Leotychides, and by the Argives to Chrysis, who all took sanctuary here, and were not demanded up."<sup>2</sup>

During the Aetolian wars an army "arrived at the temple of Artemis, which lies between Cleitor and Cynaetha,

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1. Livy, History, XLV, 5 and 6.

2. Pausanias, op.cit., III,5, Vol.I, p.177. Pausanias also relates of the fountain of Macaris at Marathon how Theseus protected the children of Hercules and thus brought on the first war between Athens and the Peloponnese. I,32,Vol. I, p. 65. Cf. Euripides, The Children of Hercules.

and is regarded as inviolable by the Greeks. They threatened to plunder the cattle of the goddess and other property round the temple. But the people of Lusi acted with great prudence: they gave the Aetolians some of the sacred furniture, and appealed to them not to commit the impiety of inflicting any outrage. The gift was accepted," and the Aetolians at once left.<sup>1</sup>

Even the violations themselves of asylum served to strengthen the faith of the ancient Greeks in the divine protection accorded to their asylums. Every misfortune which followed the violation of an asylum was considered as an effect of divine vengeance. They had a name for the punishment which would follow upon the violation of asylum, the 'Retribution of Neoptolemus'. Neoptolemus, the son of Achilles, having slain Priam at the altar of Household Zeus, was himself also slain at Delphi in the temple of Apollo, "and in consequence of that, suffering what one had inflicted on another came to be called the 'Retribution of Neoptolemus'." It is interesting to note the respect felt for asylum even on the part of those ancient writers who might be classed as skeptical, as too much men of affairs and the world, to think twice about it. Thus, Polybius' attitude is especially worthy of note.<sup>2</sup> And Livy, the Roman, whose enthusiasm for asylum is certainly not over-great speaks with a certain revulsion of feeling about sacrilege at two of

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1. Polybius, op.cit., IV,18, Vol.I, p.294.

2. Ibid., IV,35, Vol. I, p.310; cf. VII, 13,Vol.I, p.519.

the world's most venerable sanctuaries.<sup>1</sup> Wallon has, therefore, aptly phrased it when he says, "Ainsi donc, si le réfugié n'était pas toujours sous la sauvegarde de l'asyle, le droit d'asyle fut toujours, en Grèce sous la sauvegarde de la foi des peuples."<sup>2</sup>

Aristodicos could not believe an oracle commanding the men of Kyme to deliver up Pactyas even after hearing it himself. Accordingly, he devised a means of testing the oracle and "went all round the temple destroying the nests of the sparrows and of all the other kinds of birds which had been hatched on the temple: and while he was doing this, it is said that a voice came from the inner shrine directed to Aristodicos and speaking thus; 'Thou most impious of men why dost thou dare to do this? Dost thou carry away by force from my temple the suppliants for my protection?' And Aristodicos, it is said, not being at all at a loss replied to this: 'Lord, dost thou thus come to the assistance of thy suppliants and yet biddest the men of Kyme deliver up theirs?' and the god answered him again thus: 'Yea, I bid you do so, that ye may perish<sup>the</sup> more quickly for your impiety; so that ye may not at any future time come to the Oracle to ask about delivering of suppliants."<sup>3</sup>

The aristocracy of the Eginetans, having put down a revolt of the people, were bringing their prisoners forth for execution. "From this there came upon them a curse which

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1. Livy, History, XLV, 6.

2. Wallon, Henri, op.cit., p.26.

3. Herodotus, op.cit., I, 157-161, Vol. I, pp.78-80

they were not able to expiate by sacrifice, though they devised against it all they could; but they were driven forth from the island before the goddess became propitious to them. For they had taken as prisoners seven hundred of the men of the people and were bringing them forth to execution, when one of them escaped from his bonds and fled for refuge to the entrance of the temple of Demeter, the Giver of Laws, and he took hold of the latch of the door and clung to it; and when they found that they could not drag him from it by pulling him away, they cut off his hands and so carried him off, and those hands remained clinging to the latch of the door."<sup>1</sup>

The cause of Sulla's illness was considered to be the wrath of Zeus, the god of suppliants, because when Aristion fled for refuge to the temple of Athene he tore him away and put him to death.<sup>2</sup> Cleomenes "died in a fit of madness, for he seized his sword, and stabbed himself, and hacked his body about all over. The Argives say he came to this bad end as a judgment for his conduct to the five thousand fugitives in the grove, the Athenians say it was because he ravaged Orgas, and the Delphians because he bribed the priestess at Delphi to tell falsehoods about Demaratus. Now there are other cases of vengeance coming from heroes and gods as on Cleomenes..."<sup>3</sup>

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1. Herodotus, op.cit., VI,91, Vol.II, p.99.

2. Pausanias, op.cit., I,20, Vol.I, p.38.

3. Ibid.,III,14, Vol.I,p.175. Cf.Herodotus,op.cit.,VI, 75, Vol.II, p.92.

"Some of the Lacedaemonians, on a charge for which they were condemned to death, fled to Taenarum as suppliants; and there the Ephors took them from the altar and slew them. And the wrath of Poseidon came upon those Spartans who had violated his rights of sanctuary, and he adjudged the town to be utterly razed to the ground."<sup>1</sup> The Spartan city was levelled by an earthquake.<sup>2</sup> Shortly after this outrage some Messenians who had been made helots fled to Mount Ithome. "And the Messenians were allowed to surrender partly because of the strength of the place, partly because the Pythian Priestess prophesied to the Lacedaemonians that there would be vengeance from Zeus of Ithome if they violated his right of sanctuary. So they were allowed to evacuate the Peloponnese upon conditions for these reasons."<sup>3</sup>

In one of the Olympiads it was said that Cleomedes of Astypalea, boxing with Iccus from Epidaurus, killed him, and being condemned by the umpires to be deprived of his prize went out of his mind for grief. On his return to Astypalea while standing in a school where there were about sixty scholars he pulled away the pillar which supported the roof, and when the roof fell in on the boys he was pelted with stones by the citizens, and fled for refuge to the temple of Athene.

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1. Pausanias, op.cit., IV,24, Vol. I, p.275.
  2. Thucydides, op.cit., I, 128, Vol.I, p.79.
  3. Pausanias, op.cit., IV,24, Vol.I, p.276.

He got into a chest which was lying in the temple, and clapped down the lid. The people of Astypalaea had immense labor to open the chest. At last, they broke open the woodwork, and found no Cleomedes either alive or dead, and so sent messengers to Delphi to inquire what had become of him. The Pythian priestess returned this answer,

Last of the heroes is Cleomedes of Astypalaea  
honor him with sacrifices as no longer a mortal.<sup>1</sup>

Achaean, who drove some suppliants from the temple of Poseidon of Helice and slew them, "met with quick vengeance from Poseidon, for an earthquake coming over the place rapidly overthrew all the buildings, and the very site of the city is difficult for posterity to find." And that same winter the sea inundated Helice to the tops of the trees of the grove so that town and people were swept away completely.<sup>2</sup>

Pausanias assures us that we may learn not only from this ruin of Helice but also from other cases that the vengeance of Heaven for outrage upon suppliants is sure. Thus the god at Dodona plainly exhorted men to respect suppliants. For to the Athenians in the days of Aphidias came the following message from Zeus at Dodona.

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1. Pausanias, op.cit., VI, 9, Vol.I, p.378.

2. Ibid. VII, 24, Vol.II, pp.51-52.

Think of the Areopagus and the smoking altars of the Eumenides, for you must treat as suppliants the Lacedaemonians conquered in battle. Slay them not with the sword, harm not suppliants. Suppliants are inviolable.<sup>1</sup>

Thus, during one Spartan-Athenian engagement some Spartans entered the city at night to find in the morning that the supporting armies had retired. These spies fled for safety to the Areopagus and to the altars of the goddesses called the August. The Athenians allowed them to leave with complete impunity.

Perhaps it is a bit too much to say, as Beaurepaire has it,<sup>2</sup> that asylums were established principally for slaves but the dictum of Euripides indicates a public attitude,

... -the beast finds refuge in the rock,  
The slave at the gods' altars;<sup>3</sup>

and in subsequent practice slaves had an important place in the history of asylum. Herodotus in his time saw "a temple of Heracles, in which if any man's slave take refuge and have the sacred marks upon him, giving himself over to the god, it is not lawful to lay hands upon him; and this custom has continued still unchanged from the beginning down to my own time."<sup>4</sup>

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1. Pausanias, op.cit.,VII,25, Vol.II,p.53.

2. Beaurepaire, op.cit., dans Bibliothèque de l'Ecole des Chartes, t.IV, 3rd series, 1853, p.358.

3. Euripides, Suppliants, 263, trans. by Arthur S. Way, op.cit., Vol.III, p.521.

4. Herodotus, op.cit., II,113, Vol.I, p.165.

Pausanias in his description of Corinth speaks of a cypress grove and an old temple in the citadel at Phlius in which a certain goddess was worshipped. "And among the Phliasiens this goddess has various honours and especially in regard to slaves; for they give them entire immunity if they come as suppliants here, and when prisoners are loosed of their fetters they hang them upon the trees in the grove."<sup>1</sup>

The same author recounts of the people of Aricia in Italy that they had a temple dedicated to Artemis "where in my time the prize for victory in single combat was to become the priest of the goddess. But the contest was not for freemen, but for slaves who had run away from their master."<sup>2</sup> The slave could not be taken by force from, at least, one other temple and was only given back to his master if he were to swear to treat him kindly.<sup>3</sup> The Athenian law allowed the slave who had taken refuge in the Theseum, if his grievances were sufficient, to demand his sale.<sup>4</sup>

While the temple was the normal area of protection afforded by an asylum some wide extensions of that protection have been noted in the islands of Delos and Samothrace. A rather interesting attempt to extend the protection of a temple was that of the Ephesians who when they were besieged by

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1. Pausanias, op.cit., II,13, Vol.I, p.115.

2. Ibid., II, 27, Vol,I, p.144.

3. Diodorus of Sicily, XI,92, cited by Wallon, op.cit., p.18.

4. Attic Laws, cited by Beaurepaire, op.cit., dans Bibliothèque de l'Ecole des Chartes, t.IV, 1853, p.358

Croesus "dedicated their city to Artemis and tied a rope from the temple to the wall of the city: now the distance between the ancient city which was then being besieged, and the temple is seven furlongs."<sup>1</sup> Polycrates, the tyrant of Samos, attached the island of Rhenia by a chain to the island dedicated to the Delian Apollo.<sup>2</sup> The community of Hierocaesarea claimed an orbit of immunity for two miles round<sup>for</sup> their Persian Diana.<sup>3</sup>

The key to this extension of the orbit of asylum is given in Polybius' discussion of the privilege of Elis which not long before his time had enjoyed a considerable immunity. Remarking upon the wealth and general prosperity of Elis he attributes it especially to the fact that the inhabitants' lives "were under the protection of religion; for, owing to the Olympic Assembly, their territory was especially exempted by the Greeks from pillage; and they had accordingly been free from all injury and hostile invasion."<sup>4</sup> In the course of time encroachments were made upon their liberties but the Eleans "no longer troubled themselves in the least about recovering from the Greeks their ancient and ancestral immunity from pillage, but were content to remain exactly as they were. This in my opinion was a shortsighted policy... My object in thus speaking is to admonish the Eleans: for they have never

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1. Herodotus, op.cit., I,26, Vol.I,p.11.

2. Thucydides, op.cit., III,104.

3. Tacitus, op.cit.,III, 62, Vol.II, p.621.

4. Polybius, op.cit., IV, 74, Vol.I, p.344.

had a more favourable time than the present to get back their ancient privilege of exemption from pillage, which is universally acknowledged to belong to them. Even now, some sparks, so to speak, of their old habit remaining, Elis is more thickly populated than other districts."<sup>1</sup> The island of Delos, because of the immunity its sanctity secured, drew to itself the commerce of Corinth when that city was ruined by the Romans.<sup>2</sup> A whole section of the city of Ephesus was comprised within the protection of the temple of Diana<sup>3</sup> which also had the rather dubious advantage for commerce of annihilating the debts of refugees.<sup>4</sup>

The tomb of a Hero like Theseus could serve as a sanctuary. Thus, after Cimon had recovered Theseus' bones under the guidance of the gods they "were buried in the heart of the city, near the present gymnasium, and his tomb is still a sanctuary and place of refuge for runaway slaves and all men of low estate who are afraid of men in power, since Theseus was a champion and helper of such during his life, and graciously received the supplications of the poor and needy."<sup>5</sup>

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1. Polybius, op.cit., eodem loco, p.345.
  2. Strabo, op.cit., X, cited by Wallon, p. 33.
  3. Strabo, Geographica, XIVm 1,23, cited by Timbal,Fierre, op.cit. p. 24.
  4. Plutarch, De Vitando aere alieno, II,4, cited by Timbal,P., op.cit., p. 20.
  5. Plutarch, Theseus, XLXVI, trans. by Bernadotte Ferrin, London, 1914, Vol.I,p.83. Cf. Diodorus of Sicily, IV,62, trans. by C.H. Oldfather, London, 1939, Vol.III,p.15.

Some of the sanctuaries had peculiar features.

Thus, at the sacred grove of Aesculapius no births or deaths could take place in the precincts of the god, just as was the case at the island of Delos. The temple provided a sleeping place for suppliants. "And the Epidaurians who lived near the temple were especially unfortunate, for their women might not bear children under a roof but only in the open air. But Antonine set this right and erected a building where it was lawful both to die and bear children."<sup>1</sup> The Athenians at the command of an oracle purified the island of Delos completely, Pisistratus having purified only the temple. The process required the removal of the dead from their sepulchres and a prohibition against births or deaths there. If the necessity should arise one could conveniently die or be born at nearby Rheneia.<sup>2</sup>

Strabo relates a mythical tale told about a shrine to Diomedes among the Neneti. "In these sacred precincts the wild animals become tame, and deer herd with wolves, and they allow people to approach and caress them, and any that are being pursued by dogs are no longer pursued when they have taken refuge here."<sup>3</sup>

Now with such a widespread system of asylum so deeply rooted in the habits of the people it is only to be expected that abuses will arise. The better men of a community will

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1. Pausanias, op.cit., II,27, Vol.I.pp.144-145.

2. Thucydides, op.cit., III, 104.

3. Strabo, Geographica, op.cit.,V,5,2,Vol.II, p.383.

recognize them and make themselves heard. Thus, while in the Greek theatre asylum is always treated with the greatest respect and outrages against it deplored, we find in the midst of all this reverence what must have been an under-current of criticism. Aeschylus might recognize that Apollo, once an exile from heaven,<sup>1</sup> had sought refuge and that

Aye yet heavy in truth is the wrath of Zeus,  
god of the suppliant.<sup>2</sup>

Even for those who flee hard pressed from war  
there is an altar, a shelter 'gainst harm through  
awe of the powers of heaven.<sup>3</sup>

but he could also insert a latent protest,

Murder now, made nimble-handed  
Wide shall rage without control;  
Sons against their parents banded  
Deeds abhorred  
With the sword  
Now shall work, while ages roll.<sup>4</sup>

So, too, could Euripides characterize a violation of sanctuary,

But deeds of a barbarian hand are these.<sup>5</sup>

The God's house gives to all men sanctuary.<sup>6</sup>

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1. Aeschylus, Suppliant Maidens, trans. by Herbert Weir Smyth, London, 1922, Vol. I, p. 22. Cf. Tacitus, *Op. cit.*, II, 60, Vol. II, p. 619.

2. *Ibid.*, 82-84, Vol. I, p. 11.

3. *Ibid.*, 353, Vol. I, p. 39.

4. Aeschylus, Suppliant Maidens, trans. by John Stuart Blackie, Everyman Series, 1906, l. 157.

5. Euripides, The Children of Hercules, 130, trans. by Arthur S. Way, London, 1912, Vol. III, p. 265.

6. *Ibid.*, 260. Vol. III, p. 275.

and he could, in another vein, speak with a barb in his tongue,

Out upon this!  
Shame, that a god ordained unrighteous laws.  
For mortals, statutes not in wisdom framed!  
Never should crime have altar sanctuary,  
But hounding thence. Unmeet it is that hands  
Sin-stained should touch the gods: but righteous men  
Whoso is wronged, should claim their sanctuary,  
And not the good and evil come alike  
Hither to win the same boon of the gods.<sup>1</sup>

The roll of the centuries might see various expiations,<sup>2</sup> but, in spite of the humbling of Greece as a political power, whether under Alexander or under the Romans, her asylums were still respected. Just as the asylums offered many economic and social advantages so did succeeding conquerors hold out a confirmation or grant of asylum as either a reward for loyalty or an incentive to follow the new master. This was one of the extravagant promises that Demetrius made to Jonathan as he vainly sought to win his support. "And whosoever shall flee into the temple that is in Jerusalem, and in all the borders thereof, being indebted to the king for any matter, let them be set at liberty, all that they have in my kingdom, let them have it free."<sup>3</sup>

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1. Euripides, Ion, op.cit., 1312, sqq., Vol. IV, p.125.
  2. The Spartans make a twofold reparation for the death of Pausanias by placing, at the command of the Oracle, two brazen statues in the temple of the Athene of the Brazen House. Thucydides, op.cit., I, 134, Vol. I, p.84. Orestes must, also, expiate. Aeschylus, Eumenides.
  3. I Machabees, X, 43.

The Ephesians could allege the indulgence of the Persians, the Macedonians, and Romans towards "Apollo and Diana".<sup>1</sup> The Magnesians had the "rulings of Lucius Scipio and Lucius Sulla, who, after their defeats of Antiochus and Mithridates respectively, had honoured the loyalty and courage of Magnesia by making the shrine of Leucophryne an inviolable refuge." Aphrodisias and Stratonicea claimed "decrees of the dictator Julius in return for their early service to his cause, and a rescript of the deified Augustus, who praised the unchanging fidelity to the Roman nation with which they had sustained the Parthian inroad." Hierocaesarea claimed concessions from Perpenna, Isauricus and many other Roman commanders who had allowed the sanctity of its temple.<sup>2</sup> Sardis relied on a grant from Alexander and Miletus on one of Darius.<sup>3</sup> The Coans trusted in the protection which their asylum had provided for Romans themselves during the Mithridatic wars.<sup>4</sup>

But no matter how well confirmed the privileges of some of the asylums were things came to such a pass that in 22 and 23 A.D. during the reign of Tiberius the whole question of asylum was reviewed by the Senate in the face of the abuses noted by Tacitus, "For throughout the Greek cities there was a growing laxity, an impunity, in the creation of rights of asylum. The temples were filled with the dregs of the slave

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1. Tacitus, op.cit., III,61,Vol.II, p.621.  
2. Ibid. III,62, Vol.II,621  
3. Ibid.,III,63,Vol.II, p. 623.  
4. Ibid., IV, 14, Vol.III, p.27.

population; the same shelter was extended to the debtor against his creditor and to the men suspected of a capital offence; nor was any authority powerful enough to quell the factions of a race which protected human felony equally with divine worship. It was resolved, therefore, that the communities in question should send their charters and deputies to Rome."<sup>1</sup>

Suetonius says that Tiberius "abolished every where the privilege of all places of refuge."<sup>2</sup> However, the more ample statement of Tacitus indicates that this conclusion was too sweeping. Apart from the cities last mentioned, with the exception of Sardis, and the addition of Pergamum, all other cities concerned lost their legal rights of asylum. "The senate, ...passed a number of resolutions, scrupulously complimentary, but still imposing a limit; and the applicants were ordered to fix the brass records actually inside the temples, both as a solemn memorial and as a warning not to lapse into secular intrigue under the cloak of religion."<sup>3</sup>

As to the relationship between Greek asylum and the later Christian institution the following observations seem pertinent to this writer. That there was a religious element in Greek asylum would be foolish to deny. Suppliant modes of

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1. Tacitus, op.cit., III,60, Vol.II, p.619.

2. Suetonius, Tiberius, c.37, trans. by Alexander Thomson, London, 1926, p.216.

3. Tacitus, op.cit., III,63, Vol.II, p.623.

procedure with their implicit appeal to the reverence for the gods was a part of the Greeks' daily lives. And this attitude is closely allied to asylum. The contrast between the purely legal Jewish cities of refuge and the Greek temple asylums is immediately evident. The Greeks were ruled by a fatalism, a rule of blind force, which rendered them very receptive to asylum even with its inconveniences.<sup>1</sup>

Thus hath willed it Jove all-seeing,  
Thus the Fate. To their decreeing<sub>2</sub>  
Shout the responsive strain!

But when real asylum is found among the Greeks, that is, a definite check to the action of the law or a pursuer, some special intervention to sanction it seems to be very generally indicated. There will be, perhaps, an oracle. The grant of a king, an agreement among neighbors will be the basis for the security found.<sup>3</sup> The ancient writers talk of the sacredness of this or that place, as a rule, not of a general law of asylum. They present something roughly like the chartered rights of a later sanctuary. As there are many gods among the Greeks a universal respect for any asylum is almost impossible.

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1. Wallon, op.cit., p. 7. For Wallon's estimate of ancient Greek asylum see eodem loco, p.3, Cf. Beaurepaire, op.cit. dans Bibliothèque de l'École des chartes, t.IV, 1853, pp.356-357.

2. Aeschylus, Euménides, Blackie, op.cit., p.173.

3. Caillemet, E. op.cit., dans Dictionnaire des Antiquités Grecques et Romaines, t.I, pt.1, p.505. Reference is made to documents that show that Tees had special agreements with neighbouring states by which her immunity was recognized.

Your Argive gods I know not; they nor nursed  
My infant life, nor reared my riper age.<sup>1</sup>

In spite of the external resemblances between Greek and Christian asylum -a resemblance which exists among most types of asylum- Greek asylum did not depend for its success on the universal, internal principle of reverence for the sacred places that is found in Christian times. It was a territorial thing depending on some particular concession even though that were simply recognized by tradition. Certainly, even in the western world the early Christians through literature would be familiar with Greek asylum, but it must be recalled that a long period of Roman rule separated them from the most flourishing period of Greek asylum -a period as long as that which separates the modern, English speaking world from the flourishing institution of the little island.

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1. Aeschylus, *The Suppliant Maidens*, Blackie, op.cit., p.247.

### 3. Rome.

One need hardly go beyond the evidence of the Roman theatre to arrive at the conclusion that Rome did not know a right of religious asylum. Influenced as the Roman theatre was by the Greek it is not surprising to find that the topic of asylum creeps into its productions. However, when it does appear it is only to be made the object of buffoonery. Plautus has, as the scene of some low comedy, a temple. "My slaves even though you and Venus and Jove, the Supreme, be unwilling I will drag you from the altar by your hair."<sup>1</sup> While a light comedy at the expense of the misfortunes of a refugee might be found in the Greek theatre yet we cannot imagine the Greeks with their mighty respect for "Zeus, the god of suppliants", taking the protecting role of the deities themselves and making it an object of ridicule.

Rome in its inception was an asylum. But it seems clear that once the original group of refugees which swelled the population of the city had been received that protection by virtue of the right of asylum was afforded to no more newcomers.<sup>2</sup> Only the name of asylum was retained. The Romans themselves seemed to be ashamed of their origin the ignominy of which obscurity had not yet covered. At least, so the tone

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1. Plautus, *Rudens*, III,5,4; cf. III,3; III,4,63.

2. Wallon, H., *op.cit.*, p. 34.

of Livy seems to imply. "Next lest his big city should be empty, Romulus resorted to a plan for increasing the inhabitants which had long been employed by the founders of cities (vetere consilio condentium urbes), who gather about them an obscure and lowly multitude and pretend that the earth has raised up sons to them. In the place which is now enclosed, between the two groves as you go up the hill, he opened a sanctuary. Thither fled, from the surrounding peoples, a miscellaneous rabble, without distinction of bond or free, eager for new conditions: and these constituted the first advance in power towards that greatness at which Romulus aimed."<sup>1</sup>

In another place Livy speaks of that rabble of shepherds and vagrants that had deserted their own peoples, and under the protection of inviolable sanctuary had possessed themselves of liberty, or at least impunity.<sup>2</sup> With such subjects, without the fear of kings the nation, he feared, would have crumbled away with dissension before it had matured.<sup>3</sup> It has been suggested that one reason why the rape of the

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1. Livy, History, I,8,trans. by B.O. Foster, London,1919, Vol.I,p.33.

2. Ibid., II,1, Vol.I,p.219.

3. Strabo, Geography, V,3,2, trans. by Horace Leonard Jones, London, 1923, Vol.II,p.383. Strabo's account of the founding. Plutarch, Romulus,IX, trans. by Bernadotte Perrin, London, 1914, Vol.I, p.115. Plutarch says the asylum was dedicated to the god of the same name and that the Romans claimed the authority of a Delphic Oracle for founding the asylum. Juvenal, Satires, VIII, 272, "Ab infami gentem deducis asylo." Virgil, Aeneid, VIII,342, Virgil is rather non-committal.

Sabine women was necessary because of the unsavoury nature of Rome's initial population which made wedlock with its citizens undesirable to neighboring states.

There is evidence of considerable reverence being attached to the person of the Vestals, but this seems to be hardly more than a right of intercession with which Rome had some contact. Caesar, in the early part of his career while hunted by the party of Sulla, was able to secure pardon through the "intercession of the vestal virgins" and some relatives.<sup>1</sup> In civil strife when the sanctity of ambassadors was even being violated Vestals could carry messages to an approaching army and be "sent back with honour."<sup>2</sup> Messalina, when her disgraceful life had finally brought her into disfavour with Claudius "implored Vibidia, the senior Vestal Virgin, to gain the ear of the Supreme Pontiff and there plead for mercy."<sup>3</sup> Narcissus who was compassing the removal of Messalina could not repulse Vibidia, "nor prevent her from demanding in indignant terms that a wife should not be given undefended to destruction. He therefore replied that the emperor would hear her and there would be opportunities for rebutting the charge: meanwhile, the Virgin would do well to go and attend to her religious duties."<sup>4</sup> If a criminal led to punishment met a Vestal on the way he was saved if he swore that the meeting was by chance.<sup>5</sup>

1. Suetonius, Julius Caesar, c.1, op.cit., p.2.

2. Tacitus, Histories, III,81, Loeb Series, Vol.I,p.469.

3. Tacitus, Annals, op.cit.,XI,32, Vol.III, p.303.

4. Ibid., XI, 34, Vol.III,p.305.

5. Timbal, P., op.cit., p.26.

Soldiers found protection with the eagles, the standards of their legions. They were most sacred, the "propria legionum numina". They had inspired the Romans in their battles.<sup>1</sup> Mutinous Roman legions fearful of Munatius Plancus and a senatorial commission of which he was the head shouted for their colors -the guarantee of their status - which were in Germanicus' quarters. "There was a rush to the gate; they forced the door, and, dragging the prince from bed, compelled him on pain of death to hand over the ensign. A little later, while roving the streets, they lit on the envoys themselves, who had heard the disturbance and were hurrying to Germanicus. They loaded them with insults, and contemplated murder; especially in the case of Plancus, whose dignity had debarred him from flight. Nor in his extremity had he any refuge but the quarters of the first legion. There, clasping the standards and the eagle, he lay in sanctuary; and had not the eagle-bearer Calpurnius shielded him from the crowning violence, then - by a crime almost unknown even between enemies - an ambassador of the Roman people would in a Roman camp have defiled with his blood the altars of heaven."<sup>2</sup> There is, also, a case of an actuary who fled for refuge "ad militaria signa."<sup>3</sup>

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1. Tacitus, Annals, op.cit., II, 17, Vol.II, p.409.

2. Ibid., I, 39, Vol.II, p.309.

3. Ammianus, Marcellinus, History XXV, 10, 7, trans. by John C. Rolfe, London, 1937, Vol.II, p.559. Cf. Suetonius, Tiberius, op.cit., c.53, p.225.

A certain sanctity with its privileges was attached to the person of the Flaminian Dial. "If a person in fetters enters his house, he must be loosed, the bonds must be drawn up through the impluvium to the roof and from there let down into the street. ...if anyone who is to be flogged falls at his feet supplicant it is unlawful to beat him on that day."<sup>1</sup> The statement of Paganinus Gaudentius, therefore, that Rome did not know a religious asylum seems to be well fortified.<sup>2</sup>

The first indication of any real asylum came with the death of Julius Caesar and the deification which his supporters won for him, but that manifestation was a short lived one. Among other honours "they enacted that no one who took refuge in his shrine to secure immunity should be driven or dragged away from there --a distinction which had never been granted to any of the gods, save to such as were worshipped in the days of Romulus. Yet after men began to congregate in that region even this place had inviolability in name only, without the reality; for it was so fenced about that no one could any longer enter at all."<sup>3</sup>

However, the precedent inaugurated with the deification of Julius Caesar continued. As the power of the state came to be gathered in the hands of one man the deification

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1. Aulus Gellius, Attic Nights, X,15, trans.by John C. Rolfe, London, 1927, p.251.
  2. Paganinus Gaudentius, De Moribus Saeculi Justinianaei, cited by Beaurepaire, dans Bibliothèque de l'Ecole des Chartes, t.IV,3rd Series, 1853,p.360.
  3. Dion Cassius, op.cit., XLVII, 19, Vol.V., p.155.

of the supreme ruler even while yet alive became the rule. What these men refused to the gods they allowed for their own statues and imperial temples. While Augustus commanded the eldest of Antony's two sons by Fulvia to be "taken by force from the statue of Julius Caesar, to which he had fled, after many fruitless supplications for his life, and put him to death" yet the incident shows how quickly the habit of refuge at this new source of immunity grew.<sup>1</sup>

Suetonius says, "...it became capital for a man to beat his slave or change his clothes, near the statue of Augustus; to carry his head stamped upon the coin, or cut in the stone of a ring, into a necessary house, . . . or to reflect upon anything that had been either said or done by him. In fine, a person was condemned to death, for suffering some honours to be decreed to him in the colony where he lived, upon the same day on which they had formerly been decreed to Augustus."<sup>2</sup>

Apollonius of Tyana while in Aspendus in Pamphylia found an excited crowd which had "set upon the governor, and were lighting a fire to burn him alive, although he was clinging to the statues of the Emperor, which were more dreaded at that time and more inviolable than the Zeus in Olympi; for they were statues of Tiberius, in whose reign a master is said to have been guilty of impiety, merely because he struck his

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1. Suetonius, Caesar Augustus, op.cit., 17, p.81.

2. Ibid., Tiberius, c.58, p.227. Cf. Ibid., c.53, p.225.

own slavewhen he had on his person a silver drachma coined with the image of Tiberius.<sup>1</sup>

With such manifest abuses in mind it is not surprising that a protest became audible even among those of whom Tiberius could say, "These men! ---how ready they are for slavery!"<sup>2</sup> Tacitus has it this way; "Now came the disclosure of a practice whispered in private complaints of many. There was a growing tendency of the rabble to cast insult and odium on citizens of repute, and to evade the penalty by grasping some object portraying the Caesar. The freedmen and slaves, even, were genuinely feared by the patron or the owner against whom they lifted their voices or their hands. Hence a speech of the senator Gaius Cestius: ---'Princes, he admitted, were equivalent to deities, but godhead itself listened only to the just petitions of the suppliant, and no man fled to the Capitol or other sanctuary (templa) of the city to make a refuge subserving his crimes. The laws had been abolished ---overturned from the foundations --- when Annia Rufilla, whom he had proved guilty of fraud in a court of justice, could insult and threaten him in the Forum, upon the threshold

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1. Philostratus, Life of Apollonius of Tyana, I,15, trans. by F.C. Conybeare, p.41.

2. Tacitus, Annals, III,71, op.cit., Vol.II, p.627. Gaius Silanus is charged with "violating the godhead of Augustus and spurning the majesty of Tiberius."  
Cf. Ibid., I, 73, Vol.II, p.369; IV,31,Vol.III, p.55, IV,67, Vol.III,p.119.

2. Ibid., III, 65, Vol.II, P.627.

of the curia; while he himself dared not try the legal remedy because of the portrait of the sovereign with which she confronted him.' Similar and, in some cases, more serious experiences, were described by a din of voices around him; and appeals to Drusus, to set the example of punishment, lasted till he gave orders for her to be summoned and imprisoned, after conviction, in the public cells."<sup>1</sup>

In spite of these early abuses attached to refuge at the statues of the emperors it can be seen that they offered a badly needed relief for maltreated slaves. As time went on the influence of the stoic philosophy and then of Christianity affected the treatment of the slaves. "Praiseworthy it is to use authority over slaves with moderation," says Seneca.<sup>2</sup> "The principles of equity and right require mercy in their regard. Even slaves have the right of refuge at the statue of a god; and although the law allows anything in dealing with a slave, yet in dealing with a human being there is an extreme which the right common to all living creatures refuses to allow." A rescript of Antoninus Pius to Aelius Marcianus provides that if a master treats his slaves with excessive severity or forces them to do immodest things or violates them the praetor, if they flee to a statue, will order them to be sold.<sup>3</sup>

1. Tacitus, Annals, III,36, Vol.II, p.581

2. Seneca, De Clementia, I, 18, Moral Essays trans. by John W. Basore, London, 1928, Vol.I, p.407.

3. Digest, I,6,2, "...Dominorum quidem potestatem in suos servos illibatam esse oportet nec cuiquam hominum ius suum detrahi: sed dominorum interest, ne auxilium contra saevitiam

(see next page.)

However, the abuses mentioned by Tacitus received further regulation. Three references in the Digest show that the abuses attendant on refuge at the statues of emperors still did not appeal to the legal minded Romans. One warns against carrying an image in invidiam alterius under pain of being put in chains. Another concerns slaves who flee to statues to damage the reputation of their masters. The last forbids the fleeing to statues in iniuriam alterius unless the refugee has been held in chains or custody by powerful oppressors.<sup>1</sup>

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vel famem vel intolerabilem iniuriam denegetur his qui iuste deprecantur. Ideoque cognosce de querellis eorum, qui ex familia Iulii Sabini ad statuam confugerunt, et si vel durius habitos quam aequum est vel infami iniuria affectos cognoveris, veniri iube ita, ut in potestate domini non revertantur..." Hadrian banished a woman for five years because for the slightest reason she viciously maltreated her female slaves.

Cf. Gaius, Institutes, I, 53, Digest, I, 12,1,1, "Servos qui ad statuas confugerint, vel sua pecunia emptos ut manumittantur, de dominis querentes audiet." Severus for the praetor of the city.

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1. Digest, XLVII, 10,38, "Senatus consulto cavetur, ne quis imaginem imperatoris in invidiam alterius portaret: et qui confecerit, in vincula publica mittetur.

Ibid., XLVII, 11,5. "In eum cuius instinctu ad infamandum dominum servus ad statuam confugisse compertus erit, praeter corrupti servi actionem, quae ex edicto perpetuo competit, severe animadvertitur.

Ibid. XLVIII, 19,28,7. "Ad statuas confugere vel imagines principum in iniuriam alterius prohibitum est. Cum enim leges omnibus hominibus aequaliter securitatem tribuant, merito visum est in iniuriam potius alterius quam sui defensionis gratia ad statuas vel imagines principum confugere: nisi si quis ex vinculis vel custodia detentus a potentioribus ad huiusmodi praesidium confugerit: his enim venia tribuenda est. Ne autem ad statuas vel imagines quis confugiat, senatus censuit: eumque, qui imaginem Caesaris in invidiam alterius praetulisset, in vincula publica coerceri divius Pius rescripsit.

Among the Romans, therefore, even refuge at the statues of one of the emperors came to be regulated strictly. One can safely conclude that the church did not inherit the right of asylum from the Roman Empire. No matter how generous the privileges<sup>1</sup> conferred by Constantine or transferred by him to the church in the new age of freedom the bestowal of the right of asylum would have been a most unusual creation or, at least, a very abrupt revival of an institution foreign to the Romans. The Acts of Sylvester, on the basis of which Constantine was supposed to have conferred the right of asylum on the church are no longer acceptable.<sup>2</sup>

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1. Eusebius, Life of Constantine, IV, 27, in Post-Nicene Fathers, ed. by H. Wace and P. Schaff, trans. by E. J. Richardson, New York, 1890, Vol. I, p. 547. Eusebius outlines Constantine's concession to the church but he does not mention sanctuary.

2. Le Bras, Gabriel, Asile, dans Dictionnaire d'Histoire et Géographie Ecclésiastiques, Vol. IV, c. 1036.

## B. The Early Christian Church.

A study of the development of asylum soon makes it evident that in every age which witnesses it certain external features repeat themselves. Generally, in the beginning there is a state of lawlessness. There is a strong feeling on the part of the people for the church or religion. The question as to whether it is a covering for licence arises. There are unusual manifestations of the privilege. Abuses set in. There is criticism. Thus, if we are to distinguish Christian asylum from that which has been known in many places it cannot be on external evidence but rather on internal points. It has already been seen that the fatalism of the Greeks made them very favorable towards this institution. The legal and severe bent of the Romans left almost no traces of the institution among them. What, then, were the elements in the new law that brought about the development of asylum?

The thesis that Christian asylum was an outgrowth of intercession as practised by the church in the fourth century seems to the present writer most tenable. However, the same fundamental religious attitudes which favored a vigorous policy of INTERCESSION on the part of the church during its first century of freedom were also conducive to a friendly attitude towards SANCTUARY, at least, when, as in the West, the barbarian invasions made it necessary to uphold asylum as an absolute right exclusive of exceptions.<sup>1</sup>

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1. Martroye, F., L'Asile et la Législation Impériale du IVe au VIe siècle, dans Mémoires de la Société Nationale des Antiquaires de France, 8th series, t.V, 1918, p. 246.

## 1. Intercession and the New Freedom.

It is patent that Christianity was to shift the emphasis from a 'this world consciousness' to an 'other world consciousness'. The law of an eye for an eye was to be supplanted by the love of even one's enemies. The spirit of "eat, drink and be merry" had to give place to a penitential outlook, particularly in the vice-laden world that was Christianity's cradle. The constant awareness of Christ in even one of these my "least little ones" was to call for a complete reorientation of life in every aspect. God, one's salvation, became dominant, the measure and critique of everything.

It is the burden of the message of Clement and Ignatius that men repent and that those who have repented should pray, intercede that others may come to the light of repentance while they still have time here on earth.<sup>1</sup> It is little wonder, therefore, that the words of Ezechiel became the motif of these

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1. Clement, First Epistle to the Corinthians, VIII, ed. and trans. by Kirsopp Lake, in Apostolic Fathers, London, 1912, Vol. I. pp. 23-25

Ibid., Second Epistle to the Corinthians, (so-called) VIII, eodem loco, p. 141. "Let us repent then while we are on earth."

Ibid., XVII, eodem loco, p. 157.

Ignatius, To the Ephesians, X, eodem loco, p. 185. "Now for other men 'pray unceasingly', for there is in them a hope of repentance, that they may find God."

Pastor of Hermas, Vision 2, 2, Commandment IV, 1, in Ante-Nicene Christian Library, ed. by Roberts and Donaldson, Edinburgh, 1868, Vol. I, pp. 329, 353.

Didache, I, 3, in Apostolic Fathers, Kirsopp Lake, op. cit., Vol. I, p. 309, The lesson of universal love.

early Christians. "I desire not the death of the wicked, but that the wicked turn from his way, and live."<sup>1</sup> It is perhaps too literal an interpretation to apply this as a justification for preserving the life of one condemned to capital punishment, but, nevertheless, such an attitude was characteristic of the ancients who were concerned above all else that a man should do the penance required for salvation. They were on sounder ground when they took the example of our Lord's treatment of the woman taken in adultery as a reason for their intercessions.<sup>2</sup> As the cult of the saints grew it provided a parallel for intercessory action.

While the New Testament said nothing explicitly about a right of sanctuary<sup>3</sup> different texts were regarded in a way that was to throw a protecting cloud of reverence about the holy places and increase the sense of horror at their violation. Christ's condemnation of the murder of the high priest, Zacharias, at the foot of the altar figured in this connection.<sup>4</sup> His words in the Garden of Olives, "I sat daily with you, teaching in the temple, and you laid not hands on me,"<sup>5</sup> were pertinent. The condemnation of the money changers could be invoked either in a favorable or an unfavorable sense.<sup>6</sup>

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1. Ezechiel, XXXIII, 11.

2. John, VIII, 3-11.

3. Timbal, P., op.cit., p.34.

4. Matthew, XXIII, 35. Cf. Paralipomenon, XXIV, 2.

5. Matthew, XXVI, 55.

6. Matthew, XXI, 13. Cf. Jeremias, VII, 11.

St. Paul's epistle to Philemon with its intercession on behalf of the slave, Onesimus, was a strong incentive for the pleadings of the Christians. The Apostle's willingness to make personal compensation for any loss Philemon had sustained from Onesimus' conduct laid a practical basis for effective intercession.<sup>1</sup>

While there is no immediate connection between these texts, the attitude of the early Christians and Christian sanctuary, nevertheless, just as their spirit begot a charitable intercession they, also, under an ever developing piety and in the midst of continual social upheavals, gave a spiritual philosophy to the right of asylum.

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Under any circumstances, once Christianity had spread and its influence seeped into the society which enjoyed it one would expect to see some power exercised by its ministers in the cause of clemency. Such has been its history as it has met successively barbarous and semi-barbarous peoples. But in the late Roman world, whatever its harshness, its immorality, the church found ready made a legal framework of intercession.

It is of the very nature of man to seek aid either by way of advice or influence when he is in difficulties. One

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1. Paul, To Philemon, Vv 18-19.

can see in the present day the power wielded by those particularly who can, in withdrawing the delinquent from justice, show that the culprit subsequently amended. The rigid rules of early Roman justice allowed of no elastic system of appeals. The sentence was apt to stand.<sup>1</sup> However, under the emperors a system of appeal developed. These appeals to the emperor covered even cases in which capital punishment was involved.<sup>2</sup>

The person who would appeal was given considerable freedom of action. Slaves could not appeal on their own behalf but their masters could appeal for them or someone else acting in the name of the master. Failing that the slave could act on his own initiative.<sup>3</sup> A person could intercede for a man condemned to capital punishment without any delegation from the condemned person or even if the condemned were opposed to the help offered.<sup>4</sup>

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1. Timbal, P., op.cit., p. 39.

2. Digest, XLIX,4,2,3; XLVIII, 19,27,2.

3. Ibid. XLIX,1,15. MARCELLIUS LIBRO PRIMO DIGESTORUM. Servi appellare non possunt; sed domini eorum ad open servo ferendam possunt uti auxilio appellationis, et alius domini nomine id facere potest. Sin vero neque dominus neque alius pro domino appellaverit, ipsi servo, qui sententiam tristem passus est, auxilium sibi implorare non denegamus.

4. Ibid. XLIX, 1,6. ULPIANUS LIBRO SECUNDO DE APPELLATIONIBUS. Non tantum ei, qui ad supplicium ducitur, provocare permittitur, verum alii quoque nomine eius, non tantum si ille mandaverit, verum quisquis alius provocare voluerit. Neque distinguitur, utrum necessarius eius sit necne: credo enim humanitatis ratione omnem provocantem audiri debere. Ergo et si ipse acquiescit sententiae: nec quaerimus, cuius intersit. Quid ergo, si resistat qui damnatus est adversus provocationem, nec velit admitti eius appellationem perire festinans? Ad huc putem differendum supplicium.

It is to underestimate the calibre especially of those bishops of the fourth century if one does not expect them to step into this wide open door, to save souls for repentance, to soften by their good offices a rigorous penal code. However, their action will be within the framework of the law of the empire. The personal prestige especially of some of the bishops of this period will strengthen, in general, the intercessory role of all clerks. The bishop will carry the burden of this intercessory office for the church is organized around him.

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The early part, then, that bishops took as intercessors was in conjunction with the law. They were supporting the state. Radical views such as those of Lactantius were not followed.<sup>1</sup> In spite of their anxiety to preserve the life of culprits that they might do penance and save their souls they are not completely opposed to capital punishment.<sup>2</sup>

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1. Lactantius, Divine Institutes, VI, 20, in Ante-Nicene Fathers, ed. by Roberts and Donaldson, New York, 1888, p. 187. (C.S.E.L., t. XIX, p. 558) "Thus it will be neither lawful for a just man to engage in warfare, since his warfare is justice itself, nor to accuse anyone of a capital charge, because it makes no difference whether you put a man to death by word, or rather by the sword, since it is the act of putting to death itself which is prohibited. Therefore, with regard to this precept of God, there ought to be no exception at all; but that it is always unlawful to put to death a man, whom God willed to be a sacred animal.

2. St. Jerome, In Ezechielem, III, 9, 1, P.L., t. XXV, c. 85. "Qui igitur malos percussit in eo quod mali sunt, et habet vasa interfectionis, ut occidat pessimos, minister est domini."

The two powers are to work in harmony not discordantly. The complimentary role that was to be played by church and state is averted to by St. John Chrysostom. (1)

St. Augustine's views and practise in regard to intercession are outlined in his epistles. Macedonius, a judge, to whom he has written to intercede for a criminal while well disposed towards the Saint and all "good inter-

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1. St. John Chrysostom, On the Statues, Homily VI, in Library of the Fathers, Oxford, 1843, pp. 115-116. "The judges affright; the priests therefore must console! The rulers threaten; therefore must the Church give comfort; Thus it happens with respect to little children. The teachers frighten them, and send them away weeping to their mothers; but the mothers receiving them back to their own bosoms, keep them there, embrace them, and kiss them while they wipe away their tears, and relieve their sorrowing spirits; persuading them by what they say, that it is profitable for them to fear their teachers. ....He Himself hath armed magistrates with power; that they may strike terror into the licentious; and hath ordained His priest that they may administer consolation to those that are in sorrow."

Ibid., 11 Corinthians, Homily XV, eodem loco, pp. 187-188.

Ibid., eodem loco, pp. 190-191. "Further, that this rule is also the mildest of all, even though requiring greater strictness, is plain from hence. For this is not to destroy the passion, but to send away the soul with its wound upon it. But this ruler, when he hath detected, considers not how he shall avenge, but how extirpate the passion. For thou indeed dost the same thing, as if, when there was a disease of the head, thou shouldst not stay the disease, but cut off the head. But I do not thus: but I cut off the disease. And I exclude him indeed from mysteries, and hallowed precincts; but when I have restored him, I receive him back again, at once delivered from that viciousness and amended by his repentance."

cessors\* has a problem. (1) He knows that it is a duty of the priesthood to intercede. But how can one reconcile this with the actions of those culprits who simply, once their suit has been successful, go back to their old ways? Is this not to approve sin against the Lord's injunction? In the case of a thief is it right to remit his penalty and leave him in possession of his ill-gotten gains? (2)

Augustine turns Macedonius' own words upon him.

"For every sin seems to be the more pardonable if the culprit promises to amend." (3) That is, also, Augustine's opinion. He does not approve of the faults of the guilty. Rather he detests the crime while pitying the man. The more grievous the fault the more does he want to see the delinquent amend his ways before he perishes. It is easy to hate the wicked because they are wicked but more difficult to blame, in the same person, the fault and still love the person. Hence, to pursue the crime and likewise wish to deliver the man is not to participate in the crime. "There is no other place except in this world that one can repent; for after this life each one will have only what he will have stored up. Therefore, it is the love of mankind which compels us to intercede for the guilty from fear that their life will be terminated by a punishment

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1. St. Augustine, Epistle CLII, 3, Macedonius to Augustine, C.S.E.L., t. XLIV, p. 395.

2. Ibid., 2, p. 394.

3. St. Augustine, Epistle CLIII, 2, To Macedonius, C.S.E.L., t. XLIV, p. 397.

which will send them to a punishment without termination." (1)

He appeals to the long suffering of God with sinners in general as the model for our patience with the delinquent. (2) We are to love our enemies and only sinners are our enemies. (3) When he steals the guilty from the severity of the court he forbids them to approach the altar, so that by doing penance and punishing themselves, they can appease the God whom they had scorned by their sins. For the end of all sincere penance is not to leave unpunished the evil that one has done. It is in this way that the one who does not spare himself is spared by that God whose just judgment no contemner escapes. If God does not refuse His patience to those

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1. Ibid., 3, p. 398. "Nullo modo ergo culpas, quas corrigi volumus, adprobamus nec, quod perperam committitur, ides volumus impunitum esse, quia placet; sed hominem miserantes, facinus autem seu flagitium detestantes, quanto magis nobis displicet vitium, tanto minus volumus inemendatum interire vitiosum. facile est enim atque proclive malos odisse, quia homines sunt, ut in uno simul et culpam inprobes et naturam probes ac propterea culpam iustius oderis, quod ea foedatur natura, quam diligis. non est igitur iniquitatis sed potius humanitatis societate devinctus, qui propterea est criminis persecutor, ut sit hominis liberator. morum porro corrigendorum nullus alius quam in hac vita locus; nam post hanc quisque id habebit, quod in hac sibimet conquisierit. ideo compellimur humani generis caritate intervenire pro reis, ne istam vitam sic finiant per supplicium, ut ea finita non possint finire supplicium." Cf. Ep. CXXXIV, 4, C.S.E.L., t. XLIV, p. 88, "tu inimicis ecclesiae viventibus relaxa spatium paenitendi."

2. Ibid., Ep. CLIII, 4, eodem loco, p. 399.

3. Ibid., 5, p. 400.

that He knows will not do penance how much more so should we, who can only be doubtful about the sinner's future, make allowances. It is God's command. (1)

If we refuse mercy to the recidivus he will despair and plunge into the worst enormities. (2) He reminds Macedonius that judges will someday be the judged, in their own turn, in need of mercy. He appeals to the example of our Lord interceding for the woman taken in adultery. (3) Macedonius is reminded that he himself interceded for a clerk at the church of Carthage. If he can intercede in a court that never sheds blood how much more so a bishop in a secular court. Church discipline punishes that a person may live. The sword of the court punishes that one may cease to live. (4)

The sword and the rules of authority have their place. Indeed, without them there would be none of the benefits of intercession. As far as Augustine can see the

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1. Ibid., 6, p. 401. "Nam quosdam, quorum crimina manifesta sunt, a vestra severitate liberatos a societate tamen removemus altaris, ut paenitendo placare possint, quem peccando contempserant, seque ipsos puniendo. nam nihil aliud agit, quem veraciter paenitet, nisi ut id, quod male fecerit, inpunitum esse non sinat. eo quippe modo sibi non parcenti ille parcit, cuius altum iustumque iudicium nullus contemptor evadit. quod si iniquis et scelestis ille parcendo eisque vitam salutemque largiendo plerisque eorum, quos novit non acturos paenitentiam, tamen exhibet patientiam, quanto magis nos in eos, qui correctionem promittunt et, utrum faciant, quod promittunt, incertus sumus, misericordes esse debemus, ut rigorem vestrum pro eis intercedendo flectamus, pro quibus et deum, quem nihil de moribus eorum etiam futuris latet, non tamen inpudenter, quia hoc ipse praecepit, oramus!"

2. Ibid., 7, p. 402.

3. Ibid., 8 and 9, pp. 404-406.

4. Ibid., 10, p. 407. "Cum illa (ecclesiastica correptio) exeratur, ut in quem exeritur, bene vivit, iste (gladius), ne vivat!"

severities of the old testament were to show the justice of penalties established against evil men; the indulgence of the new invites us to pardon them that it may clear that the law of fear has been replaced by that of love. (1) That there are abuses cannot be denied. Restitution must be made whenever possible. Intercession does not eliminate that. But it is the good effects of intercession, not the evil ones, which must be attributed to him. (2) When he intercedes for bad men with Macedonius that he might be gentle in his judgments it is "because those who are good become good by ceasing to be evil and one appeases God by a sacrifice of mercy: if God were not forgiving to those who are evil there would be no good people." (3)

Writing to Donatus, pro consul of Africa, who was a zealous supporter of the church's cause, Augustine's concern is lest Donatus in his zeal to punish the Donatists should punish "with a severity corresponding to the enormity of the crime, and not with the moderation which is suitable to Christian forbearance." He beseeches him in the

1. Ibid., 16, pp. 414-415.

2. Ibid., 18 and 20, pp. 416-417 and 419-420. "commendatio mansuetudinis ad conciliandam dilectionem verbo veritatis et ut, qui liberantur a temporali morte, sic vivant, ne in aeternum, unde numquam liberentur, incurrant."

3. Ibid., 26, p. 427. "...sed quia ex illis (malis) fiunt, quicumque fiunt boni, et sacrificio misericordiae placatur deus, quem nisi propitium haberent male, nulli essent boni."

name of Jesus Christ to remember the law of the love of one's enemy. "It is not their death, but their deliverance from error, that we seek to accomplish by the help of the terror of judges and of laws, whereby they may be preserved from falling under the penalty of eternal judgment; we do not wish either to see the exercise of discipline towards them neglected, or, on the other hand, to see them subjected to the severer punishments which they deserve. Do you, therefore, check their sins in such a way, that the sinners may be spared to repent of their sins.

"We beg you, therefore, when you are pronouncing judgment in cases affecting the Church, how wicked soever the injuries may be which you shall ascertain to have been attempted or inflicted on the Church, to forget that you have the power of capital punishment, and not to forget our request." (1)

The lengths to which Augustine would go in practice to implement his principles are well illustrated by his intercession on behalf of a certain Faventius. To assist this man he wrote no less than five letters. He justifies his importunity by reminding the recipient of one of the letters that he will have to answer to the Lord as to the manner in which he met this request for help from the church. (2) This Faventius had fled to

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1. St. Augustine, Ep. C, 1 and 2, in Works of Augustine, trans. by J. G. Cunningham, Edinburgh, 1875, Vol. XIII, p.27.  
2. Ibid., Ep. CXIII, To Cresconius, C.S.E.L., t. XXXIII, p.659.

the Church of Hippo apparently to invoke Augustine's aid against a rich man. Growing over confident he left the church and was arrested, without being given the benefit of an imperial law which provided a thirty day respite, in such a case, in which the party under detention might put his affairs in order. Augustine had hoped in that time to investigate the case and see if he could not settle Faventius's troubles with his powerful enemy. Now he fears the influence of money with the judges. (1) Augustine wrote to the man who apprehended Faventius, (2) and also to the consular power to which the case was being referred.(3)

St. Ambrose's views on intercession are not different. "The regard in which one is held is also very much

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1. Ibid., Ep. CXV, To Fortunatus, C.S.E.L., t. XXXIII, p. 661. It is interesting to note that the jurists had already anticipated the Saint's fear of the judges, making that one basis for the right of appeal. Digest, XLIX, 1, 1. "quippe cum iniquitatem indicantium vel imperitiam recorroigat." The thirty days law in question is C.J., IX, 4, 2.
  2. Ep. CXIV, To Florentinus, C.S.E.L., t. XXXIII, p. 660.
  3. Ep. CXVI, To Generosus, C.S.E.L., t. XXXIII, p. 663.
- Ep. CXXXIII, 1, To Marcellinus, in Works of Augustine, J. Cunningham, op. cit., The Saint is writing to Marcellinus who had been empowered by imperial authority to suppress the Donatists who had perpetrated cruel outrages. Augustine points out that he does not want the Donatists made into pseudomartyrs. However, the tone of the letter still leaves the fundamental note of intercession intact. "...not, of course, that we object to the removal from these wicked men of the liberty to perpetrate further crimes; but our desire is rather that justice be satisfied without the taking of their lives or the maiming of their bodies in any part..." Vol. XIII, p. 169. He also wrote to Marcellinus' brother, Apringius, about the same matter.

enhanced when one rescues a poor man out of the hands of a powerful one, or saves a condemned criminal from death; so long as it can be done without disturbance, for fear that we might seem to be doing it rather for the sake of showing off than for pity's sake, and so might inflict severer wounds whilst desiring to heal slighter ones. But if one has freed a man who is crushed down by the resources and faction of a powerful person, rather than overwhelmed by the deserts of his own wickedness, then the witness of a great and high opinion grows strong." (1) Where it is not possible to help one without injuring another Ambrose advised dealing with neither. This would be especially true in money matters. "But it is foolish to gain others' hate in taking up money matters, though for the sake of a man's safety great trouble and toil may often be undertaken. It is glorious in such a case to run risks." (2)

Ep. CXXXIX, 2, eodem loco, p. 214. Writing to Marcellinus at a later date about Donatist trouble he refers, in the course of the letter, to an instance in which two of the clergy were killed and the Emperor granted readily a petition that the murderers might not be visited with capital punishment.

1. St. Ambrose, De Officiis Ministrorum, II, 21, 102, in Nicene and Post-Nicene Fathers of the Christian Church, Oxford, 1896, 2nd series, Vol. X, p. 59.

2. Ibid., III, 9, 59, p. 77.

Ibid., II, 29, 149, p. 66. "Your service will glow the brighter if the oppression of a powerful man, which some widow or orphan cannot withstand, is checked by the assistance of the Church, and if ye show that the command of the Lord has more weight with you than the favour of the rich."

Sermo VIII, c. 41, on Ps. CXVIII, C.S.E.L., t. LXII, p. 175. "...eripe eum qui ducitur ad mortem, hoc est: eripe eum intercessione, eripe gratia tua, sacerdos, aut tu, imperator, eripe subscriptione indulgentiae, et solvisti peccata tua, exuisti te e vinculis tuis."

In writing to Studius, a judge, as to his christian conduct in passing the sentence of death he counsels him to consider what his responsibility demands, and what clemency urges. He reminds him that it is the power of a judge to mitigate a sentence. "I know that many of the gentiles are accustomed to glory because they kept the ax of provincial administration unstained by blood. If the gentiles do this, what ought Christians do?" (1) He must constantly keep in mind the possibility that the erring will change their ways. The terror of the judge is salutary.(2) In another letter on the same matter he points out that the fault is punished with a severer sentence when a person hates his own crime, and condemns the failing in himself. "For when the accused is killed, the person more than the fault is punished: but when the fault is given up, the absolution of the person is the punishment of the sin." (3)

So great was Ambrose's fame as an intercessor that we even find Symmachus, a pagan prefect of the city, whom Ambrose had stoutly and effectively resisted before the emperor, seeking the Saint's help for a brother and a certain Eusebius.(4)

1. Ep. XXV, 3, To Studius, P. L., XVI, c. 1039. "Vides igitur quid auctoritas tribuat, quid suadeat misericordia....Scio tamen plerosque gentilium gloriari solitos, quod incruentam de administratione provinciali securim revexerint. Si hoc gentiles, quid Christiani facere debent?"

2. Ibid., 8 and 9.

3. Ep. XXVI, 20, To Iraenaeus, P. L., XVI, c. 1090. "Etenim cum reus occiditur, persona magis, quam culpa punitur: ubi vero culpa deponitur, absolutio personae est poena peccati."

4. Epp. XXIII, XXXV, P. L., XVIII, c. 209. See Vita Sancti Ambrosii by Paulinus, ed. and trans. by Sr. Mary Simplicia Kaniecka, C.U.A., Washington, 1928, VIII, 26, pp. 67-69.

It was no novelty for St. Ambrose to interpose himself between the Emperor and some contemplated action of that august person. Some Jewish synagogues at Callinicum had been destroyed by Christians and Theodosius had ordered those involved to be punished and the synagogues restored at the expense of the Christians. The Saint secured the emperor's "promise" that this order would not be put into effect.(1)

On another occasion when the people of Thessalonica had incurred the wrath of the emperor for murdering officers of the garrison there Ambrose, at first, successfully intervened. Then, under the influence of his secular advisers Theodosius gave the city over to the soldiers and seven thousand people were slain. Ambrose rebuked the Emperor who accepting the rebuke did public penance. (2) When the usurper Eugenius had been overthrown by Theodosius, Saint

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1. Ep. XI, To Theodosius, and Ep. XLI, To his Sister, in Post-Nicene Fathers, op. cit., Vol. X, pp. 440-445 and 445-450. See Vita, op. cit., VII, 22, and 23, pp. 63-65.  
2. Ep. LI, To Theodosius, in Post-Nicene Fathers, op. cit., Vol. X, pp. 450-453. See Vita, op. cit., VII, 24, pp. 65-67

Sozomen says that as a result of this Theodosius had a law passed forbidding the execution of a death sentence until thirty days after it had been delivered. Sozomen VII, 25, in Post-Nicene Fathers, New York, 1896, 2nd series, Vol. II, p. 394

Ambrose interceded for some of his followers though Eugenius had helped the cause of pagan worship. (1)

The advice of St. Jerome and its bearing on intercession is almost proverbial. "Avoid entertaining the worldly at your table," he writes to Nepotian, "especially those who are swollen with office. You are the priest of a crucified Lord, one who lived in poverty and on the bread of strangers, and it is a shameful thing for a consul's attendants and bodyguard to have a better luncheon with you than he would get in his palace. If you urge that you do this in order that you may plead for the unhappy and the oppressed, a worldly judge pays more regard to a self-denying cleric than to a rich one, he respects your sanctity more than your wealth. Or if he is the sort of man who only listens to clergymen over the wine bowl, I will gladly forego any benefit from him, and will address my prayer to Christ who is more able to help than any judge." (2)

1. Ep. LXI, 7 and Ep. LXII, 3, To Theodosius, in Post-Nicene Fathers, op. cit., Vol. X, pp. 455-456. For the difficulty with Eugenius, Ep. LVII, eodem loco, pp. 453-454; also Vita, VIII, 31, pp. 73-75.

For other intercessory activity of the Saint see Vita, VIII, 37, pp. 80-81; IX, 43, pp. 86-89.

2. St. Jerome, Ep. LII, To Nepotian, in Select Letters, ed. and trans. by F.A. Wright, London, 1933, pp. 217-219.

St. John Chrysostom, Homilies on the Statues, XVII, 1, 3, 4; and Homily XXI, Oxford, John Henry Parker, 1842, pp. 280-282, and pp. 351 et sqq. When the people of Antioch by destroying the statues of the emperor and empress in anger at new taxes brought the imperial wrath upon the city it was the intercession of monks from the surrounding hills that mollified the commissioners and gained time for Bishop Flavian's successful intercession with the emperor. Cf. Sozomen, Ecclesiastical History, VII, 23, op. cit., pp. 292-293.

The Fathers and the clergy of the fourth century interceded extensively. It remains, therefore, to be seen how this intercession of that age combined with the laws favoring it, the councils defining it more clearly, the practise of peoples consolidating it, eventually developed into a full fledged institution of sanctuary- a positive obstacle to further action on the part of the law, to further action on the part of the law, to further pursuit by a powerful aggressor against the weak.

## 2. From Constantine to Justinian.

That the bishops and the clergy in general interceded is beyond doubt. But that is not a right of asylum. Intercession comes from the right recognized from all time to the accused. It appeals to equity, clemency, the pity of the judge. It does not withdraw the accused from his tribunal. "L'asile, au contraire, lieu privilégié ou nul ne peut être saisi, offre un égal refuge aux innocents et aux coupables, aux accusés et aux condamnés, dignes ou indignes de pitié, leur permet de mettre leurs personnes à l'abri de tout contrainte, de rendre vaines, par un obstacle inviolable, les poursuites et les décisions de la justice." (1) The Empire developed intercession but what in the fourth and fifth centuries was the lot of sanctuary? One has to follow the institution from Constantine for almost a century and a half before he will have an organic body of law governing it.

During the last half of the fourth century, especially towards its close, there is a fairly representative group of instances of flight to a church. Still, from that, one cannot necessarily conclude to a right of sanctuary either from custom or from law. In 355 emissaries of Constantius, pursuing Sylvanus at Cologne dragged him "from

I. Martroye, F., L'Asile et la Législation Impériale Du IVe au VIe Siècle, dans Mémoires de la Société Nationale des Antiquaires de France, op. cit., 1918, p. 161.

a chapel where he had in breathless fear taken refuge, while on his way to the celebration of a Christian service, and butchered him with repeated sword-thrusts." (1) At Rome, in 364, a certain Hilarinus was condemned to death. "But since the executioner was lax in guarding him, the man suddenly escaped and took refuge in a chapel of the Christian sect; however, he was at once dragged from there and beheaded." (2)

St. Athanasius while at Alexandria attempted to conceal himself in a church. The doors were broken open but the Saint, forewarned, escaped. (3) In 372 a woman took refuge in a church and St. Basil came to her assistance. St. Gregory Nazianzen, in his funeral discourse on the Saint, referred to the incident and asked what should have been done not only by Basil but by "anyone who, though far inferior to him, was a priest?" (4) St. Basil carried the matter successfully but only once the whole city was fired with a rage that he had, in turn, to subdue that he might save the judge who was at fault.

St. Augustine writing on behalf of Faventius relates the fugitive's procedure: "He (Faventius), apprehending

1. Ammianus Marcellinus, *Rerum Gestarum*, XV, 5, 31, ed. and trans. by John C. Rolfe, London, 1935, Vol. I, p. 153. "extractum aedicula ... ad conventiculum ritus Christiani tenentem."

2. *Ibid.*, XXVI, 3, 3, Vol. II, p. 583. "ad ritus Christiani sacrarium."

3. Sozomen, *Ecclesiastical History*, IV, 9, in *Post-Nicene Fathers*, New York, 1891, Vol. II, p. 305.

4. St. Gregory Nazianzen, *Funeral Discourse on St. Basil*, cc. 56, 57, in *Post-Nicene Fathers*, New York, 1894, Vol. VII, p. 413.

some injury or other at the hands of the owner of that estate, took refuge in the church at Hippo, and was there, as fugitives are wont to do, waiting till he could get the matter settled through my mediation." (1)

It is true that in each of these cases there is a flight to a sacred place apparently in the hope that it will offer some protection. However, in each case, save the last, the holy place is also violated. In the case of St. Basil the lady in question was obviously depending on his intercession, not the proper virtue of the holy place itself. St. Augustine's description of Faventius' case which is much later (about 410 A. D. ) seems to make this certain. Certainly, the growing influence of the hierarchy in interceding would lead people to connect more and more their safety in times of peril or unjust pursuit with the physical location of the church where one would ordinarily seek the influence of intercession. It would seem, therefore, that one who fled to a church at this period simply hoped to secure a breathing space, a respite - inspired perhaps by superstition or real christian belief - in which to appeal to the clergy. (2)

1. St. Augustine, Ep. CXV, C.S.E.L., t. XXXIII, p. 661. "Ad Hipponiensem ecclesiam confugit et ibi erat, ut confugientes solent, expectans quo modo per intercessionem nostram sua negotia terminaret." Trans. by J.G. Cunningham, in Works of Augustine, ed. M. Dods, Edinburgh, 1875, Vol. XIII, p. 87.
2. Godefroy, God. Theod., t. III, p. 375. "Nihil ad ecclesiam perfugium erat quam clericorum deprecatio seu intercessio." cited by Beaurepaire, op. cit., dans Bibliothèque de l'Ecole des Chartes, t. IV, 1853, p. 367, n. 2.

One can speculate on a possible parallel between the refuge found at the statues of the emperors and any instances of flight to a church at this period. (1) Refuge at the statue of an emperor was essentially a form of extraordinary appeal. It simply granted a delay until the course of law could take its path without passion or prejudice. That the christian emperors should have conceded as much saving power to the Church as to their own statues is not inconceivable. (2) The physical surroundings would, in addition to the good offices of the clergy, make the flight to the church more desirable. Still that is only speculation for which there is no tangible evidence.

The major role of intercession is already indicated by the action of the Council of Sardica, (344). Abuses are present for some of the clergy are going to the imperial court altogether too often, especially those of Africa, and that not to petition things that pertain to the office of an intercessor but rather secular honors and

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1. The subject of refuge at imperial statues is found again in a law of 386. No distinction is now made between slaves and freemen. "Eos, qui ad statuas vel evitandi metus vel creandae invidiae causa confugerint, ante diem decimum neque auferri ab aliquo neque discedere sponte perpetimur; ita tamen, ut si certas habuerint causas, quibus confugere ad imperatoria simulacra debuerint, iure ac legibus vindicentur; sin vero proditioni fuerint artibus suis invidiam inimicis creare voluisse, ultrix in eos sententia proferatur." C.T., IX, 44, 1. See C. J., I, 25, 1 where the delay of nine days is suppressed.

2. Beaurepaire, op. cit., eodem loco, p. 362.

positions. This has become a cause of complaint and scandal. "It is better, however, that the bishops should give the benefit of their intercession to those, who are oppressed unjustly by powerful men or to widows who are afflicted or orphans in danger of losing their goods when these people have a just cause or petition. If, therefore, it pleases you, dearest brothers, decree that bishops will not go to the court, unless, perchance those who are invited or summoned by letters of our religious emperor. But since it often happens that those who suffer some wrong, or for their sins are condemned to exile or the islands, or at any rate receive some sentence, flee to the mercy of the Church, we must come to the aid of these and without hesitation seek their pardon. Therefore, pronounce judgment on this if it seems good to you. All answered: 'Let it be done'." (1)

1. "Osius episcopus dixit: Importunitates et nimia frequentia et injustae petitione fecerunt, nos non tantam habere vel gratiam vel fiduciam, dum quidam non cessant ad comitatum ire episcopi, et maxime Afri qui (sicuti cognovimus) sanctissimi fratris et coepiscopi nostri Grati salutaria consilia spernunt atque contemnunt, ut non solum ad comitatum multas et diversas Ecclesiae non profuturas perferant causas, neque ut fieri solet aut oportet, aut pauperibus aut viduis aut pupillis subveniatur, sed et dignitates seculares et administrationes quibusdam postulent. Haec itaque pravitas olim non solum murmuraciones, sed et scandala excitat. Honestus est autem ut episcopi intercessionem his praestent, qui iniqua vi opprimuntur aut si vidua affligatur aut pupillus expositetur, si tamen istaec nomina justam habeant causam aut petitionem. Si ergo vobis, fratres carissimi, placet, decernite ne episcopi ad comitatum accedant, nisi forte hi, qui religiosi imperatoris litteris vel invitati vel invitati vel evocati fuerint. Sed quoniam saepe contingit ut ad misericordiam Ecclesiae confugiant, qui injuriam patiuntur, aut qui peccantes in exilio vel insulis damnantur, aut certe quamcumque sententiam excipiunt, subveniendum est his et sine dubitatione petenda indulgentia. Hoc ergo decernite, si vobis placet. Universi dixerunt: Placet et constituatur." Hefele-Leclercq, t. I, p. 683. Canon 8, Latin version.

The same council decided that recourse to the emperor would be had through the metropolitan who would dispatch a deacon. Before reaching the emperor the petition would be shown to the Pope. (1) It is quite clear, therefore, that the presence of a suppliant in the church was simply the first step to intercession.

Just as the legal power of the empire had provided the framework for procedure in matters of intercession so, too, could that imperial power extend or limit intercessory action. Laws governing appeals continued to come forth and eventually they treated directly of clerical intercession itself. (2)

A law of Constantine forbade appeals that have no other purpose save to gain time and applied it in particular to the "atrocissima facinora" of homicide, poisoning, and adultery, and when the culprit had confessed or been convicted beyond reasonable doubt. (3) Crimes of violence were excepted. (4) The perpetrator of rape had no right of appeal. (5) Counterfeiters lost the right, (6) as did public debtors. (7) In 344 previous decisions of Constantine were reiterated. (8)

1. Council of Sardica, Canons 8 and 9, Latin version, Hefele-Leclercq, t. I, pp. 786-787.
2. Martroye, *op. cit.*, p. 162.
3. C. T., XI, 36, 1 (a. 314 or 315).
4. C.J., IX, 12, 6 (a. 317) "Nec interposita provocatione sententiam quae in eam fuerit dicta suspendat."
5. C.T., IX, 24, 1, 3 (a. 320) "Raptor autem indubitate convictus si appellare voluerit, minime audiatur."
6. C.J., IX, 24, 1, 3 (a. 321).
7. C.T., XI, 36, 6 (a. 342).
8. C.J., VII, 65, 2 (a. 344).

However, a reaction set in. Several laws relaxed the restrictions on appeals (1) until in 365 all cases were admitted to appeal, a delay of thirty days following the sentence.(2) The role of the clerks was mentioned specifically in the law of 369 and what was to be, henceforth, a characteristic not is mentioned, that is, fines imposed on the clergy are to be dispensed to the poor. The fine in this law was for a "delaying appeal" instituted by a cleric. (3) No doubt one can consider as leavening influences in these changes the work of the Council of Sardioa, the increase in the judicial power of bishops, (4) and the reaction after the attempt by Julian to restore the old pagan worship.

Under the Emperor Theodosius the pendulum again swung the other way. A law of March 13, 392 (5) reacted against an abuse on the part of the clergy who attempted to snatch the condemned by force from their punishment and forbade magistrates to use this as an excuse for not carrying out sentences. On April 9 of the same year a law again took away the right of appeal from those who had been clearly convicted or had confessed their crimes. In such

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1. C.T., IX, 40, 5; C.J., IX, 47, 18 (a. 346); C.T., XI, 30, 20 (a. 347).

2. C.J., VII, 62, 24 (a. 365).

3. C.T., XI, 36, 20; C.J., I, 4, 2; VII, 65, 4a (a. 369).

4. C.T., I, 27; Constitutiones Sirmondianae I (a. 333). One is not allowed to appeal from the decision of a bishop. Even after a case has been started it may be transferred to a bishop's court. However, a decision rendered by a secular judge stands. See, too, Socrates, op. cit., VII, 13, eadem loco, p. 159.

5. C.T., IX, 40, 15.

cases intercession of the clergy was forbidden and the magistrate had, under penalty of fine, to take energetic action to execute the law. (1)

The first law which made mention of taking refuge in churches was that of October 18, 392 which struck public debtors. "Public debtors, who think that they can save themselves by fleeing to churches, must be immediately taken from their hiding places or the bishops themselves who are proven to have concealed them will have to pay for them. Accordingly, let your honorable authority know that henceforth no debtor is to be defended by clerks or they will have to settle the debt of the one whom they thought they would defend." (2) This law lends itself readily to the theory that the prohibition contained therein presupposes an anterior law legally consecrating the right of asylum. However, this is a gratuitous theory based upon an unproved

1. C.T., XI, 36, 31. "Officium, quod rettulit provocare convictos vel appellare confessos, XXX auri libras inferat fisco, nec ulla episcoporum vel clericorum vel populi suggeratur intervenire aut intervenisse persona. Nec enim eos fas est adimi debitae severitati, qui pacem publicam actuum perturbatione confusam rebeli contumacia miscuerunt. Non ignaro ipso etiam iudicante, nisi post sententiam dictam impleverit suas partes, eadem se multa, qua officium, esse plectendum."

2. IMPPP. THEODOSIUS, ARCADIUS ET HONORIUS... ROMULO COMITI SACRARUM LARGITIONUM. Publicos debitores, si confugiendum ad ecclesias crediderint, aut ilico extrahi de latebris oportebit aut pro his ipsos, qui eos occultare probantur, episcopos exigi. Sciat igitur praecellens auctoritas tua neminem debitorum posthac a clericis defendendum aut per eos eius, quem defendendum esse crediderint, debitum esse solvendum." C.T., IX, 45, 1.

fact, the loss of a law, for which there is no evidence.

That there are some implications in this law cannot be denied. It is difficult to assess them at their proper value. It seems reasonable to theorize that the custom of fleeing to churches had increased with the intercessory role of the clergy. Magistrates very much impressed with the holiness of the sacred places or the prestige of the clerics, particularly the bishops, hesitate to withdraw from a church one who had fled thither. (1) Custom is creating the law of asylum without definite legal recognition. Thus, for practical purposes, this law becomes simply another restriction on intercession. The law of 396 denied absolutely to the public debtor the right of appeal.(2)

A restrictive law of June 17, 397 affected the Jews. "Jews, who burdened with some accusation or debts pretend that they want to be Christians so that by fleeing to churches they may be able to escape their crimes or the weight of their debts, are to be kept away and not received into the church until they shall have settled all their debts or their innocence having been proven be relieved of any accusation." (3)

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1. For instances of the hesitancy shown in withdrawing refugees from a church and yet no indication of a direct order against it see the case of Cresconius below p. 86, and that of Fascius p. 87. Recall, too, the prestige of the bishops.  
2. C.J., VII, 65, 8.

3. IMPP. ARCADIUS ET HONORIUS ..ARCHELAI PRAEFECTO AUGUSTIALI. Iudaei, qui reatu aliquo vel debitis fatigati simulant se Christianae legi velle coniungi, ut ad ecclesias confugientes vitare possint crimina vel pondera debitorum, arceantur nec ante suscipiantur, quam debita universa reddiderint vel fuerint innocentia demonstrata purgati. C.T., IX, 45, 2; C.J., I, 12, 1.

Socrates gives an instance of a Jewish impostor who "pretending to be a convert to Christianity, was in the habit of being baptized often and by that artifice he amassed a good deal of money. After having deceived many of the Christian sects by this fraud - for he received baptism from the Arians and Macedonians - as there remained no others to practise his hypocrisy upon, he at length came to Paul, bishop of the Novations, and declaring that he earnestly desired baptism, requested that he might obtain it at his hand." (1) When they came to baptize the Jew the water twice mysteriously disappeared from the fount and he was, finally, exposed.

In 396 at Milan, while an exhibition of wild beasts was being given, Count Stilicho at the request of Eusebius, the Prefect, sent soldiers to take a certain Cresconius, who had been guilty of the most heinous crimes, from the church. "As he took refuge at the altar of the Lord, the holy Bishop, (St. Ambrose), with the clergy who were present at the time surrounded him for his defence. But the multitude of soldiers, who had members of the Arian heresy as their leaders, prevailed against the few and carrying Cresconius away in exultation returned to the amphitheatre, leaving no small sorrow to the Church; for the bishop prostrate before the altar of the Lord long bemoaned the deed.

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1. Socrates, Ecclesiastical History, VII, 17, in Post-Nicene Fathers, New York, 1891, Vol. II, p. 161. For an apparently more authentic conversion from Jewry see Socrates VII, 13, eodem loco, p. 159.

But when the soldiers had returned and reported to those by whom they had been sent, the leopards on being let loose leaped with a swift bound to the very place in which they who were triumphing over the Church had taken their seats and left them severely lacerated. Then when Count Stilicho saw this he was moved with repentance so that for many days he made apologies to the bishop and even dismissed unharmed him who had been carried off; but because he was guilty of the most heinous crimes and could not be chastised otherwise, he sent him into exile, although pardon followed not long after." (1)

St. Augustine writing to the faithful of his diocese in 397 or at the beginning of 398 presents the case of a certain Fascius. "Fascius, our brother, in debt for seventeen shillings of gold (solidorum), was pressed by his creditors; at the moment he could not satisfy them; fearing lest they use force on him, he sought refuge in the holy church. The people pursuing him, obliged to go out but not wishing to accord any delay, came and overwhelmed me with their complaints; they demanded that I deliver Fascius to them, or that I pay the debt myself."(2) The Saint borrowed the money and when his note came due Fascius had not recouped his fortunes and so the Saint asks the faithful of Hippo to relieve him of his embarrassment.

1. Paulinus, Vita Ambrosii, op. cit., c. 34, p. 79.  
2. Ep. CCLXVIII, C.S.E.L., t. LVII, p. 652.

Clearly, in this case, the church offered some sort of refuge. But was it Augustine's delicate sense of justice, his charity in coming to the aid of a Christian in distress, or some fear that the reverence due the church might be violated, that led him to assume the man's financial responsibility? Fascius' pursuers pressed him energetically. Still they stopped at the doors of the church. Whether law or custom had established as much it is evident that the place of the church as a sanctuary was nearing a full-grown stature. Another letter of Augustine which will be examined later will throw more light on this subject. (1)

Just at the end of the century when the institution seems to be taking an accepted position it receives a short check at the hands of the usurper Eutropius. On Nov. 27, 395 the eunuch Eutropius, aided by the empress Eudoxia, had had Rufinus, prefect of the praetorium of the East, massacred and replaced him in the role of chief ministre and favorite of Arcadius. In his attempts to maintain his illegitimate ascendancy Eutropius secured legislation against intercession and what, by this time, must have been, at least, a preliminary asylum offered by the churches before intercession took place. The evidence of the history of

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1. The practise of financial assistance among the christians, of course, was well established. That of itself might explain this whole incident. See Eusebius, Ecclesiastical History, IV, 23, in Post-Nicene Fathers, ed. by H. Wace and P. Schaff, New York, 1890, Vol. I, p. 201. Also, St. Basil, Ep. LXX, ed. and trans. by Roy J. Deferrari, London, 1928, Vol. II, p. 51.

the period throws special attention on these laws for they have not come to us in a unified form.

Socrates tells us that Eutropius, "desiring to inflict vengeance on certain persons who had taken refuge in the churches, induced the emperor to make a law excluding delinquents from the privilege of sanctuary, and authorizing the seizure of those who had sought the shelter of the sacred edifices." (1) Zosimus informs us that the wife of Timasius - Timasius had fallen under Eutropius' displeasure - and her daughter were given a safe-conduct to Jerusalem when Eutropius felt that he did not dare withdraw them from a church in which they had taken refuge. (2)

A law of September 4, 397 had decreed severe punishments for the crime of lèse-majesté and had greatly extended the orbit of persons comprised under this notion. Furthermore, the very fact of interceding for such persons became a violation of law. (3)

The savants conclude (4) that since this law did not cover the case of Pintadia, Timasius' wife, that Eutropius had a law of July 27, 398 passed of which five fragments can

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1. Socrates, op. cit., VI, 5, Vol. II, p. 140. Cf. Sozomen, op. cit., VIII, 7, Vol. II, p. 404.
  2. Zosimus, History, V, 8, cited by F. Martroye, op. cit., p. 177.
  3. C.T., IX, 14, 3. "Denique iubemus etiam eos notabiles esse sine venia, qui pro talibus umquam apud nos intervenire temptaverint." C.J., IX, 8, 5.
  4. Martroye, op. cit., pp. 185-195  
Timbal, op. cit., pp. 66-73.

be found in the codes. (1) This law was designed to render null any security that flight to a church might have offered and its many provisions, as reconstructed, probably account for St. John Chrysostom's speaking of many laws being passed by Eutropius against the church. (2) Only the second and fifth fragments touch directly upon intercession and asylum. The second fragment makes the period of delay in which an appeal from coming directly to the emperor. The fifth fragment establishes the monetary responsibility of the churches both in the case of public and PRIVATE debts and laid the way open for force in withdrawing refugees. (3)

1. A.- C.J., I, 4, 7. B.- C.T., IX, 40, 16 and IX, 30, 57; C.J., I, 4, 6 and VII, 62, 29. C.- C.T., XVI, 2, 32. D.-C.T., XVI, 2, 33; C.J., I, 3, 11. E.- C.T., IX, 45, 3; C.J., I, 3, 12.

2. St. John Chrysostom, I On the Disgrace of Eutropius, 3. in Oeuvres Complètes, ed. M. Jeannin, Arras, 1887, Vol. IV, p. 283.

3. IMPP. ARCADIUS ET HONORIUS .. EUTYCHIANO PRAEFECTO PRAETORIO. Si quis in posterum servus ancilla, curialis, debitor publicus, procurator, murilegulus, quilibet postremo publicis privatisve rationibus involutus ad ecclesiam confugiens vel clericus ordinatus vel quocumque modo a clericis fuerit defensatus nec statim conventionem praemissa pristinae conditioni reddatur, decuriones quidem et omnes, quos solita ad debitum munus junctio vocat, vigore et sollertis iudicantium ad pristinam sortem velut manu mox iniecta revocentur: quibus ulterius legem prodesse non patimur, quae cessione patrimonii subsequuta decuriones esse clericos non vetabat. Sed etiam hi, quos oeconomos vocant, hoc est qui ecclesiasticas consueverunt tractare rationes, ad eam debiti vel publici vel privati redhibitionem amota dilatione cogantur, in qua eos obnoxios esse constiterit, quos clerici defensandos receperint nec mox crediderint exhibendos. C.T., IX, 45, 3. July 27, 398.

Eutropius fell from favor and he himself was forced to take refuge in the church of St. John Chrysostom where that Saint in one of his famous orations (1) subdued the fury of the pursuing mob and soldiers. According to one account the Saint was successful in interceding for Eutropius though shortly thereafter Eutropius was put to death. (2) Sozomen says that "the law which he had enacted was effaced from the public inscriptions." (3) Eutropius' law, therefore, was of short duration. Because of the almost open hostility between the eastern and western capitals, at that time, (4) it would not apply in the West.

As to the survival of these fragments hostile to intercession and asylum in the codes, it can only be supposed that they lost their force by non-application. However, one can see in a law of June 7, 399 a reaction which will eventually lead to a legally consecrated institution of asylum. Appeals are again authorized in a most generous way.(5)

1. St. John Chrysostom, I On the Disgrace of Eutropius, op. cit., ed. Jeannin, Vol. IV, p. 281.

2. Zosimus, History, V, 18, cited by Timbal, op. cit., p. 71.

3. Sozomen, op. cit., VIII, 7, Vol. II, p. 404.

4. Martroye, F., 6p. cit., p. 196.

5. IMPP.ARCADIUS ET HONORIUS. THEODORO PRAEFECTO PRAETORIO. Multorum querellis excitati hac lege sancimus, ut, si quis provocatione interposita suspecti iudicis velit vitare sententiam, in hac voce liber habeat potestatem nec timeat contumeliam iudiciorum, cum et ab ipsa iniuria possit facile provocare, maxime cum a solis tantum praefectis non sine dispendio causae provocare permissum sit. Sciant igitur cuncti sibi ab iniuriis et suspectis iudiciis et a capitale supplicio ac fortunarum dispendio provocationem esse concessam. Quod si quis posthac iudicum appellatione emissa libellos quoque ablatos audire noluerit, viginti librarum auri dispendio multabitur; officium vero eius nisi huic pertinaciter restiterit atque actis ita contradixerit et, quid iure sit constitutum, ostenderit, viginti quinque libras auri largitionibus nostris inferre cogetur. C.T., XI, 30, 58. C.J., VII, 62, 30; VII, 62, 21.

At the end of the century, therefore, legally, the laws of Theodosius excluding public debtors, Jew, the convicted and self confessed from the protection of the churches and the intercession associated therewith were in force. But, in open battle, the practise of flight to the churches, whatever its precise position in law, had come off victorious.

A council held at Carthage, April 27, 399, sent two bishops, Epigonius and Vincentius to the emperor of the West to obtain from him that, whatever the charge, no one should dare to withdraw refugees from the church. Again the evidence all but tells whether sanctuary had been consecrated by a law to which there were some exceptions. Of the requested law there is no trace. (1)

Some have thought to see in laws passed in 399,(2) in 408 and 409 (3), and 416 (4) a legal recognition of asylum. Nevertheless, it seems quite certain that these laws do not do so but for the most part were aimed at the Donatists, Caelicolae, Jews, pagans and heretics who persecuted the church with violence. (5) Still they do show an ever growing

1. "Post consulatum gloriosissimi imperatoris Honorii IV et Eutyhiani viri clarissimi, quinto kalend. maias, Carthagine in secretario basilicae Restitutae. In hoc concilio legationem susceperunt Epigonius et Vincentius episcopi: ut pro confugientibus ad ecclesiam, quocumque reatu involutis, legem de gloriosissimis principibus mereantur, ne quis eos audeat abstrahere." Mansi, III, c. 750.

2. C.T., XVI, 2, 34. C.J., I, 3, 13.

3. C.T., II, 8, 25; XVI, 8, 19. C.J., I, 9, 12.

C.T., XVI, 2, 31; XVI, 5, 44, 45, 46. Constitutiones Sirmondianae, XIV.

4.C.T., XVI, 8, 23.

5. Martroye, op. cit., pp. 199-213.

anxiety that the sacredness of the holy places be kept free of all disturbances and turmoil.

The extent to which the habits of thinking required for an institution of asylum had crept into the attitudes of the people is illustrated by an incident of June 12, 400. Gainas, a barbarian Goth, had risen high in the service of the empire and then aspired to even imperial honors. Arcadius, the emperor, ordered a group of Gainas' Goths in Constantinople to be slain. Some took refuge in a church. The soldiers set the church on fire and burnt it to the ground. This circumventing device seemed to satisfy the doubt they felt about forcibly withdrawing the fugitives from the church. (1)

In 408 Stilicon after his own fall from power took refuge in a church at Ravenna. The emissaries sent to capture him hesitated at taking him from the church. They apparently satisfied their misgivings by reading imperial letters purporting to give him safety, only to seize him once he had left the church under this vanishing hope. (2) Before the imperial orders for the seizure of Eucher, the son of Stilicon, in refuge at Rome, were executed a whole series of commands was necessary. (3) The Senator Lampadius

1. Socrates, *op. cit.*, VI, 6, Vol. II, p. 142. Sozomen, *op. cit.*, VIII, 4, Vol. II, p. 402.

2. Zosimus, *History*, V, 34, cited by Martroye, *op. cit.*, p. 201.

3. *Ibid.*, V, 34, 34, 37, eodem loco, p. 202.

who had criticized Stilicon's dealings with Alaric while Stilicon was still in power fled to a church for refuge as did Heliocrates who was charged with excessive leniency in punishing the vanquished followers of Stilicon. (1)

According to the pagan historian Zosimus, every attempt on the inviolability of the church, even by tortuous methods, was considered, henceforth, as a sacrilege which aroused public indignation. Also, whoever felt that he was in danger took refuge in the protection of the holy places with confidence. (2)

St. Augustine wrote to Bishop Auxilius asking him to lift an excommunication under which a certain Classicanus and his family had fallen. The situation revolved about a dubious case of withdrawal of refugees from a church and the Saint did not seem too certain that Bishop Auxilius was right in his action. (3) He asked Auxilius, if he had good reason for this drastic action, to tell him for his own instruction. Averting to the fact that the young bishop had not only excommunicated Classicanus but also his family he made this pertinent lament: "What of so many souls in the entire household? --- of which if even one, in consequence of the severity which included the whole household in the excommunication, should perish through departing from the body without baptism, the loss thus occasioned

1. Ibid., V, 29; V, 35, eodem loco, pp. 202-203.

2. Ibid., V, 19, eodem loco, p. 202.

3. Ep. CCL, 1, in Works of Augustine, ed. by Marcus Dods, Vol. XIII, p. 454.

would be an incomparably greater calamity than the bodily death of an innumerable multitude, even though they were innocent men, dragged from the courts of the sanctuary and murdered." (1)

Augustine seemed to incline to Classicanus' general view about the propriety of giving asylum in this case.(2) In a fragment of a letter written to Classicanus and attached to this letter the Saint said that he intended to submit the matter to Council, and, if it be necessary, to write to the Apostolic See to decide the question "whether persons ought not to be driven forth even from a church, who seek refuge there in order that they may break the faith pledged to sureties, ..." (3) The result of the affair is not known, but St. Augustine, who knew how to quote the imperial laws, would certainly have been aware of any general provision for sanctuary.

One may painfully trace the genesis of this law or that institution. However, history gives us many examples of how some great event which strikes the imagination of all the people becomes, if not the cause, at least, the occasion for a tremendous rush of popular feeling on some particular point. It prepares the way for a whole flood of actions instituting some new order, or lesser institution. The sack of Rome by Alaric had this impact upon the Roman world. Because of its connection with the right of

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1. Ibid., 2, Vol. XIII, p. 457.  
2. Ibid.  
3. Ibid., Vol. XIII, p. 458.

asylum, one cannot fail to take note of it.

Orosius relates that when Alaric laid siege to Rome "he first ..., gave orders that all those who had taken refuge in sacred places, especially in the basilicas of the holy Apostles Peter and Paul, should be permitted to remain inviolate and unmolested; ..." (1) He recounts how in a church building a goth asked a virgin advanced in years who had dedicated herself to God, for gold and silver. She brought forth the sacred vessels and said, "These are the sacred plate of the Apostle Peter. Presume, if you dare! You will have to answer for the deed. As for me, since I cannot protect them I dare not deep them." (2)

The incident was reported to Alaric. "He ordered that all the vessels, just as they were, should be brought back immediately to the basilica of the Apostle, and that the virgin also, together with all Christians who might join the procession, should be conducted thither under escort. The buildings, it is said, was at a considerable distance from the sacred places, with half the city lying between. Consequently the gold and silver vessels were distributed, each to a different person: they were carried high above the

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1. Orosius, Paulus, Seven Books of History Against the Pagans, VII, 39, trans. by Irving Woodworth Raymond, New York, Col. Univ., 1936, p. 387.  
2. Ibid., p. 388.

head in plain sight, to the wonder of all beholders. The pious procession was guarded by a double line of drawn swords; Romans, and barbarians in concert raised a hymn to God in public. ...many pagans even joined the Christians in making profession, though not in true faith. ...The more densely the Roman refugees flocked together, the more eagerly their barbarian protectors surrounded them ..." (1)

There might be serious danger of overstressing the influence of the events of the year 410, but St. Augustine would return to them in his City of God. Perhaps Beaurepaire has caught some of the feeling of an intelligent, well-disposed Roman of the day when he says, "Rome avait commenc e par un asile; elle se sauva par un asile." (2) Whatever the influence of these intangible events on the minds of men the troubled nature of the fifth century would lend itself to the acceptance of a right of asylum. Custom had created a set of circumstances to which the law now gave formal recognition. Hence, the next step takes one into what is a law, clearly conceived in the spirit of the new religion, in which asylum is definitely delineated.

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1. Ibid., pp. 388-389. Cf. St. Jerome, Ep. CXXVII, 12-14, To Principia, Marcella and the Sack of Rome, in Select Letters, ed. and trans. by F.A. Wright, London, 1933, pp. 463-465. St. Augustine, City Of God, I, 4-7, C.S.E.L., t. XL, pp. 9-12.  
2. Beaurepaire, op. cit., dans Biblioth que de L'Ecole des Chartes, t. IV, 1853, p. 371.

The first sentence of the law of 419 (1) with its forthright recognition that justice is to be moderated by charity sounds almost like a sentence from Augustine. Its terms are almost emotional as it refers to the restrictions suffered by those who have taken refuge in a church, and lays it down that henceforth they shall enjoy their immunity for fifty paces beyond the doors of the church. The law then proceeds to clarify the privileges of the clergy in succouring those in prison with their corporal charities and services as intercessors. A penalty of two gold pounds is imposed on the officer who excludes a priest on such business from a prison.

A law of March 23, 431 deals with the subject at greater length. Difficulties discovered, no doubt, in practise and not considered by the too cryptic terms of the

I. IMPP. HONORIUS ET THEODOSIUS PII AUGG. Convenit, nostris praescita temporibus ut iustitiam inflectat humanitas. Nam cum plerique vim fortunae saevientis aufugerint adque ecclesiasticae defensionis munimen elegerint, patiuntur inclusi non minorem quam vitavere custodiam: nullis enim temporibus in luce vestibuli eis aperitur egressus. Adque ideo quinquaginta passibus ultra basilicae fores ecclesiasticae venerationis sanctitas inhaerebit. Ex quo loco quisque tenuerit exeuntem, sacrilegii crimen incurrat. Nihil enim confugientibus miserationis inpenditur, si aura liberior negatur afflictis. Eam quoque sacerdoti concedimus facultatem, ut carceris ope miserationis aulas introeat, medicetur aegros, alat pauperes, consoletur insontes et cum singulorum causas scrutatus agnoverit, interventiones suas apud iudicem competentem pro iure moderetur. Scimus enim idque crebris aditionibus supplicatum frequenter ides plerosque in custodiam detrudi, ut adeundi iudicis libertate priventur et, cum semel coeperit humilior persona pati custodiam, antequam causa sciatur, iniuriae poenam sustinere compellitur. Confestim duas auri libras fisco nostro contumax solvet officium, si sacerdotem negotia tam sancta curantem ianitor feralis excluserit .. Constitutiones Sirmondianae, XIII, dec. 21, 419.

law of 419 are given precise solutions. (1) "Let the temples of the most high God be open to those who have cause for fear; we decree that not only the altars and the oratory enclosed by the four walls of the church be a place of security for refugees but also command that the area of safety extend to the last doors of the church by which the people going to church first enter so that between the walls of the church and the first entrances which separate the church from public places all the area there and all that is found there whether cells, dwellings, gardens, baths, open places, and porticoes will be for the refugees just as secure as the inside of the church. Nor let any one try to lay sacrilegious hands upon them to drag them out, lest when the one who has dared this, perceiving his own danger, should, for his own safety, have to take refuge himself. However, we grant this great space for the refugees so that none of them need be allowed to sojourn, eat, sleep or spend the night in the temple itself of God near the most

I. IMPP. THEODOSIUS ET VALENTINIANUS .. ANTIOCHO PRAEFECTO PRAETORIO. Pateant summi dei templa timentibus; nec sola altaria et oratorium templi circumiectum, qui ecclesias quadripertito intrinsecus parietum saeptu concludit, ad tuitionem confugientium sancimus esse proposita, sed usque ad extremas fores ecclesiae, qua oratum gestiens populus primas ingreditur, confugientibus aram salutis esse praecipimus, ut inter templi quem parietum describimus cinctum et post loca publica ianuas primas ecclesiae quidquid fuerit interiacens sive in cellulis sive in domibus hortulis balneis areis atque porticibus, confugas interioris templi vice tueatur. Nec in extrahendos eos conetur quisquam sacrilegas manus inmittere, ne qui hoc ausus sit, cum discrimen suum videat, ad expetendum opem ipse quoque confugiat. Hanc autem spatii latitudinem ideo indulgemus,

holy altars: since the clerks themselves out of reverence refrain from this, the refugees must do the same for religious motives.

"We also command that the refugees bear no arms of any kind within the churches and that prohibition extends not only to the temples of the most high God and to the holy altars, but also to the cells, dwellings, gardens, baths, open places and porticoes. Hence, peaceably and without exception the clerks will prevent those who without arms shall flee to the most holy temple or the most sacred altar of God whether in this fair city or any place else, from taking their rest or food within the temple or at the altar. The clerks will designate for the refugees places within the ecclesiastical enclosures. These places will be sufficient for their protection and the clerks will tell them that if any one attempts to seize them he will incur capital punishment. If the refugee does not find this assurance sufficient and obey the clerks, religion must

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ne in ipso dei templo et sacrosanctis altaribus confugientium quemquam manere vel vescere, cubare vel pernoctare liceat: ipsis hoc clericis religionis causa vetantibus, ipsis, qui confugiunt, pietatis ratione servantibus. Arma quoque in quovis telo, ferro vel specie eos, qui confugiunt, minime intra ecclesias habere praecipimus, quae non modo a summi dei templis ac divinis altaribus prohibentur, sed etiam cellulis domibus hortulis balneis areis atque porticibus. Proinde hi, qui sine armis ad sanctissimum dei templum aut ad sacrosanctum altare sive usquam gentium sive in hac alma urbe confugiunt, somnum intra templum sive ipsum altare vel omnino cibum capere absque aliqua eorum iniuria ab ipsis clericis arceantur, designantibus spatia, quae in ecclesiasticis saeptis eorum tuitio- ni sufficient, ac docentibus capitalem poenam esse propositam,

be preferred to humanity and he will be taken from the holy places to the places which we have designated.

"We forewarn those who would dare to enter temples with arms no to do it; secondly we command the clerks in the name of the bishop to sharply order anyone bearing arms in any part of the church or the enclosure of the temple whether within it or outside it, to put the arms aside, assuring them that they will be better defended by the name of religion than by the force of arms.

But if, having been warned by these repeated and urgent requests of the church the refugees are unwilling to lay down their arms our Clemency and the bishops will ask pardon of God and armed force, thus rendered necessary, will be introduced into the church. They will be seized and drawn out with all the consequences which must result for them. But no armed refugee, in this fair city or any place else, will be taken out of the churches with-

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si qui eos conentur invadere. Quibus si perfuga non adnuit neque consentit, praeferenda humanitati religio est et a divinis ad loca quae diximus turbanda temeritas. Hos vero, qui templa cum armis ingredi audent, ne hoc faciant, praemonemus: dein si telis cincti quovis ecclesiae loco vel ad templi saepta vel circa vel extra sint, statim eos, ut arma deponant, auctoritate episcopi a solis clericis severius conveniri praecipimus, data eis fiducia, quod religionis nomine melius quam armorum praesidio muniantur. Sed si ecclesiae voce moniti post tot tantorumque denuntiationes noluerint arma relinquere, iam clementiae nostrae aput deum et episcoporum causa purgata armatis, si ita res exegerit, intromissis, trahendos se abstrahendosque esse cognoscant et omnibus casibus esse subdendos. Sed neque episcopo inconsulto nec sine nostra sive iudicium in hac alma urbe vel ubicumque iussione armatum quemquam ab eccle-

out the advice of the bishop and our order or that of the judges, lest, if from time to time many people have the making of this decision, confusion would result." (1)

Throughout the history of this institution slavery, wherever it has been found, has always posed a particular difficulty. A slave in asylum was a property right lost. That aroused the maximum of public opposition. Criminals people tolerated, but a direct financial loss they abhorred. Among the late Romans this sense of the right to their property interests was by no means dead. It is not, therefore, surprising to find that on the following March 28, 432 a law dealt with the particular case of slaves and asylum. (2)

"Concerning those who take refuge at the altars of holy religion, we have decided that a sanction destined to hold forever should be promulgated to this effect, namely,

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siis abstrahi oportebit, ne, si multis passim hoc liceat, confusio generetur. C.T., IX, 45, 4, March 23, 431. C.J., I, 12, 3.

1. Eusebius' description of the Church of the Apostles at Constantinople makes clear just what the physical surroundings this law envisages were. "The building was surrounded by an open area of great extent, the four sides of which were terminated by porticoes which enclosed the area and the church itself. Adjoining these porticoes were ranges of stately chambers, with baths and promenades, and besides many apartments adapted to the use of those who had charge of the place." Life of Constantine, IV, 59, in Post-Nicene Fathers, ed. by H. Wace and P. Schaff, New York, 1890, Vol. I, p. 555.

2. IMPP THEODOSIUS ET VALENTINIANUS .. HIERIO PRAEFECTO PRAETORIO. Super confugientibus ad sanctae religionis altaria sanctionem in perpetuum valituram credidimus promulgandam, ut, si quidem servus cuiusquam ecclesiam altariave loci tantum veneratione confisus sine ullo telo petierit, is non

that if anyone's slave should flee to the church or the altars of the place, without a weapon and trusting only in the veneration in which the place is held, the clerks whose duty it is should within one day of the refugee's arrival inform his master or him for fear of whose threatened punishment he seemed to have run away. Then the party concerned provided that he, for the honor and respect due to the place to which the slave fled for help, pardon the slave's misdoings so that there may be no concealed thoughts of anger in his heart, may take the slave away. But if the slave, armed and unnoticed, should unexpectedly rush into the church, he is to be dragged forth immediately or certainly the master or the one whose mad terrorizing drove him to flight should be told and help for a speedy withdrawal not denied. But if the slave, trusting in his arms, conceive the wild scheme of resisting, the master is allowed to drag him forth and take him away with what force he can marshal. Furthermore, if it should so happen that the slave be killed in the warlike struggle, there will be no

plus uno die ibidem dimittatur, quin domino eius vel cuius metu poenam imminentem visus est declinasse, a clericis quorum interest nuntietur. Isque eum inperita indulgentia peccatorum, ut nullis residentibus iracundiae menti reliquis, in honorem loci et eius respectu, ad cuius auxilium convolavit, abducat. Quod si armatus nullis hoc suspicantibus inopinus intruerit, exinde protinus abstrahatur vel certe contiuo domino vel ei, unde eum tam furiosa formido proripuit, indicetur eique mox abstrahendi copia non negetur. Sed si armorum fiducia resistendi animos insania impellente conceperit, abripiendi extrahendique eum domino, quibus potest id efficere viribus, concedatur. Quod si illum etiam confici in concertatione pugnaque

occasion for punishing the master or bringing a charge against him, if he who passed from the servile state to that of an enemy and a homicide is killed. But if these things which are so usefully established are circumvented through negligence, or connivance, or some means by those who, by office, are responsible for them a just punishment will not be wanting. The guilty parties having been judged by the bishop in that place which they could not guard will be removed and reduced to the plebeian order to receive the vigorous action of justice."

On other law (1), that of February 28, 466 of the

contigerit, nulla erit eius noxa nec conflandae criminatio-  
nis relinquetur occasio, si is, qui ex statu servili in  
hostilis et homicidae condicionem transivit, occisus sit.  
Quod si quae tam sunt utiliter constituta eorum, qui huic  
rei pro suo praeficiuntur officio, aut neglegentia aut  
coniventia vel aliqua ratione fuerint depravata, animad-  
versio iusta non deerit, ut sub episcopalis diiudicationis  
arbitrio loco eo, quem tueri nequivere, submoti et reiecti  
in ordinem plebeiorum motum iudiciarii vigoris excipiant.  
C.T., IX, 45, 5. March 28, 432.

C.J., I, 3, 22, 1. In 445 a general confirmation of the laws relating to asylum was given.

1. IMP. LEO A. ERYTHRIO PP. Praesenti lege decernimus per omnia loca valitura (excepta hac urbe regia, in qua nos divinitate propitia degentes, quotiens usus exegerit, invocati singulis causis atque personis praesentanea constituta praestamus) nullos penitus cuiuscumque conditionis de sacrosanctis ecclesiis orthodoxae fidei expelli aut tradi vel protrahi confugas nec pro his venerabiles episcopos aut religiosos oeconomos exigi, quae debeantur ab eis: qui hoc moliri aut facere aut nuda saltim cogitatione atque tractatu ausi fuerint temptare, capitali et ultima supplicii animadversione plectendi sunt. ex his ergo locis eorumque finibus, quos anteriorum legum praescripta sanxerunt, nullos expelli aut eici aliquando patimur nec in ipsis ecclesiis reverendis ita quemquam detineri atque constringi, ut ei aliquid aut victualium rerum aut vestis negetur quies.

Emperor Leo completes what might be called a 'corpus' of the right of asylum. This law renews the main provisions of the law of 431 but most important of all the laws of 392 and 398 for the payment of the public or private debts of refugees by the bishops or oeconomos of churches are formally abrogated.

1. Sed si quidem ipsi refugae apparent publice et se in sacris locis offerunt quaerentibus conveniendos, ipsi, servata locis reverentia, iudicum quibus subiacent sententiis moneantur, responsum daturi, quale sibi quisque perspexerit convenire.
2. Quod si in finibus ecclesiasticis latitant, religiosus oeconomus seu defensor ecclesiae vel certe, quem his negotiis commodiorem auctoritas episcopalis elegerit, reconditam latentemque personam decenter sine ullo incommodo monitus, intra fines ecclesiae si invenitur, praesentet.
3. Cum autem monitus fuerit in publico privato contractu actione civili, in eius sit arbitrio sive per se seu, si magis elegerit, instructo sollempniter procuratore directo in eius iudiciis, cuius pulsatur sententiis, examine respondere.
4. Sed si hoc facere detractat aut differt, iudiciorum legumque solitus ordo servetur. itaque si res immobiles possidet, post edictorum sollempnia sententia iudicantis usque ad modum debiti bonorum eius sive praediorum traditio seu venditio celebretur.
5. Quod si res mobiles habet easque extra terminos occultat ecclesiae, sententia iudicantis et exsecutoris sollicitudine perquisitae, quocumque occultantur, erutae pro aequitatis tramite modoque debiti publicis rationibus privatisque proficiant.
6. Sane si intra fines habentur ecclesiae vel apud quemlibet ex clericis absconditae sive depositae fuisse firmantur, studio et providentia viri reverentissimi oeconomi sive defensoris ecclesiae diligentia inquisitae quolibet modo ad sacro sanctam ecclesiam pervenientes proferantur, ut pari aequitatis ordine ex isdem bonis fisco vel rei publicae sive creditoribus et quibuscumque iustis petitoribus ad modum debiti consulatur.
7. Sicubi depositae vel commendatae dicuntur, inquirendi tantam volumus esse cautelam, ut, si sola suspitione apud aliquem adserantur absconditae, de sua etiam conscientia satisfacere auctoritate venerabilis antistitis iubeatur.

However, minute rules for the regulation of matters of credit are laid down. Legal action is taken against the refugee and he is informed of the proceedings in a manner that does not prejudice the reverence due to the holy places. If he still prefers his refuge to the decision of the judges his immoveable goods will be taken to settle his accounts. The same applies to his moveable goods outside of the sanctuary.

8. Adicientes, quod ea, quae de principalibus personis decrevimus, etiam in fideiussorum sive mandatorum seu rerum ad eos pertinentius vel familiarium et sociorum vel participum et omnino in isdem causis obnoxiorum personis praecipimus observari, scilicet si ipsos quoque secum confugae intra ecclesiarum terminos habere voluerint, ut eorum quoque bonis publica debita privataque solvantur et per eos rerum ubicumque depositae sunt procedat inquisitio. et haec quidem de ingenuis liberisque personis.  
9. Sane si servus aut colonus vel adscripticius, familiaris sive libertus et huiusmodi aliqua persona domestica vel condicioni subdita conquassatis rebus certis atque subtractis aut se ipsum furatus ad ad sacrosancta se contulerit loca, statim a religiosis oeconomis sive defensoribus, ubi primum hoc scire potuerint, per eos videlicet ad quos pertinent, ipsis praesentibus pro ecclesiastica disciplina et qualitate commissi aut ultione competentis aut intercessione humanissima procedente, remissione veniae et sacramenti interveniente securi ad locum statumque proprium revertantur, rebus, quas secum habuerint, reformandis. diutius enim eos intra ecclesiam non convenit commorari, ne patronis seu dominis per ipsorum absentiam obsequia iusta denegentur et ipsi per incommodum ecclesiae egentium et pauperum alantur expensis.  
10. Inter haec autem, quae sedulo ad religiosi oeconomi sive defensoris ecclesiae sollicitudinem curanque respiciunt, erit etiam illud observandum, ut singulorum intra ecclesias confugientium personas causasque incessanter conquirant, denique iudices vel eos, ad quos causae et personae pertinent, instantius instruant, ut aequitatis convenientiam diligentius exsequantur. C.J., I, 12, 6. Feb. 28, 466.

If his moveable goods are within the church the custodian of the church will undertake to see that they are made available for the settling of accounts. If there is a suspicion that a clerk is hiding them the bishop will make adequate inquiry. The endorsers of debts are subject to the same monetary responsibility.

The provisions of the law of 432 are reiterated. As soon as a refugee comes to the church the persons responsible must inquire about his case and inform the judges of their findings.

The law of 466 represent a high point in the history of western asylum. The protection provided by the church is complete. While the Justinian Code of the next century will again regulate more severely the taking of sanctuary that code affects but a small part of western Europe. It is the laws of the Theodosian Code with their great influence that pass into the West of the early Middle Ages.

Towards the end of the Middle Ages the study of the Justinian Code had an influence on the institution of asylum. In England, however, it is difficult to estimate if any minor reception of the Justinian spirit had any great impact. Still the regulations imposed by Justinian might well be noted.

The Theodosian laws were incorporated in the code of Justinian. It was the Novellae and Edicts of that Emperor

that soon modified them. A Novella of April 16, 535 excluded from sanctuary homicides, adulterers, ravishers, and public debtors. The same prescription provided, once again, for the monetary responsibility of the clergy if refuge in a church stands in the way of the collection of taxes. (1)

Heretics, by a Novella of August 1, 535 were excluded from the right of asylum. (2) December 11, 542 the treatment of adulterers in holy places was made more precise. (3) When agents of the treasury were culpable of embezzlement and took refuge they were to be delivered up to the milder penalty of exile. (4) Those guilty of the crime of lèse-majesté could not take sanctuary. (5)

Thus, Justinian maintained the principle of asylum. His regulations represent what seems to be the constant tendency of every strong state to bring under its cognizance all major crimes. (6) To consider his regulations a virtual abolition is extravagant. The work of intercession still went on apace. The embezzler of the state escaped with a relatively mild penalty, exile.

1. Nov. XVII, c. 7.
2. Nov. XXXVII, c. 10. "Christianae fidei violatores."
3. Nov. CXVII, c. 15.
4. Ed. Just., c. 15.
5. Malalas, Chronographia, XVIII, Patrologia Graeca, XCVII, c. 714, (latin version).
6. Justinian's laws prevailed, of course, in the East. For an outline of asylum there see E. Herman, Asile dans l'Eglise Orientale, dans Dictionnaire de Droit Canonique, t. I, cc. 1084-1089.

The excepted cases represent elements that might threaten the very existence of the state itself. Justinian's laws manifest the fundamental reverence for the holy places that comes to be the root of the most matured doctrine of the West.

## C H A P T E R    I I I .

### TRANSITION AND TRIUMPH

#### A. The Barbaric Period.

With the advent of the German tribes into the old Roman Empire one is confronted with another situation in which a right of asylum can best develop. One meets not a savage people but a people whose institutions are not developed to the stage where repressive justice is entirely in the hands of the state. Private vengeance is a normal procedure. (1) However, under the influence of the church the Germanic tribes were encouraged in the substitution of the system of composition for that of 'blood-vengeance'. Each crime was assessed, as it were, at a certain value. If a culprit should then commit a misdeed the shedding of blood and its attendant family feuds could be limited. (2) Upon the payment of the fine imposed the matter would be terminated. In the course of things this system of composition harmonized well with the institution of asylum already established in the Roman world.

That the Germanic tribes had their sacred places

1. Chenon, Emile, Histoire Générale du Droit Français Public et Privé, Paris, 1926, t. I, p. 263. Cf. Tacitus, Germania, ed. and trans. by Maurice Hutton, Loeb Series, London, 1920, c. 21, p. 295.

2. Chenon, op. cit., t. I, pp. 264-268.

and held them in high respect is known. (1) Whether these tribes had a real right of asylum is difficult to say. (2) In any case, once they had been converted to christianity, it is certain that their laws provided for a special care of the peace of the churches. (3) Many of the tribes acquired a great amount of Roman law and in that the law regarding asylum.

The Theodosian law of 432 (4) had provided that the slave who took refuge in a church would be delivered up to his master within a day, the pardon of his fault and a promise that he would not be punished having been obtained by the clerks responsible for refugees. While the right of asylum continues to be accorded to the slave one finds no advance beyond the Theodosian law either in the rulings of the church (5) or deviation from this principle in the laws of the tribes. (6)

1. Tacitus, Germania, op. cit., c. 9 and 39; pp. 277 and 319.

2. Timbal, op. cit., p. 96.

3. Law of the Alemanni, Bk. I, III, IV, M.G.H., Leges, (folio) III, p. 47.

Law of the Frisians, XVII, 2, M.G.H., Leges, (folio) III, p. 670.

4. C.T., IX, 45, 5.

5. Council of Orleans V, (549), c. 22: "De servis vero qui pro qualibet culpa ad ecclesiae septa confugerint, id statuimus observandum, ut, sicut in antiquis constitutionibus tenetur scriptum, pro concessa culpa datis a domino sacramentis, quisquis ille fuerit, egrediatur de venia iam securus." M.G.H., Concilia, I, p. 107.

Council of Clichy, (626-627), c. 9: "Nam servus accepto sacramento dominis propriis ab ecclesia produci licet." eodem loco, p. 198.

6. Ostrogoths: Edict of Theodoric, c. 70: "Si servus cujuslibet nationis ad quamlibet ecclesiam confugerit, statim domino veniam promittenti reddatur; nec enim ultra unum

Even the barbarians were most insistent upon possessive rights.

Nevertheless, problems that arose in connection with slaves and refuge in churches, did focus attention on them and indirectly, at least, prepared the way for some amelioration of their lot. Even clerks, it would seem, were guilty of withdrawing their own slaves from sanctuary and the Council of Lerida in 524 averted to this practise imposing a penance on any clerk who should do so. (1)

The oath of impunity which the master was required to give was not intended to cover those guilty of the more atrocious crimes. To curb abuses which might arise from this source it was provided that the "slave ... must be

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diem ibidem residere praecipimus. Qui si exire noluerit, vir religiosus archidiaconus ejusdem ecclesiae vel presbyter atque clerici eundem ad dominum suum exire compellant et domino indulgentiam praestanti sine dilatione contradant." M.G.H., Leges, (folio) V, p. 160.

Visigoths: V, 4, 17 (Antiqua): "Hac profutura omnibus lege ut ... sed clericus aut ecclesiae custos, sicut in aliis legibus continetur, excusatum a culpa domino servum amota dilatione restituat." M.G.H., Leges, I, p. 223.

Visigoths: IX, 3, 3: "Dominus vero servum ... recipiat excusatum." eodem loco, p. 380.

Burgundians, (Roman law) II, 3: "Si vero ad ecclesiam servus homicidii reus forte confugerit, quia lex Theudusiani libro nono ad Antiochum data ab ecclesia nullum inermem permittit abduci, indulta vita, pro eo quem occidit, ipse deserviat." II, 4: "Qui vero armatus se intra ecclesiam tueri temptaverit, secundum legem ipsam cum conscientia episcopi abstrahatur." M.G.H., Leges, (folio) III, p. 597.

Franks: Pactum pro tenore pacis (553-558?), c. 15:

"Quod si cujuslibet servus deserens dominum suum ad ecclesiam confugerit, ubi primum dominus ejus advenerit, continuo excusatus reddatur." M.G.H., Capit., I, p. 6.

Lombards: Edict of Rotharis, c. 272; Law of Liutprand, c. 143; M.G.H., Leges, (folio) IV, pp. 66 and 172.

Bavarians: I, 7; M.G.H., Leges, (folio) III, p. 273.

1. Council of Lerida (524), c. 8, Mansi, VIII, p. 613.

protected only from corporal punishments. The master must not be asked to swear that he will not cut the slave's hair or impose some determined task." (1) One can readily imagine that masters were not always overly scrupulous in observing the spirit of their oaths.

SEI3 A difficulty arose when the master was not a Christian for in that case his oath as to the slave's impunity was without value. In such a case the master would have to seek the services of "persons of good faith". That meant Christians whose oath would have value due to their fear of church discipline. (2)

Some clerks forced the master to sell his slave. This unsanctioned activity was probably inspired as a result of sad experiences with excessively harsh masters and non-christian ones. No matter how well intentioned the practise was it was, also, open to abuses. Slaves themselves in the hope of being sold would take refuge in the church and complain bitterly of their masters. A lax clerk might thus secure the slave, if a desirable one, for some friend. Sometimes a third party would act as pur-

<sup>1517</sup>  
1. Council of Epaone, in Burgundy, (517), c. 39: "Servus reatu: atrocioze culpabilis si ad ecclesiam confugerit, a corporalibus tantum supplicio excusetur. De capillis vero vel quocumque opere placuit dominis iuramenta non exegi." M.G.H., Concilia, I, p. 28.

2. Council of Orleans V, (549), c. 22: "... personas requirat bonae fidei ... quia ipsi possunt servare quod sacrum es, qui pro transgressione ecclesiasticam metuunt disciplinam." M.G.H., Concilia, I, p. 107.

chasing agent and to the chagrin of the original owner the slave would pass into the possession of an enemy. Visigothic law, therefore, provided that "no one must sell his slave if he does so unwillingly." (1)

In the case of Jewish masters the practise of forced sale of slaves came to be the accepted rule. The Theodosian code had already provided that if a Jewish master were to circumcise his non-Jewish slave that the latter was to be set free. (2) The Council of Orleans in 538 had provided that if a Jewish master required his christian slaves to do anything contrary to their religion, or should punish them once they had been reclaimed from the church with the usual oath of impunity, if the slaves again had recourse to the church they would not be surrendered unless a monetary guarantee was deposited. (3) Shortly thereafter it became the right of any christian slave subject to a Jewish master to redeem himself from servitude on the one condition of a just price. (4)

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1. Visigothic law, V, 4, 17: "Ut nullus servum suum vendat invitus..." M.G.H., Leges, I, p. 223.

Cf. Pactum pro tenore pacis, c. 15; M.G.H., Capit., I, p. 7, where there is a significant condition; "Si de precium convenerit"

2. C.T., XVI, 9, 1 (a. 335)

3. Council of Orleans III, (538), c. 14, M.G.H., Concilia, I, p. 78.

4. Council of Orleans IV, (541), c. 30, M.G.H., Concilia, I, p. 94. Council of Maçon, (583) c. 16, Mansi IX, c. 935; here the price is set at twelve solidi.

If the slave, once the master had taken the oath that he would forgive and not punish him, still refused to leave the church his master could possess him by force. (1) For the most part, clerks seemed to have erred on the side of the slaves. Early in the fifth century they are found refusing to surrender the servile refugee.irate masters to even the scales would seize one of the clerks' own slaves. The practise was severely condemned. (2) The Germanic laws treated of the case specifically providing that if the clerks should, once the oath of impunity had been taken, refuse to give up the slave that they would provide as good a one in his place and that the one retained if caught outside of the church would revert to his master. (3) The Edict of Rotharis called for the return of the slave and another one along with it. (4) In another case if the clerks by connivance and to circumvent the master allowed the slave to escape they were held responsible and had to make restitution in money or with a slave of like value. (5)

A special problem was posed by the attempted marriage of slaves who needed the consent of their masters to do so. Sometimes they fled to the church hoping through the good offices of the clergy to secure the consent of

1. Council of OrleansV, (549), c. 22, M.G.H., Concilia, I, p. 107.
2. Council of Orange (441), c. 6, Mansi VI, c. 437.
3. Edict of Theodoric, c. 70, M.G.H., Leges, (folio) V, p. 160.
4. Edict of Rotharis, c. 272, M.G.H., Leges, (folio) IV, p. 66.
5. Decretio Chlotarii, c. 15, M.G.H., Capit., I, p. 7.  
Law of the Alemanni, II, 2, M.G.H., Leges, (folio) III, p. 47.

their masters. The third Council of Orleans legislated against the abuses attendant on this procedure since a pollution of the holy places was so proximate. Though benefiting from the usual 'oath of impunity' the slaves were to be returned separated to their masters. Then, if the consent of the proper parties could be secured they might marry. (1)

A famous case revolving about this point is related by St. Gregory of Tours. Two slaves mutually enamoured fled to a church. There, Rauching, their master, sought them. The priest going beyond his commission not only required that Rauching take the oath of impunity but also that he promise not to separate them. After some hesitation he consented. Taking them home he had them both buried alive thus fulfilling the unequivocal oath he had taken. When the priest heard of the incident he arrived only on time to save the boy the girl having been suffocated. (2) At a later date Rauching's own wife, when her spouse was killed for his treasonable activities, took refuge in a church. (3)

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1. Council of Orleans III (538), c. 24, M.G.H., Concilia, I, p. 92.

2. St. Gregory of Tours, History of the Franks, V, 3 (about 575) trans. by O.M. Dalton, Oxford, 1927, Vol. II, p. 170.

3. Ibid., IX, 9, eodem loco, p. 378.

The penalties for taking a slave out of asylum without observing the prescribed procedure were heavy. A person of substance would, in some cases, have to pay a fine of a hundred shillings, (solidi). If he were a person of lesser station the fine would be thirty shillings (solidi) or failing that one hundred lashes. (1) If the master forgot his 'oath of impunity' and punished the slave he was excommunicated. (2) and in some cases fined by the civil law.(3)

Asylums, as has been seen, in the ancient world were associated very much with slaves. Others, it is true, resorted to them. The law of the late empire under Christian influence provided for all who sought the protection of the church. Nevertheless, the fundamental idea among the Romans that the LAW was the refuge and protection of the liberty and rights of the FREE MAN remained dominant. Accordingly, the details for procedure in the case of slaves were laid down in the law of the empire. Asylum was their prime instrument of justice, guarantee of some human treatment. For the freeman the law regarding asylum tended to be restrictive seeking rather how to lead him back into the ordinary paths of justice.

It would seem, in view of the long-term history of

1. Law of the Visigoths, IX, 3, 3, M.G.H., Leges, I, p. 380.  
Law of the Alemanni, IV, M.G.H., Leges, (folio) III, p. 47.  
Law of Liutprand, c. 143, M.G.H., Leges, (folio) IV, p. 172.
2. Council of Orleans I (511), c. 3: "... a communione et convivio catholicorum ... habeatur extraneus." M.G.H., Concilia, I, p. 3. Council of Orleans v (549), c. 22: "... sit ab omnium communione suspensus." M.G.H., Concilia I, p. 107.
3. Edict of Rotharis, c. 272, M.G.H., Leges, (folio) IV, p. 66. Forty solidi to the church.

the institution, that in the new barbarian world representing, as it did, a society not as completely developed as the Roman world that asylum would come to have the same significance for all groups. Eventually it did. But just as the barbarians in their admiration for the Roman world absorbed as much of it as they were able during their first contacts with it they, also, tended to receive Roman legislation with its restrictions on asylum. However, the influence of the Church and the unsettled conditions finally reacted against these inherited restrictions and a real change in the institution took place. Working hand in hand with intercession and the Germanic system of compositions encouraged by the church, asylum came to be taken as a matter of course for slave and free man, an absolute obstacle to further pursuit.(1)

The tribes, then, in most immediate contact with the Roman world repeated verbally, if not in all its legal significance, much of the Theodosian law. Thus, the edict of Theodoric punished capitally those who withdrew a man from a church. (2) However, the same law provided for the expulsion of public debtors, the handing over of their goods, and the monetary responsibility of the clerks. (3) The old

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1. Chenon, op. cit., t. I, pp. 264-265, 278-280. "Ecclesia abhorret a sanguine" and insists on 'medicinal' penalties.  
2. Edict of Theodoric, c. 125, M.G.H., Leges, (folio) V, p. 165.  
3. Ibid., c. 71, eodem loco, p. 160.

ROMAN prohibition against withdrawing the condemned from their sentences and collusion in this work on the part of the judges was repeated with a severe penalty.(1) The laws of the visigoths (2) and the Lex Romana Raetica Curiensis (3) simply reproduced the most favorable law of the Empire, that of 431.

But these were laws for a state with a well developed system of courts and police power. Among the newcomers 'private vengeance' whether in matters of blood or other crimes persisted. The edict of one of these kings still left the execution of a private affair in the hands of the pursuer. To eliminate the brutality inherent in such methods the church encouraged the system of monetary compensation. The institution of asylum became the accessory instrument in this scheme. The fugitive took refuge and there was an immediate check to pursuit. The shedding of blood, the unjust oppression of the weak by the powerful was restrained. Then, the intercessory action of the clergy began to operate. If the victim were innocent an appeal could be made to the unjustified fury of the aggressor. If the victim were guilty and the composition had been fixed by law the procedure was reduced to a routine. This

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1. Ibid., c. 114, eodem loco, p. 164.

2. Law of the Visigoths, IX, 3, 4, M.G.H., Leges, I, p. 380.

3. Lex Romana Raetica Curiensis IX, 34, M.G.H., Leges, (folio) V, p. 378.

is the contribution made by the Church. Asylum is not now a part of the legal apparatus of a well organized state. It stands autonomous in the midst of a loosely arranged society which takes but little account of the individual. The seeking of refuge becomes the means of securing some application of law and reason to the settlement of the forgotten man's problems.

The Burgundians, less affected by Roman law, witness this feature. Homicide is punished with death but if the killer reaches a church he can save his life. If a free man kills a free man he will give half of his goods to the heirs of the victim and become their slave. If a free man kills someone's slave and takes refuge he will compensate for the value of the slave. This compensation might range from one hundred shillings (solidi) to forty shillings. (1) In the case of theft the compensation is determined by the decision of the prince. (2) The law of Gundebatus for theft sets the fine at twelve shillings. (3)

The lack of Frankish law on the subject is to be explained by the acceptance by the Frank kings of the de-

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1. Roman Law of the Burgundians, Title II, de homicidiis, c. 1; c. 5; c. 6; M.G.H., Leges, (folio) III, pp. 596-597.  
 2. Ibid., Title IV, de sollicitationibus et furtis, c. 2; eodem loco, p. 598.  
 3. Law of Gundebatus, Title LXX, de furtus, c. 2; M.G.H., Leges, (folio) III, p. 562.

cisions of the councils. It was Clovis (1) who convoked the Council of Orleans in 511. The first canon of this Council prescribed that in the cases of homicide, adultery and theft the decisions of the ecclesiastical canons and Roman law were to be observed. Those guilty of these crimes were not to be withdrawn from the church. They were not to be given up until the pursuer had sworn not to kill them or punish them in any way. However, an agreement about the compensation to be made had to take place in the case of those who were guilty. The pursuer who violated his oath was to be excommunicated. If the accused party refused to make the compensation and through fear left the church it was no longer a matter of concern for the clergy.(2)

The second canon dealt with the case of rape. If the man fled to the Church with the woman whom he had raped and she had suffered the action unwillingly the guilty party was to be free of punishment by death or in any other way but he was either to become her slave or else redeem himself by paying the price of a slave. If the woman had consented to him and she had a father the father had to hold her excused from punishment but he acquired the rights just mentioned over the aggressor. (3)

1. De Clercq, Carlo, La Legislation Religieuse Franque de Clovis a Charlemagne, Paris, 1936, pp. 7-8.

2. Council of Orleans I, (511) c. 1, M.G.H., Concilia, t. I, p. 1.

3. Ibid., c. 2, eodem loco.

A man who by force or ruse (seu vi seu dolo) should withdraw a refugee from the church was to be held as an enemy and kept away from the church until he should have first restored the refugee and done penance. (1) The kings, Childebert and Chlodomer approved these decisions of the councils. "Let no one presume to withdraw a thief or any guilty person, according to the decisions of the bishops, from the atrium of a church. But if there are churches whose atriums are not enclosed let a space of ground an acre (aripennis) in size starting from each of the walls of the church be considered as an atrium. Let no one in refuge go out of the aforesaid places in the desire to look after his business. But if anyone should and he is captured, let him be condemned to a fitting punishment." (2)

A person's nobility or high standing was no excuse for violating the asylum offered by the church. If the pursuer had a just complaint he was to consult the priest and he would advise him as to how the refugee might be dealt

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1. Council of Orleans IV, (541) c. 21: "... ut inimicus ecclesiae ab ejus liminibus arceatur." M.G.H., Concilia, I, p. 92.

2. Pactum pro tenore pacis, c. 14: "Nullus latronem vel quemlibet culpabilem, sicut cum episcopis convenit, de atrio ecclesiae extrahere praesumat. Quod si sunt ecclesiae, quibus atriae clausae non sunt, ab utraque partibus parietum terrae spacium aripennis pro atrio observetur. Nullus confugiens foris antedicta loca pro operarum cupiditate se ducat. Quod si fecerit et capti fuerint, ad dignum sibi subplicium condemnentur." M.G.H., Capit., I, p. 6.

with without violation of the church. (1) A council of 614 or 615 forbade the chaining of those who were in asylum. (2)

Childebert II imposed a restriction in the case of rape. The guilty party was to enjoy neither asylum nor intercession. He was to be delivered up by the bishop. If the woman consented and asylum was sought both were to be sent into exile. If the couple was apprehended outside of the church immediate death was their lot. Their goods reverted to the parents, their public accounts having been settled. (3) Still this restriction was only a passing thing for it was not considered in subsequent legislation.

A canon of the Council of Clichy (626 or 627) summarizes what the state of asylum was at the end of the sixth century. "If anyone withdraws a fugitive slave from the church for any reason without taking the oath of impunity let him be excommunicated, for it is permitted to return a slave to his master from the church once the oath has been taken. If anyone should violate the obligation of his oath let him be excommunicated. For we must guarantee

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1. Council of Maçon (585), c. 8: "... nulli permittentes quolibet dignitatis gradu functo fugitivo etiam in locis sacris violentiam inferre .... et ipsi consultum ferant, qualiter Dei habitaculum per subtractione non violetur illorum"

M.G.H., Concilia, I, p. 168.

2. Council of an unknown place, c. 9: "Sed nec vinculis, aut ferro, qui in ecclesiam confugerit, conlegetur." M.G.H., Concilia, I, p. 194.

3. Decretio Childeberti (596), c. 4, M.G.H., Capit., I, p. 16.

by oath to those who take refuge in the church that they can go out secure of life, free from torturing or maiming. In other cases, if any one shall withdraw a person from the church let him be excommunicated as it is prescribed in the ancient canons. But the person who is delivered from death by benefit of holy church must not receive his liberty to leave before he promises to do penance for the enormity of his sins." (1)

The evidence of the seventh century shows the continuance of the institution as it had developed in the sixth century. Visigothic law, especially, seemed to be conscious of the fact that once a crime was committed recourse to the refuge of a church was always possible. No one was to violently withdraw a refugee from a church save in the case

l. c. 9: "Si quis fugitivum ab ecclesia absque sacramento quacumque occasione substraxerit, a communione privetur. Nam servus accepto sacramento dominis propriis ab ecclesia produci licet. Si quis jus sacramenti prestitum temeraverit, communione privetur. Nam hoc in ecclesia fugientibus est iurandum, quod de vita, tormento et truncatione securi exeant. Aliter si quis de ecclesia abstraxerit, communione privetur, quod etiam in antiquis canonibus est preceptum. Ille vero qui sancte ecclesiae beneficio liberatur a morte, non prius egrediendi accipiat libertatem, quam poenitentiam se pro scelere peccatorum agere promittat." M.G.H., Concilia, I, p. 198.

The 'other case' (aliter) would seem to refer to free men.

The reader should be warned that in the translation of various phrases by the word, 'excommunicate', he should not suspend his own judgment. Just what the full force of those phrases, as used at the time, was, is yet to be told. However, in English, we are depending on the word 'excommunicate' to indicate, at least, some degree of separation from the church.

where the refugee preferred to defend himself with weapons. If a man took refuge in a church and did not lay down his arms, if he were killed there, his killer suffered no penalty. (1) If a debtor took refuge he was safe as to life and limb but his pursuer was to seek out the proper party among the clergy who without delay would make the proper arrangements for the repayment of the debt. (2)

The military deserter who was otherwise sentenced to death escaped with a fine of three hundred shillings (solidi) if he took refuge at the holy altars or with the bishop. (3) The free woman who had intercourse with a slave or a freed-man escaped death if she took refuge though slavery became her own lot. (4) If the parties involved in rape took refuge they both saved their lives but, once separated, they became the slaves of the girl's parents. (5)

Directing themselves against the abuse of asylum and the encouragement to crime that some found therein the laws declared that homicide should never remain unpunished, but, nevertheless, provided that if the culprit took refuge

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1. Law of the Visigoths, IX, 3, 1; IX, 3, 2; M.G.P., Leges, I, p. 379.

2. Ibid., IX, 3, 4: "Quia, licet ecclesiae interventus religionis contemplatione concedatur, aliena tamen retineri non poterunt." eodem loco, p. 380.

3. Ibid., IX, 2, 3: "Quod si ad altaria sancta vel ad episcopum confugerit, ...." eodem loco, p. 367.

4. Ibid., III, 2, 2, eodem loco, p. 134.

5. Ibid., III, 3, 2, eodem loco, p. 140.

he should not be drawn out save after consulting the priest and taking the oath. In this case the oath only provided for saving the culprit's life. In some cases the parents of the victim were allowed to dig out the homicide's eyes and thus send him to a miserable life in exile and in others they had the power over him to do what they would save the taking of life itself. A milder form of the law simply provided for the guiltyone's exile, his goods having been forfeited. (1)

A summary of the general views on asylum, at the end of the seventh century, is found in the twelfth council of Toledo (681). (2) "In favour of those who for any reason of fear or fright run to the church, likewise with the approbation and at the command of our most glorious lord, King Ervigius, this holy council defined that no one should dare drag from the church those who have taken refuge there or who are living there; nor shall they inflict any harm or damage or spoliation on those residing in the holy place.

1. *Ibid.*, VI, 5, 16 (15), eodem loco, p. 281.

*Ibid.*, VI, 5, 18, Antiqua (Forma Recesvindiana and Forma Ervigiana), eodem loco, p. 283.

2. c. 10: "Pro his qui quolibet metu vel terrore ecclesiam appetunt, consentiente pariter, et iubente gloriosissimo domino nostro Ervigio rege, hoc sanctum concilium definivit, ut nullus audeat confugientes ad ecclesiam vel residentes inde abstrahere, aut quodcumque nocibilitatis, vel damni, seu spoliis residentibus in loco sancto inferre: sed esse potius his ipsis, qui ecclesiam petunt, per omnia licitum in triginta passibus ab ecclesiae januis progredi: in quibus triginta passibus ab ecclesiae januis progredi: in quibus triginta passibus uniuscujusque ecclesiae in toto circuitu reverentia defendetur: sic tamen, ut hi, qui ad eam confugiunt, in extraneis vel longe separatis ab ecclesia domibus nullo modo obcellentur. Sed in hoc triginta passuum numero, absque

On the contrary, it is licit for those who seek refuge in the church to move about in an area of thirty paces measured from the doors of the church, and the reverence due to the whole orbit in every church of this area of thirty paces is to be strictly observed, in this way, namely that those who take refuge there, in the dependancies or the houses separated by a distance from the church will in no way be molested. But in this area of thirty paces, besides the dwelling places of the dependancies, they will have freedom to move about; in such a way too that the requirements of nature may be taken care of in proper places and they who have for their protection taken to the cloisters of the Lord will be bound by no natural necessity.

"If, however, anyone shall attempt to violate this decree let him be excommunicated and struck with the severity of the royal punishment. If, nevertheless, according to the decision of the ancient canons, the pursuer shall have taken the oath, and the priest of the church itself shall not withdraw those who have taken refuge there the escape of such,

domorum extraneorum recetaculis, progrediendi aditum obtinebunt: qualiter et requisitae naturae usum debitis expleant locis: et nullo teneantur eventu necessitudinis, qui dominicis se defendendos commiserint claustris. Si quis autem hoc decretum violare tentaverit, et ecclesiasticae excommunicationi subiaceat, et severitatis regiae feriatur sententia. Ipsos tamen, qui ad ecclesiam refugium fecerint, si juxta canonum priscorum instituta, hi qui eos competunt, sacramenta reddiderint, et sacerdos ecclesiae ipsius ab ecclesiae foribus non abstraxerit, aut fuga talium, si venerit, sacerdoti quaerenda est, aut damnorum sententia, secundum electionem principis, hujusmodi sacerdotibus irroganda." Mansi, XI, c. 1036.

if it should so happen, is the responsibility of the priest, or the decision about damages must be levied on priests of this sort as the prince decides."

The right of asylum is found in the law of the Alemanni as well as that of the Frisians. (1) The law of the Bavarians states flatly that "no fault is so grave that life may not be conceded because of the fear of God and reverence for the saints, for the Lord hath said, 'Who shall forgive, it shall be forgiven him; who shall not forgive, neither will it be forgiven him'." The same law, also, imposes a fine of forty shillings (solidi) to be paid both to the church violated and to the state that "the honor due to God and the reverence of the saints and the church of God may always be victorious." (2)

Here, as in other matters of study for the early middle ages, one is faced with a scarcity of material illustrating the daily fate of men and institutions in that crucible of practise which often purges laws of many of the implications that the reader might see in them. However, for the sixth century St. Gregory of Tours has left us with

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1. Law of the Alemanni, III, 1, M.G.H., Leges, (folio) III, p. 47.  
Law of the Frisians, I, 1, M.G.H., Leges, (folio) III, p. 682.  
2. Law of the Bavarians, I, 7: "...Nulla sit culpa tam gravis, ut vita non concedatur propter timorem Dei et reverentiam sanctorum, quia Dominus dixit 'Qui dimiserit, dimittetur ei, qui non dimiserit, nec ei dimittitur' .... ut sit honor Deo et reverentia sanctorum et ecclesia Dei semper invicta sit."  
M.G.H., Leges, (folio) III, p. 273.

a considerable number of instances of flight to sanctuary. With these one may pause a while.

The Saint relates how in 531 when Hildebert was pursuing Amalaric of Spain because of the ill treatment given to Hildebert's sister, Amalaric being cut off "brought to take refuge in the church of the Catholics. But before he could reach the holy threshold" he was killed by a lance.

(1) In the next year some of the troops of Theuderic broke in the doors of the church of the holy Julian "removed the bars, pillaged the possessions of the poor which were brought together there and committed many outrages." (2) When two bishops hid Parthenius in a church because of the Frank's resentment of his heavy taxes the mob rushed in and discovering him dragged him forth to be killed. (3)

The persecutions of King Chramn compelled various people to take refuge in churches. Some were withdrawn by ruse others apparently were saved. (4) When the same Chramn ordered a certain duke Austrapius in sanctuary to be so closely watched that he could not be fed, a judge poured out on the pavement a draught of water that someone dared to offer to the refugee. Within twenty four hours, we are told, as a sign of the displeasure of divine providence,

1. Gregory of Tours, History of the Franks, trans. by O.M. Dalton, op. cit., III, 10, Vol. II, p. 92.
2. Ibid., III, 12, p. 93.
3. Ibid., III, 36, p. 110.
4. Ibid., IV, 8, p. 125.

the judge was dead and Austrapius' food problem solved. (1)

About 576 Roccolen threatened Gregory with the destruction of Tours if he did not deliver from the church Guntram, then accused of the death of Theudebert. In spite of Roccolen's repeated threats Guntram remained secure while his pursuer overcome by disease died, receiving as the author observes a punishment for his presumption. (2)

When Merovech, son of King Chilperic, married Brunhild, his uncle's widow, to escape his father's displeasure, he sought refuge in a church. His sanctuary was respected. (3) At a subsequent date when Chilperic received word that Merovech was again going to take refuge in the church of St. Martin he commanded the church to be guarded and all the approaches to be closed only one door being left open for the clergy.(4) Such was his feeling that once in sanctuary his quarry was out of bounds.

A certain Leudast who had plotted against St. Gregory, finally foiled in his schemes, sought refuge in the church of St. Peter at Paris but soon left the sanctuary. (5) A subdeacon, Riculf, involved in the same conspiracy was

1. Ibid., IV, 12, p. 131. IV, 32, p. 156: Ursus takes refuge and profits therefrom.

2. Ibid., V, 4, p. 172.

3. Ibid., V, 2, p. 169. For further adventures of Merovech and successful attempts at sanctuary see V, 8, pp. 179-184.

4. Ibid., V, 12, p. 192.

5. Ibid., V, 49, p. 225. The same Leudast again sought asylum but was ejected for polluting the holy place by adultery. p. 227.

the judge was dead and Austrapius' food problem solved. (1)

About 576 Rocolen threatened Gregory with the destruction of Tours if he did not deliver from the church Guntram, then accused of the death of Theudebert. In spite of Rocolen's repeated threats Guntram remained secure while his pursuer overcome by disease died, receiving as the author observes a punishment for his presumption. (2)

When Merovech, son of King Chilperic, married Brunhild, his uncle's widow, to escape his father's displeasure, he sought refuge in a church. His sanctuary was respected. (3) At a subsequent date when Chilperic received word that Merovech was again going to take refuge in the church of St. Martin he commanded the church to be guarded and all the approaches to be closed only one door being left open for the clergy.(4) Such was his feeling that once in sanctuary his quarry was out of bounds.

A certain Leudast who had plotted against St. Gregory, finally foiled in his schemes, sought refuge in the church of St. Peter at Paris but soon left the sanctuary. (5) A subdeacon, Riculf, involved in the same conspiracy was

1. Ibid., IV, 12, p. 131. IV, 32, p. 156: Ursus takes refuge and profits therefrom.

2. Ibid., V, 4, p. 172.

3. Ibid., V, 2, p. 169. For further adventures of Merovech and successful attempts at sanctuary see V, 8, pp. 179-184.

4. Ibid., V, 12, p. 192.

5. Ibid., V, 49, p. 225. The same Leudast again sought asylum but was ejected for polluting the holy place by adultery. p. 227.

granted his life at the Saint's request but subjected to horrible tortures. Rigunth, daughter of King Chilperic, took refuge in the church of the Blessed Mary at Toulouse. (1)

Eberulf, accused of the death of King Guntram's brother took refuge in the church of St. Martin of Tours where he carried on in a most unholy manner. (2) When he was killed in the asylum by a certain Claudius a bloody holocaust took place as the killer and many armed men, in turn, were killed. (3) In arranging the betrayal of a pretender to the throne one of the agents was promised pardon from the king or, failing that, he would be put in a church that he might escape punishment. (4)

When the judges issued an order that all who had been slow in joining a late expedition should be punished the count of Bourges sent his servants to collect the fine from alleged delinquents in a house belonging to the blessed Martin. "But the overseer of this property resisted stoutly, saying; 'These be Martin's men; do them no injury, since it is not customary for them to serve upon such occasions'." And when the official disregarded this advice he forthwith felt the power of the Saint and gave up his evil design.(5)

1. Ibid., VII, 10, p. 293. VII, 4, p. 289 and VII, 15, p. 296; Fredegund, widow of Chilperic, sought security in a church.
2. Ibid., VII, 21 and 22, pp. 299-302.
3. Ibid., VII, 29, pp. 305-308. VII, 35, p. 313; The goods of the populace are placed in St. Vincent's at Agen for protection.
4. Ibid., VII, 38, p. 316.
5. Ibid., VII, 42, p. 319.

Guntram Boso took refuge in a church of Verdun hoping thereby to secure pardon by Bishop Ageric's intercession and was successful. (1) However, at a later date, Guntram Boso met his end. (2) Duke Amalo attempting to ravish a maiden was killed by her. She fled to a church and there gained the King's favour. (3)

Many dwelling on some of the notable violations of sanctuary related by St. Gregory of Tours have thought to see in them a wholesale disregard for asylum. The evidence for such a conclusion does not seem to be sufficient. It is to be noted that many of the violations are concerned with the great ones and attempts on the part of monarchs to maintain their thrones. Even in some of these cases sanctuary is respected. Men do not frequently have recourse to an unavailing source of help. The fact that so many did take refuge would seem to indicate that help, ordinarily, was to be expected therefrom. The Saint's narrative, also, indicated the deep religious feeling that men of the age felt for the patron saints of these places. It was the drive of excessive passion rather than any spirit of skepticism or indifference that accounted for cases of violation.

1. Ibid., IX, 8, p. 376. VIII, 6, p. 333; A traitor takes refuge and profits from intercession. VIII, 18, p. 343; Successful asylum and intercession. VIII, 33, p. 357; Prisoners miraculously released from their bonds during a conflagration flee to the tomb of St. Germanus.
2. Ibid., IX, 10, p. 379. IX, 12, p. 381; A twofold violation of sanctuary. IX, 38, p. 409; Two refugees escape with their lives by taking sanctuary.
3. Ibid., IX, 27, p. 398.

## B. Carolingian Influence.

The Christian institution of asylum, as has been seen, was born in the days of the late empire which was ever more and more under the influence of the newly accepted religion. It had developed as a natural corollary of the intercession of the clergy and Christian opposition to the death sentence which was regarded as the termination of the possibility of penance, the sine qua non of salvation. Even though the props were crumbling from beneath that empire it still inherited the Roman tradition of law and order. Besides, a few strong figures appeared in the fourth century who by the vigor of their personal administrations were able to check for a while the disintegrating forces from within and without that were to spell the empire's doom.

It is in the next century, the fifth, when disorder and incursions have reached a new crescendo that we see the right of asylum take definitive form in the laws of 431, 432, and 466. A strong reaction in favor of law and order such as Justinian brought about could witness a more effective public control of the institution. However, the West was practically untouched by this reform. Rather it saw a period of even greater turmoil resulting from the movements of the Germanic tribes. Thus, in the West, the institution developed into a more absolute thing providing a definite check to repressive justice, the unjust aggressor. It forestalled for one who profited from it, the possibility of death or loss of members.

It availed for slave and freeman alike. A system of

monetary compositions rendered it more acceptable to simple peoples whose political development had not directly pertain to the interest of the whole state. The new rulers of the West, in spite of their adoption of Roman forms, still carried over from their tribal state' vengeance of blood' and personal settlement of other particular grievances.

The triumph of Charlemagne represents a shift to the old direction of law and order. The reforms of Charlemagne hardly outlive their author, but they are there. He had conquered. He would now rule. His was to be no barbarian empire of tributes. It was to be cohesive, governed by laws valid throughout its length and breadth. Homicide, private vengeance and theft wherever they were found were to be judged by this judges according to the law he had laid down. (1)

Under Charlemagne there is a shift in the viewpoint of the laws. They become social instruments designed to provide for the common good not simply statements of policy for private parties to follow in their difficulties. (2) Local

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1. Admonitio Generalis (789), c. 67: "Episcopis, omnibus. Item ut homicidia infra patriam, sicut in lege Domini interdictum est, nec causa ultionis nec avaritiae nec latrocinandi non fiant; et ubicumque inventa fuerint, a iudicibus nostris secundum legem ex nostro mandato vindicentur; et non occidatur homo, nisi lege iubente." M.G.H., Capit., I, p. 59.  
2. Chenon, op. cit., t. I, p. 267.

powers were to bow to the central authority. Holders of great administrative estates were not to hold up the administration of penal law. (1)

It is not that the churches are going to enjoy less respect and care in general under Charlemagne. Indeed, they come under his special protection. (2) But it is simply that the rights of repressive justice enforcing a universal set of obligations much more detailed than those of the preceding barbarian regimes must not be obstructed.

The intercessory role of the clergy is probably as old as mankind. The restriction or regulation of asylum at any one period does not mean that the clergy loses its intercessory prestige with judges and emperors. The fundamental Christian idea of the amendment of culprits by penance persists

1. Capit. of Heristal (779), c. 9, M.G.H., Capit., I, p. 47

Capit. Legibus Additum (803), c. 2, eodem loco, p. 113.

2. Capit. Missorum Generale (802), c. 5: "...quia ipse dominus imperator, post Domini et sanctis ejus, eorum et protectos et defensor esse constitutus est." eodem loco, p. 93

Capit. Aquisgranense (801-813) c. 2: "Ut ecclesiae, viduae, pupilli per bannum regis pacem habeant. Sin aliter, in praesentia nostra hoc veniat, si fieri protest; sin autem, missi nostri investigent illud quomodo gestum sit." eodem loco, p. 171

Capit. de Partibus Saxoniae (775-790) : "Hoc placuit omnibus ut ecclesiae Christi, que modo construntur in Saxonia et Deo sacratae sunt, non minorem habeant honorem, sed majorem et excellentiorem quam vana habuissent idolorum." eodem loco, p.68

Admonitio Generalis (789), c. 71: "Aliquid sacerdos, aliquid populus. Item placuit nobis ammonere reverentiam vestram, ut unusquisque vestrum vestrum videat per suam parrochiam, ut aeclesia Dei suum habeat honorem, simul et altaria secundum suam dignitatem venerentur, et non sit domus Dei et altaria sacrata per via canibus quia domus Dei domus orationis debet esse, non spelunca latronum." eodem loco, p. 59

in the legislation of Charlemagne. (1) That in itself means that intercession retains its full vigor. (2)

At first glance the sanctuary legislation of Charlemagne seems to stand in contradiction to itself on some points. Before proceeding further, therefore, it seems desirable to point out the most acceptable theory reconciling the various texts. The sanctuary law of Charlemagne rests on the principle that the right of asylum is recognized to the ACCUSED, but is denied to the CONDEMNED. (3) "The first (the accused) who must be protected from private vengeance can benefit from the intercession of the clergy and the protection of the holy places; those benefits are done away with for the second, (the condemned) because they must not hinder the execution of judgments." (4)

1. Karoli Magni Capit. Primum (769), c. 10: "Ut de incestis et criminosis magnam curam habeant sacerdotes, ne in suis pereant sceleribus, et animae eorum a districto iudice Christo eis requirantur. Similiter de infirmis et poenitentibus, ut morientes sine sacrati olei unctione et reconciliatione et viatico non deficiant." M.G.H., Capit., I, p. 45

2. Council of Tribur (895), c. 46, M.G.H., Capit., II, p. 239.

Eginhard's intercession is frequent. Ep. XVII; he writes asking that Gundhartus be relieved of the obligation of military service since he is involved in a feud (faidosus) and the leader that he must follow is most hostile to him. P.L., t. 104, c. 515.

Epp. XXVI, XXVIII; he intercedes that men who are too ill to go to the palace may suffer no prejudice to their lands. eodem loco, c 518. See also, Ep. XXVIII, P.L., 104, c. 518.

3. Timbal, op. cit., p. 142

4. Ibid., "Le premier qui doit être à l'abri de la vengeance privée peut bénéficier de l'intercession des clercs et de la protection des lieux sacrés; elles sont écartées pour le second car elles ne doivent pas empêcher l'exécution des jugements."

The capitulary for Saxony seems to accept almost completely the institution as we have seen it. "If any one takes refuge in a church, let no one presume to drive him out of the church by force, but let him be in peace until he is brought to court, and for the honor of God and from reverence for the saints and the church itself let his life and all his members be granted to him. However, let him make compensation, in so far as he can, according to the decision of the judge. Then let him be brought to the King who himself will decide in his clemency where he will send the offender." (1)

A more negative note is struck by the capitulary of Heristal. "Let no one allow homicides and other evil doers, who according to the laws or for the preservation of the peace must die, entry into his church for the purpose of escaping their punishment. If such a person should enter a church in spite of the pastor, the pastor of that church must neither give the refugee any food nor allow anyone else to give him food." (2)

1. c. 2: "Si quis confugium fecerit in ecclesiam, nullus eum de ecclesia per violentiam expellere praesumat, sed pacem habeat usque dum ad placitum praesentetur, et propter honorem Dei sanctorumque ecclesiae ipsius reverentiam concedatur ei vita et omnia membra. Emendet autem causam in quantum potuerit et ei fuerit iudicatum; et sic ducatur ad praesentiam domni regis, et ipse eum mittat ubi clementiae ipsius placuerit." M.G.H., Capit., I, p. 68.

2. c. 8: Forma Langobardica; "De homicidis et ceteris malefactoribus, qui legibus aut pro pace facienda moriri debent: nemo eos ad excusationem in aecclesia sua introire permittat, et si absque voluntate pastoris ibidem introierit, huic ipse in cujus ecclesia est nullum victum ei donet nec alio dare permittat." M.G.H., Capit., I, p. 48. Forma Communis, eodem loco.

The Saxon law is as explicit as it is terse: "Capitis damnatus nusquam habeat pacem; si in ecclesiam confugerit, reddatur." (1) The explanation that only the ACCUSED but not the CONDEMNED were to enjoy asylum seems to be the most acceptable way of reconciling this legislation of the period with the existence of the institution of asylum. Asylum, thus, does not necessarily become the terminus of a dispute but rather a step in the direction of a judicial decision, with the accessory help of intercession. The following law is practically in the spirit of the ancient Hebrew institution. "If any one flees to a church, let him be in peace in the atrium of the church itself, nor need he actually enter the church. Let no one presume to withdraw him thence by force. On the contrary, he can lawfully confess what he did and then be brought, under the guard of trustworthy men, to public trial." (2)

An interesting case illustrating the sanctuary law of Charlemagne arose in 801 or 802 between the bishop of Orleans and Alcuin at St. Martin of Tours. A fugitive clerk condemned by the bishop had, through the negligence of his guards, escaped and taken refuge at St. Martin's.

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1. *Lex Saxonum*, III, 5, M.G.H., *Leges*, (folio) V, p. 64. See, also, for another opinion on the distinction between the CONDEMNED and the ACCUSED in Carolingian sanctuary note 78, *eodem loco*.  
2. *Capit. Legibus Additum* (803), c. 3; M.G.H., *Capit.*, I, p. 113.

When the bishop sent his men to take the fugitive a public clamor arose and it was only through Alcuin's action that they were saved from harm. The case came before the Emperor. Alcuin in justification of the monks at St. Martin's quoted the Councils of Orleans, the supposed precedents set by the emperor Constantine, the Theodosian Code, Orosius' description of the sack of Rome in 410, and the practise of pagan sanctuary. (1) Charlemagne deciding the case in favor of the Bishop of Orleans pointed out that the clerk was both accused and condemned (*et accusatus et iudicatus*) and, therefore, had no right to asylum. (2)

Eginhard, in his epistles, shows himself as a frequent witness to asylum and a cheerful intercessor for those who resorted to the church. The serf of a bishop took refuge in the church of the blessed martyrs Marcellinus and Peter for having committed homicide. He wrote to the bishop asking that he be granted his life and limbs and be allowed to pay the monetary composition and, moreover, make suitable amends.(3)

For two other serfs who had stood bond for the monetary composition in a case of homicide he wrote to ask similar consideration after they had taken refuge at the

1. Alcuin, Ep. 245, M.G.H., Epistolae IV, pp. 392, 396, 397.

2. Ibid., Ep. 247, eodem loco, p. 400.

See also Epp. 246 and 249, eodem loco, pp. 398 and 401.

3. Eginhard, Ep. XXV, "... ut, indulta membrorum integritate, verberumque poena, liceat illi solutione pecuniae componere atque emendare quod mala voluntate commisit." P.L., t. 104, c. 517.

same church. (1) He interceded for serfs who had attempted to secure their masters' consent to marriage by taking refuge in the church. (2)

In 786 some of the Thuringians had conspired against Charlemagne. The plot being exposed they took refuge at the monastery of Fulda. The abbot interceded for them and secured for them their lives, but afterwards their eyes were gouged out. (3) Louis the Pious for the protection of his wife Judith left her in a monastic asylum. (4) Such procedure was habitual among the great when danger threatened. (5)

The Council of Mayence in 813 gave a view of the Church's attitude almost at the end of Charlemagne's reign. It was a confirmation of sanctuary legislation of that ruler. "Let no one presume to withdraw an accused person who has taken refuge in a church thence to punishment or death, that the honor of God and his saints may be safeguarded. And, also, let the rectors of churches strive to secure the accused person's peace, life and members. Nevertheless, let the accused party make the legal composition for any injustice

1. Ibid., Ep. XVIII; "... rogantes ut eis liceat solvere illum veregildum pro fratre suo, et ut ei membra perdonetur." eodem loco, c. 515.

2. Ibid., Epp. XV, XVI, eodem loco, cc. 514-515. See, also, Ep. VII, eodem loco, c. 511.

3. Annales Nazariani, a. 786, M.G.H., Scriptores, (folio) I, pp. 41-42.

4. Vita Hludowici, c. 44, M.G.H., (folio) Scriptores II, p. 633.

5. Lesne, Emile, Histoire de la Propriété Ecclésiastique en France, Paris, 1910, t. II, p. 384.

done." (1) Louis, the Pious, maintained the institution (2) and prescribed the construction of a house near the atrium for those who took refuge. (3)

One might speculate on what form christian asylum would have taken if rulers as strong as Charlemagne had succeeded that monarch. However, such was not the case. Europe had yet to face a period which at its best was a twilight one. It is upon emerging from that period that one sees canon law give a definitive form to sanctuary as it was to be known throughout the Middle Ages. Hence, the next step is to investigate that last period prior to the appearance of the first two parts of the Corpus Iuris Canonici.

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1. c. 39: "Reum confugientum ad ecclesiam nemo abstrahere praesumat neque inde donare ad poenam vel ad mortem, ut honor Dei et sanctorum ejus conservetur. Sed et rectores ecclesiarum pacem et vitam ac membra ejus obtinere studeant; tamen legitime componant quod inique fecit." M.G.H., Concilia, II, p. 271.

2. Capitula Legibus Addenda (818-819), c. 1, M.G.H., Capit., I, p. 281.

3. Capit. Aquisgranense De Vita Monachorum (817), c. 40: "Ut domus semota his qui fugere aut pugnibus baculisve inter se voluerint conflagrare aut quibus ex integro factae sunt regulares disciplinae habeatur hujusmodi, qua in hieme ignis possit accendi, et atrium juxta sit, quo possint quod eis injungitur operari." M.G.H., Capit., I, p. 346.

### C. Feudal Disorder.

If one were to confine one's self to the narrowest sense of the right of asylum there would be but little to add to the subject for the period preceding its reception into the Decretum of Gratian and the Decretals of Gregory IX. One might note that the turmoil and disorder of the age again offered the most fertile ground for its development. It would become plain from decisions of councils and isolated examples that the church continued to champion the institution.

However, a number of allied institutions tended to reenforce and strengthen the institution. Of these one might single out the continued growth of the church as a great immunist and the movements of the Peace of God. The influence of the church's position as an immunist on the development of sanctuary as it has been seen to grow in France is of particular interest fōr, to the present writer, at least, if offers a parallel to a movement found in Anglo-Saxon England.

At a later date in England one will be faced with a two-fold form of asylum. The one will be the simple asylum attaching to any church and the limited space about it. The other, however, at least in a great many cases, will apply not to this relatively restricted area but rather to whole domains surrounding a great church sometimes in measures of miles. At that later period one can probably only look upon

both types as forms of sanctuary. Nevertheless, there is still a question of origins. Is one simply to look upon the chartered sanctuaries of England as specially privileged places of the same nature as any other church sanctuary or is there another historical explanation? To this writer it would appear that the chartered sanctuaries owe their origins in large measure to the immunities granted to great churches and monasteries. Since a right of asylum and an immune position often begot similar effects and were sanctioned by similar penalties a confusion arose which attributed to the geographically more extensive matter of immunity the nature of the right of asylum and, in turn, strengthened the regular privilege of sanctuary.

The laws both secular and ecclesiastical that have been seen thus far speak of asylum simply in connection with the church, its atrium and dependancies. However, at least from the early seventh century and probably from the middle of the sixth century (1) great churches and monasteries had been receiving charters of immunity. In Merovingian times they were granted indifferently to powerful lay persons and to ecclesiastical establishments. (2) Under the Carolingians, bishops or the abbots of monasteries

1. Levillain, L., Note sur l'Immunité Mérovingienne, dans Revue Historique de Droit Français et Etranger, 4th series, 6th year, 1927, p. 64, n. 2.

2. Ibid., p. 60. Chenon, op. cit., t. I, p. 475

are almost exclusively the recipients of them. They take the form of donations of land from which the prince might expect the returns of justice administered or other taxes levied, (1) or simple concessions of immunity. (2)

In actual practise, if not in direct point of law, these charters left the immunist free from all judicial interference on his land and the sole recipient of the income which otherwise would have gone to the royal treasure. (3) From the absence of a royal justice jurisdiction automatically fell into the hands of the immunist. When the immunist was an ecclesiastic to conduct judicial affairs not compatible with his state he required a lay official to perform these functions. This was his advocatus who under Charlemagne became by law a necessity. (4) Employing the police powers

1. Levillain, L., op. cit., eodem loco, p. 39.

2. Ibid., p. 60 for the strict bond between immunity and possession of the land. In general, the land conceded would parallel the Anglo-Saxon distinction between 'Book-land' and 'Folk-land'.

3. The classical formula of the diploma reads thus: "Praecipientes ergo iubemus, ut nullus iudex publicus vel quislibet ex iudicaria potestate in ecclesias aut loca vel agros seu reliquas possessiones memoratae ecclesiae, ... ad causas iudicario more audiendus vel discutiendas vel freda exigenda aut homines ipsius ecclesiae contra rationis ordinem distringendos nec ullas redibitiones vel illicitas occasiones requirendas ullo unquam tempore ingredi audeat." M.G.H., Formulae, p. 294, no. 11. The editor (n. 2. eodem loco) thinks that this formula was taken from a diploma granted to the church of St. Mary Paderbrunnensi, April 2, 822.

A diploma of 712 confirms the immunities of Anisolensis thus: "...neque vos neque juniores, neque successores vestri, in curtis ipsius monasterii neque ad causas audiendas, neque ad freda exigenda, nec mansiones requirendo, penitus ingredi non praesumatis, ..." The diploma was granted by Dagobert III. M.G.H., (folio) Diplomatum, p. 477

4. Chenon, op. cit., t. I, p. 477

of this official Charlemagne withdrew certain majores causae from the jurisdiction of immunists. (1) In fact, if not in law, during the period of feudal confusion these exceptions lost their importance.

The great churches and monasteries, therefore, came to enjoy by their immunity what was really a lay jurisdiction. But at the center of an ecclesiastical immunity would be found the church which also enjoyed the right of sanctuary. Both privileges excluded the entrance of judges. The hallowed precincts of the church would tend to cast their protecting shadow over the adjoining immune territories. In turn, the outer exempt circle of exempt territory would serve as a buffer and extra protection for the orbit which enjoyed sanctuary, in the strict sense of the word, at the center of the immune holding. In law the distinction was clear. In the popular mind confusion was inevitable. In the period of feudal disorder and royal weakness the distinction of law lost its force. At a later date a strong monarch may be able to reclaim the jurisdiction usurped by a lay immunist. In the case of ecclesiastical immunities his task is complicated for the asylic nature of the center of the immunity has permeated the surrounding territory. The monarch's right to a lay jurisdiction may go relatively unchallenged, but any opposition to what comes under the universally recognized institution of asylum is bound to meet the most

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1. Ibid., t. I, p. 478.

vigorous opposition. In those cases where the area of asylum is almost identical with that of the immunity the difficulty is accentuated.

An attempt to confine the immunity of the church simply to its atrium or the cloisters of a monastery is witnessed as early as the time of Louis the Pious. (1) The taking of all the churches sub regia immunitatis defensione to assure their peace in troubled times again accentuated the confusion between what actually was a lay jurisdiction and the proper right of asylum and peace belonging to sacred places. (2) The repeated diplomas of confirmation of church immunities used a language which, if sufficient for their day, at a later time of more precise legal definition might be challenged. Eventually they came to be regarded as simple charters of asylum. When the law of the church limits the right of asylum to all churches on a limited territory the diplomas will be resurrected to claim a more extended area of asylum. (3)

1. Formulae Imperiales e curia Ludowici Pii, no. 15, Praeceptum quid sit immunitas, M.G.H., Formulae, p. 296.
2. Council of Mayence (847) c. 6, M.G.H., Capit., I, 2, p. 177. Capitulary of Pistes (869) c. 1, M.G.H., Capit., II, p. 333.
3. The advocatus (avoué) in France came to usurp the land and power of his former superior. His office became hereditary. The need of military protection during the Norman invasions induced many church establishments to seek as advocati the powerful counts. The advocatus thus passed, at times, from the state of a judicial servant to a superior military protector and sometimes an outright aggressor. In the last case his encroachments would force militarily weak establishments to insist more and more on the immunity of a smaller area closer to the actual orbit of sanctuary. Laprat, R., Avoué, Avouerie Ecclésiastiques, dans Dictionnaire d'histoire et de Géographie Ecclésiastiques, t. cc. 1220-1241. See, too, Chenon, op. cit., t. I, pp. 329-333.

There, also, was a certain amount of interplay between sanctuary and the development of the movement of the Peace of God. Perhaps Beaurepaire has caught some of the spirit which in the society fatigued by continual feudal disorders conceived the concept of the Peace of God when he writes, "Au milieu de cette anarchie qui marque le plus haut degré de l'influence barbare, un ardent besoin de repos s'empara de tous les coeurs. Le sentiment religieux, . . . , produisit alors des effets plus étendus et vraiment extraordinaires. Quelques esprits généreux avaient rêvé l'existence d'une paix perpétuelle. Cette prétention exagérée n'eut pu aboutir à aucun résultat. Il fallut se réduire à continuer, sur une plus vaste échelle, ce qu'on avait fait précédemment. Ne pouvant soustraire le pays tout entier à l'empire de violence, ni garantir à tous les temps comme à tous les lieux cette sécurité continuelle qui n'appartient qu'à la civilisation, on l'accorda à autant de lieux et à autant de jours qu'il fut possible de prendre. Cette spécialité de faveur, fait remarquable qui n'a pu arriver que dans des temps désastreux, était l'unique moyen d'assurer quelque calme à une société aussi profondément troublée." (1) The conciliar activity promoted by the movement for the Peace of God gave strength to the right of asylum for some of the constitutions of peace contained statements similar to those of the diplomas of protection.

1. Beaurepaire, *op. cit.*, dans Bibliothèque de l'École des Chartes, t. 5, s. 3, 1854, pp. 151-152.

The council of Charroux (989) laid it down that "if anyone molest the holy church or takes anything thence by force, unless he makes reparation anathema sit." (1) The council of Saint Gilles forbade anyone no matter what his rank from ever attempting to break into the residences of canons, the convents of monks or the dwellings set aside for those of the church in sacred orders. (2) Fortified churches or those which robbers made their stronghold did not enjoy peace, but the thirty paces of other churches were to be free from robbery nor was any person whether innocent or not to suffer harm there unless the evil was inflicted in the hallowed area itself. The sanction of excommunication fell on violators of these provisions. (3)

The oecumenical council of the Lateran (1123) adopted the principle of the Peace of God and stated: "If any one should presume to violate this decree and after recognizing his crime does not make suitable satisfaction within thirty days, let him be kept from the threshold of the church and struck with the sword of the anathema." (4) The council

1. c. 1: "Si quis ecclesiam sanctam infregerit aut aliquid exinde per vim abstraxerit, nisi ad satis confugerit factum, anathema sit." Mansi, t. XIX, c. 89.

2. c. 1, Mansi, XIX, c. 843.

3. Ibid., c. 2: "... nec malefactorum excursus ad reparanda damna civilia vel communia fieri comprobatur, .... ut nemo infra terminum XXX dextrorum circa ecclesias positum quicquam rapere praesumat, nec ulli personae nocenti aut innocenti malum ingerat, nisi cum ipso termino malefactor damnum intulerit." eodem loco, c. 844.

4. c. 20: "Si quis autem contra hoc facere praesumpserit et postquam facinus suum recognoverit, infra triginta dierum spatium competenter non emendaverit, a liminibus ecclesiae arceatur et anathematis gladio feriatur." Mansi, XXI, c. 286.

of London in 1142 reserved the absolution of this excommunication to the Pope. (1) Once the return of a stronger royal power had lessened the necessity of the Peace of God the effect it had had in fortifying respect for holy places persisted in the right of asylum.

It has been seen that at the time of Charlemagne the notion of penance still persisted in connection with the right of asylum. Once one emerges from the subsequent period of confusion and disorder penance has lost its dominant character in the institution. Its justification comes to rest solely on the respect due to the holy places. No doubt the lack of law and order had made it necessary to welcome good and bad that the innocent might not suffer. Perhaps, too, the tremendous insistence on peace that there might, in that troubled world, be some islands of quiet and security had strengthened the simple notion that the sacred precincts should absolutely exclude any type of force. The insistence, also, of the church upon her immunities for her own protection during that age of discord tended to simplify asylum into a blind obstacle which would suffer no trespasser. And it is such, that is, as an immunity that one finds asylum in the Decretals.

I. "Generaliter constitutum est, qui ecclesiam coemiteriumque violaverit, vel in clerico, aut viro religioso manus injecerit violentas, ne ab alio quam ab ipso Papa possit absolvere."

In the same council is found the further explicitation: "Statutum est etiam, ut aratra in campis cum ipsis agricolis talem pacem habeant in agris, qualem haberent in coemiterio, si extitissent." Mansi, XXI, c. 604.

The role of the great monasteries in the development of urban centers is well established. In this connection the security offered by the right of asylum would be another element in attracting to them the populace of the territory that they might transact their business there. (1)

At any rate, as one comes into the latter part of the Middle Ages the principle, at least, of the right of asylum is no more questioned. It is universally accepted. (2) It guarantees the 'life and members' of the refugee. It penalizes its violation with excommunication. Pope Nicholas II wrote from the council of the Lateran: "Concerning the limits of cemeteries (3), as it was established of old by the holy fathers, so we establish that a major church shall (have an area of asylum) through a circuit of forty paces but chapels or minor churches through a circuit of thirty paces. Moreover,

1. Wallon, op. cit., pp. 61-66.

2. Council of Coyaca (1050) c. 12: "Praecipimus, ut si quilibet homo pro qualicumque culpa ad ecclesiam confugerit, non sit ausus eum aliquis inde violenter abstrahere, nec persequi infra dextros ecclesiae, qui sunt triginta passus; sed sublato mortis periculo et corporis deturbatione, faciat quod les Gothica jubet. Qui aliter fecerit, anathema sit et solvat episcopo mille solidos purissimi argenti." Mansi XIX, c. 789.

Council of Clermont (1095) cc. 29 and 30, Mansi, XX, c. 818.

Council of Oviedo (1115) c. 3, Mansi XXI, c. 132.

Council of Rheims (1131) c. 14, Mansi XXI, c. 461.

Council of Pisa (1135) c. 14, Mansi XXI, c. 490.

Council of Rheims (1148) c. 14, Mansi XXI, c. 717.

Council of Rouen (1190) c. 18, Mansi XXII, c. 584.

3. The cemetery is the old atrium. In some cases dwellings and shops encroached on the atrium because of the security it offered. The territory, however, still retained its privilege of asylum.

he who should attempt to violate these limits, or drag thence a man or his goods, except in the case of a man who is a public thief (publicus latro), is to be excommunicated until he makes reparation and restores what he has taken." (1)

The oecumenical council of the Lateran (1139) legislating in the same breath on the privilege of clerks commanded "that no one dare in what way so ever to lay a hand on those who take refuge in a church or cemetery. But if anyone should do so let him be excommunicated." (2)

For this period there is but limited information on actual examples of taking sactuary. However, Richer relates how in 892 King Rudes captured an invader named Catillus. He offered him the alternatives of death or life on condition that he be baptized. The captive chose baptism. On the feast of Pentecost Catillus was brought to the basilica of St. Martial, Martyr. Just as the baptismal formula had been completed with a

1. Epistle VIII: "De confiniis coemeteriorum, sicut antiquitus a sanctis Patribus statutum est, statuimus ita ut major ecclesia per circuitum sexaginta passus habeat, capellae vero sive minores ecclesiae, triginta. Qui autem confinium eorum infringere tentaverit, vel personam hominis, aut bona ejus inde subtraxerit, nisi publicus latro fuerit, quousque emendet, et quod rapuerit reddat, excommunicetur." Mansi XIX, c. 873.  
2. c. 15: "Item placuit, ut si quis suadente diabolo hujus sacrilegii reatum incurrit, quod in clericum vel monachum violentas manus injecerit, anathematis vinculo subjaceat et nullus episcoporum illum praesumat absolvere, nisi mortis urgente periculo, donec apostolico conspectui praesentetur et ejus mandatum suscipiat. Praecipimus etiam ut in eos, qui ad ecclesiam vel coemeterium confugerint, nullus omnino manum mittere audeat. Quod si fecerit, excommunicetur." Mansi XXI, c. 530.

three fold immersion Ingon, the standard-bearer, drew his sword and killed Catillus whose blood reddened the sacred font. The King immediately ordered him to be killed. Ingon, however, ran to the altar begging for pardon and an opportunity to justify his action. He convinced the King and was even restored to high favor. (1) The same author relates that in 988 during the betrayal of Laon some of the people hid in different parts of the churches. (2)

In 932 a group of soldiers which had entered Noyon by trickery was successfully routed. The soldiers took refuge, but the citizens broke the doors of the church and slew, at the foot of the altar, the two chiefs of the invaders. (3) The Duke Hugo ravaging the countryside of Rheims in 948 was reported to have burned five hundred and sixty people in the churches where along with their possessions they had taken refuge. (4)

The institution of asylum profited from the long period of feudal chaos. With the weakness of the royal power and the dispersal of judicial rights the notion of an absolute check to justice as found in sanctuary did not seem at all out of place. The prevalence of private war and private vengeance made of sanctuary a reasonable institution

1. Richer, Histoire de son Temps, I, 10-11 ed. and trans. by J. Guadet, Paris, 1845, t. I, pp. 26-31.
2. Ibid., IV, 16, t. II, p. 167.
3. Ibid., I, 63, t. I, p. 117.
4. Ibid., II, 85, t. I, p. 257.

for the protection of the innocent. While charters of donation and diplomas of immunity with the implied jurisdiction that they gave might for the lack of preciseness in their terms be, at a later time, construed in different ways the church's own canon law had been taking a more precise and concrete form. If the institution had rested solely on accepted custom the return of order and royal prestige might have seen its gradual but, nevertheless, rapid disappearance in the late medieval world. As things happened the canonists provided a clear, firm base for sanctuary so that its survival in the new christian world dominated by the church was assured. The next step, therefore, is to see how much of the development of the preceding centuries went into the universal law of the church.

D. The Corpus Iuris Canonici.

The bulk of the texts governing asylum at its zenith are found in the second part of Gratian's Decretum, causa XVII. A few other provisions in the third book of the decretals of Gregory IX under the heading of immunity fill out sanctuary legislation and constitute the first restrictive (1) tendency after the triumph of the institution in Europe.

It is unlawful to withdraw from a church a man who has taken refuge there. (2) He who presumes to do so falls under the penalty of excommunication. (3) For the violent extraction of a refugee a pecuniary penalty and public penance will be imposed. (4)

A major church enjoys a protected circle of forty paces, a minor church one of thirty paces. (5) The prime effect of asylum is to save the refugee's life and members (*vita et membra*). He can be punished in other ways. (6)

A serf enjoys the right of sanctuary. (7) Once the serf's master has taken the oath of impunity the serf is to be returned immediately. (8) Before the oath of impunity has

1. Misserey, L.R., op. cit., dans Dictionnaire de Droit Canonique, t. IV, c. 1092.

2. Gratian, Dist. LXXXVII, c. 6: (Prima pars). C. XVII, qu. 4, cc. 6, 8, 9, Gregory IX, III, 49, 6,

Unless indicated otherwise the references to Gratian are from the *secunda pars*.

3. Gratian, C. XVII, qu. 4, cc. 6, 10, 11, 20, 35.

4. Ibid., cc. 20, 35.

5. Ibid., cc. 6, 21, 35.

6. Ibid., c. 9. Gregory IX, III, 49, 6.

7. Gratian, C. XVII, qu. 4, cc. 19, 20.

8. Ibid., cc. 32, 33, 36.

been taken a refugee serf cannot be compelled to leave the church.

(1) He who takes the oath of impunity and violates it is excommunicated. (2)

Certain groups are excluded from the benefit of asylum. Highwaymen, murderers who lie in wait to commit the crime, and those criminals who by night wantonly destroy seeds and plants in the fields do not enjoy the privilege. (3) Those who commit their crimes in churches or cemeteries with an eye to the protection they offer do not profit from asylum. (4) The incorrigible homicide cannot seek the protection of sanctuary. (5)

The rapist is given the alternative of becoming the servus of the unwilling victim or redeeming himself by a monetary payment of equal value. (6) In general all "loca Deo dicata" and the things within the thirty paces enjoy immunity. (7) Refugees are to have sufficient freedom of movement that the

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1. Ibid., c. 36.

2. Ibid., c. 36.

3. Gregory IX, III, 49, 6: "... nisi publicus latro fuerit, vel nocturnus depopulator agrorum, qui dum itinera frequentata vel publicas stratas obsidet aggressionis insidiis, pro facinoris magnitudine (quum et communem utilitatem impediatur, et nocere omnino molitur) ab ecclesia extrahi potest, impunitate non praetita, secundum canonicas quaestiones."

4. Gregory IX, III, 49, 10: "Qui sub spe immunitatis in ecclesiis vel coemeteriis delinquant, immunitate non gaudent."

5. Gregory IX, V, 12, 1: "Homicidia incorrigibilis debet deponi et tradi curiae seculari, ut moriatur. En Exodo. Si quis per industriam occiderit proximum suum, et per insidias, ab altari meo evelles eum, ut moriatur."

6. Gratian, C. XXXVI, qu. 1, c. 3.

7. Ibid., C. XVII, qu. 4, c. 21.

common decency of the holy places may be preserved. (1)

Even though not consecrated a church in which the divine offices are celebrated enjoys immunity. (2)

Local custom, special privileges, the jurisprudence of the lawyers modified in one way or another these provisions. In general, however, the requirements of the Corpus are generously accepted. In France, the subsequent history of the institution would reveal not a further elaboration but a long period of gradual restriction until the work of the legists, in effect, if not in principle, does away with the practical exercise of the right. That, however, is beyond the scope of this work. In England, though, one will see a similar movement which culminates in the abrupt and rigid restrictions of the reformation period.

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1. Ibid., c. 35.

2. Gregory IX, III, 49, 9.

## C H A P T E R I V

### EARLY ENGLISH BEGINNINGS

#### A. To the Laws of Henry I.

When one looks back to the Anglo-Saxon world of the sixth century he cannot expect to see a miniature reproduction of the Frankish kingdom across the channel. Perhaps, not all would agree that England of that day had received nothing from the Briton and Roman of the fifth century. (1) More would probably concede that the civilizing power of Rome and the necessities of conquest had given the Frankish kingdom a maturity in the sixth century which England had not reached four centuries later. (2) And that point is capital for one does not find in England that underlying strata, the Gallo-Roman of the Frank kingdom, of civilized but conquered peoples who, while recognizing a new political superior, in turn, more profoundly influence the supposed victor.

Still in 597 A.D. when St. Augustine with his monks landed on the shores of Kent he must have brought with him, at least, the memory of sixth century Rome. The church that he was to found, if not in its political surroundings, at

1. Stubbs, William, Select Charters, ed. by H.W.C. Davis, Oxford, 1913, p. 3. "From the Briton and the Roman of the fifth century we have received nothing."

2. Ibid., p. 7.

least, in its new religion was to be consciously and decidedly Roman. (1) Somewhere in St. Augustine's thoughts there must have been a recollection of the right of asylum which had concerned at various times his own superior, Pope Gregory the Great. (2) Nevertheless, for close on to a hundred years there is no documentary evidence of the existence of sanctuary in England.

One may speculate on the possibilities of asylum being known in late Roman Britain. Indeed, the protection with which Westminster was hallowed was ascribed to a Mythical British King, Lucius, who was supposed to have ruled Britain in the second century. (3) In the House of Commons as late as Elizabethan times one finds Dean Goodman using this approach to defend the liberties of that Abbey. (4) The documented history of the institution at the heart of the empire makes it probable that considerable intercession was enjoyed by the early British Christians. However, the early withdrawal of the Roman legions seems to militate against acquaintance with asylum and of records there is nothing to ascertain the fact. (5)

1. Levison, Wilhelm, England and the Continent in the Eighth Century. Oxford, 1946, pp. 3, 89, 94, 97.

2. Gregory the Great, Bk. X, app., 38, 46, 80; VIII, 20. P. L., LXXVII, cc. 1095, 1103, 1105, 922. He refers to refuge in churches.

3. Stanley, Arthur Penrhyn, Historical Memorials of Westminster Abbey, London, 1886, p. 371.

4. Ibid., p. 379.

5. Trenholme, Norman Maclaren, The Right of Sanctuary in England, in University of Missouri Studies, Vol. I, no. 5, 1903, p. 307.

It is, therefore, in Anglo-Saxon times that one must look for the first documentary evidence of sanctuary in England. In England, as on the continent, while the fact of a temple does not seem to figure in the barbaric religion the awe inspired by their own sacred groves left the natives prepared to receive the reverence due to the new Christian temples.

In the Anglo-Saxon code of Ethelbert drawn up after his conversion and baptism in 597 A.D. there is a reference to church peace or frith. A breach of the church's peace was to be punished with a penalty twice that exacted for an ordinary breach of the peace. (1) This is not sufficient evidence to conclude to the existence of an institution of asylum. The Venerable Bede speaks of Ethelbert's drawing up the laws "according to the example of the Romans" (2) but that reference does not seem to justify any supposition about the importation of a right of sanctuary. The notion of a 'peace' was not foreign to these barbarous peoples and, indeed, there is a deep connection between that notion of 'peace' and a successful institution of asylum. The law does show how quickly the Church came to profit from a special royal security. To a great extent that early law as Bede

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1. The Laws of King Aethelbirht, 1: "The property of God and of the church, twelve-fold; a bishop's property, eleven-fold; a priest's property, nine-fold; a deacon's property, six-fold; a clerk's property, three-fold; 'church-frith' two-fold; 'm ... frith' two-fold." In Ancient Laws and Institutes of England, ed. by Benjamin Thorpe, London, 1840, p. 1.

2. Bede, Venerable, Ecclesiastical History, II, 5, "juxta exempla romanorum." ed. and trans. by J.E. King, Opera Historica, London, 1930, vol. I, p. 226.

might imply (1) must have been intended as a shield from the persecutions and prejudices of those whose interests were affected by the King's conversion to the faith of his wife, Bertha.

In Bede's life of St. Cuthbert, the bishop of Lindisfarne, who died in 687 there is another significant reference. The Saint died on the island of Farne and expressed the wish to be buried there. The monks attending him asked that they should be allowed to take his remains to rest in their abbey on the mainland. The holy man wishing to discourage them from this argued, "But I also think that it will be more expedient for you that I should remain here, on account of the influx of fugitives and guilty men of every sort, who will perhaps flee to my body because, unworthy as I am, reports about me as a servant of God have nevertheless gone forth; and you will be compelled very frequently to intercede with the powers of this world on behalf of such men, and so will be put to much trouble on account of the presence of my body." (2) However, the monks won their point and after

1. Bede, Venerable, Ecclesiastical History, op. cit., II, 5, p. 227. "...wishing doubtless to provide a safeguard for them whom and whose doctrine he had received."

2. Bede, Venerable, Vita Sancti Cuthberti, 37: "Sed et vobis quoque commodius esse arbitror ut hic requiescam, propter incursionem profugorum beliosorum quorumlibet. Qui cum ad corpus meum forte confugerint, quia qualiscumque sum, fama tamen exiit de me quia famulus Christi sim, necesse habetis sepius pro talibus apud potentes saeculi intercedere, atque ideo de presentia corporis mei multum tolerare laborem." Two lives of Saint Cuthbert, ed. and trans. by Bertram Colgrave, Cambridge, 1940, pp. 278-279.

many translations the Saint's body became the center of power of one of England's greatest sanctuaries, Durham. All the notes of continental sanctuary seem to be found here. There is the flight to the sacred place, especially one enjoying the reputation of a great saint. There is the mediation with the great men to secure their indulgence towards a fugitive.

For the same period as the incident just mentioned there is an enactment in the code of laws of Ine, King of Wessex, that constitutes our first unqualified, legal reference to sanctuary. "If any one be guilty of death, and he flee to a church, let him have his life, and make 'bot' as the law may direct him. If any one put his hide in peril, and flee to a church, be the scourging forgiven him." (1) Thus, flight to a church could save one from the penalty of death provided 'bot', composition, were made. For a lesser crime punishable by stripes the penalty was completely forgiven. Within less than a hundred years, therefore, of the advent of St. Augustine there was in England an institution that granted full asylum. It checked the course of justice.

The law of Alfred the Great provided that if any one for whatsoever crime reached a monastic dwelling (*ecclesiae mansio*) he was to have a space of three days in which to protect himself. "If during this space, any one harm him by blow, or by bond, or wound him, let him make 'bot' for each of these according to regular usage, as well with

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1. Laws of King Ine, 5, in Thorpe. op. cit., p. 46.

'wer' as with 'wite'; and to the brotherhood one hundred and twenty shillings, as 'bot' for the church- 'frith': ..." (1) Another law of the same monarch provided that if a criminal fled to a dedicated church that no one was to drag him out for seven days, under penalty of fine. If the church had to be used the refugee was to be kept in another house that did not have more doors. No one was to feed him. He could give up his arms and surrender to his pursuer thus gaining thirty days in which his kinsmen were to be notified. If a man took refuge for a fault that was not yet publicly known half the penalty was forgiven him. (2)

Alfred's law does not seem to be as generous as that of Ine. In its provisions for not feeding the refugee it departs from the canonical injunctions that have been noticed on the continent. Whether, to a small degree, it falls within the framework set by strong monarchs like Charlemagne in the direction of a more effective enforcement of repressive law one cannot say definitely. A more specific provision about asylum in the case of willful homicide might indicate this. "Let the man who slayeth another willfully perish by death. Let him who slayeth another of necessity or unwillingly or unwillingly, as God may have sent him into

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1. Laws of Alfred, 2, eodem loco, p. 27. The 'wer' would be the composition due to the injured party; the 'wite' the fine due to the king; while the hundred and twenty shillings went to the monastic dwelling. Latin Version, II, eodem loco, p. 492.  
2. Ibid., 5, eodem loco, p. 29. Latin Version, V, p. 492.

his hands, and for whom he has not lain in wait, be worthy of his life, and of lawful 'bot', if he seek an asylum. If, however, any one presumptuously and willfully slay his neighbor through guile, pluck thou him from my altar, to the end that he may perish by death." (1)

Still this need not necessarily imply any new, comprehensive, legal concept in regard to sanctuary. It may, in the absence of other developments simply be a pious borrowing from the Old Testament. On the whole, however, Alfred's legislation does make of sanctuary simply a prelude to intercession or the compositional arrangements of the Germanic laws. It provides, too, our first documentary reference to the chronologically limited nature of ordinary sanctuary in England in contrast to the unlimited time factor in the Frankish kingdom.

A law of Athelstan provided that if any thief or robber "should flee to the king, or to any church and to the bishop; that he have a term of nine days. And if he flee to an 'ealdorman', or an abbot, or a thane, let him have a term of three days." (2) If a man slew him during this time of grace he was subject to the usual procedure of composition. After the nine days no one might harbour the fugitive and if one did so knowingly he himself was subject to the thief's penalty. A law of King Edmund read, "If any one take refuge in a church, or my 'burh', and one there seek him, or do him evil; be those who do that liable in the same that is heretofore ordained." (3)

1. Ibid., 13, p. 21.

2. Laws of Athelstan, IV, 4, eodem loco, p. 94.

3. Laws of King Edmund, 2, eodem loco, p. 106é

The laws of King Ethelred are replete with injunctions to respect the peace of the churches (1) providing for their inviolability "within walls" and the maintenance of their every right. One might speculate as to whether the expression, "within walls" indicates that the atrium of a church has not yet acquired sanctuary rights in England. "If a man who has forfeited his life seek a sanctuary, and thereby gain refuge for his life" (2) he must make compensation or else go into perpetual thralldom or imprisonment. If he frees himself he must find a pledge or bondsman and lacking this he must "swear, that he will never, neither steal, nor bear away cattle, nor avenge his punishment. And if he belie any of these, let him proceed nowhere again for his life, nor gain refuge." (3) A man who commits homicide in a church is to be 'botless' and everyone is to pursue him "unless it happen that he escape thence, and seek so awful a sanctuary, that the king through that grant him life, against full 'Bot', both to God and to men." (4)

The laws of the Danish king, Canute, on sanctuary retained almost all the provisions of Ethelred's code. (5)

1. Laws of Ethelred, 14, eodem loco, p. 136. See, also, 13, p. 126, a man is not to feed one who has broken the lord's 'grith'. 10, p. 130. 29, p. 132. 14, p. 136. 1-19, pp. 141-142. 26, 28, p. 143. 31, p. 144. 2,3,4,5, pp. 145-146.
2. Ibid., VII, 16, p. 142.
3. Ibid., VII, 17-18, p. 142.
4. Ibid., IX, 1, p. 145.
5. Laws of Canute, 2,3, eodem loco, pp. 153-154. Latin Version II, p. 532.

In them is the distinction, also found in Ethelred, of the various dignities of churches and corresponding fines for breaking of their peace. Thus, for a chief minster the fine was five pounds, for a minster of the middle class one hundred and twenty shillings, for a lesser church with a burial place sixty shillings, and for a field church thirty shillings. (1)

While the so-called laws of Edward the Confessor and the Leis Williame have been relegated to the twelfth century (2) yet in the investigation of legislative development they can be considered here without prejudice to the subject as views of what some men thought the law of those times should have been. In the Leis Williame one can have considerable confidence.

The law of Edward on sanctuary runs more in the vein of the continental canons with which we have become familiar. In view of the surmises that have been made about their author one might expect as much. Indeed, there seems to be no reason why one should not attribute to the influx of Norman clerks after the conquest, in part at least, the change in the pattern of English sanctuary law which, in its final shape, conformed in its main outlines to the Corpus Iuris Canonici. According to the law of Edward if an accused person or a guilty one

1. Ibid., 2, 3, pp. 153-154.

2. Pollock, Frederick and Maitland, Frederic William, The History of English Law, Cambridge, 1911, Vol. I, pp. 101-104.

reached the atrium of a church he was free from seizure by any pursuer. If he went to the house of the priest and that was in the privileged area (feudo) of the church he was likewise immune. For any theft committed he was to make restitution. If he frequently took refuge he was to forswear the province and not return. If he did return no one was to receive him unless the king's justices allowed it. (1)

The laws of the Conqueror provided that if a person guilty of any crime took refuge in a church he was to save his life and members. If anyone used violence on a refugee he would first of all restore the refugee to the place from which he had been taken and then pay a fine. For a cathedral or monastic church the fine was one hundred shillings (solidos), for a parochial church twenty, for a chapel ten. (2)

Thus far Anglo-Saxon law on the subject of sanctuary has been surveyed. (3) However, that is partly a misnomer for

1. Laws of Edward the Confessor, V, in Thorpe, op. cit., p. 191.

2. Leis Williame, I, 1, eodem loco, p. 201.

3. Thorpe, op. cit.; This editor has printed under the title Excerptiones Ecgberti, Arch. Ebor., a set of canons that at various times have been attributed to the famous archbishop of York. However, Haddan and Stubbs have disassociated these canons from the Archbishop's name giving them a date no earlier than the ninth century and indicating a strong possibility of Frankish origin. (Councils and Ecclesiastical Documents Relating to Great Britain and Ireland, Haddan, Arthur West, and Stubbs, William, Oxford, 1871, Vol. III, pp. 414-415) However, since direct ecclesiastical legislation in England seems to be non-existent for the early period the present writer has decided to give them here, for though they do not belong to that ancient Bishop they still have significance even though they circulated in England at a date considerably later than the ninth century. The following is from Thorpe, op. cit., pp. 332-333.

LXXVI. Canon Hebritan'. Eos qui ad aecclesiam confugerint trahi non oportet, sed eos domini sui promissa intercessione persuadeant. Quod si ab aecclesia exeuntibus penale aliquid

the interplay of secular and ecclesiastical law and even jurisdiction in pre-Norman England was very intimate. (1)

The early legal acceptance of the special place church peace should have in Anglo-Saxon law and the multitude (2) of

dominus intulerit, ut ecclesiae inimicus habeatur excommunicatus.

LXXVII. Canon Hibern'. Si quis alicui aliqua ratione nocuerit sub confugio aecclesiastico, vel sub aliquo sanctimonii signaculo, septempliciter emendet, reddat, et restituat, sed et vii annos in dura penitentia permaneat; sin aliter, excommunicandus est ab omni aecclesia catholica.

LXXVIII. Hieronimus Dicit: Aecclesia defendit quos in sinu suo recepit, more gallinae, quae pullos proprios et alienos nutrit et defendit; ita et aecclesia cunctos fugientes in se defendere debet.

LXXIX. Canon Hibern'. Qui occiderit hominem intra septa monasterii, exul cum damnatione exeat, vel projectis amis, raso capite et barba, reliquum vitae suae tempus Deo serviat, primo tamen aecclesiae et parentibus satisfaciens.

LXXX. Hieronimus Dicit: Qui peccant in loco sancto, in eodem quoque occidendi sunt; in loco castrorum Finees interfecit virum et meretricem; Mathathias Judaeum, qui immolabat simulacro. Quicumque enim maculaverit sanctum, sancta non defendent eum. Christus malefacientes in templo flagris compescuit.

1. Oakley, Thomas Pollock, English Penitential Discipline and Anglo-Saxon Law in Their Joint Influence, New York, 1923, p. 138.

2. In Thorpe, op. cit., Laws of Wihtraed, 1, p. 16, freedom of imposts for the church. 2, p. 16, the church's 'bot' equal to the king's, fifty shillings.

Laws of Ine, 4, p. 46, heavy penalty for failure to pay church-scots. 61, p. 61, a directive re- church-scots.

Laws of Alfred, 6, p. 29, penalty for stealing in a church.

Laws of Edward and Guthrum, 1, p. 71, church peace. 12, p. 78, value of apriest's oath.

Laws of Athelstan, p. 84, church-scots. 5, p. 86 church peace.

Laws of King Edmund, 2, p. 104, church tithes under penalty of excommunication.

Laws of King Edgar, 1, p. 111, God's church entitled to every right. 5, p. 112, "And let every church- 'grith' stand as it has best stood."

Laws of Ethelred, see n. 1, p. 162.

Laws of Canute, 2, 3, pp. 153-154, church peace. 38, p. 171, special peace for holy times.

Laws of Confessor, 1, p. 191, peace of church for members and possessions.

references to the necessity of observing that peace under all sorts of penalties would naturally lead one to expect to find in the general law on the point the most ample sort of sanctuary. Yet this does not seem to be clearly the case. What, then, is the reason? Probably no definite answer can be given. Nevertheless, there are some general suggestions which are pertinent.

As has been noted at the beginning of this section Saint Augustine and his monks did not come into a country which enjoyed a conquered but more cultivated population left from the days of the Roman empire. The Saxon invasion, in any case, had been a migration not simply a conquest. (1) Even in their places of origin Saxon contact with Roman institutions, if it existed at all, had no significant effect. What, perhaps, is more important is this, namely, that they had not acquired the Arian heresy. England, then, was a sort of missionary paradise to a great extent being untouched by any but the rude, primitive customs of the Saxons. The missionary had to begin his work of conversion from the ground up. He had no group of half-Christians but simply raw material. During those first hundred years of Christian contact one cannot be surprised that he does not find any elaborate development of sanctuary. Neither politically nor religiously were the people prepared for it.

It has been mentioned that St. Augustine must have brought with him his own memories of the working of asylum

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1. Stubbs, op. cit., p. 6.

in Italy. However, his own great superior had been most prudent and cautious in his insistence upon the right of asylum. The rule of reason observing justice was the norm that great Pope applied to the institution. (1) He wanted the Church to be exposed to no charge of disturbing public order. (2) Perhaps, too, there hovered in the back of that Pope's thinking some influence absorbed by way of Justinian's restrictions on asylum. Hence, one might suspect the possibility that an early insistence on this right would not be in St. Augustine's mind.

The advice of his sage superior about various customs and their application must have rung in the ears of Saint Augustine. "Choose then out of each Church that that is godly, that is religious, that is right in any of the, and these being gathered as it were in a bundle deliver unto them and inure the minds of the English thereunto." (3) And on the precise question of theft from the Church Gregory had warned, "But God forbid that the Church should look to receive back with increase of gain such earthly things as it seemeth to lose, and to be greedy of lucre from that which is vanity." (4) The Saint, therefore, had a very free hand in adapting the new religion to the island. Possibly his early success with

1. Gregory the Great, Bk. X, Ep. 38, P.L., LXXVII, c. 1095.
2. Ibid., Bk. X, Ep. 46, eodem loco, c. 1103.
3. Responsum Gregorii ad Augustinum, II, in Bede's Ecclesiastical History, I, 27, op. cit., Vol. I, p. 121.
4. Ibid., p. 123.

Ethelbert encouraged the thought that other happier remedies might substitute for asylum.

While the influence of the bishops throughout medieval Europe is practically universal yet in England their place in the secular laws seems to be almost dominant. With Wihtred, Alfred, Ine, Ethelred and Canute episcopal dictation seems to be the only explanation of their tone. (1) The bishops, too, played an important part in the courts which in anglo-saxon times scarcely distinguished between ecclesiastical matters and secular ones. (2) The bishops through their learning would represent a dominant influence in these courts. There by direct action and their own prestige they could apply the softening influence that sanctuary was intended to give. Perhaps, as judicial persons they did not care to be compromised by the necessity of defending refugees and dealing law at the same time.

While the king's peace and local courts of anglo-saxon times may have been rather ineffective (3) still when the courts did act there were many principles dear to the Church that the episcopal authority could appeal to the laws to support. There was a legal justification for mild penalties. (4)

1. Oakley, op. cit., p. 139.

2. Ibid., p. 155.

3. Ibid., p. 165-166.

4. Laws of King Ethelred VI, 10, in Thorpe, op. cit., p. 135.  
"And it is the ordinance of the 'witan', that Christian men be not, for altogether too little cause, condemned to death; but in general let mild punishments be decreed, for the people's need; and let not for a little God's own handywork, and his own purchase, be destroyed, which he dearly bought; but let every deed be heedfully distinguished, and doom, according to the deed be moderated in degree; so that before

There were other injunctions against selling slaves into foreign countries where they would be exposed to paganism. (1) Of course, one need not visualize an ecclesiastical Utopia because of these provisions and on numerous occasions their effective value may have been questionable, but they still contained real possibilities.

Finally, one might mention that in England laws continued to appear throughout the whole pre-Norman period. Indeed, they flowed most freely in that very tenth century which saw the veil descend upon continental Europe. One is, also, dealing with a small country which even at that early date lent itself more readily to laws. The completeness of the Danish conquest made it possible to proceed with the

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God it be fitting, and before the world bearable. And let him who judges others bear in mind very seriously what he himself desires, when he thus speaks: 'Et dimitte nobis debita nostra', et reliq."

Laws of Canute II, p. 161, repeats the same injunction.

68, p. 176: "And if any one will earnestly turn from wrong again to right, let him have mercy shown him, or fear of God, as best may be very earnestly."

69, p. 176: "...For we ought always, for love and fear of God, to doom and prescribe more lightly to the feeble man than to the strong; because we know full well that the powerless cannot raise a like burthen with the powerful, nor the unhale a like with the hale; ...And both in religious shrifts and secular dooms these things ought to be discriminated. Moreover, in many a deed, when any one is an involuntary agent, then is he the better deserving of protection, because he did what he did from necessity: and if any one do a thing unwillingly, it is not at all like that which he does willfully."

Laws of the Conqueror XL, p. 208. The injunction that a man is not to be put to death for a little because man has been made in the image of God and redeemed by his blood. But for the correction of the people the culprit will suffer some penalty.

1. Laws of Ethelred VI, 9, eodem loco, p. 135.

Laws of Canute 3, p. 162.

Laws of the Conqueror XLI, p. 208.

faltering footsteps of progress rather than in the self-extinction of heroic but incomplete resistance. (1) The anarchic conditions created by private warfare which necessitated the 'peace of God' did not seem to appear at that early date in England. (2)

In contrast with the continent, therefore, the sanctuary of anglo-saxon England presents a modified version. Yet it is a real type of sanctuary that is found there. That one does not have a more distinctively developed institution canonically is probably so because "a close and confused union between church and state prevented the development of a body of distinctively ecclesiastical law which would stand in contrast with, if not in opposition to, the law of the land." (3) Such was the power of the bishops in public affairs that they could likely see but little to gain from such an institution.

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1. Pollock and Maitland, op. cit., I, pp. 19-21.
  2. Ibid., I, p. 75; II, p. 463.
  3. Ibid., I, p. 21.

## B. Practise.

While the evidence of the Anglo-Saxon dooms leaves the existence of an institution of sanctuary clear one is faced with the absence of other matter which would tell one of the daily routine of its working out. There are a few items for the eleventh century. The chroniclers tell one more about the twelfth century. Illustrations from the first half of the twelfth century are important for men were still trying to harmonize the old law with the needs of a new age. From that time on evidence from every side shows that sanctuary has been accepted.

In 1004 some Danes condemned to death fled to the nunnery of St. Frideswide at Oxford. Their pursuers set fire to the monastery and the refugees died in the holocaust. The violation, however, did not pass unpunished for the responsible parties had to rebuild the monastery and add to its endowments. (1)

Malmesbury relates that in 1083 "there was a disgraceful contention between the abbot of Glastonbury and his monks; so that after altercation they came to blows. The monks being driven into the church bewailed their miseries at the holy altar. The soldiers, rushing in, slew two of them, wounded fourteen, and drove away the rest. Nay the rage of the military had even bristled the crucifix with arrows.

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1. William of Malmesbury, De Gestis Pontificum, IV, c. 178, ed. by N.E.S.A. Hamilton, London, 1870, pp. 315-316.

The abbot, rendered infamous by such a criminal outrage, was driven into exile during the whole of the king's life; but, upon his decease, he was restored to his honors, a sum of money being paid to such as interceded for him, for the expiation of his transgression. (1)

Bishop Walker (Walcher) of Durham died in spite of sanctuary. He was suspected, however justly or unjustly, of complicity when two of his aides, Gilbert and Leobin, killed a certain Liwulph. The family of the victim would not accept any legal satisfaction and Gilbert was slain as he was going out of the church. "The bishop, while making overtures of peace before the gates" was killed and "Leobin was half-burnt, as he would not quit the church till it was set on fire, and when he rushed out he was received on a thousand spears." (2) Of course, the advent of the Conqueror had brought the Normans into the country and national feeling seems to have aggravated this case.

Malmesbury describes the soldiers of King Stephen as "a most rapacious and violent race of men; who made no scruple to violate church-yards, or rob a church." (3) The same author also relates of Robert Fitz-Hubert, a character

1. William of Malmesbury, De Gestis Regum, III, trans. by J.A. Giles, London, 1847, p. 303. Cf. Florence of Worcester, cited below, p. 183.

2. Malmesbury, De Gestis Regum, op cit., pp. 303-304. Cf. Florence of Worcester, cited below, p. 181.

3. Malmesbury, De Gestis Regum, op. cit., Bk. I, of Modern History, p. 492.

of the same reign, that he used voluntarily "to boast of having been present at a place where twenty-four monks were burnt, together with the church, declaring, that he too would frequently do the like in England." (1) In the same history it is related that "the abbey of nuns at Warewell was burned by one William de Ipres, an abandoned character who feared neither God nor man, because some of the partizans of the empress had secured themselves within it." (2)

Florence of Worcester relates that in the year 1041 "Hardicanute, king of England, sent his huscarls through all the proninces of his kingdom to collect the tribute which he had imposed. To of them, Feader and Thurstan, were slain on the fourth of the ldes of May, by the citizens of Worcester and the people of tha neighbourhood, in an upier chamber of the abbey-tower, where they had concealed themselves during a tumult." (3)

The same chronicler relates that in the year 1070 "by the advice of William, earl of Hereford, and some others, King William, during Lent, caused all the monasteries of England to be searched, and the money deposited in them by the richer sort of the English, for security against his violence and rapacity, to be seized and carried to his own treasury." (4) In 1098 according to the same Florence a priest

1. Ibid., Bk. II. p. 511.

2. Ibid., Bk. III, p. 523.

3. Florence of Worcester, Chronicles, trans. by Thomas Forester, London, 1854, p. 143.

4. Ibid., p. 174.

named Kenred was dragged from his church as he had given counsel to the Welsh. He was emasculated, one of his eyes put out and his tongue cut off "but on the third day, by the mercy of God, his speech was restored to him. (1)

The sack of Worcester in 1139 illustrates a phase of sanctuary that one does not see illustrated very often. The citizens expecting the sack of the city "had recourse for refuge in their misery to the sanctuary of the most high God the Father, ... and committed themselves and all theirs to his divine protection, ... Then might be seen crowds of the citizens carrying their goods into the church. Oh, wretched sight! Behold the house of God, which should have been entered with oblations, where the sacrifice of praise should have been offered, and the most solemn vows paid, seems now but a warehouse for furniture! Behold the principal conventual church of the whole diocese is converted into quarters for the townsmen, and a sort of council-chamber, for little room is left for the servants of God in a hostelry crowded with chests and sacks. Curtains and palls, albs and copes, stoles and chasubles, are secreted in recesses of the walls." (2)

Speaking of the plundering of Nottingham in 1140 the chronicle relates how a fire started in one of the houses

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1. Ibid., p. 204.

2. Ibid., p. 270. Note that this section is by the first 'continuator' of the Chronicles. This, also, is an eye-witness account.

consumed the whole place "and all who could be taken outside the churches were carried into captivity; some of them as far as Gloucester. The rest of the common people, men, women and children, who fled to the churches, not daring to come forth for fear of being taken by the enemy, nearly all perished as the churches fell a prey to the raging conflagration. It was a cruel sight, and even the enemy, were filled with sorrow when they beheld the temples of God, which even the heathen would have spared, consumed by fire." (1)

In 1232 "Hubert de Burgh, earl of Kent, having incurred the king's displeasure, was thrown into prison. His wife having taken sanctuary at St. Edmund's remained there in security until a reconciliation took place." (2) In the troubles of the year 1263 even the bishop of Hereford was dragged out of his church, "and the bishop of Norwich could find no safety but by fleeing with all speed to sanctuary in the liberty of St. Edmund." The chronicler's comment is pertinent, "Indeed, at that time, the liberty of St. Edmund's was very precious in the eyes of the barons." (3)

A Durham monk of the latter part of the twelfth century tells of a youth who took refuge there for homicide. Closely guarded by his pursuers they finally inflicted eleven

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1. Ibid., p. 279. See p. 285 for another violation by fire at the sack of Winchester.

2. Ibid., p. 320. Note that this section is by the second 'continuator'.

3. Ibid., p. 334. See, also, p. 337, a. 1265, a violation; p. 349, violation by a mob at Norwich, a. 1272; restitution made to monks at Norwich, pa. 335, a. 1275.

blows on him leaving him for dead. He miraculously recovered and a just fate overtook one of those violators of the peace of St. Cuthbert. (1) The same monk, Reginald, tells of how some people during the reign of King Stephen were celebrating --the feast of St. Cuthbert when a band of robbers plundered the holy place at which they were gathered. The robbers withdrew and having made a camp indulged in a drunken orgy.--The local priest by a stratagem threw the robbers into confusion so that when they awakened, in their drunken stupor they slew each other. (2)

Whatever the law of this and most of the following century was on sanctuary, whenever one meets it, it always seems to be a healthy institution. Its violations are not taken as a matter of course and one sees it observed. It now remains to pick the way through the sanctuary legislation in England for the later Middle Ages.

1. Reginaldus, Monachus Dunelmensis, Libellus de Virtutibus Beati Cuthberti, Surtees Society, London, 1834, cc. 60-61, pp. 119-122.

2. Ibid., cc. 64-65, pp. 126-134e

## C H A P T E R V

### ENGLAND TO THE SIXTEENTH CENTURY.

#### A. Subsequent Legislation.

The action of the Conqueror in separating the ecclesiastical and secular courts in England<sup>1</sup> proved to be the first step in what seems to be the never-ending effort to distinguish the sphere of each. However, it was not sanctuary which was to be the first occasion for dispute in this matter. Greater matters involving the field of jurisdiction of the ecclesiastical courts were for a long time to overshadow the relatively harmless and often beneficial institution of asylum. The jurisdictional franchises offered a greater check to repressive justice. They would come under fire long before men turned their attention to simple sanctuary. Probably the peculiar English institution of abjuration<sup>2</sup> - providing for voluntary exile on the part of the refugee - saved the ordinary practice of sanctuary from criticism for a day when the king's power would be absolute.

By the constitutions of Clarendon (1164) Henry II laid it down that the chattels of those who are in the forfeit

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1. Stubbs, op.cit., p.99

2. See the section below on abjuration, p. See also the section on chartered sanctuaries and the present writer's notions on their relationship to real jurisdictions. p.

of the king should not be kept in a church or the surrounding privileged territory.<sup>1</sup> This, no doubt, affected refugees whose chattels if they abjured rather than accept the king's justice were forfeited. However, a famous event of this monarch's reign probably did more to strengthen sanctuary than any piece of legislation could ever have possibly done. When Thomas à Becket was brutally murdered, December 29, 1170, the immediate cause was not any dispute over sanctuary, but it did involve the immunities of the church among which sanctuary came to be listed. He was ready "to die for the cause of God and his Church."<sup>2</sup> In spite of the apparent reluctance of his executioners to do so they had killed him in the church. The revolution of feeling not only in England but throughout Europe on behalf of the Church was to last in men's minds for centuries, perhaps, even now. "The cause of the church again flourished; its liberties seemed to derive new life and additional vigour from the blood of their champion."<sup>3</sup> Typical of the reaction was Henry's own subsequent pilgrimage to Canterbury when he felt that the rebellion of his sons was so unnatural that it must be a punishment for his persecution of Becket.<sup>4</sup>

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1. Constitution of Clarendon, cap.XIV: "Catalla eorum qui sunt in forisfacto regis non detineat ecclesia vel coemiterium contra justitiam regis, quia ipsius regis sunt, sive in ecclesiis sive extra fuerint inventa." In *Select Charter*, Stubbs, op.cit., p. 167.
  2. Lingard, *History of England*, abridged ed. by H.N.Birt, London, 1912, p.100.
  3. *Ibid.*, p.101.
  4. *Ibid.*, p.109.

Henceforth, no ruler if he deserved the name of 'statesman' would needlessly violate sanctuary. To do so was to canonize one's enemies. At best, it was poor politics. The shrine at Canterbury, any church, was a physical symbol whose violation was understood by all. If one would persecute he must be more subtle. The prevalence of this spirit seems to be the only explanation of the rather general observance of sanctuary even in the fifteenth century when no principle seemed too sacred to violate if one could wear a bloody crown. However, one must not romanticize overly much. The church still had a strong opposition with which to contend for, otherwise, little would be left to be said about subsequent sanctuary legislation in England.

In 1257 the clergy took the opportunity that a gift of fifty-two thousand marks for the King's military adventures offered to complain among other things that refugees in churches were so closely guarded that even the clerks themselves could not give them food. Refugees were often withdrawn from asylum and if they abjured they were treacherously led off their route to be eventually hung or massacred.<sup>1</sup> Abjuration is now mentioned as a simple matter of normal procedure.

In May 1261 the provincial council of Lambeth averted to these same abuses. They prejudiced the immunity of the

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1. Matthew Paris, Chronica Majora, ed. by H.R.Luard, London, 1872-1883, Vol.VI, Additamenta, p.357.

Church. Those who so offended were subject to the penalties attaching to sacrilege. Those who guarded refugees in the consecrated places were struck with excommunication. A note of caution, however, was added in that those only were to be protected by the immunity of the Church whom the canons had commanded should be protected.<sup>1</sup> The reference is doubtless to the excepted cases in the decretals of Gregory IX.<sup>2</sup>

The whole problem was gone over once again at the general council for England held at London in April 1268. The papal legate, Othobon, presided over this council. Its decisions on the subject of sanctuary were constantly referred to for the following two centuries and more.

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1. "Porro cum ad immunitatem ecclesiae confugientibus aliquando vix in alimentis valeat subveniri propter arctam custodiam, quae frequenter opponitur circa ipsos; ac aliquando confugientes huiusmodi ab ecclesiis, vel coemiteriis, aut viis publicis post terrae abjuramentum violenter saepius extrahantur, ac sic extracti in praeiudicium immunitatis ecclesiasticae crudeliter occiduntur; statuimus, quod qui talibus confugis, quos quidem ecclesia tenetur tueri, alimenta impedierint ministrari, fecundum arbitrium ordinariorum per censuram ecclesiasticam castigentur. Illos vero, qui hujus modi confugas ab ecclesia, vel coemiterio, vel ab alio quocunque loco ecclesiasticam immunitatem habente, post abjuramentum patriae, aut a via publica extrahentes, vel extractos taliter ausu sacrilegio occidunt, cum tunc sub ecclesiastica protectione consistant, omnibus poenis sacrilegii decrevimus puniendus, una reliquis minime confirmente. In ecclesiae autem vel coemiterio nulla omnino deputetur custodia contra confugientes ad ecclesiam per potentiam laicalem; quod si secus praesumptum fuerit, tam custodientes quam qui eos apposuerunt, in forma juris per excommunicationis sententiam arceantur. Illos autem tantummodo tueatur ecclesia, quos canones praecipunt esse tuendos." Wilkins, David, Concilia Magnae Britanniae et Hiberniae, London, 1737, Vol. I, pp. 751-752.

2. See above, P. for Gregory's exceptions.

The canon relating to sanctuary<sup>1</sup> opens with a lament that ungodly men have so little reverence for the holy places and their role in protecting the persons and goods of the oppressed and guilty. Because of the great danger latent in this disregard of the immunity of the church action is necessary. Hence, those who violently withdraw either persons or things from the protection of the church, the cemetery, or a cloister and those who in any way all cooperate with them fall under an ipso facto excommunication. Under no condition are they to be absolved from this censure until they have made a compensation to the church violated and repaired the loss of the persons involved.

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1. Cap.XII: "De abstrahentibus confutientes ad ecclesiam vel coemeteria, seu res ibidem depositas; et de auferentibus aliquid praeter voluntatem dominorum ecclesiasticorum de domibus, maneriis, seu grangiis eorumdem.

Ad tutelam et refugium oppressorum ita immunitatem ecclesiasticam cernimus constitutam, ut etiam reos sanguinis ab incursu hominum defendat. Quanto magis insontes criminum confugientes ad ipsam, et res nulli vitio subjacentes, hostili timore intra ipsius ecclesiae septa repositas, convenit non solum inde non abstrahere vel rapere, sed etiam non contingere, ut in eis aliquid temeritatis attemptetur, satis intelligit, qui prudenter attendit. Praeterea circa tuitionem tam personarum ad ecclesias vel coemeteria confugientium, et rerum quae in ipsis pro securitate fiducialiter reponuntur, quam circa salutem hominum prophanorum, qui Dei timore contempto, et ecclesiae reverentia prorsus abjecta, immo totius humanitatis et fame pudore deposito, ad hujusmodi confugarum abstractionem et rerum praedam et rapinam, de locis ipsis se conferunt impudenter; nos tanto promptius oportet intendere, quanto sceleris hujusmodi perfidia magis noscitur periculum importare.

Nos igitur hujusmodi iniquitates et scelera perfecto odio, ex officio nostri debito, prosequentes statuimus, ut si quis aliquem ad ecclesiam, coemiterium, vel claustrum confugientem inde abstraxerit violenter, vel ei victum necessarium prohibuerit, in quo similis est necanti, aut res alienas in locis praedictis depositas violenter seu hostiliter aspor-

Furthermore, such an excommunicated person will be warned by his ordinary and given a fixed time in which to make compensation and restitution. If he does not comply his lands will come under an interdict. If he does not possess land he on whose lands he lives must, if the culprit does not comply, expel him from those lands or the lands will fall under interdict. If the guilty party is a clerk he loses his benefice or the possibility of acquiring one for a certain time. The same provisions apply to those guilty of burning or destroying churches.

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taverit, vel asportari fecerit, aut factam suo nomine vel a familiaribus suis abstractionem, prohibitionem, vel asportationem ratam habuerit, aut abstrahentibus, prohibentibus, vel asportantibus praebuerit publice vel occulte auxilium, consilium, vel consensum, ipso facto fit excommunicationis vinculo innodatus, a quo nullatenus absolvatur, nisi prius ecclesiae, cui tantam iniuriam intulit, et damnum passo satisfecerit competenter. Et si quidem excommunicatus hujusmodi monitus a suo dioecesano infra praefixum ab eo tempus non satisfecerit, terra ipsius subjiciatur ecclesiastico interdicto, quod ante praestitam satisfactionem nullatenus relaxetur. Quod si forte terram non habuerit, dominus terrae, in qua moratur, si monitus infra terminum sibi ad hoc indultum, extra eam non expulerit hujusmodi pestilentem; ex tunc terra ipsius ecclesiastico interdicto supponatur, quamdiu ille ibidem remanserit duraturo. Nempe si talis excommunicatus clericus fit, et a praelato suo commonitus, infra terminum, quem ei duxerit praefigendum, minime satisfecerit, extunc omni beneficio ecclesiastico, quod in eodem regno obtinet, fit privatus. Si vero nullum obtinet, ad quodcumque ejusdem regni beneficium per quinquennium fit inhabilis obtinendum. Etenim digne ab ecclesiasticis bonis excluditur, qui charitatem et ecclesiae decus in Dei contemptum, et proximi dispendium tam nequiter violavit. Quae autem in praemissis statuta sunt, eadem contra ecclesiarum incendiarios, et effractores volumus et praecipimus observari.

Ad haec, si quis de domibus, maneriis, grangiis, et aliis locis hujusmodi ad archiepiscopos, episcopos, vel alias personas ecclesiasticas, vel ad ipsas ecclesias pertinentibus accedens, quicquam praeter voluntatem aut permissionem dominorum, vel eorum qui sunt hujusmodi rerum custodes deputati, consumere vel auferre, aut contrectare praesumpserit, ipso facto, fit

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The protection of an ipso facto excommunication was extended to the abstraction of things from the houses, manors, granges and other places pertaining to ecclesiastical persons or churches. And lest these salutary commands be neglected on account of ignorance it was ordered that the canon or a summary of its contents for one continuous year from the date of its publication, on every Sunday, in the presence of the parishioners and faithful, should be read in cathedral, collegiate, and other churches by the chaplains and rectors of these places.

Certainly, the English clergy gave their spiritual subjects no opportunity to neglect these commands through ignorance. They are met again in the constitutions of John Peckham, Archbishop of Canterbury.<sup>1</sup> The constitutions of Peckham (abridged form of great decision) were reiterated at the Council of Lambeth in 1281.<sup>2</sup> In 1287 the Council of Exeter repeated in an

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excommunicatione ligatus, a qua donec satisfecerit, absolutionis gratiam minime consequatur.

Et ne hoc salubre statutum praetextu ignorantiae negligetur, ipsum vel intentionem ipsius per annum continuum a tempore publicationis ejusdem in ecclesiis cathedralibus, collegiatis, et aliis, per capellanos et rectores ecclesiarum quibuslibet diebus dominicis, astante parochianorum et fidelium multitudine, praecipimus publicari." Wilkins, Concilia, op.cit., Vol.II, p.8.

Maitland, Frederic William, Domesday Book and Beyond, Cambridge, 1907, p.114, A 'grange': ". . .it seems often to be a detached portion of a manor which is in part dependent on, and yet in part independent of the main body.

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1. Constitutions of John Peckham, Archbishop of Canterbury, Wilkins, Concilia, op.cit., Vol.II, p.35, cc.9,10.

2. Ibid. p.57.

abridged form the excommunications of Othobon.<sup>1</sup> The Council of York in 1311 again averted to the censures passed at the general Council for England, in London, under the delegate.<sup>2</sup>

Throughout the latter history of asylum in medieval England the office of the Coroner played an important part. The outline of his duties as regarded sanctuary men were laid down by Edward I in 1284. "Moreover when a Thief, or Manslayer, or other Malefactor shall fly to the Church, the Coroners, as soon as shall be certified thereof, shall direct the Bailiff of our Lord the King for that Commote to cause to come before him at a certain day the good and lawful Men of the neighbourhood; and in their presence, after Recognition made of Felony, shall cause the Abjuration to be made in this manner: That the Felon shall be brought out unto the Church Door, and a Sea Port shall be assigned him by the Coroner, and then he shall abjure the Realm; and, according as the Port assigned shall be far or near, the term shall be set for his going out of the Realm aforesaid: so that in journeying towards the Port, bearing in his Hand a Cross, he shall not in any manner turn out of the King's Highway, that is to say, neither upon the right hand nor upon the left, but shall always hold to the same until he shall depart the Realm."<sup>3</sup>

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1. Wilkins, Concilia, op.cit., Vol.II, pp.141, 161.

2. Ibid. p.414.

3. Statutes of the Realm, Vol. I., p.59; 12 Edward I, c.5.

One source of complaint at this period on the part of the clergy was that clerks were allowed to take refuge and abjure thus withdrawing themselves from ecclesiastical jurisdiction. In 1286 the Bishop of Lincoln wrote to Edward I that a priest, Richard of Scarborough, after a theft, had taken sanctuary, expecting to abjure. The bishop asked that the refugee be withdrawn and handed back to the ecclesiastical courts.<sup>1</sup> A clerk was free from danger as to life and limb in the ecclesiastical court and, therefore, did not enjoy the privilege of sanctuary. At heart the difficulty seemed to involve the principle that made Clarendon so famous. Apparently complaints in this regard continued until in 1316 Edward II legislated on the point. Henceforth, under such circumstances the clerk was not to be compelled to abjure but was to be brought into an ecclesiastical court.<sup>2</sup>

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1. Rotuli Claus., 14 Edward I, m.3; cited by André Réville, L'Abjuratio Regni, dans *Revue historique*, t.50, Sept.1892, p.20.

2. Statutes of the Realm, Vol.I, p.173; 9 Edward II, l,c.15.

"Moreover, though a clerk ought not to be judged before a Temporal Judge, nor anything may be done against him that concerneth Life or Member; nevertheless Temporal Judges cause that Clerks fleeing unto the Church, and peradventure confessing their offences, do abjure the Realm, and for the same cause admit their Abjuration, although thereupon they cannot be their Judges, and so Power is wrongfully given to Lay Persons to put to death such Clerks, if such Persons chance to be found within the Realm after their Abjuration; the Prelates and Clergy desire such remedy to be provided herein, that the Immunity or Privilege of the Church and Spiritual Persons may be saved and unbroken. The Answer. A Clerk fleeing to the Church for Felony, to obtain the Privilege of the Church, if he affirm himself to be a Clerk, he shall not be compelled to abjure the Realm; but yielding himself to the Law of the Realm, shall enjoy the Privilege of the Church, according to the laudable Custom of the Realm, heretofore used."

The numerous complaints about the treatment given to abjurers while on their way to their ports or the restrictions imposed on sanctuary men within the sacred places bore fruit in further legislation in the same year. The security of the abjurer was again edicted and it was provided that those in sanctuary were not to be so closely guarded that they could not take care of the necessities of the body. The condemned's right to confession was safeguarded.<sup>1</sup> As to the custody of those in sanctuary the escape clause, "except Necessity

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1. Statutes of the Realm, Vol.I, p.172; 9 Edward II, l.c.10.

"Also where some flying unto the church, abjure the Realm, according to the Custom of the Realm, and Lay-men or their Enemies do pursue them, and pluck them from the King's Highway, and they are hanged or headed; and whilst they be in the Church, are kept in the Church-yard, with armed Men and sometimes in the Church, so straitly, that they cannot depart from the hallowed Ground to empty their Belly, and cannot be suffered to have Necessaries brought unto them for their Living: The Answer: They that abjure the Realm so long as they be in the Common Way, shall be in the King's peace, nor ought to be disturbed of any Man; and when they be in the Church, their keepers ought not to abide in the Church-Yard, except necessity or Peril of Escape do require so. And so long as they be in the Church, they shall not be compelled to flee away, but they shall have Necessaries for their Living, and may go forth to empty their Belly. And the King's pleasure is, that Thieves or Appellors whensoever they will may confess their offences unto Priests; but let the Confessors beware that they do not erroneously inform such Appellors."

The right of the condemned to the sacrament of penance had been recognized in the Anglo-Saxon Laws. Laws of Edward and Guthrum 5, in Thorpe, op.cit., p.72; "And if a man guilty of death desire confession, let it never be denied him." This provision was repeated in the Laws of Canute 44, and in the so-called Laws of Henry 0, XI, 9, eodem loco, pp.172, 226. The legislation of Charlemagne seemed to provide for this right. Some place its observance was lost or neglected. It is only at the end of the fourteenth century that we find its

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or Peril of Escape do require so" must have seriously affected the whole force of the statute. The law presented a rather grim picture of police officers determinedly observing the least letter of the law by refusing to actually withdraw the refugee from the sanctuary but dogging his every footstep with a watch that would slowly drive him by sheer exasperation to surrender of his own accord. Nevertheless, when one recalls that the men of a will would be subject to fine if the refugee escaped he can appreciate somewhat why their natural reverence for the holy places might in such circumstances be seriously compromised.

In 1330 Parliament refused to accept the denunciations of a banished person who three years before had killed an official.<sup>1</sup> Other cases in Parliament similarly made it clear that one who abjured was not only to lose his chattels but all legal rights. He assumed the status of an 'outlaw'. He was legally dead.<sup>2</sup>

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observance again commanded by a modern ordinance in France. (Timbal, op.cit., p.289, n.3; Beaurepaire, op.cit., dans Bibliothèque de l'Ecole des Chartes, t.V, 3rd Series, 1854, p.343.

With such provisions and the gradual disappearance of the severe canonical penances reasons for the maintenance of asylum disappear. The old system of compositions is replaced by set penalties administered by a regularized justice. However, by modern standards justice still remained sufficiently harsh to call for a moderating influence.

1. Rot. Parl. II, p. 376; cited by Réville, op.cit., p.27.

2. Rot.Parl.I,p.52b; 66-67: IV,p.164a and b:VI,p216b,243b.  
Cited by Réville, op.cit., p. 31.

The debtor, as there has been occasion to see, has the eternal problem with the institution of saylum. In 1347 the people of London in a petition manifested to the King their regret that a dishonest debtor was admitted to enjoy the privilege of sanctuary and thus frustrate his creditors.<sup>1</sup> Petitions on debtors' abuse of sanctuary rights continued to come before Parliament.<sup>2</sup> Finally, in 1377, a statute was passed which gave the creditor the right to take civil action against those who had made collusory gifts and then fled to sanctuary to enjoy the profits of their ill-gotten gains. The sanctuaries of Westminster and St. Martin le Grand of London were specifically mentioned in the act.<sup>3</sup>

In England it was the chartered sanctuaries which came in for the major share of the criticism directed against this institution. Because of the peculiar development of

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1. Rot. Parl. III, p.187b; cited by Réville, op.cit., p.31.

2. Rot. Parl. II, p.369a; III, p.37b, in 1376 and 1378, cited by Réville op.cit., p.31.

3. Statutes of the Realm, Vol.I, p.388, 50 Edward III, c.6:

"Item, Because that divers people inherit of divers Tenements borrowing divers Goods in Money or in Merchandise of divers People of this Realm, do give their Tenements and Chattels to their Friends, by Collusion thereof to have the Profits at their Will, and after do flee to the Franchise of Westminster, of St. Martin le Grand of London, or other such privileged Places, and there do live a great Time with an high Countenance of another Man's Goods and Profits of the said Tenements and Chattels, till the said Creditors shall be bound to take a small Parcel of their Debt, and release the Remnant; It is ordained and assented, That if it be found that such Gifts be so made by Collusion, that the said Creditors shall have Execution of the said Tenements and Chattels, as if no such Gift had been made."

English custom and law the ordinary privilege of sanctuary did not extend beyond forty days. At the end of that time the refugee surrendered to the King's justice or abjured. On the continent sanctuary was life-long if the refugee could discipline himself to remaining within the protected precincts. In England, only the chartered sanctuaries enjoyed this privilege of unlimited security as regards time. Many of the chartered sanctuaries of great territorial extent were in the far North. In the South it was principally Westminster and St. Martin le Grand in the commercial community of London which by their location became most obnoxious and, therefore, subject to the brunt of what soon appeared to be an organized movement against them.

The case of Westminster came before Parliament for a complete investigation as a result of a most outrageous violation of the Abbey. Two knights of the Black Prince, Robert Hawley and John Shackel, who had served with the Black Prince in the North of Spain in 1367, had taken prisoner a certain Count Denia. The Count returned home to secure ransom leaving his son as a hostage. The ransom never came.

In 1378 John of Gaunt demanded the young Count's release. Hawley and Shackel having refused the request were committed to the Tower and then escaped to Westminster. "They were pursued by Sir Alan Boxhull, Constable of the Tower, and Sir Ralph Ferrers with fifty armed men. It was a day long remembered in the Abbey ---the 11th of August, (1378) the festival

of St. Taurinus. The two knights, probably for greater security had fled not merely into the Abbey, but into the Choir itself. It was the moment of the celebration of High Mass. The Deacon had just reached the words of the Gospel of the day, 'If the good man of the house had known what time the thief would appear.'. 'when the clash of arms was heard, and the pursuers, regardless of time or place, burst in upon the service. Shackel escaped, but Hawley was intercepted. Twice he fled round the Choir, with his enemies hacking at him as he ran; and, pierced with twelve wounds, he sank dead in front of the entrance of the Prior's stall --- that is, at the north side of the entrance of the Choir. His servant and one of the monks fell with him. He was regarded as a martyr to the injured rights of the Abbey and obtained the honour (at that time unusual) of burial within its walls. ...The Abbey was shut up for four months, and Parliament was suspended, lest its assembly should be polluted by sitting within the desecrated precincts and from the alleged danger of London."

Boxhull and Ferrers were excommunicated and were only absolved on the payment of a fine of two hundred pounds to the Abbey. Shackel surrendered his prisoner but only after gaining his ransom. However, the incident led to a general airing in Parliament of the problem of sanctuary and of Westminster's in particular.

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1. Stanley, op.cit., pp. 373-374.

A committee investigated the matter and its opinions are found in the parliamentary rolls. "It results from the statements made by the prelates touching the Abbey of Westminster, 'that Robert Haulay, Esq., and another person servant of the church had been set upon and killed in the church itself by a great number of armed men, at the very hour when High Mass was being celebrated at the High Altar'. Upon the complaint of the Lords Spiritual, certain Lords on their part objected that they should safeguard the Royalties of the Monarch, and the ancient laws of the land, and that the King should during his youth be so counselled and governed that nothing should be abstracted or accroché by the said clergy, and the said Lords vouched to bear record the justices and other men of law of the land who well know that in the Church of England, there was neither custom nor duty to yield immunity for debt, trespass, or any other cause whatever, except only crime; and also that certain Doctors in Theology, both canon and civil lawyers had been examined as to that, and sworn before the King himself to speak the plain truth of what appeared to them to be of reason, and they had said after mature and sound deliberation 'that neither in case of debt, account or single trespass, was sanctuary demandable unless it involved injury to life and limb.' ---And besides they say that God, saving his perfection, nor the Pope, saving his holiness, nor any King or Prince could grant such a privilege, and if any Prince should grant such a privilege, the church which is and must be the fount and nurse of every

virtue, must not accept that privilege, from which sin or the occasion of sin could flow; for sin it is and occasion for sin to expressly keep a man from the collection of his debt and justice it is to recover what is one's own."<sup>1</sup>

The apparent source of irritation for the lay foes of sanctuary in London was the extensive claims made for the chartered sanctuaries "under color of general privileges". Thus, the petition of the foes of sanctuary read, "May it please your Majesty, and in his noble council for charity's sake, to consider the great damage which many of your loyal subjects have received wrongfully by means of the franchise, which the Abbey of Westminster, under color of general privileges contained in certain charters from your noble Progenitors has from time to time usurped with respect to fugitives to Westminster, some of them debtors, some flying thither with their master's property, and others in different ways relying on the said franchise, may it please you further to cause a due interpretation to be obtained as to in what the said privileges consist before God and in reason, in order to resume all ambiguities, to the ease and quiet of your said Majesty's subjects, that no more mischiefs and inconveniences (desaises) may henceforth arise from the said franchise, seeing that the said interpretation belongs of right to your Royal Majesty, and

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1. Rot. Parl. III, pp. 37, 50, in Mazzinghi, Thomas John de', Sanctuaries, Stafford, 1887, p. 46.

that the Holy Church should neither maintain nor give ground to suppose it supports, what is false or sinful."<sup>1</sup>

The King having heard all parties then gave forth a decision calculated to satisfy the protests of London for the time but to leave fundamentally intact the privileges of Westminster. "...no one for the future should, by virtue of any such general privileges or other contained in the same charters, have any Immunity or franchise within the Church Abbey or place of Westminster, in any cases before mentioned or similar ones, only provided always that to Holy Church should be preserved her franchise respecting felony. But nevertheless in respect of the especial affection felt by the King for the said place of Westminster more than for any other place in his kingdom, and particularly on account of his reverence for the noble body of St. Edward and the other great relics there, and in respect that other noble Progenitors of the King repose there, it is the will and intent of the King by the advice aforesaid, that those, who by fortune of sea or fire, robbers or other mischief with out fraud or collusion shall have been so impoverished as to be unable to pay their debts, and shall wish to enter the said sanctuary to avoid imprisonment of their bodies, may, and shall be in such cases suffered to abide safely and freely in the said sanctuary, and there have personal Immunity to the intent that they may in the meantime be sufficiently raised up

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1. Manzzinghi, op.cit., p.48.

to enable them to satisfy their creditors."<sup>1</sup> Indeed, for a King to be remiss in protecting Westminster, the apple of his predecessors' eyes, and that on the complaint of the Londoners would have been equivalent to a symbolic submission.

All these complaints about the abuse of sanctuary by debtors bore some fruit in a statute of 1379 which made more precise the points of the law of 1377. If a debtor made a feigned gift of his goods and lands to an accomplice and then fled to sanctuary, for five weeks continually, once every week, proclamation would be made before the sacred place that the debtor was to stand trial. If he did not appear for trial judgment against his goods or those who illegally held them would be passed and executed in his absence.<sup>2</sup> This must have been a difficult law to enforce.

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1. Manzzinghi, op.cit. p.49.

2. Statutes of the Realm, Vol.II, p. 12; 12 Richard II,c.3.

"In case of Debt, where the Debtors make feigned Gifts... of their Goods and Lands to their Friends and others, and after withdraw themselves and flee into Places of Holy Church privileged, and there hold them a long Time, and take the Profit of their said Lands and Goods so given by Fraud and Collusion, whereby their Creditors have been long and yet be delayed of their Debts and Recovery; wrongfully and against good Faith and Reason: It is ordained and stablished, that after the said Creditors have thereof brought their Writs of Debt, and thereupon a Capias awarded, and the Sheriff shall make his return, that he hath not taken the said person, because of such places privileged, in which they be or shall be entered, then after such return made, Another Writ shall be granted and made to the Sheriff, in which Writ shall be comprised, that Proclamation be made openly at the Gate of the Place so privileged, where such persons be entered, by Five Weeks continually, every Week once, that the same Person, be at a certain Day comprised in the same Writ, before the King's Justices, there to answer

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The conflict between sanctuaries (in this case chartered ones) and a heavily populated commercial community was bound to be acute. The Territory covered by the immunities was relatively small and touching immediately on a broad expanse that must be disciplined by a distinct authority. The larger immunities, real, broad territorial jurisdictions, in the North and the West had a problem of civil government of their own. They were not slow to solve it "in some cases, providing that neighbour could bring neighbour to justice the liberties notwithstanding. By the time of Edward I, if a man of Northumberland fled into Norham, the sheriff might replevy him on the suit of any man of the shire, and the Bishop of Durham's bailiff would bring him 'ad marchiam videlicet inter corpus comitatis et libertatem de Norham in quodam loco qui vocatur Holdenbur,' there to abide the law. Similarly the bailiff could replevy for trial in the march a Norham man who fled into the open shire."<sup>1</sup> Of course, this was only a local arrangement.

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to the Plaintiff of his Demand: and upon this writ, returned by the said Sheriff, that Proclamation is made in the said Form, if the said Persons called come not in proper Person nor by Attorney, Judgment shall be given against them upon the Principal for their Default: And out of the same Judgment Execution shall be made of their Goods and Lands, bring out of the Place privileged, as well, that is to say, of those lands and Goods so given by Collusion, as of any other out of the same Franchise, after that such Collusion or Fraud be duly found, in the same manner as that ought to have been, if no Devise had been thereof made, notwithstanding the same Devise. But it is not the King's mind, that by virtue of this Statute any Man be barred of his Suit against such Debtors by the common course of Law, before the present Statute used."

1. Thornley, Isobel D. The Destruction of Sanctuary, in Tudor Studies, ed. R.W. Seton-Watson, Toronto, 1924, p.185.

It probably explains why the register of the Durham sanctuary contains the names of refugees from rather remote parts of England. Those from distant parts would not be excluded by a local regulation. In London the situation did not lend itself to any such mutual settlement of police difficulties. The sanctuary's fame rested almost exclusively on the fact that it was a refuge. If its privileges amounted to a grant of jurisdiction it, nevertheless, did not have the problem of administration, say, that Durham faced. Its denizens might very well confine their depredations to the city, respecting, for their mutual protection, the peace of the Abbey. Surely, the Londoners would view with some envy the exemptions of the Abbey. From the nature of the situation, accordingly, the sanctuaries of London insisted on their rights to the last jot and tittle. In the case of St. Martin's the fact that it was a peculiar of the King re-enforced its liberties.

There were lay as well as ecclesiastical jurisdictions and as far as the administration of justice went they presented the same difficulties. Early in the fifteenth century one finds attempts being made to curb the security offered to the villainous by these lay immunities.<sup>1</sup>

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1. Statutes of the Realm, Vol.II, pp. 118-119; 1 Henry IV, c.18 (a. 1399) Persons of Chester (a lay franchise) are made outlaws for felonies committed elsewhere. Once so decreed they are to be taken and punished by forfeiture of lands, The same applies for battery and trespass.

Eodem loco, pp.177-178, 2 Henry V, Statute 1, c.5 (a.1414): "Item, Forasmuch as by the Commons of the County of Northumberland grievous complaints have been made to our Sovereign Lord

Throughout the fourteenth and fifteenth centuries most monarchs would have very little to gain by antagonizing churchmen. The chartered sanctuaries maintained their rights.

The Londoners were not influenced by these considerations so that once Westminster had for all practical purposes defeated them they shifted their guns to St. Martin le Grand, a royal free chapel. Through their complaints about this chartered sanctuary they kept the matter before the public eyes throughout most of the fifteenth century. With the vagaries of the crown as they were it was not a time for great decisions.

In 1402 the Londoners petitioned against the abuses of sanctuary in St. Martin's dwelling particularly on the economic grievances. Servants flee there with their masters' goods, to live at their will without punishment; "merchants' debtors remove there with all their possessions and so escape

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the King in this present Parliament, for that many Murders, Treasons, Manslaughters, Robberies, and divers other Offences, to many of the faithful liege People of the same County, by People dwelling in the same County within the Franchise of Tyndal and Exhamshire, where the King's Writ runneth not, now of late have been perpetrated otherwise than have been done or known before this Time, to so many perils of the said liege People of our Lord the King, that without due Remedy in this Behalf provided, they dare no longer there dwell, because that such offenders be favoured by such Franchises;..." Penalties similar to those of the act of 1399 are attached.

Eodem loco, pp. 206-207; 9 Henry V, Statute 1, C.7 (a.1421). The same regulations are extended to Redesdale.

payment." Goods are ordered and when brought to the sanctuary payment is refused. Traitors, murderers and thieves harboured there break out at night to renew their crimes. However, the sanctuary's position was strong and Henry IV heard the petitions to let them die and uneasy death. In 1423, 1424, and 1428 complaints about debtors were repeated.<sup>1</sup>

In 1430, when two apostate canons of Waltham sought sanctuary there the civil officials of the city removed them by force. A long investigation followed in which the city objected to the 'general words' of the charter conferred by the Conqueror. The two canons were handed over to their abbot. In 1434, a debtor was restored to sanctuary after being forcibly removed from St. Martin's.<sup>2</sup>

In 1440, a soldier named Knight was being led past the gate of St. Martin's to appear for a charge at the Guildhall when four men rushed from the sanctuary and dragged him into its protecting boundaries. When Knight was forcibly withdrawn, the Dean, Caudray, protested to the King. The case came before the Star Chamber. "The two chief justices, however, advising the Council in the law, laid it down that William I's charter in general words, supported by immemorial usage and allowance in eyre, was sufficient warrant for the exercise of the privilege."<sup>3</sup> Similar privileges of Beverley, Westminster,

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1. Thornley, op.cit., p. 188.

2. Ibid. p. 189.

3. Ibid. p. 191.

and Glastonbury, according to the judges, "stood in their respective charters in general rather than in special words. Thereupon, Henry directed his Chancellor and Treasurer to decree that the prisoners should be restored to sanctuary, and that 'the lordes of his counsail and bloode, in the sterred chamber' should fine the sheriffs for disobedience to his letters and writ."<sup>1</sup>

In 1451 and 1452, when two characters under charge of treason took refuge the same Dean Caudray prevailed with the King and the sanctuary was upheld. One of the refugees had been withdrawn by force. However, the violators of the sanctuary did canonical penance to escape the ipso facto excommunication which they thus incurred.<sup>2</sup>

The City also attacked St. Martin's immunities in taxation on a lane opening on the city but which fell within the protected area. The craftsmen, especially the goldsmiths, objected to the lack of surveillance within the boundaries of the immunity. Frequent complaints came to the King which were attentively heard and, for the most part, effectually forgotten. St. Martin's was the favorite resort of foreign craftsmen who were prevented from exercising their trade in the City. Because of the immunity found there and the careless supervision, dishonest craftsmen, particularly among the goldsmiths, found it a desirable location.

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1. Cox, J. Charles, The Sanctuaries and Sanctuary Seekers of Medieval England, London, 1911, p. 86  
2. Ibid. pp. 87-88. Also Thornley, op.cit. pp.191-192.

Still an act of 1463 outlawing wares made by aliens provided that the searchers after such goods, "shall not enter in any Place, exempt by Privilege Franchise or Custom."<sup>1</sup> A subsequent exception in the same act read almost like a new charter in the most ample terms as it "Provided always, That this Ordinance and Act, or any other Ordinance or Act, made or to be made in this present Parliament, shall extend, or in any wise be prejudicial or hurtful to. . . (St. Martin's). . . as in and for all manner of Privileges, Liberties, Franchises, Rights, and Customs in any manner pertaining to them before this parliament; nor to any Person or Persons dwelling or inhabiting, or which shall hereafter dwell or inhabit within the Sanctuary and Precinct of the same Chapel, and especially within the Lane commonly called Saint Martin's Lane."<sup>2</sup>

In 1478, an act aimed at the abuses of goldsmiths indicated once again the strong position these jurisdictions maintained. After admitting to the right of claiming the divisions and forfeitures for violation of the act to several of the lay franchises it continued, "And it is ordained by the said authority, That William Bishop of Durham, and his Successors Bishops of Durham, shall have all such Partitions and Forfeitures, which shall happen within the said Liberties and Franchises, in as (ample and) large form as the King should

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1. Statutes of the Realm, Vol.II, p.398; 3 Edward IV, c.4,s.6.  
2. Statutes of the Realm, Vol.II, p.398; 3 Edward IV, c.4, s.8

or ought to have in any other Place by virtue of this Act." Then for the places of the Capital it continues, "Provided always That this Act nor none other Act or Statute made or to be made in this present Parliament, shall extend to be prejudicial or hurtful to...(Westminster)...nor to any Person for the Time dwelling, resiant, or being within the same monastery..." The same standing was confirmed to St. Martin le Grand.<sup>1</sup>

However, England had been passing through a troubled period. Kings whose titles are uncertain cannot, without due caution, turn to the details of internal policing. This was especially true in fifteenth century England when it meant restriction of ecclesiastical immunities. With the War of the Roses behind him Henry VIII, therefore, followed a prudent policy and enlisted the support of Pope Innocent VIII in his attempt to regulate sanctuaries. In August 1487 he secured a Bull from the same Pontiff.<sup>2</sup>

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1. Statutes of the Realm, Vol.II, p. 460; 17 Edward IV, c.1.

2. "...Romanum decet Pontificem concessas immunitates, quibus mali se tuentur, et Indies ad pejora perpetranda magis inducuntur, taliter moderari, quod exinde non praebeatur eis in posterum tanta delinquendi facultas...loca, quae tali gaudent immunitate, ut quicumque facinorose et scelestissimi homines, quaecunque homicidia, incendia, sacrilegia, atque furta et alia mala committentes, etiam latrones publici, et agrorum populatores, ac rei laesae majestatis, et delictorum aliorum, ad illa recurrentes, et in illis moram trahentes, inde extrahi, ac in eorum bonis et personis molestari non possunt; ex quo sequuntur continue, causa immunitatis hujusmodi, in dicto regno quamplura damna atque mala, et creditores defraudantur, in pecuniis et aliis rebus, eis per alios debitis; cum illas, dum praefati debitores in dictis locis moram trahunt, nequeant recuperare: contingit etiam saepenumero, quod hujusmodi mali et facinorosi

It was provided that for the future thieves, homicides, highwaymen, nightly pillagers of the fields, just as it was allowed by law, who went into sanctuaries and went thence to commit new evils and then returned to them for protection could be withdrawn from sanctuary by the King or his officials freely and licitly without censure or ecclesiastical penalty. While these provision just repeated what was already in common law they formed an explicit claim against particular privileges and would go far towards allaying the fears of royal officers about excommunication. Perhaps, too, they accounted

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homines intendentes habere locum tutum, in quo dum moram trahunt in personis et bonis nequeunt molestari, interdum exeunt ad aliquod maleficium perpetrandum; quo perpetrato, ad locum eorum redeunt, videntes se tutos fore, et per justitiam puniri non posse. Nos igitur immunitatem hujusmodi in aliquo moderari volentes, ut hujusmodi improbi homines de caetero magis studeant a malis abstinere, motu proprio, non ad alicujus nobis super hoc oblatae petitionis instantiam, sed de nostra mera deliberatione, et ex certa scientia, auctoritate apostolica, tenore praesentium statuimus, decernimus, et ordinamus; quod de caetero perpetuis futuris temporibus, fures, homicidae, latrones publici, agrorum populatores nocturni, prout etiam hoc a jure permittitur, et in dictis locis pervenientes, ac ad committenda aliqua maleficia exeuntes, et ad dicta loca redeuntes inde de mandato regis dicti regni pro tempore existentis, aut officialium suorum extrahi et capi libere, et licite, ac absque alicujus censurae, et poenae ecclesiasticae incursu possint; quodque debitoribus aliorum ad dicta loca confugientibus, si haec in fraudem fecerint creditorum, quoad bona eorum, immunitas hujusmodi eis in aliquo non suffragetur. Si qui vero in dictis locis erunt suspecti de crimine laesae majestatis, qui fuerunt convicti, nec exire possint ad pejora perpetranda, eis per dictum regem deputentur custodes, qui illos habeant custodire;..." Wilkins, Concilia, Vol.III, pp.621-622. Cf. Bacon, Francis, History of Henry VII, London, 1676, pp. 24, 12.

for the subsequent willingness of civil judges to decide more freely on the scope of sanctuary both as regards persons and places.

In regard to debtors, if they took refuge to defraud their creditors, the possessions of the refugee did not enjoy the immunity. The King could depute guards to watch over those in sanctuary who were suspected of lèse-majesté or had been condemned that they might not go out to perpetrate worse evils.

These regulations were to hold in spite of any previous provisions laid down in synods, particular charters or the great council held under the papal legate, Othobon. They were to be published under the seal of the king and announced wherever necessary. This Bull was confirmed in almost identical terms by Pope Alexander in 1493<sup>1</sup> and in 1505 by Pope Julius.<sup>2</sup>

When the final blows that saw the virtual destruction of sanctuary fell, from a historical perspective, they seemed to come with a dramatic suddenness. Nevertheless, one sees that opposition to the institution was already growing. The religious upheaval of the next century, doubtlessly, accentuated this movement. However, more precise judicial restrictions had already, in their subtle way, confined the privilege. Of this there will be more below.

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1. Rymer, Foedera, Vol. XII, pp.541-542.  
2. Ibid., pp.104-105.

## B. Abjuration of the Realm.

The legal flowering of civil law in twelfth century England reached a sort of fulfillment in the work of the jurist Bracton, about the middle of the thirteenth century. The practice of regular canonical sanctuary was by that time established in England. In the works of the jurists, Bracton and, at the beginning of the next century, Britton and Fleta, one finds precise regulations for carrying out the peculiarly English custom of abjuration. This custom was known in Normandy on the continent, but that seems to be the single continental exception. Even there the custom was imported from England. By abjuration the refugee swore to leave the realm of England, and never return unless he should be pardoned by the King.

Bracton points out to his readers that when a person flees to " a church or other religious or privileged place" and keeps himself in the church that he has the alternatives of either accepting the King's justice and the security it provides or acknowledging his misdeed and choosing some port by which he may after the oath of abjuration leave the realm. According to Bracton the refugee did not necessarily have to leave the land and power of the king "but only the realm of England."<sup>1</sup> Thus an abjurer could go to one of the continental possessions of the king.

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1. Bracton, De Legibus et Consuetudinibus Anglæe, ed. by Sir Travers Twiss, London, 1879, Vol. II, p. 593.  
Fleta, Selden Edition, London, 1647, Bk. I, capt. 29, p. 45.

Britton in the more regal manner laid it down in his tract of the office of the coroner: "And when any man has fled to church, we will that the coroner as soon as he has notice of it, command the bailiff of the place, that he cause the neighbours and the four nearest townships to appear before him at a certain day at the church where the fugitive shall be; and in their presence he shall receive the confession of the felony; and if the fugitive pray to abjure our realm, let the coroner immediately do what is incumbent on him. But if he does not pray abjuration, let him be delivered to the township to keep at their peril."<sup>1</sup>

If the refugee refuses to accept the alternatives offered his chattels are subject to immediate forfeiture and he falls under a grave suspicion of guilt. The coroner has the responsibility of entering all the details of the case. When the refugee confesses the coroner enrolls the confession and is present at the abjuration at the gate or fence of the churchyard.<sup>2</sup> Bracton and Fleta<sup>3</sup> follow Britton in stating that the refugee will choose for himself a seaport or passage into Scotland. However, the weight of practice seems to have been in favour of assigning a port.<sup>4</sup> A time limit is set

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1. Britton, trans. by Francis Morgan Nichols, Washington, D.C., 1901, Vol.I, pp.13, 53.

2. Ibid., Vol.I, p. 54.

3. Bracton, op.cit., Vol.II, p. 395. Fleta, op.cit., p.45.

4. In this connection see, also, the Statute of Wales, 12 Edward I, c.5, quoted above. p.

within which the refugee must reach the port assigned. Fleta indicates that the physical condition of the abjurer is to be considered in setting this time though the abjurer must not delay in any one place for more than one night.<sup>1</sup>

The voluntary exile then takes an oath to leave the country and to observe the conditions under which he enjoys the king's peace in his flight. The jurists give short forms of this oath. However, there is an oath taken from Rastall's statutes which is particularly valuable for the details it gives on the final stages of the process of abjuration.

This Hear thou, Sir Coroner, that I M. of H. am a robber of Sheep, or of any other Beast, or a Murderer of one or of more, and a Felon of our Lord the King of England, and because I have done many such Evils or Robberies in this Land, I do abjure the Land of our Lord Edward King of England, and I shall haste me towards the Port of such a place which thou hast given me, and that I shall no go out of the Highway, and if I do I will that I be taken as a Robber and Felon of our Lord the King: and that at such a place I will diligently seek for passage, and that I will tarry there but one Flood and Ebb, if I can have Passage; and unless I can have it in such a Place I will go every Day into the Sea up to my Knees assaying to pass over; and unless I can do this within Forty Days, I will put myself again into the church as a Robber and a Felon of our Lord the King. So God me help and his Holy Judgments etc."<sup>2</sup>

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1. Fleta, op.cit., p. 45. Bracton, op.cit., Vol.II, p. 395.
  2. Statutes of the Realm, Vol.I, p.250, The abjuration and oath of thieves, taken from Rastall, 1559. Translation from 1603 edition. Fleta, op.cit., p. 46; sends the abjurer into the water "usque ad collum."

Britton offers these further details: "Let them then go with a wooden cross in their hands, barefooted, ungirded, and bareheaded, in their coat only. And we forbid any one under peril of life and limb to kill them so long as they are on their road pursuing their journey; nor shall they, or any other fugitives, be killed, if they can be taken in any other manner."<sup>1</sup>

Bracton indicates that "there ought to be computed for him his reasonable travelling expenses as far as that port, ..." <sup>2</sup> The same writer refuses the privilege to the condemned. <sup>3</sup> Britton points out that one who abjured through fear, his innocence having been proved, can return though his chattels but not his lands remain forfeit. <sup>4</sup>

The problem of the man who refused to leave the church after his forty days of refuge had expired received the following answer from Bracton. "But what if he, who has fled to the church, is unwilling to leave it, can he be dragged out forcibly by a lay hand? Not, as it seems, for this would be horrible and unhallowed. It seems therefore that the ordinary of the place, such as the archdeacon or his official, the dean or the parson, may do this, and ought to compel

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1. Britton, Op.cit., Vol.I, p.55.

2. Bracton, op.cit., Vol.II, p.395.

3. Ibid., Vol.II, p. 395.

4. Britton, op.cit., Vol.I, p.55. A coroner, if he should fail in the performance of his office does not enjoy the right of abjuration. In abjurations on account of the king's game or other trespasses forfeiture of property is not required.

him to go forth, for the sword ought to assist the sword, and the execution of the law works no injury, and when such a person will not go forth unless compelled, there is a vehement presumption against him, that he is an evil person, and to maintain him in the church will be nothing else than (when he is a public robber) to act in the highest degree against the peace, and against the king himself, who ought to protect the peace for the security of all... What therefore shall be done, when ordinaries are afraid of irregularity and laymen of excommunication? I see nothing else, than that they should deny such a person victuals, so that he may go forth gratuitously and seek what he has contemptuously refused, and he, who after this has supplied victuals to the said person, shall be taken to be as it were an enemy of the king, and so let it be done with all who ought to abjure the realm and be sent into exile."<sup>1</sup>

Britton's penalty for feeding a refugee in such a case shows no such reserve, "We forbid all laymen under forfeiture of life and limb, and clerks under pain of banishment from our kingdom during our pleasure, to give them any meat or drink after the said forty days, or to have any manner of communication with them."<sup>2</sup> Bracton punished capitally any one who returns illicitly from the exile of abjuration.<sup>3</sup>

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1. Bracton, *op.cit.*, Vol.II, p.397.  
2. Britton, *op.cit.*, Vol.I, p. 55.  
3. Bracton, *op.cit.*, Vol.II, p.399.

The question, not unnaturally, arises as to how this English custom of abjuration grew up in contrast to the continental practice, with the exception of Normandy, of allowing unlimited sanctuary as far as time was concerned. The truth is that its early development is obscure. However, André Réville has sketched from the analogous English institution of outlawry a theory to cover the system of abjuration. He finds the roots of the institution in the old Anglo-Saxon laws. There is in abjuration a religious and a secular element. It was religious for it took place in the churches in favor of the right of asylum after the manner of a commutation of a penalty. It was secular in that it entailed a punishment involving banishment and confiscation of goods.

The notion of banishment is to be found in the Anglo-Saxon custom of outlawry. Outlawry was most often pronounced against the accused who feared to appear for trial and therefore took to flight. It was in this form that it persisted in English law.<sup>1</sup> It was also inflicted as a punishment for certain crimes.<sup>2</sup> The use of the penalty was not peculiar to the Anglo-Saxons but its survival in England to a much later period distinguishes it there.

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1. Réville, André, op.cit., dans Revue Historique, Sept. 1892, p. 5.

2. Laws of Ethelred, D. c. 1, in Thorpe, op.cit., p. 119.

Laws of Canute, II, c. 30, eodem loco, p. 169.

Laws of Henry I, c. 53, 1, eodem loco, p. 239.

2. Laws of Edgar, c. 3, eodem loco, p. 110: " And the man who neglects this, and denies the doom of the hundred, and the same be afterwards proved against him; let him pay to the hundred 30 pence, and for the second time sixty pence; half to the hundred, half to the lord. If he do so a third time, let him pay half a pound; for the fourth time, let him forfeit all

Of itself outlawry was not abjuration but like abjuration it entailed civil death, the prohibition of comforting such a person, the necessity of killing such a person if he resisted arrest.<sup>1</sup> As the laws of the Confessor have it the outlaw is to carry the head of a wolf and be hunted and treated in the same manner.<sup>2</sup> The man can only return to civil life by the mercy of the king.<sup>3</sup> The outlaw's only alternative was really to leave the country and Canute ordered as much. Bracton in his day classes abjuration and outlawry as two types of exile.<sup>4</sup>

The abjurer takes an oath because he is physically, at least, within the reach of the law. The abjurer is to be

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that he owns, and be an outlaw, unless the king allow him to remain in the country."

Laws of Canute, c.39, eodem loco, p.171; outlawry the penalty for killing a clerk.

Laws of Canute, c.49, eodem loco, p.173; "If he kills anyone let him be an outlaw, and let every of those pursue him with hue and cry who desire right."

Laws of Edward and Guthrum, c.6, eodem loco, p. 73; same penalty.

1. Réville, op.cit., p.6.

2. Laws of Edward the Confessor, c.6,pt.2, in Thorpe, op.cit., p. 191: "...lupinum enim caput geret a die utlagacionis suae, quod ab Anglis wluesheued nominatur. Et hec sententia communis est de omnibus utlagis."

3. Laws of Canute, c.13, eodem loco, p. 164; The outlaw loses his bloc-land.

Laws of Edgar, c.3, eodem loco, p.110; A man forfeits all that he owns.

4. Laws of Canute, c.4; "And we command, that . . . outlaws of God and men retire from the country.

Bracton, op.cit., Vol.III, p. 339.

given a safeconduct out of the land, but the outlaw is subject to seizure wherever he is found within the land.

As to how the transformation from outlawry to abjuration took place, Réville proposes the following hypothesis. King Canute "preferred to punish his people with proscription rather than death, and he gave them the right of taking flight ... What he wanted was to put the guilty to shame, not to take their life, and he thought them better punished by a dishonoring penalty than by a bloody one."<sup>1</sup> Réville appeals, also, to Canute's general ordinance, "And we command, that ye undertake diligently to cleanse the country on every side, and every where to desist from evil deeds: and if withthes or diviners, 'morth'-workers or adulteresses, be any where found in the land, let them be diligently driven out of this country, except they desist and the more thoroughly amend."<sup>2</sup> Finally, the laws of Canute ordering mercy and discretion in punishing Christian men help to create the atmosphere for such a change.<sup>3</sup> These conditions, therefore, make it seem possible to Réville that under Canute abjuration may have taken a precise form. Perhaps, he sets the date even a little later than necessary.

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1. Saxonis Grammatici..., Libri XVI, pp. 309-310, *Historiae Danicae*, edit. Christ, Ad. Klotzius, Lipsiae, 1771, cited by Réville, *op.cit.*, p.8.
  2. Laws of Canute, c.4, in Thorpe, *op.cit.*, p.162.
  3. Laws of Canute, c.2, *eodem loco*, p.161.

Whatever may be said of the precise time, such conditions would facilitate such a transformation. It is known for certain that the so-called laws of the Confessor - and that puts one in the early part of the twelfth century - speak of abjuring the province.<sup>1</sup> It seems reasonable, therefore, to assume a gradual development of the institution in the preceding century or even, allowing for the scarcity of the sources, at an earlier date. Henry II punished with abjuration, among others, the crimes of homicide and theft.<sup>2</sup>

Abjuration satisfied the Church for it spared the life of a culprit. The King, thereby, was enriched by the forfeitures while the culprit did not go scot free.<sup>3</sup> One might suggest that, to some degree, it could have accounted for the lack of a more generous form of sanctuary in Anglo-Saxon England.

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1. Laws of Edward the Confessor, c.V: "...provinciam forisjuret, nec redeat." in Thorpe, op.cit., p.191.

2. Assize of Clarendon, art. 14; Assize of Northampton, art.1: in Stubbs, op.cit., pp.172, 179.

3. Réville, op.cit., p.12.

### C. Practice.

One is apt to get the erroneous idea in reading much of the history of sanctuary that it was an institution more honored in the breach than in the observance. Now at certain periods one might be able to erect a skeleton case of this kind. Thus, in the history of Saint Gregory of Tours one can read of many violations. However, throughout most of the early middle ages, particularly in England, it is difficult to find many examples of the practice though the legal continuity of the institution remains beyond doubt. When examples become scarce they tend to be of the nature of violations. Some are inclined to reason on the basis that when one meets much insistence upon the observance of the institution that there must have been a corresponding general disregard for it. Deductions of this kind cannot be flatly contradicted yet they cannot be posited as irrefragible conclusions to which one must adhere. They are deductions necessitated not by incontrovertible evidence but hypothetically posited for lack of definite information.

It is interesting to note that when the chroniclers of the twelfth century<sup>1</sup> in England are speaking of history previous to their own time the mention of instances of sanctuary are

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1. e.g. William of Malmesbury and Florence of Worcester cited above in the section on early English practice.

rare or non-existent. But once they arrive at their own time they become conscious of a fairly large number of instances. This may be explained by the fact that the institution is what one might call a subsidiary one in the society which enjoys it. In the long term history of a country one will not avert to the little things that are of the very woof and warp of human life unless they happen to cross the path of some of the great of the day. This leads to the point, namely, that it is often in connection with these great ones that one finds the instances of violation. Some great ruler or powerful magnate is involved in the violation. Then too, many of the violations occur in troubled times, particularly of war and civil strife.<sup>1</sup> Oftentimes the attitude of the chronicler seems to indicate a horror of these deeds, There is nothing to show a calloused though regretful recognition of a very common state of affairs. A modern newspaper in a city of three hundred thousand will blazon forth in its headlines that someone has committed homicide. It does not trumpet the corresponding that two hundred ninety-nine thousand nine hundred and ninety-nine people did not homicide. And, at times, one is inclined to wonder whether the latter, after all, is not the more astonishing and apparently, therefore, the more newsworthy fact.

To test sanctuary's power in actual practice, consequently, one needs the less exciting, but, in the long run,

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1. Note above, in the section on early English practice, the 'cluster' of instances in the troubled reign of King Stephen.

the more trustworthy proofs that come from documentary sources in the strict sense of the word. Unfortunately these will carry one back only into the thirteenth century. Yet when one does come to this period, which in a certain sure sense can be said to be known, what answer do the documents give? For the most part they represent an unbroken line of observance. When violations occur they are frequently punished or compensation is made.

Now it is not the purpose here to amass a number of incidents which establish the point. This is the one phase of English sanctuary that has received fairly ample attention. Thus far the attempt has been to trace the development of an institution observing some of the factors which begot it, strengthened it, and others, perhaps, which contributed to its decline. Nevertheless, for the sake of completeness one might briefly turn to the subject. An institution's development cannot be dissociated from its practice.<sup>1</sup>

The documents that give one the most ample information on this subject are the episcopal registers, the assize and coroners' rolls, the patent and close rolls, and the sanctuary registers. Of these last it would seem that they were possibly a fairly late institution for the two sanctuary registers that survive are of a late date. They are for Beverley

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1. The works of Mazzinghi and Cox, supra cit., tend to dwell on instances of sanctuary. The long articles by trenk lme and Réville, supra cit., also, contain many examples though in the case of the latter they serve to develop a thesis.

and Durham and were published by the Surtees Society.<sup>1</sup>

The Durham register extends from June 18, 1464 to September 10, 1524. From the abstract of the Surtees publication one finds that three hundred and thirty-one people sought refuge there during the period covered by this register. Two hundred and eighty-three of these people were implicated in murder and homicide. Sixteen were there for debt. Seventeen sought refuge for various forms of pilfering. Yet one need not necessarily conclude that they were the only ones who took refuge there. The intercessory action of the clergy was still at work. In cases of a more private nature settlements could be reached and no entry made.

The Beverley register extends from about 1478 to 1539. During this period four hundred and ninety-three persons are listed as having taken refuge there. Of these one hundred and eighty-six were implicated in murder or homicide. Two hundred and eight were debtors, fifty-four were involved in felony and the rest in an odd allotment of charges.

Now these cases all went through a perfectly normal and orderly procedure. The refugees were in chartered sanctuaries and, therefore, could remain there or abjure. But in none of these cases is the refugee's right to enjoy asylum violated.

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1. Sanctuarium Dunelmense et Sanctuarium Beverlacense, published by Surtees Society, London, 1837.

Mazzinghi found twenty instances for one year in a coroner's roll of the county of Staffordshire.<sup>1</sup> These cases are more interesting for they relate to the ordinary privilege of sanctuary. Trenholme makes a computation that not less than a thousand persons would have resorted to sanctuary in England in any one year.<sup>2</sup> Furthermore, these would be cases in which the immunity was respected.

A Patent of 1213, July 11, pardons a Roger de Parks for having abjured the realm because he assisted his brother in a duel.<sup>3</sup> A Close roll of 1300, November 7, commands that Adams Coly and William de Offeleghe who were dragged from St. Mary's church in Stafford be restored to the church. Another close roll of 1309, February 28, orders the restoration of another refugee to sanctuary whence he had been forcibly withdrawn.<sup>4</sup>

In the episcopal register of Godfrey Giffard, Bishop of Worcester from 1265 to 1301, one sees the penalties that could be imposed by a bishop in a case in which a man has been withdrawn from sanctuary and beheaded. On August 21, 1279, the Bishop pronounced the following penalties on the offenders. Five of the men involved "were to exhume the body of the said William and restore it to the church, together with the head,

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1. Mazzinghi, op.cit., pp.35-41.  
2. Trenholme, op.cit., p. 70.  
3. Cox, op.cit., p. 262.  
4. Ibid., p. 263.

burying it in the churchyard from whence it had been violently taken when living."<sup>1</sup> The hangman was to participate in this work and all were to go in a very public procession "with bare heads and feet, and wearing only their shirts and breeches, before the third hour of the day, on four market days in four weeks, and at the door of the church to be scourged by priests specially appointed."

The rest of the ten men who had participated in the violation were to make a similar procession and be scourged on one market day. "Peter de la Mare, the person of highest authority involved, was to do like penance on one day, was to endow a priest with fit maintenance to perform divine service for ever... He was, also, to erect a stone cross at the cost of at least 100s...; and that at the same cross every year a hundred poor were to be fed, and each of them should receive one penny for food at the expense of the said Peter; and further, that he should be present at the penances of all the other offenders." Shortly thereafter an alternative was offered by way of joining the Crusades and this was further mitigated to financing a fitting person to go on the Crusades.

An episcopal register reveals an instance of 1390 in which a ruse was used to withdraw a refugee. John Bentley,

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1. Cox, op.cit., p.245.
  2. In 1417 for a violation of St. Paul's in London the faithful are called to go there on the Sunday next by way of expiation of the outrage. Wilkins, Concilia, p.388  
For other cases of episcopal action see eodem loco, pp.132, 122-123, 385.

the victim, was called to the gate (at Winchester) and a shoemaker pushing him from behind shoved him from the churchyard into the highway where he was free game. In a similar case four years later a severe public penance was imposed.<sup>1</sup>

Sanctuary, thus, as a rule was observed. Violators were energetically punished. Restoration of the refugee after withdrawal was not infrequent. Often one will find that cases of violation involve border line decisions. So goes the testimony of one person in an investigation that he held the refugee by the feet though the rest of his body was in the protected area.

This institution which, however, incorrectly, seems so strange to modern ears leads one to dwell on the bizarre, the exceptional. There is not much romance in a long, dull list of coroner's entries stating that man after man sought refuge, found it and abjured according to the due forms of law accepted by the canons of the church.<sup>2</sup> Yet it is just these routine entries that tell one the story of typical practice and the truth of its casual acceptance as a part of every day life.

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1. Cox, op.cit., p.254.

2. Munimenta Gildhallae Londoniensis, ed.H.T. Riley, London, 1859-1862.

The fact that Henry de Bello, a clerk, took refuge at St. Brigid's is casually mentioned. The ward watched the church all night and next day Henry abjured. 18th year of reign of Henry III; Vol.I, of the Munimenta, Liber Albus, Bk.I, c.27, p.96, See eodem loco, c.12, p.86.

Three men take refuge but in spite of the watch escape during the night. eodem loco, Bk.I, c.36, p.101.

See also, eodem loco, Bk.III, p.281, and Vol.III, Liber Custamarum, pt.I, pp.377-378.

#### D. Chartered Sanctuaries.

Chartered sanctuaries because of the unlimited length of time a refugee could remain within them and the absolute immunity that they provided have a special interest. They, also, as has been seen, bore the brunt of the first full scale opposition to privileges of sanctuary in England. Of their number there might be some doubt, but one can be certain that there were at least twenty and, maybe, a few more.<sup>1</sup> Many of them claimed chartered rights dating far back into Anglo-Saxon times. Oftentimes one hears of subsequent confirmation of these rights, especially by the Conqueror and his successors, but after the year twelve hundred one is more apt to hear of their rights being challenged. The rights they claimed to protect fugitives were so extensive that one immediately inquires as to their origin. Were they simply the result of a religious benevolence run riot in an attempt to provide some security in a troubled world? That possibility cannot be excluded. Still,

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1. Pegge, Samuel, A Sketch of the History of Asylum, in Archaeologia, London, Vol.VIII, p.41. Pegge lists twenty-two principal sanctuaries: Abingdon, Armethwaite (Cumberland), Beaulieu, Battle Abbey, Beverley Colchester, Derby, Durham, Dover (St. Martin's Priory), Hexham, Lancaster, St. Mary le Bow (London), St. Martin's le Grand (London), Merton Priory, Northampton, Norwich, Ripon, Ramsey, Wells, Westminster, Winchester, York.

Trenholme, op.cit., in University of Missouri Studies, Vol.I, n.5, 1903, p.21, n.19, adopted this list.

It is, also, found in both the Britannica and Catholic encyclopaedias under the word asylum.

whenever their rights were challenged, these sanctuaries produced their charters. Therein was to be found the basis and justification of their rights. These charters tell part of a story whose missing chapters will probably never be found. The story of the charters may give a clue to some of their beginnings that were not purely religious.

However, the erudites suspect and sometimes openly reject the authenticity of many, at least, of these charters.<sup>1</sup> Indeed, it is difficult to find a charter accepted by modern scholars which states in the elaborate manner set forth by some of the charters the precise sanctuary privileges claimed therein. It has been seen that when this matter came before the parliament that the opponents of the chartered sanctuaries objected to the privileges that were deduced from "general words".

"In the middle ages," as Maitland has it, "the clumsiest forgers deceived the gravest critics."<sup>2</sup> One might drop the problem there and simply say that whether 'spurious' or genuine

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1. For a clear cut case of what is called a 'clumsy forgery' see the charter of Croyland Abbey in Birch, Walter de Gray, Cartularium Saxonicum, London, 1885, Vol.I, p.567. Note for sanctuary the third paragraph, p.568. The charter was supposed to be of the year 835. For a summary of the criticism on which this charter is rejected see Cox, op.cit., p. 201.

For a more favorable view of the validity of these charters see Knowles, David, The Monastic Order in England, Cambridge, 1940, p.577.

2. Maitland, Frederic William, in his introduction to the Mirror of Justices, ed. by William Joseph Whittaker, London, 1895, p.1.

the charters were accepted and did their work. For the development of the institution, if they were accepted, these charters were as good as legitimate instruments in practice. But that is to abandon the 'germ of truth' that even the severest critic tries to find in them.

One might explain the whole problem by simply relying on the theory that charters when lost or destroyed were rewritten from memory or that in England the developments of the twelfth century forced many great ecclesiastical establishments to write down for their own legitimate protection the rights they had acquired over the years either by practice or forgotten charters. Composition, under such circumstances, of course, would give free play to much imagining of which even the author would not think himself guilty.<sup>1</sup>

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1. See the charter of St. John Beverley, printed by the Surtees Society, Sanctuarium Dunelmense et Sanctuarium Beverlacense, London, 1837, pp.97-108. The writer, Alured (Alvaredus) - living about the middle of the twelfth century - is quite candid. He tells us about privileges conferred by Athelstan in A.D. 937 and gives his sources. "Sed quoniam, defunctis antiquis patribus, successit antiquitatis ignara juventus, saepe inter modernos solet oriri desceptatio volentis de causis apud eam emergentibus secundum LEGEM FORENSEM, non secundum ECCLESIAE CONSUETUDINEM, (capitals are mine) judicare; unde utile duxi, ea, quae mihi occurrunt de pace et consuetudinibus ecclesiae posteritatis memoriae tradere, quae vel scripto didici, vel quae ipse oculis vidi, vel quae junior a senioribus audivi." p. 97.

See the frank admission in Birch, Cartularium Saxonicum, Vol.II, p.487, no.759. "Ideo scripsimus novam cartulam quia antiquam non habemus." a. 940, King Eadmund to Culham. See eodem loco, p.529, no.786, and p.556, no.800.

For a much later instance of the practice at the priory of Armathwaite which received a confirmation of its rewritten charter after the sanctuaries physical destruction see Cox, op.cit.,pp.177-178, a.1480.

That by the year one thousand there were immunists on the continent and among these, the church especially, will be generally accepted. For different periods and various places the immunity may vary in degree but it was there. It has been seen how this could be quite plausibly one of the factors in the extension of unusual privileges of sanctuary to some places. In England, during the reign of the Confessor, it is known that the church enjoyed a strong immunist position.<sup>1</sup> From that we can go back to our favored line of thinking and assert that the confusion between the jurisdictional rights created by an immunity and the similar result of excluding judicial interference by the general right of sanctuary led to a confusion of the two. The simple refugee who fled to a church enjoying immunities would not distinguish as to whether his security came from the fact that he was in territory where the jurisdiction in judicial matters was, in varying degrees, in the hands of the local ecclesiastical authorities or the fact every church enjoyed the right of sanctuary. At most to him one church would enjoy a more certain, a more extensive privilege of protection. Even if he were acute enough to distinguish between sanctuary and the jurisdiction that grew out of immunity his own practice would probably simplify the matter by lumping everything under the word "sanctuary."

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1. Maitland, Frederic William, Domesday Book and Beyond, Cambridge, 1907, pp.259-260.

Doubtless half-formed notions in the minds of many churchmen would encourage that sort of thinking. At root it was the same notion of respect for the holy places which begot their general immunities and sanctuary in particular. This confusion is accentuated in a place where the immune area does not greatly exceed the area which would be embraced by the area of sanctuary. Even, therefore, if all were to concede that a confusion between the immunist church lands and the ordinary law of sanctuary gave rise to the claims of chartered sanctuaries especially after the decretals laid a very reasonable and common basis for the institution we find ourselves at a relatively late period. Some of the great chartered sanctuaries claimed privileges that dated far beyond the Confessor. Was there a corresponding immunity at that time to account for the confusion of which we have been speaking? To that problem we might turn briefly.

To the present writer the theory put forward by Maitland, however tentatively, seems quite acceptable. The land books of the period were exempting church lands from all but certain specified burdens. At that time "to exempt land from public or national justice," was "to create private or seignorial justice."<sup>1</sup> The burdens of justice were not mentioned as binding on the exempted lands. Indeed, as one advances into the period more explicit clauses granting rights

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1. Maitland, Domesday Book and Beyond, op.cit. p.276. For a full discussion of the author's theories on an early English immunity see, eodem loco, Essay II, pp. 220-293.

of justice appear. Maitland's theory will imply "that in the eighth or even in the seventh century, there were in England 'immunists' who had jurisdiction within their territories, and further it implies that a royal grant of land in the ninth and tenth centuries generally included, and this as a matter of 'common form', a grant of jurisdiction."<sup>1</sup>

To the present writer the most ancient claims to a special form of privileged sanctuary should, therefore, be also attributed to what was really a grant of judicial jurisdiction. An expression from the law of Ethelred regarding sanctuary might indicate a distinction of sanctuaries corresponding to chartered ones. In the case of homicide in a church a man is to be 'botless' unless, perchance, the homicide should reach so "awful a sanctuary"<sup>2</sup> that the King in his mercy should be pleased to grant him his life. Still the phrase need imply no more than the pious reverence for an especially holy shrine by the king in some particular case.

Under the Normans whether abbots or barons the desire to retain the "phrases which gave the English immunist his justice"<sup>3</sup> would be just as great. Even if the Conqueror were determined that feudal encroachments were not to make a mere symbol of his kingship<sup>4</sup> he had to retain the developments of

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1. Maitland, Domesday Book, op.cit., p. 282.

2. Laws of Ethelred, IX, 1, in Thorpe, op.cit., p. 145.

See above, p.

3. Maitland, Domesday Book, op.cit., p.283.

4. Stubbs, Select Charters, op.cit., pp.15-16.

seignorial justice that had grown up. For the period prior to the Normans and Domesday Book it is to the point to note that those places that are singled out as of the immunist group are those that have been best known as chartered sanctuaries.<sup>1</sup>

Now to follow this line of reasoning is not necessarily to deny the possibility of real privileges having been conceded. It is not to eliminate the authenticity and effectiveness of papal or royal grants either at an early or a late date. It is, however, to explain the atmosphere which made such delegations or surrenders of power to chartered sanctuaries on the part of secular justice possible. It is to account for the situation even if the charters were 'spurious'. It is to explain the broader base on which special rights of sanctuary could be created and could survive with such tenacity especially after the decretals had cast a general form for the common right of sanctuary attaching to all sacred places.

Now the key words in these charters, or at least, after Canute in the writs, such as *sacu* and *soen* lost much of their significance under the Normans.<sup>2</sup> Whereas "the well endowed

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1. Maitland, Domesday Book, op.cit., p. 289, n.3. See also pp.87-92, *passim*; p.161.

2. Earle, John, A Hand-Book to the Land-Charters, and Other Saxon Documents, Oxford, 1888. On page 233, Earle gives Kemble's translation of a famous writ of Canute. As it is indicative of the maximum immunity that an establishment could desire I give it here. The writ is genuine.

"I, Canute, the King, greet all my bishops, and my earls,

immunist of St. Edward's day has jurisdiction as high as that which any palatine earl of after ages enjoyed" the reconstruction of "criminal justice in Henry II's time, the new learning of felonies, the introduction of the novel and royal procedure of indictment, . . . reduce the immunist's power and leave him with nothing better than an unintelligible list of obsolete words."<sup>1</sup> The King's justice becomes regularized reaching into every corner of the land.<sup>2</sup> The new development of law supersedes

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and my reeves, in each shire, in which Archbishop Aethelnoth and the brotherhood at Christchurch have land, friendly. And I do you to know that I have granted him his privilege of Sac and Socn, and Grithbryce and Hamsoen, and Forstall, and Infangthief, and Flymenafirmth, in town and out of town, and over Christchurch, and as many thanes as I have allowed him. And I will not that any man shall meddle in aught therein, save himself and his stewards: seeing that I have granted these rights unto Christ, for the eternal salvation of my soul; and it is my will that no man break this, - on my friendship: (i.e. on pain of losing it)." a.1020.

Kemble's note attached in the same place points out that the Sac and Socn gives the bishop the right to hold plea and the Infangthief his criminal jurisdiction. "The formulary continued to be repeated in the charters of the Norman kings long after its meaning was entirely forgotten."

Earle, in his introduction, pp. xxxiii-xxiv, gives a short explanation of the Anglo-Saxon terms.

While it is problematical just what conclusions one could draw from the fact it is interesting to note that Maitland in a reference to Schmid's Glossary, under the word socen, says: "The word, it would seem, first makes its way into the vocabulary of the law describing the act of seeking a sanctuary and the protection that a criminal gains by that act." Domesday Book, pp. cit., p. 86, n. 1.

He also points out that another combination of the word, fridsoen, occurs in Aethelred and Cnut where it seems to stand for a sanctuary, an asylum. eodem loco, p. 93, n. 6.

1. Maitland, Domesday Book, op. cit., p. 283.
2. Pollock, Frederick, and Maitland, Frederic William, The History of English Law Before the Time of Edward I, Cambridge, 1911, I, pp. 84, 167.

the customary law contained in these now archaic phrases.<sup>1</sup> With the loss of significance to the charters went the simple principle of feudal justice that finally prevailed in England, namely, "That any and every lord, no matter his personal rank or the rank of his tenement, has civil justice over his tenants."<sup>2</sup> An effective, superior, and oftentimes popular royal justice overshadowed and eventually eclipsed the justice of the immunities by its prestige. Some, it is true, by prescription retained their powers. Others retained them over a limited area.<sup>3</sup> Thus, as a rule, only the simplest forms of civil justice remained in the feudal courts. Rights of high justice went to the courts of the King.

Under the guidance of the King's justices the notion that the King cannot absolutely alienate his rights is given a more effective application. No 'general words' in unintelligible charters are to stand against him.<sup>4</sup> If a charter has to be rewritten perhaps it is best to modernize it. It may be that in the face of a losing cause one might better claim an absolute right of sanctuary. That is an unquestioned immunity sanctioned by the church's common law. An extension of it

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1. Pollock and Maitland, op.cit., I, pp.97,576, 577,n.3; 579.

2. Maitland, Domesday Book, op.cit., p. 283.

3. Pollock and Maitland, op.cit., I, p.203, p.583.

St. John Beverley enjoyed such a privileged ban-leuca. Sanctuarium Beverlacense, op.cit., p.99.

Knowles, David, op.cit., p. 580, gives the ban-leuca to Bury, Croyland, Ramsey and possibly Glastonbury.

4. Pollock and Maitland, op.cit., I, 584, 572-574.

will seem quite reasonable. It will be a more difficult thing with which to interfere.<sup>1</sup> After all the King's claims are not to be taken too seriously. No matter how much he protests about his royal rights and the allowance of a franchise in eyre, once forfeited, the franchise is easily repurchased.<sup>2</sup> And what is more, the right may have been real and allowable. To put it into the charter is only to note what is already a right by prescription.<sup>3</sup>

The continued acceptance of their privileges of sanctuary and the subsequent confirmation of many of their charters rendered the question of the origin of their privileges academic as far as the facts were concerned. However, to the present writer it seems somewhat gratuitous to take the existence of a 'spurious' charter as the evidence of a right that has been usurped. Men, at various times, are easily fooled. Still one does not see, at any time, whole sections of a kingdom granted out without some justification in fact. It is not history

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1. Earle, op. cit., introduction p. xxiii. See his opinion about the ampler Norman redactions of old charters and their faithfulness to what was an actual condition through now expressed in the language of the day.
  2. Pollock and Maitland, op. cit., I, p. 574. Cam, Helen M., Liberties and Communities in Medieval England, Cambridge, 1944, p. 65, n. 4.
  3. Pollock and Maitland, op. cit., I, p. 584. Prescription comes to be the best ground for the most powerful franchises.

For the toying of Edward I's justices with the absence of special mention about some privilege in a charter see Cam, op. cit., p. 65.

but one sometimes has in human nature a surer claim to the probable reasons that motivate men at any given time. Consequently, it would seem that the same spirit of largesse which led to such handsome endowment of the church in lands would not be averse to a like profligacy with its rights of justice. And this is more patent when, once again, the obvious is recalled, namely, that such surrender of judicial rights was not foreign to the ways of life either at the close or the early part of the Middle Ages.<sup>1</sup>

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1. This note is added by way of a brief appendix on chartered sanctuaries.

The charters of the places offering a special type of sanctuary, as has already been intimated, were not limited to just that. Indeed, the first challenges offered to these charters were not on the basis of their sanctuary rights but rather for other exemptions more particularly judicial privileges which in turn implied a great economic advantage. Nor were the first attacks upon 'chartered' pretensions necessarily royal. Privileges royal and papal exempting ecclesiastical establishments from the jurisdiction of bishops came under fire. (Knowles, *op. cit.*, pp. 580-581, 587-589.) The new centralization of government which made the King's power in secular justice felt over an ever wider territory was having the same result with the efficiency of the papacy.

The time element involved in English chartered sanctuary, after all, was the ordinary prerogative of a continental sanctuary. The main elements of privileged sanctuary would be involved in the extent of the territory covered and the number of crimes to which it gave immunity. Opposition based on these last two grounds as has been seen came relatively late in the Middle Ages. In England one has to wait from the time of Edward I and his son to that of Henry VII before a monarch is able to give his full attention to such matters and, then, sanctuary is involved in a multitude of other franchisal claims.

A few samplings of the charters might be considered. A charter of Westminster attributed to Offa, King of the Mercians, bestows lands "cum omnibus aptis usibus, pratis, pascuis, piscariis, silvis, silvarum densitatibus, cunctisque

necessariis utilitatibus, ut habeant in propriam potestatem perpetualiter concedens donavi." Dugdale, William, Monasticon Anglicanum, London, 1817, Vol. I, p. 291. This is a type which well might have been given. For the implications that these almost harmless phrases carry we have followed Mr. Maitland and Earle.

Another charter of the same Abbey purports to secure the privileged rights of sanctuary from King Edgar. "... id est ut quisquis fugitivorum pro quolibet scelere ad prae-fatam basilicam beati apostoli fugiens, procinctum ejus intraverit sive pedes, sive eques, sive de curia regali, sive de civitate, sive de villa, seu cujuscumque condicionis sit, quocumque delicto facinoris contra vos vel succedentes reges Anglorum, vel contra alium quemlibet fidelem, sancte ecclesiae Dei forisfactus sit, relaxetur, et liberetur, et vitam atque membra absque ulla contradictione obtineat." eodem loco, p. 292. While the redaction of this charter has probably been modernized, to think that the substance of the privilege concerned is vitiated on that ground is to accept an unproven premise.

Westminster, also, had its charter from the Conqueror. eodem loco, p. 307.

The charter for Battle Abbey lists every possible exemption in the terms of Anglo-Saxon law as prevailing in its ban-leuca. To explain the charter would be to give a young gloss of Anglo-Saxon law. Specifically it provides: "Et si quis latro, vel homicida vel aliquo crimine reus, timore mortis fugiens, ad hanc ecclesiam pervenerit, in nullo laedatur sed liber omnino dimittatur." The charter is that of the Conqueror. eodem loco, Vol. III, p. 244. The abbot here became a mobile sanctuary. "Abbati vero ipsius ecclesiae liceat ubique latronem vel furem de suspendio liberare, si forte supervenerit." Cox, op. cit., pp. 195, 210 gives two instances of this last privilege being respected.

The Conqueror's reputed charter to St. Martin's gives every exemption and also includes an elastic clause: "Et si quas alias libertates vel consuetudines aliqua ecclesiarum regni mei Angliae meliores habet." eodem loco, Vol. VI, pt. 3, p. 1324.

Subsequent confirmations and the personal interest of the King in a place like St. Martin's, which was his peculiar to bestow upon some worthy supporter, assured the existence of such sanctuaries until a strong king should be able to make the whole realm his manor.

## CHAPTER VI

### ENDINGS.

#### A. Opposition to the Institution.

Opposition to sanctuary, as has been seen, was no new thing. However, for such to mark the end, or near end, of an institution there must be a strong, steady, stream of concerted actions aiming at its destruction or severe restriction. Furthermore, such action must be reenforced by an effective prosecutor. During the troubled fifteenth century in England men could come forth with the impassioned indictments of sanctuary which More attributes to the Duke of Buckingham<sup>1</sup> but in the general insecurity prevailing they could make personally convenient exceptions such as "... yf the crowne happen (as it hathe done) to comme in questyon, whyle eyther parte taketh other as traytours, I wyll well there bee somme places of refuge for bothe."<sup>2</sup>

When Henry VII came to the throne, in this background, he did well in proceeding with caution. His attack was waged primarily through the judicial arm of the government. By its nature such an attack tends to be more subtle. It offers an elusive opponent. Straightforward legislative action provides a definite target for opposition. The elder Henry

1. More, Thomas, History of Richard III, ed. by J. Rawson Lumby, Cambridge, 1883, p. 29.

2. Ibid., p. 28. For examples of such use of political sanctuary see, eodem loco, pp. 80, 85, 93, 95, 98, 109.

thus left to that stalward, his son, strengthened by years of continued possession of the throne to let loose that legislative avalanches which say the virtual destruction of sanctuary.

### 1. Judges.

As early as the late fourteenth century, in the case of Westminster, strong views were expressed on the legal rights involved in any right of sanctuary. The judges in 1399 had "issued a manifesto against the erection of new sanctuaries by declaring that the King could not grant away the royal prerogative of pardoning felony; though they admitted that those who, like the Abbots of Glastonbury and Battle, had such power by prescription supported by allowance in eyre, could lawfully exercise it."<sup>1</sup> In the numerous discussions of sanctuary at St. Martin's during the fifteenth century judicial opinion had upheld sanctuary<sup>2</sup> though in the case of treason there was some support for the contrary opinion.<sup>3</sup> Under Henry VII, however, the judges definitely hedged the privilege.

"In 1486 some of the judges thought that the King alone could no longer grant a sanctuary for treason, though agreeing he had done so in the past."<sup>4</sup> The plea (1486) of

1. Year Book 1 Henry IV, pl. 6, Quo Warranto, cited by Thornley, op. cit., p. 197.

2. Cam, op. cit., p. 217.

3. Cox, op. cit., p. 87.

4. Year Book, 1 Henry VII, Trin, pl.1, cited by Thornley, op. cit., p. 197.

the rebel Humphrey Stafford of sanctuary at Culham was denied because Culham could not meet the new formula of a royal grant supported by usage and allowance in eyre. Culham's grant ran in general terms whereas that of Westminster "spoke expressly of fugitives and of protection for all crimes." <sup>1</sup> This new interpretation was put into effect at Durham, St. Martin le Grand, and Hexham in cases of treason.<sup>2</sup> In a case involving the abbot of Battle in 1494 "it was ruled that a charter of William the Conqueror gave no title because it was before the time of legal memory, and that a recent allowance of the liberty in the Common Bench gave no title because it was not in the general eyre, ..." <sup>3</sup> The act against fraudulent debtors in sanctuary was applied with a new vigor.<sup>4</sup> Henry VIII showed his own talent for his father's judicial methods in the attempt of the Prior of St. John of Jerusalem (1519) to make good a claim to special sanctuary before the Star Chamber.<sup>5</sup>

However, by the time of Henry VIII's accession the judges had brought things to the stage that "no sanctuary could be maintained in law, unless its owner could

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1. Thornley, op. cit., p. 199. Cam, op. cit., p. 210. Cox, op. cit., pp. 205-207, gives a good brief account of Culham.

2. Thornley, op. cit., pp. 199-200.

3. Cam, op. cit., p. 217.

4. Year Book, 1 Henry VII, Hil., pl. 11, cited by Thornley, op. cit., p. 200.

5. Thornley, op. cit., pp. 200-201.

show a royal grant as the basis of the privilege, supported by usage and by allowance in general eyre."<sup>1</sup> The judges also defined the area of monastic sanctuary as consisting only of the church, cloister, dorter and cemetery. No longer were the gardens, barns and stables to be included.<sup>2</sup> A man now extracted from any liberty needed legal counsel for if he did not plead precisely that he had been taken out of sanctuary his complaint did not avail.

## 2. Henry VIII.

The young Henry built on the foundation laid by his father. A legislative attempt to control the privilege (1512) was abandoned.<sup>3</sup> At last, in the reformation parliament of 1529, the custom of abjuration was regulated.

It was provided that when a culprit took refuge for murder or felony and abjured that immediately after the oath of abjuration the coroner was to see that the abjurer "be marked with an hote yron upon the brawne of the thombe of the right hande with the signe of an A to the entent he may be better be knowen amonge the Kynges Subjectes that he was abjure."<sup>4</sup> The same act provided that if the felon or murderer refused to take passage at the time limited by the coroner that he "shall lose the benefyte of the same Seyntwarye."

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1. Thornley, *op. cit.*, p. 197.

2. *Ibid.*, p. 198.

3. *Ibid.*, p. 200.

4. Statutes of the Realm, Vol. III, p. 284, 21 Henry VIII, c.2.

Henceforth, it would, indeed, be both less inviting to leave the country and almost impossible to return by stealth.

In the next session of Parliament the King is found complaining, in the preamble of a law, that many expert mariners and able warriors abjure the country and instruct foreigners in archery and disclose knowledge of the commodities and secrets of the country of England, Of course, the number of secrets that Henry would now have kept within the country was growing. It was, therefore, enacted that if anyone fled or resorted to parish church, cemetery or other like hallowed place for murder, robbery or other felony that he should now elect and chose a sanctuary within the realm where he would stay for life. If he were to leave the sanctuary he would be subject to the penalty of death. If after going into sanctuary he should commit any "pety treason murder or felony" he would be taken out of sanctuary.<sup>1</sup> A subsequent act providing for succession to the throne made it treason to contravene the same and specifically indicated that no sanctuary could be had in such a case.<sup>2</sup> An act whereby "maliciously to wish or attempt, bodily harm to the King or Queen, or their Heirs, or to deprive them of Their Title, or to slander the King as an Heretic, etc. or to detain any Fortresses, Ships, etc." was

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1. Statutes of the Realm, Vol. III, pp. 332-334, 22 Henry VIII' c. 14.
  2. Eodem loco, p. 474, 25 Henry VIII, c. 22, s. 7.

declared to be high treason specifically exempted such persons from sanctuary.<sup>1</sup>

The elimination of effective sanctuary was just one item in the religious and centralizing policy of this monarch as he extended his police power throughout the realm. The whole basis of independent jurisdiction which, as has been indicated, may well have been in origin, if not in the final analysis, the real basis for chartered sanctuaries, was removed before the hardest blows were aimed at sanctuary itself. Thus, the independent jurisdiction of the Lordshippe Marcher in Wales was reduced to the simplest sort of offences.<sup>2</sup>

Servants who stole their masters' goods and took sanctuary lost the benefit of the same if the goods stolen were worth forty shillings.<sup>3</sup> Further regulations were forthcoming for sanctuary men when it was provided that when they went out of the houses assigned to them they were to wear a distinctive badge at least ten inches in length and breadth. The only knife that they were to carry was a knife for carving their meat and that was only to be used at meals. Violation of these regulations meant loss of the privilege.

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1. Statutes of the Realm, Vol. III, p. 509, 26 Henry VIII, c. 13. See, also, p.661, 28 Henry VIII, c.7, s. 13.
  2. Eodem loco, p. 500, 26 Henry VIII, c. 6. See also, c.5; The ferries of the Severn were stopped at night to prevent felons from Gloucestershire and Somerset escaping into the liberty of South Wales. - Cam, op. cit., p. 218.
  3. Eodem loco, p. 549, 27 Henry VIII, c. 17.

They were confined to their quarters from sun down to sunrise and a third violation of this rule meant loss of sanctuary.<sup>1</sup>

The most devastating piece of legislation for the institution of sanctuary that came from Henry VIII was that of 1540. Persons excepted by previous laws, murderers, ravishers, burglars, robbers, arsonists, sacrilegious persons and accessories to these crimes were not to enjoy the privilege of sanctuary. Thus, but a mere shred of the old privilege was left. The sanctuaries protected one for little else save debt<sup>2</sup> which paradoxically enough was the main point in the first opposition to them and what originally they were perhaps least intended to do.

The act provided further "that all manner of sanctuaries and places privileged, which heretofore have been used reputed or taken for any maner of sanctuary, except parrish churches and their Churches yerdis Cathedrall churches hospitalles and churches collegiate and all chapels dedicated used as parrish churches and the cemytories to them and ev-y of them belonging, and except such places and territorites as hereafter shalbe declared appoinctid and named to be places of tuytion and privilege by this presente acte, shalbe utterly extinguished ..."<sup>3</sup> The dissolution of the monasteries had made of this act little

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1. Statutes of the Realm, Vol. III, p.551, 27 Henry VIII,

c. 19.  
2. Eodem loco, p. 756, 32 Henry VIII, c. 12, s. 1.

3. Ibid.

more than an affirmation of the existing situation. Little of the institution's old grandeur was now retained.

Seven cities, Wells, Westminster, Northampton, Norwich, York, Derby, Manchester and Launceston were set up as sanctuary places. If a person fled to one of the aforementioned churches he would have to choose before the coroner which of the cities to which he would go. There were to be no more than twenty sanctuary men in any one of these cities. The sanctuary men were to appear for a daily muster and if without excuse they missed the muster for three days they were to forfeit their right of sanctuary.

The people of Manchester found the burden of a sanctuary insupportable. They were engaged in a woolen and linen trade that required them to keep their products outside for six months of the year. Apparently the temptation was too much for light-fingered sanctuary men. The natives complained that the trade they had enjoyed with the Irish was falling off because of the presence of the sanctuary men. Westchester, having the officials and gaol to deal with thieves, was, accordingly, made to substitute for Manchester.<sup>1</sup> Almost immediately, however, the sanctuary site was switched from Westchester to Stafford.

The fate of sanctuary after the time of Henry VIII till the final, formal abolition under James I is somewhat ob-

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1. Statutes of the Realm, Vol. III, p. 850, 33 Henry VIII, c. 15.

scure. Legislation on the subject, if not contradictory was poorly integrated. In the first year of Edward's reign treason, wilful murder and aggravated forms of theft were excepted from sanctuary.<sup>1</sup> The seven sanctuary cities disappear from the records.<sup>2</sup>

Mary re-established and re-endowed Westminster Abbey by a charter of November 10, 1556<sup>3</sup> and sanctuary rights were again exercised there<sup>4</sup> Scattered evidence indicates the persistence of the practise under Elizabeth but then even the debtor was subject to a rigid oath against fraud and non-payment in which, if he should fail, he lost the right of sanctuary.<sup>5</sup>

In 1604, the first year of the reign of James I, it was laid down that "all statutes as concerneth adjured Persons and Sanctuaries, or ordering or governing of Persons abjured or in Sanctuaries made before the five and thirtieth yre of the late Queene Elizabeths Reigne, shall also stand repealed and be voide..."<sup>6</sup> This rather ambiguous law received further clarification in 1623 in an omnibus bill which proclaimed "All statutes taking away sanctuary revived" in spite of the bill of 1604, and, besides, "That no Sanctuaire or Privilege of Sanctuaire shalbe hereafter ad-

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1. Statutes of the Realm, Vol. IV, pt. I, p. 20, 1 Edward VI, c. 12, s. 9. Vol. IV, pt. I, p. 74, 2&3 Edward VI, c. 33.
  2. Thornley, op. cit., p. 204.
  3. Calendar of Patent Rolls, 3 & 4 Philip and Mary, pt. 5, mm. 1-6.
  4. Machyn's Diary, cited by Cox, op. cit., p. 74.
  5. Thornley, op. cit., p. 206.
  6. Statutes of the Realm, Vol. IV, pt. 2, p. 1050, 1 James I, c. 25, s. 7.

mitted or allowed in any case."<sup>1</sup>

Sanctuary was now definitely, legally dead in England. Just as the jurisdictional rights so closely allied with some phases of it did not disappear completely with the mere stroke of the legislator's pen so, too, some vestiges of sanctuary hung on in a tenacious way. Nevertheless, they cannot be considered as parts of the great religious institution which covered medieval Europe but rather as faint reflections, survivals not arrivals. For a thousand years and more sanctuary had been a part of the daily life of Europe. Even Englishmen, in spite of the religious revolt, could not shake the practise from their moeurs immediately even as it continued on the continent in many places though in an ever more attenuated form right into the nineteenth century.

### 3. Broader Considerations.

When one sees an institution which has an extremely ancient history pass out of the life of a country he must if for no other reason than natural curiosity ask that very human question, "Why?" Since this institution has its roots deep in man's natural religious sense a definitive answer probably cannot be given. On the other hand, one can point out some of the more obvious elements which help to account for that demise.

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1. Statutes of the Realm, Vol. IV, pt. 2, p. 1237, 21 James I, c. 28, ss. 6 & 7.

It is clear that each time the governing authority of a territory became effective in the sense that the central power was able to send its agents into the farthest regions comprised under its headship and there take positive action backed up by a sanction, there has been a tendency to restrain rights of asylum. After all that is the first and proper function of government, to preserve "law and order". For this reason one finds few traces of asylum among the Romans who had an elaborate system of laws. In the case of slaves where there was some form of asylum one is dealing with a group whose rights were but little protected in Roman law.

The first Roman laws precisely recognizing sanctuary came in the fifth century. It was a period which while it might see occasional signs of strength in the governance of the empire was for the most part very unsettled. In the sixth century when Justinian was able to re-establish an effective rule a regulatory, if not a restrictive tendency was immediately witnessed. However, save for a small part of Italy, Western Europe was left untouched by Justinian influence. It was the Theodosian Code, the one most favorable to sanctuary, which left the first Roman legal imprint on the barbarian society of Europe. It will be observed, too, that it was under the tutelage of the church and her intercessory action that the precise form of sanctuary which came into Western Europe was developed.

It was this same Church with the institution which she had breathed into the late Roman laws that was to deal with the barbarian society which came to rule Western Europe. No one better than she realizes the benefits and need of a peaceful ordering of things, the abuses that can come from the private use of force. Her supernatural principles led her to place a value above that of the natural instinct for the preservation of existence, on the life of each person. She shunned the shedding of blood, the cruel mutilations that barbarian justice would impose. She encouraged a system of compositions. And just as flight to a church became an accessory to the act of intercession in the fourth century so too that flight to the church served as an intermediate step in the system of compositions.

The eternal struggle between justice and mercy is going on. But in the loosely administered, barbarian kingdoms it is difficult to secure an accurate and well-weighed decision backed up by executive power in matters of dispute, especially those of a more private nature. To protect the innocent and absolute barrier protecting all with little discrimination seemed necessary. Under the Church, therefore, sanctuary tended more and more to become an autonomous thing in no way subsidiary to other purposes.

With the advent of Charlemagne one sees a slight reversal in the direction of the ordered state. This, however, quickly shades off into the disorder of the feudal period.

If kings speak of protecting churches they are bestowing pious wishes rather than effective custody. On the continent during that ebb time the church alone legislates to any extent. The theory of her position, even in the midst of confusion, is clearly established.

The result is that as one emerges from that long period of darkness the Church is able to give the final outlines to the institution. In practice it is quite divorced, now, from all those early influences that saw the genesis of christian asylum. It has been strengthened by the development of the Church's other immunities. The reverence due to sacred places suffices to justify it. The Decretum of Gratian and the Decretals of Gregory IX are the frame that sets the institution's forms for the rest of the Middle Ages.

The canons of the Corpus are surprisingly mild in their requirements. They are aimed primarily at saving the refugee's life and members. Certain groups who injure the common good are excluded from sanctuary. The territorial scope of the privilege is reasonable. The canons hardly seem to ask more than any enlightened person might grant. However, a whole fabric of local custom, special privilege and accepted traditions complicate the application of any such general and progressive set of principles.

In early England the Church met an even purer

form of barbarian society. Asylum was known. Documentary evidence indicates that it was not receiving the ample canonical development that took place on the continent. The happy relations between church and state probably account for this. Perhaps the role played by privileged, ecclesiastical jurisdictions in a SMALL country, geographically speaking, - if one accepts the theory of an early English immunity - made the development of the general law of sanctuary less necessary.

What, then, are the broader, deeper movements in which one might look for the seeds of opposition which developed at a later period? They seemed to be summed up in what one calls the development of the national state. It is not that there need necessarily be an opposition between sanctuary and a centralized, efficient government, but simply that the growth of the new state provided new points of contact which were not always resolved in an amicable spirit. In some cases this might be due to prejudice, in others to the lack of clearly developed principles regulating mutual relationships. In England almost immediately one has to introduce certain stipulations. There more than in any other place geographical unity with a well defined kingship had been preserved. But the extension of the effective operation of a central government centered about the king entailed problems similar to those of developing national states.

The Conqueror with his Norman experience in mind resolved to be a king and not simply the most noble defender of a royal estate. But the administration of justice, the great prerogative of the state, remained feudalized. However, his separation of the spiritual and temporal courts required of itself new determinations of fields of authority. The work of Henry II gave a definitely judicial aspect to the crown. If there was a reaction it was again in favor of dispersed justice. "Magna Carta was a charter not of liberty but of liberties."<sup>1</sup> In England, a strong king exercised his authority by a vigorous use of the judiciary. Sanctuary crossed that field.

Now if, in England, one does not find the casual Roman endowing of all imperium solely and exclusively in the monarch the control of justice remains particularly close to the king and the chosen ones about him.<sup>2</sup> If the King lacks a theory to cover this situation practise is constantly building up the fact.<sup>3</sup> But no one as yet cared to be responsible for all the good and necessary work the local, franchisal courts did.<sup>4</sup> Even Henry VIII after his

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1. Pollard, cited by Cam, op. cit., p. 183.
  2. Vinogradoff, Paul, Roman Law in Medieval Europe, 2nd ed., Oxford, 1929, pp. 104-105.
  3. Pollock and Maitland, op. cit., I, pp. 528-529, 571-574, 84, 165, 167, 688.  
Cam, op. cit., pp. 65, 175.
  4. Jam, op. cit., pp. 208, 221-222.

drastic curtailment of their rights had to retain their machinery.<sup>1</sup>

Even allowing for all this sanctuary might still have had a long life. This would be especially true in England where the practise of abjuration already solved, at least in part, perplexing problems as to who decided an individual's right to sanctuary and as to who withdrew the refugee when he did not enjoy the right. But secular influences working for the glorification of the crown received momentum from the religious revolt. Thus, the virtual abolition of a general privilege of asylum became but a small item on a long agenda as franchises both lay and ecclesiastical were attacked.

Justice, if not always as mild as one would have it, had become regularized.<sup>2</sup> The eternal problem of the debtor had been a cause of complaint for well over a century.<sup>3</sup> The integrity of financial arrangements was essential if trade

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1. Ibid., p. 218.

2. More, op. cit., p. 28. In the memorable speech of Buckingham reference is made to Exodus and the injunction to tear the deliberate manslayer from the altar. Otherwise according to the speaker there is no need of sanctuary. "For yf eyther necessitie, hys owne defence, or misfortune drawe hym to that dede, a pardon serveth, which eyther the law graunteth of course, or the Kynge of pitie maye."

3. See above, pp. 188, 192, 194, 198, 240. More, op. cit., p.29: The Duke makes reference to Westminster and St. Martin's which because of their location were especially noxious. "What a rabble of Theues, murderers, and malicious heyghnous traitours, and that in twoo places specyalle. The tone at the elbowe of the cities, the tother in the verye bowelles."

were to flourish. Times were out of joint. The 'sweet reasonableness' required for the harmony of Church and State was preparing for a long exile.

## B. Conclusions.

An item in history always has two conclusions. One is the past. The other is constantly renewing itself as men of a later age look back at what has gone before them. For this reason this section is divided into two parts. The first will deal with the past, the second with the present.

### 1. The Institution's Effects.

One need not be at great pains to point out that an institution such as sanctuary must have a considerable impact upon a society. Given the structure of the institution as found in the laws, a few examples, and a notion of just how widespread its practise was and one can rely on the ordinarily healthy imagination to fill in the details. Sanctuary is here envisaged as affecting the life of the ordinary citizen.

A person is walking down the street of a medieval town. There is a great commotion. An escaped felon is

being pursued by the officers of the law.<sup>1</sup> The fugitive crosses the threshold of the church. Immediately, as though an iron curtain had been dropped, the pursuing officers stop their chase. They may call to the now protected refugee, attempt to reason with him, but as long as he remains within that sacred precinct there is no immediate action that can be taken.

The instance for flight to the church might have been of a more private nature.<sup>2</sup> Perhaps the fugitive had by accident killed a man at work. The victim's kin attribute malice of forethought to his act and threaten to take the law into their own hands. Again, the probability is that the sacredness of the holy place will check the raging anger of the pursuer. A serf fearing unjust injury from his lord finds in sanctuary a check to his abuse of power. While for the most part one finds that recorded cases are in the nature of crimes or actions for debt this may well be because the action of the clergy of the church in other cases could more easily arrange a peaceful solution.

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1. Chroniques de London, published by the Camden Society, 1844, p. 42. "En cette annee (1124), a la nuit de la Nativite de Notre-Dame, qui fut un dimanche, dix personnes s'eschapperent de Iewgate (prison de Londres), dont cinq furent ramenees, quatre s'enfuirent a l'eglise du Saint-Sepulcre et une a l'eglise Saint-Bride; et apres, celles-ci forjurerent l'Angleterre." cited by Reville, op. cit., p. 23.
  2. Sanctuarium Dunelmense et Sanctuarium Beverlacense, op.cit.; p. 4, viii; A case wherein a man is killed by a stone seems to imply that the death was accidental. (Durham) p. 2, iv; Thomas Carter while riding with his three year old son before him was accosted by Christopher Brown. The child fell as Thomas dismounted and was trampled by the horse. Christopher anticipating the charge involving death took refuge. (Durham). p. 30, lxx; An escaped thief abjures. (Durham)

But what has happened to the casual passer-by in the street? Likely he has yielded to that simple interest in something exciting. He has been an eager witness of all that has transpired. It may be that a crowd has gathered. People will undoubtedly reflect on the case. "Who is the fugitive? Is he a local man?" Private judgement are passed. Possibly the root of the trouble is known generally and the crowd sympathizes with the refugee. Maybe the refugee is a public character, as widely detested, as known. The unfriendly tone of the mob might, in a rare instance, urge it on in a 'lynching spirit' to abet the officers in a forceable withdrawal.

The crowd disperses. The story goes home to each household, is retold. The right of sanctuary is probably nearer to every native of the country than any other legal institution. All will know that, in a given case, where there is doubt about the legal status of their case, there is one device which in practise hardly seems to know an exception. It will, at least, delay a reckoning, give the harrassed party a chance to consider his line of action. Every man is his own lawyer on this point.

But there is another side to the question. The law does not allow such refugees to remain there on their honour. They are to be guarded from without, " the

watch and ward,"<sup>1</sup> This duty devolves upon the men of the four neighbouring vills. Perhaps one of the men who had been in that bustling crowd is summoned. There is nothing romantic about this. He is going to lose his sleep, his time. He has work to do. This right of sanctuary can be a troublesom thing. Maybe it would be better if the refugee were chained and honest people could go about their business.

Perhaps the satisfaction of excitement is even lacking. As is true of most cases of refugee slips quietly into the church and presents himself to the proper person to declare himself a sanctuary man. The coroner is summoned. A cold formal legal process is performed. The refugee decides that he cannot trust himself to the King's justice. "Watching and warding" must still go on.

Sanctuary had its economic implications, too. The problem of debtors has already been treated. But, then, there was the problem of the maintenance of sanctuary men. It is true that in many places where possible, they would provide for their own support. This was especially true of important personages. A poor man might do some work. Perhaps the friends of the refugee would come to his assistance. At any rate the great sanctuaries were faced with the problem of dealing with large groups within their bounds. There might be as many as fifty refugees in some of the larger

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1. Pollock and Maitland, op. cit., II, 590; I, 565-566.

sanctuaries.<sup>1</sup> There were fees to be paid at the sanctuary for registration and to the coroner for his work.

When a locality allowed a sanctuary man to escape or was judged negligent in not capturing him the town was fined. It was declared to be 'in mercy'. It is rather striking the number of times one meets this expression in the assize rolls.<sup>2</sup> Protest about this would be in order even if the amount were not too pressing. In a large center like London the frequency of recourse to sanctuary would aggravate the situation.

A political fugitive enjoyed sanctuary though in many cases he enjoyed it under trying circumstances. Still the institution thus came to confront the great men of the state on matters about which they would, naturally, be most sensitive. Quite aside from the personal reaction of some monarch as he saw a rebel, quite liable to a conviction for treason, thus escape his hands, there would, again, be the public reflections of such matters. So and so

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1. Cox, op. cit., p. 72: In 1532 there were fifty life prisoners at Westminster. Catholic Encyclopedia, 1907, II, 376d, under Beaulieu Abbey: "Shortly before the suppression of the monastery in 1539, the Visitor's report mentioned that 'thirty-two sanctuarymen, who were here for debt, felony, or murder,' were living within the monastic precincts with their wives and families."
  2. Mazzinghi, op. cit., pp. 35-40.

had escaped the king's action. The political stature of the church was thus enhanced. No doubt, at times, **there** was a certain general satisfaction in seeing some popular figure elude royal justice. However, such cases also plunged the church into numerous situations charged with the most energetic passions of men.

And that is a cardinal point. Sanctuary was another one of those ecclesiastical influences which had grown up quite legitimately, but which, nevertheless, kept the church embroiled in many affairs of which some would not be to savoury. At times, it must have been difficult for the ordinary person to grasp the distinction which allowed a basis for refuge, in spite of the church's insistence on the necessity of keeping one's plighted word or rendering justice. Indeed, sympathetic people quite capable of judging sometimes felt that there must be, on occasion, abuses.

Any ambitious monarch with absolutist tendencies would turn his attention to this institution. It was a visible, concrete denial of his absolutism. A Henry might declare himself the head of the church in England, for a long time leaving the ordinary man relatively unaware of any fundamental change. But uproot the right of sanctuary and it becomes clear to all that the powers of control are shifting into other hands. Indeed, it was just that concrete simplicity of the institution which made it so

desirable in the early stages of western Europe before NOTIONS of justice came to supplant the material SYMBOLS on which a simpler society depended.

## 2. Estimates.

It has been quite usual for English writers on the subject of sanctuary to quote Hallam's evaluation of the institution:

"Under a due administration of justice, this privilege would have been simply and constantly mischievous, as we properly consider it to be in those countries where it still subsists. But in the rapine and tumult of the middle ages, the right of sanctuary might as often be a shield to innocence, as an impunity to crime. We can hardly regret, in reflecting on the desolating violence which prevailed, that there should have been some green spots in the wilderness, where the feeble and persecuted could find refuge. How must this right have enhanced the veneration for religious institutions! How gladly must the victims of internal warfare have turned their eyes from the baronial castle, the dread and scourge of the neighbourhood to those venerable walls, within which not even the clamour of arms could be heard, to disturb the chaunt of holy men, and the sacred service of the altar." <sup>1</sup>

Another observer has framed his thoughts as follows:

"The sanctuaries of medieval Christendom may have been necessary remedies for a barbarous state of society, but when the barbarism, of which they form a part disappeared, they became almost unmixed evils; and

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1. Hallam, Henry, State of Europe During the Middle Ages, 4th ed., London, 1869, c. 9, pt. 1, p. 605.

the national school, and the Westminster hospital which have succeeded to the site of the Westminster sanctuary, may not unfairly be regarded as humble indications of the dawn of a better age." 1

Mazzinghi seems to have rendered a more mature judgment:

"Before we destroy we should at least consider and weigh what we propose to do, lest in pruning the luxuriant or decayed, or diseased branches, we lop not those that bear precious fruit. The legislators of the sixteenth and seventeenth centuries in interfering with chartered sanctuaries, did not approach their work with due calmness or exact discrimination, after a period of vacillation, or partial reform, and of re-enactments, they cut away the entire tree; with what result? There was no longer any distinction between the dishonest and the unfortunate debtor. The quality of a political offence or of a criminal act was left to the harsh letter of an indiscriminating, often a cruel and barbarous law, and the innocent and the guilty were alike confounded in the penal consequences of the imputed crime. Even, where the offence was clear, there was no longer the merciful privilege of the sanctuary which could interpose to mitigate the excessive or disproportioned penalties attached by the law to a conviction." 2

In spite of the tolerant tone of these estimates they seem a bit smug and complacent. A modern writer treating of the subject in a half-playful vein seems to have come nearer to the truth. 3 The institution, as has been seen, had to deal with debtors and all sorts of felonious people. It existed in an age of severe punishments

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1. Stanley, op. cit., p. 379.

2. Mazzinghi, op. cit., pp. 106-107.

3. Glenn, Garrard, The Light of Sanctuary, in Virginia Quarterly Review, Vol. 12, 1936 (Jan. to Oct.) pp. 500-514.

and heavy rates of interest. In England one finds what is equivalent to an abrupt termination of the privilege in the sixteenth century. It was some three hundred years before modern laws took serious cognizance of the excessive punishments in vogue, the conditions of jails, the lot of the debtor. Even today the cry against rates of interest is not completely hushed.

At present the use of capital punishment is relatively rare. One cannot now find two hundred offences punished by death. Even the use of the lash is unknown in some places. Certainly no one advocates the severance of a hand, the pouring of hot lead into the ears of an offender as a punishment. Yet these were the things that sanctuary, at various stages, primarily prevented. It sought to preserve the life and members of the refugee. In the present day imprisonment for debt has been discarded. Yet it was precisely that that sanctuary in its latter centuries in England sought to do. At the worse, even in fourteenth century England, there were statutes that would have made it possible to prosecute fraudulent debtors. One might well ask whether the modern laws on bankruptcy are not much more lenient than sanctuary itself was. The refugee in sanctuary was subject to the confiscation of his goods. The modern felon does not undergo as much.

Today the parole system allows at large on an even freer scale many of the convicted, not merely the accused. Sanctuary, as its very best or worse, comprised the element of punishment found in confinement. This may account for the great numbers that took the oath of abjuration even in the chartered sanctuaries where they might have remained with impunity for a lifetime.

In the modern penal system which has, at least, made an attempt in the direction of reform rather than simple vindictiveness one still finds the provision of chaplains in jails. They enjoy considerable freedom of action. Is it too much to suppose that the proximity to religious influence must have wrought some rather remarkable changes of life in even some of the least deserving who sought sanctuary?

Little wonder, then, that a writer notes that the idea of sanctuary governs us today though veiled in modern terminology and "certainly, as to an understanding of the delinquent, whether criminal, cheat, or landlord, our remote ancestors showed an insight that was surprisingly modern."<sup>1</sup>

On the continent though in an ever weaker fashion the institution persisted in some places even into the nineteenth century. A continental judgment on the institution is probably one of the most balanced:

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1. Glenn, Garrard, op. cit., p. 514.

"La fonction historique de l'asile a été de favoriser la paix. Entre les groupes familiaux, d'abord, que l'asile pouvait préserver des excès de la vengeance privée; entre les groupes féodaux, dont il contrariait les guerres privées ... Par la défense qu'il offre à l'individu sans protection: esclave, débiteur insolvable, vaincu, délinquant, le droit d'asile a corrigé en quelque mesure la rigueur des lois et préparé leur adoucissement. C'est un privilège qui fut onéreux à l'Eglise et, en fin de compte, profitable à la société civile, malgré les graves abus auxquels il donna lieu." <sup>1</sup>

From practical life sanctuary has disappeared in the fullness of its old historical meaning. But it is interesting to note that the principle still remains enshrined in the church's canon law. "A church enjoys the right of asylum, so that guilty persons who take refuge in it must not be taken from it, except in case of necessity, without the consent of the Ordinary, or at least of the rector of the church." <sup>2</sup> It is interesting to note, also, that in this form the right of asylum was incorporated into the Lateran Concordat of 1929. <sup>3</sup> It is ready to come to life again should the need arise, the circumstances reoccur.

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1. Le Bras, op. cit., dans le Dictionnaire d'Histoire et Géographie Ecclesiastiques, t. IV, c. 1047.
  2. Canon 1179. Trans. from Canon Law, T. Lincoln Bouscaren and Adam C. Ellis, Milwaukee, 1946, p. 591.  
"Ecclesia iure asyli gaudet ita ut rei, qui ad illam confugerint, inde non sint extrahendi, nisi necessitas urgeat, sine assensu Ordinarii, vel saltem rectoris ecclesiae."
  3. Misserey, L.R., op. cit., dans Dictionnaire de Droit Canonique, t. I, c. 1103.

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