

BIBLICAL INFLUENCES ON THE MEDIEVAL AND EARLY MODERN ENGLISH LAW OF SANCTUARY

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In Act Three of Shakespeare's *King Richard III* the Duke of Buckingham asks Cardinal Bouchier to try and persuade Elizabeth Woodville to release the young Duke of York from sanctuary at Westminster. In the event of such tactics failing, Buckingham wishes Lord Hastings to accompany the Cardinal to Westminster and '... from her jealous arms pluck him perforce.' The Cardinal's initial reaction is one of horror:

'... if she be obdurate
To mild entreaties, God in heaven forbid
We should infringe the holy privilege
Of blessed sanctuary! not for all this land
Would I be guilty of so deep a sin.'¹

Subsequently, Cardinal Bouchier is easily convinced that seizing the Duke in these circumstances would not constitute a breach of sanctuary. Nevertheless, his first words may be seen as reflecting the remarkable measure of respect and honour that had been accorded to the privilege throughout the medieval period.

Intrinsic to this revered position sanctuary had held was an awareness of the ancient origins of the privilege. Historians have emphasised the influence of pagan notions of asylum on the English institution.² Amongst such pagan uses were those of ancient Rome. Legend suggests that Romulus provided the Palatine Hill as a sanctuary.³ The Emperor Antoninus Pius (138-161 AD) enacted that a cruelly treated slave should be allowed to take asylum at the statue of the emperor or in a temple. The magistrate was bound to consider the relevant circumstances and if he thought necessary, order the slave to be sold, so that he did not return to the cruel master.⁴ Undoubtedly pagan uses of asylum, in the Greek and Roman civilizations and amongst peoples such as the Vikings were influential on the notion of sanctuary developed in England but it may be suggested that an additional and perhaps more pervasive role was played by the Old Testament concept of sanctuary.

The form of sanctuary described in Exodus XXI and Numbers XXXV may be seen as influential on both the use made of sanctuary in medieval England and the nature of the reforms of the institution made in the sixteenth century. Provision of sanctuary is part of the law the Lord gave Moses for the Israelites in Exodus XXI.12:

'Whoever strikes a man so that he dies shall be put to death. But if he did not lie in wait for him, but God let him fall into his hand, then I will appoint for you a place to which he may flee.'⁵

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1. SHAKESPEARE, *King Richard the Third*. Act III Scene I.
 2. Sir W. HOLDSWORTH, *A History of English Law*. Vol iii (1936) Methuen and Co 303. THORNLEY, I D. 'Sanctuary in Medieval London'. (1933) NS Vol XXXViii *Journal of the British Archaeological Association* 293.
 3. N. M. TRENHOLME, 'The Right of Sanctuary in England', (1903) Vol i part 5 *University of Missouri Studies*. 3.
 4. W. W. BUCKLAND, *The Main Institutions of Roman Private Law*. (1931) Cambridge University Press 41.
 5. *The Oxford Annotated Bible with Apocrypha*. Revised Standard Edition. (1976) Cambridge University Press.

Numbers XXXV records that the Lord told Moses and the Israelites to select places to act as cities of refuge once they had crossed the Jordan into Canaan. The command is repeated in Joshua XX and the cities are named as: Kedesh in Galilee, Shechem in Ephraim, Hebron in Judah, Bezer in Reuben, Ramoth in Gilead and Golan in Bashan. Where the assembly found that the killing had been unintentional:

‘. . . if he stabbed him suddenly without enmity, or hurled anything on him without lying in wait, or used a stone, by which a man may die, and without seeing him cast it upon him, so that he died, though he was not his enemy, and did not seek his harm. . .’

the killer would not be handed over to the nearest relation of his victim to be slain. Instead he was to be allowed sanctuary in one of the cities of refuge. He had to stay within the boundaries of the city until the death of the high priest, after which he could return to his home. If in the meantime he ventured out he could be slain by the avenger of the blood.

Parallels may be drawn between the Mosaic and medieval English notions of sanctuary. As Professor John Baker has described in a previous article in the *Ecclesiastical Law Journal*, there were two kinds of sanctuary in England.⁶ ‘General’ or common sanctuary pertained to any consecrated church or chapel. An accused person could shelter in the church for forty days. If he called the coroner and confessed his crime he could then abjure the realm, supposedly never to return. ‘Special’ sanctuary did not have this element of abjuration attached to it. These sanctuaries, such as Westminster, received their privileges from grants from the Crown or pope. Once at a chartered sanctuary a fugitive could confess his sins and would be allowed to remain there for the rest of his life. There are obvious similarities between these chartered sanctuaries, constituting specially appointed places of safety within which the fugitive was supposed to remain, and the ancient cities of refuge. The rule in Mosaic law that protection is lost if the fugitive leaves his city may be seen reflected in the medieval idea that an abjurer roaming from his designated path to his port was an outlaw. In 1276 John Westfield fled from the road when he was supposed to be heading for Dover. He was followed and beheaded by the township of Houghton.⁷ Even where the abjurer kept to his path he was still considered dead in law from the moment of his abjuration oath.⁸ Under the Mosaic law the fugitive had to await the death of the high priest before he could leave the city. The waiting for the death of the high priest was for atonement purposes. In Israel the nearest male relation of a victim had a duty to ensure the death of the killer. Even where the killer took sanctuary there was still a need for a second death. However, this could be the death of a ‘representative sacred figure’ which would negate the ‘blood guilt’.⁹ Possibly, the circumstances of abjuration by which the felon became dead in law, his lands escheating to his lord and his goods to the Crown, were seen as fitting compensation in the same way that the death of the high priest symbolically paid the debt.

The most interesting contrast between Mosaic and medieval sanctuary, aside from abjuration, was the availability of the privilege. In the Old Testament asylum is for unintentional murder. The medieval institution provided sanctuary for all manner of offences apart from sacrilege, but more importantly the privilege was granted regardless of the sanctuary seeker’s intent when he had committed

6. J. H. BAKER, ‘The English Law of Sanctuary’. (1990) 2 *Ecclesiastical Law Journal* 8.

7. C. GROSS, (ed) *Select Coroners Rolls AD 1265-1413*. (1895) Vol. 9 Selden Society 37.

8. J. H. BAKER, (ed) *Spelman’s Reports*. (1977) Vol. 94 Selden Society 337.

9. J. STURDY, *Numbers*. *Cambridge Bible Commentary*. New English Bible. (1976) Cambridge University Press 242.

his act. When on 4th January 1486, Thomas Smalwode confessed in the churchyard at Battle in Sussex, that he had killed a man named Martyn on the outskirts of Colchester at Whitsun, John Bokeland the coroner had no interest in whether Thomas had intended to kill Martyn or not. Thomas took the abjuration oath and Bokeland assigned him the port of Winchelsea from which to begin his journey abroad.¹⁰ The absence of a distinction between fugitives who had killed intentionally and those who had not in the context of sanctuary seeking was an inevitable result of the victim based approach to homicide that had existed in medieval times. The important questions all centred around the victim's position when he died, whether he died as a lawful free man, not on the fault element in the defendant's behaviour.

The extensive use made of sanctuary for a variety of purposes was one of the aspects of the medieval privilege criticised by John Wyclif in the fourteenth century. A violation of sanctuary at Westminster Abbey which had ended in the death of two sanctuary seekers, Shakel and Hauley (who had apparently been chased twice round the chancel before being killed in the quire), precipitated a great debate of Westminster's privileges when parliament met at Gloucester in 1378. Wyclif spoke at Gloucester but his involvement there was only part of a continuing campaign against the privilege extending to work in his pamphlet *De Officio Regis*. At this early stage Wyclif argued that the cities of refuge of the Old Testament had only been for accidental murder and that the clergy's defence of these 'wordly privileges' could only turn their minds from their proper duties.¹¹

As Professor Baker has described, the many abuses of sanctuary were not effectively tackled until the Tudor period.¹² The abuses were manifold; manipulation of sanctuary for political purposes, the use of chartered sanctuaries as safe houses for bands of thieves and robbers and the shelter offered to debtors. Debtors often used sanctuary to cheat their creditors by giving away property to friends and then taking refuge until their creditors accepted a small sum in lieu of the debt. The fact that sanctuary was being put to ends for which it was never intended was used as a force for reform. The case involving Sir John Savage in 1516 signalled the direction to be pursued. Professor Baker refers to Henry VIII's statement in this case:

I do not suppose that St. Edward, King Edgar, and the other Kings and holy fathers who made the sanctuary ever intended the sanctuary to serve for voluntary murder and larceny done outside the sanctuary in the hope of returning, and such like, and I believe the sanctuary was not so used in the beginning. And so I will have that reformed which is encroached by abuse, and have the matter reduced to the true intent of the making thereof in the beginning.¹³

Some of the reforms Henry was to make appear to have drawn the institution of sanctuary closer to the Old Testament concept. They were to include measures to abolish abjuration and chartered sanctuaries and replace them with designated places of refuge, and restrictions on the scope of sanctuary, notably with regard to voluntary murder.¹⁴

10. Huntingdon Library BA Vol. 5 East Sussex Record Office Ref XA ¾.

11. G. M. TREVELYAN, *England and the Age of Wycliffe*. (1909) Longman and Green 95.

12. BAKER, *The English Law of Sanctuary*.

13. BAKER, *Spelman's Reports*, p. 343

14. In 'Hamlet and the Law of Homicide', (1984) 100 *Law Quarterly Review* 282, T. G. Watkin has explored the shift from victim based liability in medieval times to a defendant based approach to liability in the sixteenth century. Henry's attack may be viewed in the context of such developments. With homicide, voluntary murder is to be distinguished from other killings. If accidental killings were to have no guilt attached to them and cases of manslaughter were to be eligible for benefit of clergy, the protection afforded for the remainder through sanctuary may well have seemed unjustifiable.

Amidst the anti-clericalism of the Reformation Parliament, the attack on sanctuary began in earnest in 1529. A series of Acts successively curbed the privilege. The Act of 1530 ended abjuration from the realm.¹⁵ A sanctuary seeker at any ordinary church had to confess before the coroner, swear his oath and be branded before being escorted to a chartered sanctuary. If he committed any further felony within or outside the sanctuary there were powers to have him taken out and put in gaol. Under the new procedures all sanctuary seekers should have ended their days within the boundaries of a chartered sanctuary. The differences the provisions made to a fugitive are illustrated by some of the Sussex cases R. F. Hunnisett has studied from this period.¹⁶ In the summer of 1532 William More, a 'maryner' from Bristol, took sanctuary at the Church of the Nativity of St. Mary in Lancing. William confessed to being a felon and a thief. He had killed a man at Great Yarmouth by hitting him over the head with a 'botehoke' on 18th July and on 3rd August he had broken into Simon Combes' house in Lancing and stolen a violet coat and a knife. As abjuration was no longer an option, William chose to go to the chartered sanctuary at Beaulieu Abbey. He took his oath, was branded and escorted to Beaulieu by a constable of Brightford.

The major attack on sanctuary came in the Act of 1540 under the guidance, at least in the initial stages, of Thomas Cromwell.¹⁷ The 1540 Statute extinguished most sanctuaries other than parish churches. A fugitive would be allowed to remain in a church for forty days or until the coroner reached him. He was then to abjure to a designated place, as opposed to a chartered sanctuary, accompanied by a constable. The eight designated places were: Wells, Westminster, Manchester, Northampton, Norwich, York, Derby and Lancaster. Each place was to be allowed to shelter twenty persons. If it had filled its quota the sanctuary men had to be moved on to another place. These eight appointed privileged places could be compared to the six chosen cities of refuge. More importantly the Act placed severe restrictions on the offences for which the immunity could be available, curtailing the scope of the privilege considerably. Sanctuary was not to be available to any person who had committed wilful murder, rape, burglary, robbery on a highway, house or church, or arson.

As Professor Baker has written, '(t)hough sanctuary was to linger on into the next century, it was effectively stifled by this act of 1540.'¹⁸ Between 1540 and 1624 there were further reforms but these are of limited significance.¹⁹ The important changes had occurred during Henry VIII's reign and subsequent use of sanctuary was mainly on the part of debtors. Historians have identified a variety of influences upon the notion of sanctuary in England at different stages in its existence. The Old Testament concept is but one of these influences but it can be viewed as an important and pervasive one. It would appear to have been one basis for the form sanctuary took in medieval England, for criticisms that were made of sanctuary during the medieval and early Tudor period and finally for the reforms of the sixteenth century which in the long term suffocated the whole institution.

15. 22 Henry VIII 1530 c. 14.

16. R. F. HUNNISETT, 'The Last Sussex Abjurations', (1965) 102 *Sussex Archaeological Collections* 49.

17. 32 Henry VIII 1540 c.12.

18. BAKER, *Spelman's Reports* p.346.

19. A statute of 1624, 21 Jac. 28 c.7, abolished sanctuary.