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Chapter 1: Sanctuary for crime in the early common law

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Introduction

Around the year 1086, speaking through a royal charter attributed to him, William the Conqueror reminisced about his military victory over the English at the Battle of Hastings twenty years earlier and recalled, 'I made a vow then that if by God's grace we would be able to obtain victory I would construct a church to the honour of God.' Making good on this battlefield vow, William ordered the endowment of a church on the site and named it Battle Abbey in honour of the decisive battle by which he secured the English crown. As was customary in such charters, the king then proceeded to enumerate a list of liberties that the abbey could claim against royal justice. Last in the list was the following: 'If any thief or homicide or other guilty person flee from fear of death to this church, let him not be harmed, but let him be released wholly free' (Davis 1913: charter no. 62). With these words King William conferred upon the church at Battle Abbey the right to serve as a sanctuary for criminals who might take refuge within it. Three points should be noted immediately. First, the specific articulation of sanctuary rights in the charter was superfluous because any consecrated church in England, and indeed throughout medieval Christendom, was understood to provide sanctuary to fugitive criminals, regardless of whether or not the right had been granted by a specific royal act. Second, and much more important for our present purposes, the royal charter is spurious. It was forged nearly a century after William's death, probably in the 1170s, by monks at Battle Abbey who sought to secure a raft of privileges against the crown by resting them upon William's imagined grant (Searle 1980: 17– 23). But like all forgeries produced with any hope of success, the charter put assertions into William's mouth that rang with plausibility to contemporaries. The image of a heroic king, flush with victory and Christian piety, announcing that a criminal would be free from harm if he fled to the church provided the monks with an effective vehicle by which to authenticate the privileges they hoped the crown would honour. The monks were not merely attempting to secure sanctuary protections through a forged charter. Rather, they invoked a royal grant of sanctuary in their charter in order to create a more convincing forgery. Seen in this light, the forged Battle Abbey charter prompts an important observation: the expectation that a murderer or thief could find escape from punishment by fleeing to a church and claiming sanctuary was so replete within twelfth-century England that royal recognition of it could be used to manufacture authenticity in a forged charter. Nor was medieval English law exceptional in its regard for sanctuary. At the time the monks at Battle Abbey forged this charter in the late twelfth century, they might have noted that sanctuary for criminals had been attested not only in centuries of ecclesiastical legislation, but also in centuries of Anglo-Saxon and Frankish royal legislation, as well as in late imperial Roman law. To these legislative examples one might add the myriad instances of sanctuary for crimes that had been described in patristic letters, chronicles, and saints' lives. The monks at Battle

Abbey had good reason to pin their forgery to the image of a sanctuary-granting king (Shoemaker 2011: 8– 37). The forged charter evoked a pleasing confluence of royal and ecclesiastical power, reminding its audience that good Christian kings looked favorably on sanctuary protections for fugitive criminals. Finally, a third point requires emphasis. The sanctuary contemplated by the Battle Abbey charter, and indeed by medieval sanctuary law as a whole, was specifically aimed at protecting avowed criminals, even (or perhaps especially) murderers and thieves. It was not intended to protect innocent fugitives, though it may on occasion have accomplished this. Sanctuary was for the guilty. The Battle Abbey charter serves as a useful introduction to medieval sanctuary law because it appeared at a crucial juncture in the life of sanctuary, particularly in England. For while sanctuary had been recognized in Anglo-Saxon law for centuries, procedural reforms instituted (or perhaps reinstated) by Henry II in the 1170s were about to bring sanctuary more squarely within the ambit of royal administration, domesticating sanctuary within the processes of the English common law (Shoemaker 2011: 112– 51). Once integrated into the common law procedures governing felonies, sanctuary survived for nearly four more centuries until it was all but abolished by legal reforms instituted under Henry VIII. The virtual abolition of sanctuary in the sixteenth century was a pan-European phenomenon, accomplished in Protestant and Catholic countries alike by a combination of royal, parliamentary, and papal decrees. Before examining the fate of sanctuary in sixteenth-century Europe, however, it will be instructive to explore the attempts by which early modern and modern historians have attempted to understand the development and eventual decline of medieval sanctuary laws.

Historians and sanctuary

How did the notion that criminals who fled to churches should receive impunity come to occupy such a central place in medieval European law? Why, in other words, would those who had committed the worst sorts of violence and depredation be singled out for special protections which were announced and enforced by Church and Crown alike? Since its abolition in the sixteenth century, sanctuary has attracted the attention of historians who sought to explain its ubiquitous presence in medieval legal traditions. Sometimes, but certainly not always, these explanations could be mapped onto confessional differences. Some early modern Protestant scholars accused the medieval Church of smuggling pagan sanctuary practices into Christian law (Mattheas 1684, 1987– 94: 4, 632). Samuel Pegge, for example, denounced ancient ‘Christian leaders, from whom we might expect the best’ for recklessly ‘transferring all of the privileges and immunities of the Heathen temples ... onto the Christian churches’. Sanctuary laws consecrated in the ancient sources, Pegge continued scathingly, were born from a pagan propensity for ‘blind reverence and devotion’ and rested upon ‘a mistaken and ill-judged veneration for fabrics, and altars, and the saints’ (Pegge 1787: 1). Such arguments were often a response to attempts by some early modern canon lawyers to ground sanctuary in reason or divine law, as opposed to ancient pagan superstitions. For example, sixteenth-century Italian canon lawyer Jacobus Menochius acknowledged that sanctuary privileges could be found among pagan peoples, but then asked rhetorically: ‘If even the *ius gentium*’ recognized sanctuary, ‘how much more should these immunities be bestowed upon the churches of God?’ (Menochius 1695: 298). Despite such attempts to ground sanctuary in divine law, however, by the late sixteenth century even the papacy was working to restrict the scope of sanctuary law by drastically limiting the sorts of crimes for which one could claim sanctuary (Shoemaker 2011: 172). Interestingly, whatever they thought of its origins, jurists and historians of all stripes largely held the end of sanctuary to be a good thing. Scholarly descriptions of medieval sanctuary law often veered into litanies of the evils it visited upon society. On account of sanctuary, ‘the strong,

the swift, the premeditating murderer cheated the gallows' (Maitland and Montague 1915: 71). In sum, sanctuary was an 'error ... costly to the civilized community, in that wrongdoing was protected' (Trenholme 1903: 96). From its infancy, criminology agreed. Beccaria concluded that 'places of asylum invite to crime more than punishments influence against it' (Beccaria 1986: 92). By the early modern period, not only had sanctuary come to be identified with injustice, but it was also credited with encouraging more crimes. Just as detrimental was sanctuary's infringement upon the province of the sovereign and its laws. 'Within the borders of a country there should be no place independent of its laws', and 'to multiply such places of asylum is to create so many small sovereignties ... where laws have no say' (ibid.: 92). With the end of sanctuary, 'we may see more clearly from what a fruitful source of outrages we are freed by the laws obtaining in all cases their natural and uninterrupted course' (Pegge 1787: 2). The abolition of sanctuary, then, was heralded as a hallmark of progress. In the modern age, 'under a due administration of Justice', sanctuary can only be 'simply and constantly mischievous' (Hallam 1818: 2, 449). One nineteenth-century writer asserted that 'the more the administration of laws improved, and the less imperfect was the system of laws which they had to administer, the fewer the instances of resort to sanctuary' (de Mazzinghi 1887: 101). Indeed, if due process and a fair trial were guaranteed, 'sanctuary was a public nuisance' (Maitland and Montague 1915: 70). Its 'abolition was a measure calculated to advance the interests of justice and morality in the land' (Trenholme 1903: 98). For 'with the advent of a well-organized judiciary and even-handed justice, sanctuaries and asylums became places of escape rather than refuge' (ibid.: 1). The triumph of the rule of law was thought to have rendered sanctuary detrimental to the public good. The uniform judgment of nineteenth- and early twentieth-century historians confirmed these opinions. For historians, sanctuary laws thrived in the Middle Ages because structures of law enforcement were weak and unorganized, leaving the field to violent bloodfeuds or, on occasions where wrongdoers were actually apprehended, to the overwhelming cruelty of royal punishments. In this lawless welter, historians saw sanctuary laws providing 'some green spots in the wilderness, where the feeble and the persecuted could find refuge' (Hallam 1818: 2, 449). 'The sanctuaries of medieval Christendom' were a stopgap measure – 'necessary remedies for a barbarous state of society' (Stanley 1861: 414). Indicative of 'all rude ages', sanctuary was thought to have 'substituted impartiality for prejudice' and 'mitigated the ferocious punishment' (de Mazzinghi 1887: 102). Examples could be multiplied, but the gist is clear. Without 'a universally competent public justice, where neither the general peace nor protection of the individual was well assured, and where common respect for sacred things preserved certain edifices and certain districts from acts of violence', sanctuaries flourished (Le Bras 1930: 1035). On the other hand, 'strong political power assured the order and restraint of asylum' (Timbal 1939: 454). Recent scholarship has moved beyond assessing the utility of sanctuary for weak states. For example, Gervase Rosser has noticed that medieval sanctuary flourished not only in periods of relative disorder and violence but also in periods of relative stability and strong governance (Rosser 1996: 61). In addition, William Jordan has recently cautioned against 'reading the medieval history of sanctuary from the early modern assault on it', helpfully recognizing the extent to which early modern juridical accounts of sanctuary established the parameters of the historical accounts (Jordan 2008: 17). An essay by Richard Helmholz sets sanctuary law within its internal juridical context, showing how medieval sanctuary provides fertile ground for exploring how medieval canon lawyers developed rules to administer it (Helmholz 2001: 22). If we recall for a moment the creative forgers at Battle Abbey, it is clear that they considered sanctuary to be both an expression of strong, pious kingship and an integral feature of a just legal order.

Sanctuary and good kingship

Therefore, it is worth considering in more detail the historical conditions under which our forgers thought it significant to have William the Conqueror pronounce sanctuary protections for their church. For one thing, by the late twelfth century, William, despite being a conqueror, represented legal continuity with Anglo-Saxon rule. William had, after all, claimed the English throne by right of succession, not sheer conquest. The policies articulated in William's authentic post-Conquest charters and often repeated in twelfth-century Anglo-Norman legal collections favoured confirmation of the old laws and customs of England. William the Conqueror himself oversaw an ecclesiastical council in Normandy in 1080 which gave attention to the preservation of sanctuary law (Vitalis 1968– 80: 5.5). The image of sanctuary-respecting kings was sufficiently powerful that William I's son, King Henry I, explained to Pope Calixtus II that he had invaded Normandy in 1106 because he had heard reports of frequent sanctuary breaches there. He thought he could justify his actions to the Pope by reference to his desire to protect sanctuary rights (ibid.: 6.12). Twelfth-century English legal collections consistently credited old kings with promulgating laws that protected criminals who fled to churches. The so-called *Leis Willelme* affirmed sanctuary in its very first chapter, immediately following the prologue: 'Concerning some misdeed that a man has done, if he is able to come to a holy church, he shall have peace of his life and his limbs' (Liebermann 1903– 16: 1, 498). The *Leis* were not promulgated by William. They were compiled (and created) by twelfth-century scribes who knew, or guessed, what the laws of William should have looked like (Wormald 1999: 410). Such collections, which proliferated in the twelfth century, consistently emphasized sanctuary to be chief among the legislative acts that gave old kings their proper kingly attributes. The early twelfth-century *Laws of Edward the Confessor* provide similar evidence. Their fifth chapter provided that only a bishop or his ministers could remove one guilty or accused of a crime who had fled to a church (Liebermann 1903– 16: 1, 630). The sanctuary articles in the *Laws of Edward*, consistent with twelfth-century canon laws, also extended sanctuary protection to the house of priests, not just the church itself (ibid.). At the same time, the *Laws of Edward* commanded thieves who fled to sanctuary to return what they had stolen or to make restitution from out of their own goods (ibid.). They also provided that those we might today call recidivists, those who took frequent recourse to sanctuary, were to 'foreswear the province and never return' (ibid.). If such a repeat offender did return from exile, the laws declared: 'let no one presume to receive him' except by consent of the king (ibid.). It has been observed that the sanctuary provisions in Edward's laws bore more similarity to the canons of Frankish church councils than to pre-Conquest Anglo-Saxon sanctuary laws, but the important point conveyed by the text to the twelfth-century reader was that King Edward stood firmly in favor of sanctuary (O'Brien 1999: 65– 70). In fact, although the *Laws of Edward* sometimes betrayed considerable ignorance of Anglo-Saxon law in the time of Edward, portions of them have been considered to 'derive from [twelfth-century] experience' (Wormald 1999: 410). Such developments were not peculiar to England. Traditions of sanctuary-granting kings circulated on the Continent as well. Some were factual, such as when Charlemagne introduced sanctuary legislation to the Saxons shortly after finally subduing them and forcing their conversion to Christianity in the 770s (Shoemaker 2011: 73– 4). Others were apocryphal (though no less important on that account), such as the sanctuary legislation Roman Emperor Constantine was reputed to have issued in honour of his conversion and baptism (ibid.: 33). Whether they were aware of these precedents or not, twelfth-century English monks and legal compilers continually reminded English kings of how attentive their predecessors had been to sanctuary law. In this way, they emphasized to English kings that giving homicides and thieves a place to claim sanctuary was a pious and noble act, an expression of a particular

form of kingly power that proved to be incredibly persistent. Far from a concession in the face of inept governance, sanctuary was understood in the twelfth century as an attribute of good kingship.

Sanctuary and the English common law

It was perhaps partly because of these reminders that when Henry II implemented his sweeping reforms of English criminal procedure in the 1160s and 1170s, sanctuary was brought securely within the ambit of royally defined legal process, at the same moment when other jurisdictional privileges were targeted for restriction (Shoemaker 2011: 102–3). Under policies which were solidified in the late twelfth century, sanctuary-seekers were required to identify themselves to royal officials and acknowledge the felony for which they had fled as a condition of receiving sanctuary. This was accomplished by charging the coroner, a royal office instituted in 1194, with the task of enrolling the name and the possessions of each sanctuary-seeker. After enrolling the offender and his felony, the coroner was required to administer an abjuration oath to the sanctuary-seeker. The abjuration oath was a solemn vow to leave England, with no hope of return without explicit royal permission. Abjuration oaths had been used occasionally for malefactors in early twelfth-century English law, but by the 1190s they were an integral feature of English sanctuary law. Typically, each sanctuary-seeker was required to choose a seaport from which to leave England within the space of 40 days. Although the documentary records of Henry's reforms at Clarendon and Northampton say nothing about sanctuary explicitly, thirteenth-century treatises paint a detailed picture of the sanctuary and abjuration process that had emerged in the common law. The early common law treatise Britton, for example, offers an oath that combined the confession of felony with the promise to abjure the realm: Hear this, coroner and other good people, that I, for such act that I did feloniously or assented to do, will go out of the realm of England ... and never will I return unless by consent of the king or his heirs, so help me God and the Saints. (Nichols 1865: c. 17)

Rather than always being freely chosen, the plea rolls occasionally show coroners or others assigning the port from which the sanctuary-seeker was to depart (Hunnisett 1958: 41–2). According to Britton, abjurors then were required to don the garb of a penitent exile or crusader and travel 'with a wooden cross in their hands, unshod, ungirt, head uncovered and in their tunic only' (ibid.). Abjurors were to keep to the main highways until they reached the port and sailed away from England, never to return without royal permission. A case that came before royal justices sitting in Berkshire in 1241 nicely illustrates how sanctuary had come to operate within the common law in the thirteenth century. Some time before 1241, and for reasons that are not stated in the record, Richard le Vacher and John Dobyn had come to the home of Matilda la Daye and killed her. Afterwards, they fled to the Church of St. Laurence in Reading. There, they claimed sanctuary, acknowledged their felony before two of the king's coroners, and, in exchange for safe passage and immunity from prosecution, abjured the realm of England. John and Richard appear to have left the church separately, for as John travelled out of Reading, Matilda's two daughters pursued him raising the hue and cry so that John was soon captured by villagers and taken to nearby Charlton. After being tried by the bailiff and men from Charlton and the surrounding hundreds, John was hanged. ¹ When the eyre came to Berkshire in 1241, the royal justices were informed of these events by twelve jurors from the nearby hundreds of Charlton. The first matter the justices inquired about was why a man who had claimed sanctuary and abjured the realm before two of the king's coroners had been captured, tried for felony by a hundred court, and hanged. The jurors attempted to explain the events by claiming that John had only 'abjured the fee of the abbot' of the Church of St. Laurence, not the realm of England, implying thereby that the abjuring felon was not

protected once he left the abbot's jurisdiction. It appears that the eyre court was suspicious of this explanation, because the plea roll contains an interlinear addition in which one of the justices' scribes remarked that this account was 'according to what is testified by the jurors'. The coroners who administered the abjuration oaths offered a different account, claiming that John had 'abjured the realm of England', and was therefore illegally seized and executed. Because the jurors had misrepresented the facts of John's abjuration in their testimony, they were fined, as were the bailiffs and hundreds that had illicitly hanged John. Richard le Vacher avoided the summary justice that John had received. Although he was apparently also captured after abjuring from the church, he was still alive and in custody when the eyre justices arrived. He was brought before the eyre justices where he elected to stand trial and was acquitted of the felony and allowed to go free (NA, JUST/ 1/ 37/ 33r). As the records of the thirteenth-century common law show, men and women of all stations and trades, nameless wanderers, and occasionally clerics took sanctuary for all sorts of felonies. At any given eyre visitation, scores of suspected or accused homicides, thieves, and other malefactors were entered in the rolls as having 'fled to the church, acknowledged the felony, and abjured the realm'. For example: 'Two malefactors fled to the church at Haliwell. It is not known where they were from, nor are their names noted. At the church they acknowledged thefts and abjured the realm' (NA, JUST/ 1/ 951A/ 3r). Or, 'a certain William and Radbert, under suspicion of wrongdoing, fled to the church, acknowledged thefts, and abjured the realm. They were strangers' (NA, JUST/ 1/ 951A/ 5d). Or again: 'two men and two women stole bread in the village of Ballingsbury, fled to the church, acknowledged the theft, and abjured the realm' (NA, JUST/ 1/ 229/ 14r). Husbands and wives sometimes took sanctuary and abjured the realm together. On the other hand, Edith fled to the church, confessed to killing her husband, and abjured alone (NA, JUST/ 1/ 4/ 30d). Gernasius, who had assisted Edith in the killing, fled as well, but not to a church, so he was outlawed (*ibid.*). Infrequently, women abjured alone; more often, they did so with company (Shoemaker 2011: 124). When 'Greta who was the wife of Walter Russel put herself in the church' and abjured, 'the jurors testified that Angus of London, Alicia his consort, William Potter, and Henry of Winton' abjured as well (NA, JUST/ 1/ 60/ 29r). It may be that coroners consolidated abjurors when they arrived at a church to take acknowledgement of felony, assigning a single port to all the sanctuary-seekers who had arrived at a church since the last batch had been dispatched. Fathers and sons sometimes fled to sanctuary together, as did brothers, and occasionally entire bands of marauders (Shoemaker 2011: 123– 5). This system of sanctuary and abjuration worked fairly smoothly for several centuries.

Sanctuary and the new criminal jurisprudence

Medieval English law, unlike its early modern and modern critics, seemed relatively untroubled by the fact that sanctuary-seekers avoided the penalties otherwise specified for felons, namely execution. However, as early as the thirteenth century such concerns were beginning to trouble canon lawyers. Gratian's *Decretum*, a twelfth-century legal text which formed one half of the foundation of the medieval *Corpus Iuris Canonici*, specifically asked whether someone who claimed sanctuary should be prosecuted anyway. Some say if no one is able [to bring an accusation] crimes would remain unpunished: but this ought not be. For in this manner the privilege of the Church would be an occasion for much delinquency. On account of this some say that [the sanctuary-seeker] is able to be accused by anyone, lest in this way [sanctuary] permit impunity. ² Such comments reveal a theoretical tension that medieval canon law was never able to resolve. Canonists were simultaneously developing doctrines of deterrence that would eventually clash with the underlying logic of sanctuary and at the same time striving to protect ecclesiastical liberties like sanctuary. The tension was neatly evident when the King of

Scotland wrote to Pope Innocent III asking 'what should be done in regard to those who, perpetrating wrongs, flee to church so that, on account of reverence for the sacred place, they might succeed in evading due punishment?'³ Innocent's answer first harkened to ancient principles, 'According to the sacred canons and the civil law ... it must be distinguished whether the fugitive is a freeman or a servus.' Regarding servi, Innocent followed the rules that had survived from ancient Roman law: 'If a slave has fled to church, after his master has given an oath of impunity before the churchmen, let the slave be compelled to return to the service of his master, even unwillingly.' As to freemen, Innocent also began with the ancient principle: If free, no matter how grave a wrong he has committed, he is not to be violently dragged from the church, nor should he be condemned to death or punishment; but rectors of churches ought to strive to save the fugitive's life and members. Then, partially following the Decretum, Innocent added: 'Above this, however, what he has done iniquitously should be punished in some other legitimate way.' The text of the Decretum had actually said that, once the fugitive's life and members were secure, 'he should make composition for what he did iniquitously'. Innocent replaced composition with punishment. But the truly remarkable change Innocent worked came next, when Innocent added: 'That is, unless the fugitive was a public thief or destroyer of fields by night, who often had insidiously and aggressively beset public highways', explaining that 'for wrongdoing of this magnitude, which both impedes public utility and noxiously molests everyone, the fugitive can be extracted' so that he does not succeed in gaining impunity.⁴ This was the direction the papacy continued to move in the fourteenth century. Noting the dangers that emerged in an age where the 'rod failed to correct', Pope Clement V ordered a bishop to remove a criminal from sanctuary in 1310 (Shoemaker 2011: 166). That the criminal had been complicit in a homicide may have sufficed under Roman law to remove him from the privilege, but Clement never invoked a rule excluding homicides from sanctuary and the papal court seems not to have applied a consistent policy in such cases. Instead, Clement stated that even though the sanctuary to which the killer fled was approved 'from ancient times', he was unwilling that crimes 'might remain unpunished' (ibid.). A decade later, Pope John XXII absolved Oddo, the duke of Burgundy, for seizing a cleric from an ecclesiastical immunity at Cluny. The duke had humbly explained that he had acted, not from 'contempt of the Church, but from zeal for justice' and made sure to catalogue the cleric's considerable misdeeds (ibid.: 166). It was now, in the fourteenth century, possible to justify breaching sanctuary, and to oppose sanctuary laws in general, by claiming a laudable 'zeal for justice'. Criticism of sanctuary consonant with the canonical critique began appearing in English sources by the end of the fourteenth century and with increasing frequency in the fifteenth century. In 1465, a complaint was lodged by the Commons to Edward IV that: Persons of diverse estates, resident both in the city of London and in its suburbs, as also from other parts of the kingdom ... flee with their masters' goods to the college of St. Martin le Grand in London with the intent of living there. (Shoemaker 2011: 168) Almost two decades later, and again to Edward IV, the Commons complained anew of the permanent character acquired by the chartered sanctuaries so that felons in them: daily depart and go out of the said sanctuaries doing treasons and robberies and felonies ... despoiling [people] of their goods ... [And then] they resort again to the said sanctuaries ... there living by the goods ... [and by this] many of your people [are] undone. (NA, C 49/ 40/ 10) Although Edward rejected the bill, the characterization of sanctuary as a cause for criminality, and the concomitant claim that reducing the scope of sanctuary would deter crime, stuck. A petition made to Parliament in 1483 furthered the critique, which had been initiated within canon law, that sanctuary-seekers 'be not sorry of their outrageous treasons, felonies, and other offences'. Instead, 'by occasion of the said sanctuaries they ... commit great or greater treasons, felonies, and other offences [than] ever they did before time' (NA, C/ 49/ 40/ 10). Not only

were sanctuary-seekers perceived not to regret their crimes, the existence of sanctuaries appeared to encourage ever more audacious crimes. The petition linked this lack of regret to an insufficient 'dread for the sovereign's laws' (ibid.). The rhetoric of the petition was rife with anxieties about the capacity of the penal law to prevent law-breaking and firm convictions that sanctuary laws only hindered good order. As such late fifteenth-century complaints against sanctuary grew more vociferous, chartered sanctuaries, like Westminster, became the foil for sanctuary's opponents. But restricting these perceived abuses was not simply a matter of royal fiat. Because liberties once granted to the Church could prove difficult to take back, the last half of the fifteenth century featured several abortive attempts to undo the chartered liberties and the sanctuary privileges they offered (Kaufman 1984: 465–76). No longer understood as an appropriate response to serious crime, sanctuary had come to be seen as a nuisance. Some wrongs were perceived to pose such a threat to public interest that their perpetrators could not be protected by sanctuary. Rather than a way for wrongdoers to make satisfaction for their wrongs, sanctuary was simply a way to evade punishment. Worse yet, because some wrongdoers might commit wrongs in anticipation of claiming sanctuary, sanctuary was recast as an invitation to commit crime. Canon law could now routinely express a tension between sanctuary and the new conception of punishment. As Pope Euginius IV wrote to the Bishop of Lincoln in 1442, by virtue of sanctuary, wrongdoers 'escape the punishment of their evil deeds and the satisfaction of their debts' and effect 'the supplanting of justice', providing a 'detestable example to others'. Many 'live [in sanctuary] for a long time, even with dishonest women', to the 'scandal and corruption of the religious and other honest men who dwell therein' (Tremlow 1912: 9.282). With a frontal attack, Henry VIII accomplished what his predecessors had half begun, restricting sanctuary privileges almost completely. Given Henry VIII's break with the papacy, the classic view was that the fate of English sanctuary law was entirely determined by a struggle between royal prerogative and ecclesiastical privilege (Thornley 1924: 182). Henry did remove 'willful murder, rape, burglary, robbery in the highway or any house' as well as arson from the sanctuary privilege. 5 As a result, churches could only serve as sanctuaries for lesser offences, while the most serious felonies, which had made up the majority of sanctuary cases in the earlier centuries, were excluded from the privilege. By 1540, Henry had designated eight towns in England as permanent sanctuaries, though there were limits on how many fugitives could reside in a sanctuary town at one time. These alternative sanctuaries were intended, in part, to curtail abjuration because Henry feared that abjuring Englishmen were teaching archery and other martial skills to the French. Meanwhile, a significant effort by royal justices steadily narrowed the scope of the sanctuary privilege (Thornley 1924: 200– 1). As Isobel Thornley (ibid.: 204) noted, 'Sanctuary was a very tough privilege which survived more than one legal abolition.' It is clear that sanctuary men were part of an abbot's procession in 1556, so apparently the practice continued in some form through the middle of the sixteenth century (Cox 1911: 75). Under James I, there were several attempts to draft legislation that abolished the privilege entirely, and the legislation passed in 1623 seems to have accomplished this aim. At that point in seventeenth-century England, the promiscuous availability of sanctuary for murder and theft was all but gone. Tempting as it is to read this as a strand of confessional conflict, sanctuary was also undergoing important restrictions at this time in Catholic countries as well. In France, large-scale restrictions on sanctuary were issued in 1539, 1547 and 1555. The frequency of legislation prohibiting sanctuary is in part a testament to the endurance of the practice in regions of France, but also a result of the decentralized legislative power in sixteenth-century France (Timbal 1939: 430– 1). In 1591, a papal bull from Gregory XIV all but abolished sanctuary within the canon law, but the groundwork had already been laid in the previous centuries. The Codex Juris Canonici of 1917 offered a

distilled, but recognizable version of the rule: 'A Church enjoys the right of sanctuary ... Wrongdoers who have fled to church should not be dragged out without the consent of the ordinary or rector. An exception is allowed only in extreme necessity' (CIC 1917: c. 1179). In the most recent edition no rule concerning sanctuary even appears (Landau 1994: 47). But in truth, this was only the quiet disappearance of a law whose claim had long ago fallen silent and whose faint echoes we perhaps are no longer able to hear.

Notes 1 The archival records of itinerate justices in medieval England are housed in the National Archive (hereinafter NA) in Kew, England. The convention for citing to these unpublished manuscripts is to refer to them by the file name and number under which they are archived. In the case mentioned here, the citation is JUST/ 1/ 37/ 33r.l

2 Glos.ord. to C. 17. q. 4. c. 9. The translation is mine. 3 Liber Extra 3.49.6. 4 Ibid. 5 22 Henry VIII, c. 14; 27 Henry VIII, c. 19; 32 Henry VIII, c. 12, in Statutes of the Realm, (1810).

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