

Asylum and Sanctuary in History and Law

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A Social and Political Approach to Temporary
Protections around the World

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and
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Respectfully Dedicated to

Zenon B. Sahan

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Jeffrey Lucien Radel

Daniel Maguire

Scholars who taught at Niagara University

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Introduction

The two concepts, asylum and sanctuary, are so intertwined that one cannot realistically separate them. One might realistically inquire if asylum would exist today had it not been for the practice of sanctuary in early societies. In a simplistic explanation, sanctuary can be offered by a religious organization, usually at a designated spot in which religious rituals and ceremonies are performed. There may be some procedures required in order to gain the protections sought. The power seeking the arrest of a person is inevitably some governmental agency. There seems to be a general assumption that the person seeking sanctuary is guilty of the crime for which he is being sought. Eventually, the religious power may prescribe some penance that will take the place of secular punishment.

Asylum is a secular term in which one sovereign state is offering protection from the power of a second sovereign state. The person seeking protection is invariably the subject of the state seeking his return. The asylum-seeker presumably has some realistic fear that he will be subjected to some intense form of persecution or discrimination, often death. The international treaty against torture has added a recent new dimension to the granting of asylum.

Christian Sanctuary was always optional and could be dispensed only by action of the Church. It was not always so because in pagan and Hebrew societies one could ordinarily gain sanctuary merely by becoming physically present on soil considered to grant sanctuary. Whether sanctuary could be violated was always a bone of contention between state and religion. Religious authorities could threaten with eternal damnation if an

agent of the state violated sanctuary, but they also could choose to cooperate with civil authorities and suspend sanctuary.

Modern so-called sanctuary, as misused in sanctuary cities, is a total misnomer. A right or power is not necessarily valid simply because a group claim that it is so. There cannot be such thing as a sanctuary city because such power to so designate resides, not with municipal governments but with the national government. Neither do modern states recognize the power of religious organizations to offer medieval-style sanctuary or protection from the law. If, indeed, a church should extend sanctuary and find it honored by the civil authorities, it would not be because they have acted legally, but because civil authorities do not wish to provoke a confrontation.

Modern states have simply become overwhelmed by asylum-seekers and few can handle the requests for asylum. There are vast numbers of refugees from various wars and internal rebellions and civil wars. Many seek refuge from criminal elements within their own nations. International treaties have made it incumbent upon nations to provide asylum for refugees from such nations. There are a few notable exceptions. First, nations are not required to accept economic refugees, that is, those who are merely seeking to improve their standards of living. Second, acceptance of asylees is totally a matter of choice on the part of presumed host nations; asylees do not have a right to enter. Certainly, nations need not accept true criminals. There is much controversy whether nations should accept as political refugees the deposed dictators from other nations. This has been a point of contention among South American and African nations.

Many nations have reassessed the impact of the admission of large numbers of legitimate asylum-seekers upon their own political landscape. A few, such as Germany, with decreasing and aging populations have actually welcomed refugees as vital to the health of the nation. But other nations see ethnically and culturally diverse refugees as having negative impact in various ways. Some sovereign nations regard many refugee groups as incapable of assimilation and thus a threat to their own culture.

The non-refoulement provision is a modern development in asylum law. It holds that, should a refugee be refused entry, he must not be sent to a nation where he will not be safe, especially if that would be the nation from which he initially fled. This has entered in as well with the matter of extradition. Should a nation honor its extradition treaty with another sovereign

power if the person to be extradited might suffer from torture? Or should that nation offer asylum?

Another modern development has been the offering of sanctuary to persons accused of capital crimes. Despite Europe's long and bloody history of criminal executions, contemporary European Union members reject executions for any crime regardless of the scale or heinous nature. Added to that is the recent condemnation of capital punishment by the Roman Catholic Pope Francis.

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Sanctuary and Asylum

In the beginning the concept of sanctuary meant a consecrated place, such as the ancient Hebrew temple at Jerusalem or its holy of holies. It evolved into a term designating the most sacred part of a religious building, such as the part of a Christian church in which the altar is placed. With time it came to mean the room in which general worship services are held. Finally, sanctuary designated a place, such as a church or a temple, dedicated to religious worship.

Sanctuary, in the religious usage, is a sacred place, set apart from the profane, ordinary world. Originally, sanctuaries were natural locations, such as groves or hills, where the divine or sacred was believed to be especially present. The concept was later extended to include man-made structures; e.g., the tabernacle (initially a tent) of the ancient Hebrews, the later Jerusalem Temple, the sacred lodge of the Algonkin and Sioux, or, especially, sacred parts of such structures. Sanctuaries were reserved for special religious functions, and a state of purity was required of participants. Special taboos and rules prevented the profanation of sanctuaries. It was because of this special sacred quality and the protection that it afforded that the sanctuary became a place of asylum for criminals. In addition to the fear of shedding blood in a holy place, a dominant motive in protecting the fugitive was the fear of the evil magic force that would emanate from his curse, believed dangerous to gods as well as to men.¹

Sanctuary came to include a place of refuge and protection both for human beings and a refuge for wildlife where predators are controlled and hunting is illegal. Historically, churches have been places where fugitives could seek at least temporary protection from the law. Especially Christian houses of worship became sanctuary for refugees, especially those accused

¹“Sanctuary” in Encyclopedia Britannica.

of crimes. In Anglo-Saxon England, churches and churchyards generally provided 40 days of immunity, and neither the sheriffs nor the army would enter to seize the outlaw. But gradually the right of sanctuary was eroded. In 1486 sanctuary for the crime of treason was disallowed, and sanctuary for most other crimes was severely restricted by Henry VIII and later abolished. Eventually this definition of sanctuary evolved to include the immunity from law attached to a physical place of sanctuary. In the United States in most recent times sanctuary refers to or being a locality that provides limited cooperation to federal officials in the enforcement of immigration laws or policies.²

Contemporary usage has stripped much of the religious association from the term sanctuary. Its use has broadened to include anywhere people go for peaceful tranquility or introspection. In a non-religious sense, a sanctuary is a place of refuge or rest, a place where one can feel at peace, a place of comfort, security, and rest. A sanctuary is a place where people who are in danger from other people can go to be safe. In the most secular sense, it has become any area set aside for any particular purpose.³ Literally, sanctuary is a safe haven. Sanctuary generally is a place that causes brings about a condition of isolation or seclusion from worldly or practical affairs; a sheltered, protected existence removed from the harsh realities of the world, which produces a certain aloofness from the mainstream of society. Often sanctuary is a sort of hiding place, offering distance from those unfamiliar with it.

The actual term sanctuary first appeared around 1300 to 1350 in Middle English. In turn, it was derived from the Late Latin word *sānctuārium*, equivalent to *sānctu-* (replacing Latin *sānct-*), combining form of *sanctus* (see *Sanctus*) + *-ārium -ary*.⁴ Lexico, the Oxford Dictionary, defined sanctuary as “refuge or safety from pursuit, persecution, or other danger.” It noted the word origin was Middle English, “from Old French *sanctuaire*, from Latin *sanctuarium*, from *sanctus* ‘holy’. Early use in reference to a church or other sacred place where a fugitive was immune, by the law of the medieval Church, from arrest, gave rise to sanctuary.”⁵

² Merriam Webster Dictionary definition of sanctuary. See also <https://dictionary.cambridge.org/us/dictionary/english/sanctuary>.

³ <https://www.yourdictionary.com/sanctuary>. See also <https://www.collinsdictionary.com/us/dictionary/english/sanctuary>.

⁴ <https://www.dictionary.com/browse/sanctuary>.

⁵ <https://www.lexico.com/definition/sanctuary>.

One of the earliest law dictionaries used in the United States discussed the meaning of sanctuary in American jurisprudence. First, it is a “place of refuge, where process of law cannot be executed. A place of refuge, where the law cannot be executed. Second, sanctuaries may be divided into religious and civil. The former were very common in Europe, religious houses affording protection from arrest to all persons, whether accused of crime, or pursued for debt. This was never known in the United States. Civil sanctuary is that protection which is afforded to a person within his own home. His homestead protects him from all civil processes in the first instance. It does not protect him if he has been served outside his home, but has subsequently taken refuge in his home. In public matters, there is no sanctuary that affords a person protection from arrest in criminal cases. Authorities may even break in to a person’s home to effect a criminal arrest. There is no legal sanctuary from criminal matters in the United States, nor has there ever been such. This is also generally true in all modern states.⁶

The most recent study of asylum and sanctuary was undertaken by Professor Linda Rabben. She argues that the practice of sanctuary, which she defines as the giving refuge to the threatened, vulnerable stranger, may be universal among humans. It is a part of charity, a natural occurring human sentiment, directing inter-personal and inter-societal relationships.⁷

Sanctuary is a synonym of asylum. As nouns the difference between sanctuary and asylum is that sanctuary is a place of safety, refuge or protection while asylum is a place of safety.⁸ Our concern in this tome is governmentally sanctioned, or opposed, sanctuary. What we generally find is that some government granted sanctuary to the defector, protecting him from his former government. Some organizations will seek sanctuary as a refuge for their members. In a sense, sanctuary can be a physical place that shields those within from all physical harm and danger.

As commonly used by various military commentators, sanctuary is a nation, or at least an area, contiguous to the combat area, which, by tacit agreement among the warring powers, is exempt from attack or other

⁶Bouvier, John. *A Law Dictionary, Adapted to the Constitution and Laws of the United States*. 1856. Delhi, India: Reprint by Gyan Books, 2018. See also *American Heritage Dictionary of the English Language*, Fifth Edition; Houghton Mifflin Harcourt, 2016.

⁷Rabben, Linda. *Sanctuary and Asylum: A Social and Political History*. University of Washington Press, 2016.

⁸<https://wikidiff.com/sanctuary/asylum>.

military combat. It may then serve as a staging or logistic refuge for the combatants.

A common legal definition is as follows: “A place of temporary refuge and protection to avoid law enforcement. Sanctuary, a concept very similar to asylum, is traditionally taken in a church or monastery.”⁹ The same definition applied to sanctuary in ancient and medieval times. It noted that “Sanctuary is still sought in modern times where an individual being sought by law enforcement officers, often immigration officers, will enter and seek to stay within a local church, appealing to the church on humanitarian and compassionate grounds to avoid deportation. The person enters the church and stays there. This buys the person time and may also provide a new set of facts upon which a new hearing might be convened.”¹⁰

Asylum

Asylum is derived a Greek word meaning an inviolable refuge for persons fleeing from pursuit. Among the Greeks all holy shrines were Asylums, and any pursuer who should remove a suppliant by force was regarded as a transgressor against the gods. The term asylum was especially applied to such shrines as secured to the suppliants absolute security within their limits, which were often considerable. The priests and the community in each case watched jealously over this right. The sanctuary of Zeus Lycaeus in Arcadia, of Poseidon in the island of Calauria, and of Apollo in Delos, are excellent examples of such asylums. These sanctuaries were exceptionally numerous in Greek colonies in Asia and Asia Minor.

According to tradition, the great and welcoming city of Rome had been founded in the eighth century B.C. as an asylum, a Latin word meaning “sanctuary for refugees.” As Rome grew from monarchy to humble republic to unrivaled empire, the Rome extended citizenship to non-residents of did so three times: first, in its wars of Italian conquest in the first century B.C.; second, during its aggressive period of colonial expansion in the first and second centuries A.D.; and finally, in 212 A.D., when Emperor Caracalla granted citizenship rights to every free-born person in the Roman

⁹ Duhaime’s Criminal Law Dictionary. This definition is repeated in other Duhaime legal dictionaries, including Duhaime’s Ancient Common Law Dictionary.

¹⁰ See also Begaj, Pamela, “An Analysis of Historical and Legal Sanctuary and a Cohesive Approach to the Current Movement,” *John Marshall Law Review*, 42: 137 (2008–2009).

Empire. In this multilingual, multi-ethnic world of approximately sixty million inhabitants were affected by Caracalla's law.¹¹

In Rome there was an asylum of great antiquity, said to have been founded by Romulus, in a grove of oaks on the Capitoline Hill. The erection of buildings in its neighborhood gradually rendered it inaccessible. During the Roman period the right of asylum attaching to Greek sanctuaries was, at first, maintained and even confirmed by Roman commanders. But its abuse led to a considerable reduction of the number of asylums under Tiberius. The right of asylum was now confined to such shrines as could found their claims upon ancient tradition.¹² Fourth-century Roman law recognized sanctuary, ensuring that it was part of the legislative traditions that medieval Europe received from Rome.

In its medieval meaning, sanctuary law granted a wrongdoer who fled to a church protection from forcible removal as well as immunity from corporal or capital punishment. The fugitive might be required to pay a fine, forfeit his goods, perform penance, or go into exile, but almost without exception his body and his life were to be preserved. Laws carving out sanctuary protections appear in every major medieval legal tradition. Ecclesiastical canons reiterated it, backing sanctuary with the Church's spiritual justification, and, if required, punishment, including excommunication.

As understood in international law, asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection. Asylum is a fundamental right; granting it is an international obligation, first recognized in the 1951 Geneva Convention on the protection of refugees.¹³

Although every medieval legal tradition had offered criminals who fled to a church respite from corporal and capital punishment, in the sixteenth century kings, parliaments, and popes reached the common conclusion that the privileges that protected sanctuary seekers presented a major obstacle to good order, and the thousand-year-old legal practice was abolished or drastically restricted throughout Europe. With remarkable unanimity,

¹¹ Millar, Fergus. "The Political Character of the Classical Roman Republic, 200–151 B.C." *Journal of Roman Studies*, 74 (1984), pp. 1–19.

¹² <http://www.classics.upenn.edu/myth/php/tools/dictionary.php?method=did®exp=1516&setcard=0&link=0&media=1>.

¹³ Vierdag, E. "Asylum" and "Refugee" in International Law. *Netherlands International Law Review*, 24: 1–2 (1977), pp. 287–303.

scholars since the eighteenth century have looked approvingly upon the abolition of a practice that, according to their critique, had allowed respite to the guilty and unnecessarily infringed upon the proper reach of sovereign jurisdiction.

John Bassett Moore, the greatest American international lawyer of his age, wrote in his *Digest of International Law* (1906): “No legal term in common use is perhaps so lacking in uniformity and accuracy of definition as the ‘right of asylum.’” A century later, the same can still be said. Asylum, originally conceived as a right claimed by an individual fugitive, is now more readily regarded as a privilege abused by hordes of foreigners, self-styled refugees seeking to avoid the immigration restrictions of beneficent countries.

The word asylum derives through Latin from the Greek *asulon*, refuge, and from *asulos*, that which may not be seized. The Cambridge Dictionary defines asylum as a place offering protection or safety, especially that given by a government to those who have been forced to flee because of war or for reasons of safety. been forced to leave their own countries for their safety or because of war. Farlex, a free dictionary on the internet, defines asylum as, “protection and immunity from extradition granted by a government to a-year-old legal practice was abolished or drastically restricted throughout Europe. With remarkable unanimity, scholars since the eighteenth century have looked approvingly upon the abolition of a practice that, according to their critical refugee from another country.” The Merriam-Webster Dictionary says that asylum offers “protection from arrest or extradition given especially to political refugees by a nation or by an embassy or other agency enjoying freedom from what is required by law for most people.”

In its 1828 edition, Webster’s Dictionary defined asylum as “sanctuary, or place of refuge, where criminals and debtors shelter themselves from justice, and from which they cannot be taken without sacrilege. Temples and altars were anciently asylums; as were tombs, statues and monuments.” The same publication also noted that “The ancient heathens allowed asylums for the protection of the vilest criminals; and the Jews had their cities of refuge.” Webster confirmed that the origin of the term asylum is from classical Latin from Classical Greek *asylon* from *asylos*, inviolable from a-, without + *sylon*, right of seizure.

In the early American legal dictionary of 1856, the author made the following observation about asylum: “At one time, in Europe, churches and other consecrated places served as asylums, to the disgrace of the law.”

Such asylum was never sanctioned in the United States for this union never coddled criminals. There was some concern whether an asylee might take refuge in the place of a foreign ambassador, as in an embassy, and be protected against apprehension.¹⁴

The Collins Dictionary defines political asylum as “the right to live in a foreign country and is given by the government of that country to people who have to leave their own country for political reasons.”¹⁵

Asylum is not to be confused with refuge, although the terms are sometimes used inter-changeably. Asylum is granted to a person commonly called any asylum-seeker, more recently referred to as an asylee, who wishes to leave the birth nation, wholly abandoning the former allegiance, and to create a new allegiance. Asylees usually come to a new nation because of some previous negative experience back home. Commonly, asylees have been persecuted because of race, religion, ethnicity, political opinion, or tribe. More recently, nations have granted asylum to persons who are victims of discrimination because of sexual orientation or gender reassignment. The assumption is that the asylee has been, or may reasonably expect to be, tortured or even killed for the situation.¹⁶ Others whose status is similar may already have been killed, imprisoned, tortured, or otherwise harmed.

Asylum is often confused with the quasi-religious concept of sanctuary, which, as we have seen, has traditionally a place of protection or a place, of refuge where debtors and criminals fled for safety. Although at one time or another, in Europe, churches and other consecrated places served as refuges or asylums, such was never the case in the United States. Asylum, in that sense, along with sanctuary, have no clear historical precedent in America, for religious institutions cannot afford protection to those taking shelter within their area.

As we have seen, the practice of asylum, like the word itself, can be traced to ancient Greece, where particular altars and similar holy places offered sanctuary to fugitives, especially ill-used slaves. In the early Roman Republic the comparable custom protected aliens fleeing from other states, and though

¹⁴ Bouvier, John. *A Law Dictionary, Adapted to the Constitution and Laws of the United States*. 1856. Dehli, India: Reprint by Gyan Books, 2018. See also *American Heritage Dictionary of the English Language*, Fifth Edition; Houghton Mifflin Harcourt, 2016.

¹⁵ <https://www.collinsdictionary.com/dictionary/english/political-asylum>.

¹⁶ Berg, Laurie and Millbank, Jenni, “Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants,” *Journal of Refugee Studies*, 22: 2 (2009), pp. 195–223.

the practice was weakened during the first centuries of the Roman Empire, losing what little legality it originally possessed, the tradition that fugitives might seek at least temporary protection against those with greater physical power or apparent right reemerged with the establishment of Christianity.

As the authority of the Catholic Church declined, so conversely grew the power of the secular state which was far less guided by religious standards than was heretofore the case. For many centuries asylum had been understood as the granting of a privileged and protected area within a wider jurisdiction, that is, within the precincts of a church. Since the seventeenth century, however, asylum has been understood as the creation by one jurisdiction, that is specifically, a “sovereign” state, of a privileged status for an individual from the reach of an opposing claimant, invariably another sovereign state whose national the fugitive was. Thus, the common theme that links present-day notions and practices of asylum to those of the classical and pre-modern world is the special or “privileged” status of the would-be asylum seeker.

Asylum, understood as ‘the protection that a State grants on its territory or in some other place under the control of certain of its organs to a person who comes to seek it’, is a well-known institution in international law and its historical roots in state practice are well established. Asylum is different from refugee status, as the former constitutes the institution for protection while the latter refers to one of the categories of individuals—among others—who benefit from such protection and the content of that protection. It is vital to understand the nature of asylum as a general principle of international law. It first examines the relationship between asylum and refugee status to place the discussion in context. It then outlines the current debate on asylum and, in particular, the nature of asylum as a right of individuals. Scholars explore the normative nature of asylum through its historical practice, paying particular attention to the practice of states as reflected in their constitutional traditions. This constitutional focus responds to the normative character of constitutions. As asylum features in a significant number of constitutional texts across the world, the value of this institution as one of the underlying principles in legal orders worldwide is clear and, as such, it informs international law itself. There has been a long historical tradition of asylum as an expression of sovereignty which has recently been coupled with a right of individuals to be granted asylum of constitutional rank, which in turn is recognized by international human rights instruments of regional scope. This, and its continuous historical presence across

civilizations and over time, suggests that asylum constitutes a general principle of international law that is legally binding when it comes to the interpretation of the nature and scope of states' obligations towards individuals seeking protection.¹⁷

The U.S. Citizenship and Immigration Services defines asylum as a form of protection available to people who meet the definition of refugees and who are already in the nation or are seeking admission at a port of entry. The U.S. Department of Homeland Security has posted the following: "A refugee is a person outside his or her country of nationality who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. An asylee is a person who meets the definition of refugee and is already present in the United States or is seeking admission at a port of entry. Refugees are required to apply for Lawful Permanent Resident status one year after being admitted, and asylees may apply for green card status one year after their grant of asylum."

Asylum is a place of safety. The term may also be used to describe the protection, physical and legal, afforded by a place a place of refuge or shelter. Every day, thousands of individuals seek asylum in scores of countries. In so doing they are exercising a basic human right as defined in article 14 of the Universal Declaration of Human Rights promulgated in 1948. That document reads in part: "Everyone has the right to seek and to enjoy in other countries asylum from persecution". The vast majority do not immediately obtain refuge through the elaborate systems established by international and national laws and policies. Many wait years for a definitive decision. In the meantime they may go underground, living precariously or in destitution, denied social welfare.¹⁸

Article 3 of the United Nations Convention against Torture prohibits a nation from deporting an asylum seeker if there is a genuine threat of torture or death if the person is returned. The new nation need not accept the asylee but must send that person to a nation where there will be no threat. It is most important to understand throughout this study that no nation

¹⁷ Gil-Bazo, Maria-Theresa "Asylum as a General Principle of International Law," *International Journal of Refugee Law*, 27: 1 (2015), pp. 3–28,

¹⁸ Center for the Study of Human Rights 1992: 7.

is obligated to grant asylum to any person or group irrespective of threat. The right to asylum means only that an individual has the right to seek asylum.

Derivative Asylum covers those who are related to the asylee. Not infrequently, asylees seek the same protection for spouses, children, or step-children. Rather than go through separate procedures, such family members may be included with the original asylee's application. Normally, a couple must have been married for some reasonable period of time, such as two years, to qualify for derivative asylum. Children and step-children must be minors.¹⁹

The adoption of asylum provisions can be motivated by national self-interest as well as a way to show state superiority to other nations which are less prone to accept asylees. Even when framed as a universal right, asylum might be a useful tool to condemn the human rights records of foreign countries. Moreover, countries with net refugee outflows, such as some of the smallest and poorest African states, as well as nations with aging and declining populations, such as Germany, more readily entrench the right to asylum in their constitutions. These apparently self-serving motivations for constitutionalizing asylum rights are not necessarily detrimental for asylum-seekers, nor do they necessarily undermine the right: appealing to self-interest, rather than self-sacrifice or humanitarian ideals, might actually prove more effective in motivating states to ensure adequate protection of human rights, including the right to asylum.²⁰

Asylum and Sanctuary of Becket

We would like to suggest that the emerging concept of asylum was merged with the ancient concept of sanctuary in the case of the important medieval statesman Thomas Becket, sometime shown as Thomas a Becket (c.1118–1170). The asylum of Thomas Becket was essentially notorious because of the participation of four of the most powerful and important figures of its time: the pope, the kings of England and France, and the Lord Chancellor of England.

¹⁹Nicholson, Frances, and Patrick Twomey, eds. *Refugee Rights and Realities: Evolving International Concepts and Regimes*. Cambridge University Press, 1999.

²⁰Kowalczyk, Lucas and Versteeg, Mila, "The Political Economy of the Constitutional Right to Asylum," *Cornell Law Review* 102: 5 (2017), pp. 1219–1318.

Thomas was born to Norman parents of the merchant class. He was educated first at the Augustinian Merton Priory, then in a London school, and finally at Paris. Thomas entered adult life as a city clerk and accountant in the service of the sheriffs. After three years he was introduced by his father to Archbishop of Canterbury Theobald, of whose household he became a member. His colleagues included a distinguished company that included the political philosopher John of Salisbury, the Roman lawyer Vacarius, and several future bishops, including Roger of Pont l'Évêque, later archbishop of York. Although neither a scholar nor a stylist, he excelled in argument and repartee. In 1154 Theobald, as a reward of his services, appointed Thomas archdeacon of Canterbury, an important and lucrative post, and less than three months later recommended him to English King Henry II as chancellor where Thomas showed to the full his brilliant abilities, including raising an army and leading troops in war.

At this same time, a major movement, known as the Gregorian Reform, had begun to influence English churchmen. Among aspects of its program were free elections to clerical posts, inviolability of church property, freedom of appeal to Rome, and clerical immunity from secular power. Under Henry I, the English archbishops had advocated these reforms with only partial success. Once crowned, Henry II aimed at a complete return to the strict political control over the church. He recruited his chancellor to aid him in completing the return to secular control of the Church. With the death of Archbishop Theobald in 1161, Henry chose to appoint Thomas as archbishop and thus complete his program of secularization.

However, Thomas sorely disappointed him, choosing to become God's advocate first and the king's servant second. He became far more devout and chose to live an austere life. He resigned the royal chancellorship and advanced the papal program, adhering to canon law rather than the law of England. Henry II pressed his claim by promulgating the Constitutions of Clarendon which mandated adherence to royal prerogatives. Thomas refused to subscribe to these articles.

The inevitable clash came over the exercise of jurisdiction over various crimes committed by those in service to the Church. Religious punishments were rarely as great as were secular punishments for the same crime. Henry was correct when he said that these rights had been exercised by Henry I, but Thomas also was justified in maintaining that they contravened canon law. Thomas appealed to the pope, then in France,

who philosophically supported him while taking no real action. The Roman pontiff feared that any strong show of support for Becket might throw Henry II into support of the Holy Roman emperor Frederick who supported an antipope, Paschal III.

Henry summoned Becket to trial on a point of feudal obligation. Thomas chose to flee in disguise and took refuge with Louis VII of France. It served the interests of the French king to tweak his English counterpart so he granted Thomas asylum. Pope Alexander III received him with honor but hesitated to act decisively in his favor for political reasons. Moreover, the pope supported negotiations rather than confrontation. Thomas remained in asylum in France from 2 November 1164 through 2 December 1170, first at Pontigny Abbey and then, when Henry threatened the monks, at an abbey near Sens. Because he was housed in religious facilities his exile may also be regarded as sanctuary.

Henry meanwhile had seized the properties of the archbishop and his supporters and had exiled all Thomas's close relatives. The English bishops were divided, but a significant number of them were either hostile to Thomas or hesitant in supporting him for fear of losing their sees or because they depended on Henry's friendship and patronage. Papal legates more than once endeavored to mediate, without tangible success. King Henry and the archbishop came together at Montmirail in 1169, only to part in anger. Thomas distrusted the king. In the same year, Henry promulgated additions to the Constitutions of Clarendon, additions which essentially withdrew England from granting papal obedience. Finally, in 1170, Henry had his eldest son crowned as co-king by the archbishop of York, Becket's old rival whereas the Archbishop of Canterbury had traditionally crowned all English kings. Thomas then excommunicated all responsible and the pope agreed to that action. Henry, fearing imposition of a papal interdiction for England, met Thomas and agreed that Thomas should return to Canterbury and receive back all the possessions of his see, neither party altered its position regarding the Constitutions of Clarendon. There has never been a satisfactory explanation of why that festering sore was left alone. Thomas returned to Canterbury and was soon martyred. The papacy quickly announced that Thomas was now recognized as a saint.²¹

²¹ Knowles, Michael Davis, "St. Thomas Becket," *Encyclopedia Britannica*. See also Barlow, Frank, *Thomas Becket*, University of California Press, 1986; and Staunton, Michael, *The Lives of Thomas Becket*. Manchester University Press, 2001.

Types of Asylum

That type of asylum which a sovereign state grants within its own boundaries, is called Territorial Asylum. This type of asylum is one that every state grants as an exercise of its territorial sovereignty over all persons in its territory to any one. The grant of territorial asylum is dependent on the discretion of a state.

Extra-territorial asylum involves active protection which a sovereign state offers to persons outside its own national boundaries. In this case, asylum is granted by a State at places outside its own territory. A sovereign state is thus giving asylum within an area over which it has no legitimate political control. The most common way in which extra-territorial asylum unfolds is when a state refuses to surrender a person demanding who is not upon its own physical territory but is located on one of its public ships or aircraft in foreign territorial borders or when an individual has taken refuge within its diplomatic mission within foreign territories. In the second case, asylum will be given at legation, consular premises and, in the first case, a state extends asylum to those who have found refuge on ships or in aircraft.

Accompanying the rise of the modern states, diplomats were invested with various privileges and immunities, part and parcel of the convenient but necessary fiction that ambassadors and their entourage occupied within their country of posting (the “territorial” sovereign) an enclave of their own sovereign power. Thus persons and property of the “sending state” enjoyed within the protected zone customary (extraterritorial) rights and were exempt from the normal reach of the executive and judicial power of the host or “receiving state,” to cite the language of the two Vienna conventions of 1961 and 1963 governing diplomatic and consular practice, respectively. Accordingly, an embassy could by custom extend the protection of its premises to fugitives from the summary justice or even lynch law of the host country.

The tradition of diplomatic asylum became particularly strong in Latin America during the nineteenth century—a reflection of the political violence that frequently accompanied regime changes within the continent. By custom such asylum was not extended to ordinary criminals (“persons accused of or condemned for common crimes”) but rather to “political offenders,” those refugees whose only offense, it was asserted, lay in their