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Protecting Places

The Visigothic sack of Rome in 410 caused Romans to question the Christian God's protection of their city. In an effort to renew Roman confidence in Christ's triumph, Augustine of Hippo wrote *The City of God*. At the very outset of the work, Augustine argues that God did protect the city. How? All who took refuge in God's houses—that is, the churches—were spared from harm. As Augustine puts it, "Even these ruthless men, who *in other places* customarily indulged their ferocity against enemies, put a rein to their murderous fury and curbed their mania for taking captives, the moment they reached *the holy places*."[1] What a miracle, he points out, that merciless enemies, who otherwise stopped at nothing to capture prisoners of war, had mercy on all who took shelter in churches. Augustine proceeds, in the first six chapters of the work, to catalog the times in Greek and Roman history when the temples of the gods ought to have protected those who sought safety there but failed to do so. The success of asylum in churches, insisted Augustine, proves God's protection.

As we saw in the previous chapter, though episcopal synods and imperial consistories ensured the inviolability of churches in different ways, their aim was the same: to show that *res sacrae* were divinely protected. In principle, what imperially endorsed bishops consecrated remained sacred in perpetuity and therefore could not be repurposed. At the same time, one of the primary duties of bishops was to care for the needy. To fund charitable activities, bishops relied on revenue from revenue-producing lands (the land itself was sacred), donations made for the express purpose of charity, or donations that were not earmarked for any specific purpose. These sources did not suffice, especially for enormously expensive activities, such as ransoming captives. For this reason, bishops actively petitioned that ecclesial property not only be considered protected, but also protecting.

Bishops petitioned lawmakers to establish rules that made churches places where slaves could be manumitted, places of asylum for fugitives, and places that provided for the redemption of captives. In this way, the protected places would

extend their protection to vulnerable members of society: slaves, fugitives, and captives. Churches would personify the protection they received and granted. The untouchable *res sacrae* would have the power to make vulnerable members of society untouchable, too, as Augustine emphasized in his opening to *The City of God*.

A law of Leo and Anthemius issued in 469 expresses this bilateral notion of a church's protection: that churches receive protection and grant it as well.[2] In the context of an explanation about how corruption of the clergy via bribes undermines the safety and protection fundamental to sacred places, Leo and Anthemius ask:

> Indeed, what place could be safe (*tutus*), and what cause defended (*excusata*), if the venerable temples of God are conquered by money? What wall shall we raise for integrity, or what rampart for honesty, if the accursed hunger for gold slithers into the innermost sanctuaries? What can be safe (*cautum*) or secure (*securum*), if uncorrupted sanctity itself is corrupted? The profane ardor of greed shall cease to loom over the altars and sinful wantonness shall be driven from the inner sanctums.[3]

The installation of an administrator by bribes prevents the church from providing safety, defense, integrity, or protection. Instead, it threatens (*imminere*) the altars themselves.[4] Administrators who accept bribes would not be likely to judge cases of asylum with integrity, for example. According to Leo and Anthemius, the altars must be protected in order for them to provide protection. The protection granted to churches translates into protection for those in need, particularly slaves, refugees, and captives.

This chapter shows how bishops petitioned for churches to be spaces offering protection to slaves, refugees, and captives. Jurists justified such legal recognition by making it an extension of the long, well-established principle that *res sacrae* are protected. As part II will show, some bishops argued that the opposite was true: *res sacrae* were protected because they were protecting, not vice versa.

MANUMISSION OF SLAVES

One way in which churches extended their protection to slaves was by serving as the public place of their manumission. As the following rules show, laws and canons set forth measures to ensure social stability among all the parties involved or interested in the public manumission of a slave in a church. In general, the rules protected the manumitted slave from challenges to his or her new social status and they protected the former master and the church itself from threats, such as expressions of ingratitude, to the honor of their patronage.

The laws on the manumission of slaves in churches state the procedure of manumission, explain the legal force of ecclesial manumission, and name specific categories of slaves who were eligible for manumission without the permission of their masters. Most of the laws were issued in response to episcopal petitions.

The canons, on the other hand, primarily concern the obligations of the church to the freedman and those of the freedman to the church. Since the manumission of ecclesial slaves (i.e., slaves that belonged to the church) could be conceived as a violation of the inalienability of ecclesial property, some canons declare that manumission is not a form of alienation.[5]

Laws on the Manumission of Slaves in Churches

Four extant laws concern the manumission of slaves in churches. Two were issued by Constantine to specific bishops; these mention the procedure for granting manumission in churches and they guarantee the legal force of the grant. The only other emperors from whom laws on the manumission of slaves in the churches survive are Honorius and Justinian, both of whom legislated about the manumission of the slaves of noncatholic masters.

The first extant law of Constantine concerning manumission in the churches was addressed as a response to a petition of Protogenes, the bishop of Serdica, in 316, explicitly allowing him to manumit slaves, since "we decreed long ago that masters could manumit their slaves in a Catholic church."[6] The law explains that the typical procedure consisted of (1) manumission in the presence of the people and bishops and (2) the composition of a legal document, which the attending bishops signed as witnesses. The second was addressed as a response to a petition from Hosius, bishop of Corduba, only five years later in 321.[7] It guarantees that the manumission of slaves in churches (via the same procedure described to Protogenes) grants the former slaves Roman citizenship.[8]

Honorius's law, issued in 405, might have been made in response to episcopal petitions planned in 401 from Carthage. It allowed slaves of Donatist masters to seek asylum and manumission in catholic churches.[9] Similarly, Justinian wrote to the praetorian prefect of the East, John, sometime between 533 and 534, allowing the slaves of Jews, pagans, and heretics to be manumitted in the catholic churches, provided that they join the church.[10] He explicitly notes that their masters may not receive any compensation for them and that the judges of the provinces, the defenders of the church, and the bishops were required to ensure their protection.

Canons on the Manumission of Slaves in Churches

As for the canons, they address four issues: (1) the need for civil recognition and support of certain manumissions; (2) the church's protection of those it manumits and the obligations of such freedmen to the church; (3) the manumission of slaves that belong to the churches; and (4) whether abbots may manumit slaves.

An anthology that the monk Dionysius Exiguus compiled in the sixth century, referred to as *Registri Ecclesiae Carthaginensis Excerpta*, collects excerpts from the acts of councils held in Carthage. According to the anthology, two councils held in Carthage in June and September 401 resolved that the emperor should be petitioned to grant churches in North Africa similar manumission rights to those of

churches in Italy.[11] No laws concerning manumission in the churches addressed to Italy survive, so it is not clear what sort of precedent the bishops gathered at Carthage adduced. Honorius did, however, issue a law to North Africa four years later.[12] As mentioned above, it allowed catholic churches to manumit the slaves of Donatist masters. Perhaps Honorius issued it in response to the petitions from Carthaginian councils.

Six canons show that the grant of manumission in the church was not simply a one-time act; rather, it placed binding obligations both on the church and on the freedman. Churches had to protect the freedom of their freedmen from any threats. In return, freedmen were obligated to show gratitude to the church and to obey the church. A council at Nimes, Gaul, in 394/396 permitted the excommunication of freedmen who opposed the church (*contra ecclesia ueniunt*), citing the burden (*iniuria*) of protecting (*tuitio*) such freedmen as justification for their excommunication.[13] The Councils of Orange in 441 and Orleans in 549 stated the obligation of the church to protect its freedmen from reenslavement.[14] The Council of Orange ruled that the church had to censure those who reenslaved freedmen manumitted in the church, whether to slavery or to the colonate. A collection of canons made in Arles sometime between 442 and 506 includes one that requires accusations of a freedman's ingratitude to be heard in a civil court.[15] In 541, the Council of Orleans noted that the freedom of a bishop's freedmen was contingent on their continued service to the church.[16] A council held in Toledo in 589 guaranteed the protection of the church to those it manumitted as well as those manumitted by others at the recommendation of the bishop.[17]

Two canons affirm the fact that the manumission of slaves of the church was not tantamount to alienation of ecclesial property. The first, from the collection known as "Ps-Agde," states that ecclesial property is inalienable, but if bishops, presbyters, and deacons manumitted an ecclesial slave, the deed was considered an act of the church (*actum ecclesiae*).[18] Likewise, a canon from a council in Orleans in 541 did not permit a bishop to mortgage, financially burden, or sell ecclesial property unless he bequeathed the church equal value from his personal property.[19] The canon adds a qualification to the rule: the slaves whom he has freed remain free.

Though no canon outlines the procedure for manumission in the churches, Constantine's rescripts to Protogenes of Serdica in 316 and Hosius of Corduba in 321 suggest that only bishops could perform this legal function.[20] The problem of other leaders assuming such a role arose only, as far as the evidence of canons shows, in Epaon, where a canon from a council held 517 denies abbots the right to manumit ecclesial slaves.[21]

Finally, it is worth noting that although Gaul was not part of Justinian's empire, a canon from a council at Orleans allowed in 541 what Justinian had permitted in 533 and 534. Canon 30 states that churches may manumit the slaves of Jewish

masters by purchasing their freedom.[22] Justinian's law, however, explicitly denied Jewish masters compensation for the loss of their slaves.[23]

ASYLUM OF REFUGEES

Bishops and jurists alike legislated on the matter of fugitives' asylum in churches, but their particular concerns differed. Bishops issued canons affirming the authority of churches to grant asylum to all who sought it and protecting both refugees and ecclesiastical administrators from the fugitives' prosecutors. Jurists, on the other hand, promulgated laws to limit the demographic eligible for asylum, to draw the spatial boundaries of ecclesial property on which asylum could be granted, and to hold ecclesiastical administrators responsible for bypassing civil procedure. The two rule-making bodies initially disagreed on the definition of ecclesial asylum. Ecclesiastical administrators wanted full discretion in seeking pardon for refugees. Jurists, especially in the fourth and sixth centuries, wanted to limit the scope of ecclesiastical clemency and prevent excessive proliferation of cases of appeals. The most important issue over which they were divided was the matter of forcible seizure of an unarmed refugee from the place of ecclesial asylum. The laws demanded the arrest of certain kinds of refugees, but bishops petitioned against forcible seizure altogether. There are two traceable points of interaction between the two rule-making bodies, when bishops of Carthage petitioned Emperor Honorius for a law. By the middle of the fifth century, laws civilly recognized a robust definition of the status of churches as places of asylum, but laws written during Justinian's tenure would once again place limits on ecclesial asylum.[24]

Before discussing the evidence of the canons and laws it is important to sketch an image of the motions that could take place between the defendant, the ecclesiastical administrator, the prosecutor, the judge, or other civil authorities, if the defendant sought ecclesiastical asylum. A defendant could seek asylum at a church at two possible periods of time: (1) before a trial or (2) after a civil judicial decision on the case was made.

Before a trial commenced, ecclesiastical administrators could engage in a negotiation (*intercessio*) directly with the prosecutors on the matter and indemnify the defendant from certain damages to his or her person or property by having the prosecutor swear an oath or sign a letter of security (*cautela*). If the prosecutor refused to accept the terms stipulated by the ecclesiastical administrators, then he might have the defendant forcibly seized (*abstrahere*) from the church and put on trial. The ecclesiastical administrators could in turn respond with an excommunication of the prosecutor. If the arrest were made without a judge's demand for it, the judge would have to decide whether the prosecutor was justified in making the arrest.

In the event that one or more trials already took place and the defendant pursued an appeal, the ecclesiastical administrators could help the defendant make

the appeal of a former decision. If the appeal were accepted by the civil authorities, then the judge would have to sign a letter of security indemnifying the defendant from certain personal or proprietary damages in order for the ecclesiastical administrators to release the defendant. If the appeal were denied, then the civil authorities could forcibly seize the defendant. The ecclesiastical administrators could in turn respond with an excommunication of the prosecutor or the civil authorities.

Canons on Ecclesial Asylum

As for the evidence of canons, it largely stems from Gaul. Two fourth-century canons were issued in Asia Minor and North Africa regarding asylum, but the rest of the extant canonical evidence comes from fifth- and sixth-century Gaul.

That No One May Be Denied Asylum. The Council of Serdica in 343 set forth a canon prohibiting bishops from going to the civil courts to advocate on behalf of defendants, unless expressly invited to do so by the emperor.[25] By way of qualification, the canon added that bishops could seek pardon for those who "flee to the mercy of the church" (the late antique expression for "asylum seeker" is *ad misericordiam ecclesiae confugiant*), regardless of whether the asylum seeker was a victim of wrongdoing or a condemned offender.[26] The Council of Agde in 506 and that of Macon in 585 guaranteed asylum to particular demographics: freedmen and slaves, respectively.[27] The canon produced by the Council of Macon included a rhetorical question that depended on two premises to prove the right of churches to grant asylum: (1) that church property fell under divine protection and (2) that divine law was of a higher order than human law. The synod's reasoning invoked the right of asylum at statues of the emperor: "If even worldly leaders judge in their laws that whoever should flee to their statues have asylum, how much more ought the uncondemned remain [in asylum] who have reached the protection of the immortal, celestial kingdom?"[28] The synod argued that if imperial protection affords asylum, there should be no question about whether divine protection can grant asylum or not.

That Asylum May Be Sought on Church Premises. The Council of Orleans in 511 cited "canonical and Roman law" (*quod ecclesiastici canones decreuerunt et lex Romana constituit*) to rule that criminals, such as murderers, adulterers, and thieves, would fall under the protection of asylum if they reached the atrium of the church or even a house of the church or the bishop's residence (*ab ecclesiae atriis uel domum ecclesiae uel domum episcopi*).[29] The synod invoked the precedent of unspecified canons and laws to show that the lands on which divine protection rested consisted not only of the church building itself but of associated properties, such as the atrium and residencies. No other canons survive that prescribe the

spatial limits of ecclesial asylum, but it was certainly the preoccupation of jurists to identify such boundaries, as we will see below.

That the Refugee May Not Be Forcibly Removed from the Place of Asylum or Put to Flight. The entry in Dionysius Exiguus's anthology for the Council of Carthage held in 399 records that two bishops, Epigonius and Vincentius, were sent as conciliar delegates to Emperor Honorius to request a law forbidding the forcible seizure of any fugitive who obtained ecclesial asylum, regardless of the nature of his or her crime.[30] The law that was eventually produced as a result of this episcopal petition and a later one will be discussed below. One fifth-century and several sixth-century councils that met at Orleans, Gaul, reiterated and elaborated on the rule, for which bishops at Carthage had sought civil support. In 441, the Council of Orleans prohibited masters from removing their asylum-seeking slaves from ecclesial property.[31] In 511, another council at Orleans stated that murderers, adulterers, and thieves who found asylum in a church could not be forcibly removed.[32] Canon 3 of the same council forbade masters of refugee slaves from removing them from the precincts of asylum. Thirty years later, at the Council of Orleans in 541, penalties were added against those who violated the rule. Anyone who forcibly removed a refugee or forced him or her to flee the ecclesial place of asylum would face excommunication until the refugee was returned.[33] The council in 549 applied the same penalty specifically to masters who forcibly removed their slaves.[34]

That Prosecutors Must Make an Oath in order for the Refugee to Leave the Place of Asylum, but If the Refugee Willingly Leaves Beforehand, the Church Cannot Be Held Responsible. Several canons required that the prosecutor swear an oath before the refugee could leave the place of asylum.[35] The canon issued at Epaon in 517 explains the purpose of the oath in detail. The oath protects the refugee from suffering two kinds of penalties as a result of his or her crime: corporal punishment and death. According to the canon, haircutting and hard labor, however, do not count as "corporal punishment," so the meting out of such punishments would not violate the oath.[36] The Council of Orleans in 511 decided that oath breakers would suffer excommunication.[37] The same council absolved clerics of responsibility for the fate of refugees who left the place of asylum of their own accord.[38]

Councils held at Orleans demanded more of non-Christian prosecutors. Jewish masters of Christian slaves had to leave a deposit (equivalent in value to the price of the refugee slave) with the bishop in order to claim their slaves from ecclesial asylum.[39] Non-Christian prosecutors had to find a Christian to make the oath on his or her behalf, since the penalty of excommunication for breaking the oath could apply only to a Christian.[40]

Appropriate Courses of Action for Specific Circumstances. Three councils at Gaul prescribed courses of action in response to specific circumstances. At Orange in 441, the episcopal gathering ruled against masters who confiscated a cleric's slave to replace the slave protected by ecclesial asylum.[41] The Synod of Orleans in 511 decided on the punishment that kidnappers of women would face in lieu of death or corporal punishment if the kidnappers sought refuge in the church: slavery.[42] At Orleans in 541, the synod allowed churches to purchase the freedom of refugee Christian slaves from Jewish masters.[43]

Laws on Ecclesial Asylum

In the fifth century, the jurists conceded to the wishes of bishops by supporting expansions to the practice of ecclesial asylum, but in the centuries preceding and following it, jurists limited the scope. In the course of the fourth century, bakers, public debtors, heretics, Jews, disruptors of the public peace, and those convicted of particularly heinous crimes would be expressly denied asylum benefits. In the years 392 to 398, laws were issued to Egypt and the East requiring judges and ecclesiastical administrators to follow civil procedures for appeals and not to bypass them in the name of ecclesial protection. The laws of 392 concerned judges. Judges could not allow clerical intercession to sidestep civil procedure. In other words, judges were not allowed to reduce a sentence or a penalty in a negotiation with clerics that exceeded the limitations of the procedure for appeals. The purpose of ecclesial asylum was to protect refugees from extreme penalties and for clerics to negotiate for mercy toward the criminal, but negotiations had to occur within the framework of an appeal (*appellatio* or *provocatio*).[44] The law of 398 concerned ecclesiastical administrators. Just as judges could not *accept* inappropriate requests for appeals, so also ecclesiastical administrators could not *submit* inappropriate requests for appeals.

The laws directed against bakers and public debtors consider asylum to be a pretext for evading responsibility. Valentinian I addressed a law in 364 to Rome, stating that ecclesial asylum cannot protect individuals from their membership to the association of bread making.[45] The guild could recall refugee bread makers at any time. Theodosius I likewise addressed a law to the count of the sacred imperial largesse in 392 preventing public debtors from avoiding exaction of their debt through asylum.[46] Theodosius I added a penalty against clerics who nevertheless harbored public debtors: the clerics would personally be liable to pay the public debt as a punishment for offering asylum to persons to whom it was forbidden.

Heretics and Jews were denied ecclesial asylum benefits as well. In the wake of the Council of Constantinople in 381, Theodosius I issued a law to the prefect of Illyricum against those who rejected the council's rule of faith.[47] Theodosius I forbade heretics from crossing the threshold of churches (*ecclesiarum limine penitus arceantur*).[48] In 397, Arcadius wrote to the prefect of Egypt that Jews were

not to be permitted asylum.[49] In fact, like the heretics, Jews were to be forced to leave (*arceantur*).[50]

In 392, Theodosius I legislated against the grant of asylum to disruptors of the public peace in Egypt and convicts of heinous crimes in the East. In Egypt, judges were not allowed to permit convicts "who by the disorder of their acts and by rebellious contumacy confound and disturb the public peace" to appeal their case as a concession to mediating clerics, otherwise the judges and office staff would face a fine of thirty pounds of gold.[51] Theodosius I similarly forbade judges in the East in 392 from waiving or reducing a penalty or sentence on account of clerical intercession or clerical hostage of the criminal, if the convict was judged guilty of a grave crime (*maximus criminis*).[52] Judges and their office staff could be fined fifteen or thirty pounds of gold, depending on the rank of the office, for granting ecclesial asylum in such cases of heinous crimes.

A law issued in 398 addressed the problem of judges and ecclesiastical administrators in the East who contravened civil procedure in the name of ecclesial protection. The grand chamberlain Eutropius petitioned Arcadius for legislation against ecclesiastical administrators in the East.[53] Two relevant excerpts of the law in the Theodosian Codex show that clerics were forbidden from offering asylum once the legal time limit for submitting a *provocatio* (appeal) elapsed and that civil authorities were obliged to forcibly seize particular kinds of individuals from ecclesial asylum. If the time limit (between the declaration of a sentence and its execution) elapsed, clerics could not "vindicate and hold by force or by any usurpation persons who have been sentenced to punishment and condemned for the enormity of their crimes."[54] Slaves (*servi*), maidservants (*ancillae*), decurions *(curiales)*, public debtors *(debitores publici*), procurators (*procuratores*), collectors of purple dye fish (*murileguli*), and anyone involved in public or private accounts (*quilibet* [. . .] *publicis privatisqve rationibus involutus*) could be forcibly seized for seeking ecclesial asylum.[55] The law penalizes ecclesiastical stewards by requiring that they pay the debts of those that clerics defended.

The laws of the fifth century expanded the limits set in the fourth century. Bishops of Carthage may have effectively petitioned for the first piece of extensive legislation issued to the entire empire by Honorius and Theodosius II. As mentioned above, a synod at Carthage in 399 sent bishops Vincentius and Epigonius to petition for legislation guaranteeing that no refugees could be forcibly seized from churches.[56] An episcopal petition with a similar cause was sent in 419, and it is possible that one law of Honorius and Theodosius II was made in order to respond to the matter. By 445, a comprehensive piece of legislation was made to fully recognize churches as places of asylum for all refugees and to permit the forcible seizure of refugees under no circumstances.

Two laws issued prior to 419 began the expansion of limits to ecclesial asylum and concerned slaves and Jews. In 405, Honorius encouraged the slaves of

Donatist masters in Italy and North Africa to seek asylum in churches in order to avoid rebaptism.[57] While Arcadius in 397 did not permit Jews asylum in churches, and even stipulated that Jews had to be clear of criminal offenses and debt before they could convert to Christianity,[58] Honorius and Theodosius II in 416 offered more leniency. In a law addressed to an otherwise unknown Annas, whose title was Didascalus (he was either the leader of a synagogue or teacher of the law),[59] the two emperors ruled that Jews would be permitted to join a church and seek asylum there. However, if those Jews did not remain faithful to the church, then judges were obliged to revoke the pardon negotiated by the clerics and enforce the original sentence.[60]

The years 419, 431, and 445 witnessed the height of legal expansiveness regarding ecclesial asylum. In 419, Honorius and Theodosius II established two new rules in response to episcopal petitions.[61] They may have responded to two Carthaginian petitions, one sent in 399 and another in 419.[62] Augustine mentions the latter petition in three of his letters.[63] His letters claim that Bishop Alypius of Thagaste had traveled to the imperial court in Ravenna to seek a decision regarding the case of refugees at a church in Carthage and that a copy of the decision had been sent to Largus, the proconsul of Africa, but that Augustine himself is still awaiting the news concerning the content of the decision. Honorius and Theodosius II's law of 419 is not addressed to Largus; in fact, it names no addressee, and it therefore may have been designated for general application. According to the first new rule established in the law, the boundary of the ecclesial space of asylum no longer ended at the doors of the church but extended fifty paces beyond it. Second, bishops were permitted to visit prisons to learn of cases and to negotiate with the relevant judge on behalf of prisoners. The matter of ecclesial asylum was so sacred (*sancta*), according to the law, that doorkeepers of prisons would be fined two pounds of gold for refusing a bishop entrance.[64]

Theodosius II addressed the first comprehensive law on ecclesial asylum to the East on March 23, 431.[65] The law was posted in Greek translation only a few weeks later in Alexandria on April 7.[66] "Those who are afraid" (*timentes*) may seek the church's protection.[67] The places of asylum included the altars, the surrounding oratory, the space in front of the outside doors of the church, any intervening space, and any space within the outer doors of the church behind the public grounds (cells, houses, gardens, baths, courtyards, colonnades). Forcible seizure of refugees was prohibited and violation of this prohibition amounted to sacrilege, except in one case only.[68] Fugitives could not bear arms into the place of asylum; but if armed fugitives were unwilling to relinquish their arms at the request of the clerics, the bishop, the emperor, or the judges could demand forcible seizure of the refugee. As further restrictions on the behavior of the refugee, the law prohibited eating or sleeping in the temple or in the altar. In fact, part of the purpose for expanding the demarcation lines of asylum was to prevent refugees from using the altar or church space for dining and overnight accommodation. The law

mentions boundary marks for the extent of the protective area, and some inscriptions survive that indicate the boundaries of asylum at sacred places.[69]

One year later, Theodosius II supplemented the law of 431 with an addendum limiting the amount of time slaves could spend at the place of asylum to one day and setting forth the procedure that clerics and masters had to follow.[70] Clerics were supposed to notify the slave's master or the person from whose punishment the slave had fled. The master had to grant pardon to the slave and escort him or her out of the church. A different procedure applied to slaves who entered the church armed. Masters were to forcibly seize armed slaves from the church and were not liable for the slave's death, should the slave die in a struggle. Noncompliant clerics were to "be removed from that place which they could not protect" (*loco eo, quem tueri nequivere, submoti*), be subject to episcopal trial, and be defrocked.[71]

Leo issued the most comprehensive legislation on ecclesial asylum in 445. He legislated on the matter twice in the month of February of that year. The first law simply affirmed that all the privileges churches enjoyed as places of asylum must be respected.[72] The second detailed the most extensive rules on ecclesial asylum and procedures that applied to all regions of the East, except the city of Constantinople.[73] According to the comprehensive law, no fugitives could be expelled, delivered, or dragged from the church and the areas of asylum set forth in previous laws. In contrast to Theodosius I's law of 392 discussed above,[74] refugees' debts could not be exacted from the bishops or stewards. Refugees could not be detained or restrained to the point that they should be denied food, clothing, or rest. There were limits to the length of a refugee's stay, but the exact time frame was left to the discretion of the ecclesiastical administrators: refugees could not reside so long in the church that they would be supported to the detriment of the poor and needy. The law outlines specific procedures to be followed for dealing with refugee defendants of a civil action in connection with a private or public contract and with refugee slaves who destroyed property, stole property, or withdrew from the power of their master. The steward of the church was required to examine each refugee carefully. Violators of the rules of asylum would suffer "capital and ultimate punishment."[75]

Less than one century later, Justinian would revert to some of the limitations that had been set before the fifth-century expansions made between 419 and 445. He would also establish new limitations. In 535, Justinian instructed his provincial governors about how to carry out his policies. Regarding ecclesial asylum, Justinian summarized his overall policy as follows: "the safety of holy places has been granted by law for the benefit of those who suffer injustice, not those who inflict it. It would not be possible to assert the safety of inviolable places for them, both criminal and victim alike."[76] By contrast, Augustine argued one century earlier that if churches did not protect the unjust, then the just would find no protection either.[77] For him, it was precisely because the just rightly deserved protection that the unjust required protection as well. By allowing forcible seizure of the unjust, mistakes would invariably be made to the detriment of the

just.[78] Some of Justinian's laws would explicitly name the categories of criminals who "inflict harm."

The same instruction to the governors already mentioned some of the categories of criminals who "inflict wrong" and would therefore be ineligible for ecclesial asylum: those who commit homicide, adulterers, ravishers of virgins, and public debtors. Theodosius I had excluded public debtors and convicts of heinous crimes from the benefits of ecclesial asylum in 392,[79] but no extant laws prior to those of Justinian explicitly excluded the first three categories of criminals—murderers, adulterers, and ravishers of virgins. The period for determining whether a letter of asylum should be given could not exceed thirty days. If someone brought a suit against the asylum seeker and a decision was made against him or her, he or she could either revoke the asylum and comply or receive the judgment at the sacred enclosures (*τοῖς ἱεροῖς ὅροις*) "with the reverence due to the pure enclosures" (*μετὰ τῆς ὀφειλούσης τοῖς εὐαγέσιν ὅροις αἰδοῦς*).[80] In a general law concerning the dissolution of marriages issued in 542, Justinian cited his instructions to governors to address the issue of asylum-seeking adulterers.[81] The law targets those who commit the act of adultery in the church. Justinian calls this act of sin in a church as contempt of the church and pollution of the church: "Such persons ought not to have the protection of a venerable place which they have themselves held in contempt with their uncleanness. [. . . They shall] suffer the penalties that those who dare to defile most holy places deserve (*τιμωρίαν ὑπομένειν ἧς ἄξιοι καθεστᾶσιν οἱ τοὺς ἁγιωτάτους τόπους μολύνειν τολμῶντες*). For where is the hope for those who commit sin in such places?"[82]

Another law of 535 would name the last explicit category of criminals excluded from the protection of the churches: violators of the Christian faith. Justinian addressed a law to North Africa in which he named "violators of the Christian faith" alongside murderers and ravishers of virgins.[83] Justinian's reasoning for the exclusion of such individuals echoes that of his overall policy cited above: "The holy church cannot both help the wicked and offer its assistance to the victims of harm."[84] Justinian considered the ecclesial protection of certain criminals and impious persons to be mutually exclusive from that of victims.

Justinian's most detailed instructions regarding ecclesial asylum concerned public debtors. As the following paragraphs show, he initially outlawed asylum for fiscal causes altogether; he then permitted asylum for setting a schedule of indemnification and providing a security. The asylum, however, would only protect the debtor from molestation, not from the penalty of exile altogether.

Edict 2, probably issued before Novel 17, "forb[ade] all most distinguished provincial governors to grant the right of asylum in fiscal cases."[85] Even asylum granted in private causes of debt had to be limited in time and nonrenewable. An edict issued in 545 addressed the provincial prefects specifically regarding their apparitors' embezzlement of fiscal funds.[86] If provincial apparitors sought asylum for embezzling money they collected for the fiscal treasury, the bishops had to

receive the letter of safety, lead them out of the sacred enclosure, and deliver them to the public servants who would lead them into exile where they would live as though within sacred enclosure. Noncompliant clergy were to indemnify the fisc out of their personal property and were threatened with deposition.

In 538 or 539, when Justinian wrote to the prefect of the East to reorganize the region of Egypt, he included detailed instructions regarding asylum for fiscal causes, especially when it was sought by civil authorities.[87] In matters that pertained to the fiscal treasury, the prefect, and his staff, the bishop of Alexandria could not grant any letters of asylum, unless the asylum was requested only for the purpose of assistance (in indemnifying the fisc). The asylum seekers had to accept the grant of asylum "on condition of appearing in public and, without fail, paying what they owe to the public treasury within a stated number of days, or providing the *scriniarii* or administrators with sufficient security."[88] The civil authorities could use their own discretion in setting time limits for such letters of asylum, but the bishop of Alexandria could only set the limits that the office determined (otherwise the letter was void and the person was subject to exaction even within the sacred enclosures). The stewards and defenders of the churches would be liable to pay out of their personal pocket and that of the archbishop; then, if a balance remained, they would have to pay out of the property of the church. The significance of this cannot be underestimated, since legislation generally favored the increase of ecclesial assets and even established measures to safeguard them against diminution. If the stewards acted contrary to the bishops, they would not only be liable to the debt; they would be removed from their position as steward and would be defrocked. Civil authorities, for their dishonesty to the fisc and for making compulsion necessary, would have their property confiscated, and they would have to live in perpetual exile on the coasts of the Black Sea (the "Hospitable Sea," *Pontus Euxinus*) at Sebastopol and Pityus (cities on the modern-day Crimean Peninsula).[89]

As the foregoing analysis of laws and canons shows, ecclesial properties in the fourth through the sixth century became protecting bodies. Ecclesiastical administrators offered the church's protection to all who sought it and petitioned emperors for civil laws that defined ecclesial asylum in such a robust way. Emperors of the fourth century and, later, in the sixth century did recognize ecclesial asylum, but they limited its scope. They made certain criminals ineligible and they required both civil authorities and ecclesiastical administrators to comply with civil procedures. By contrast, in the fifth century, Theodosius II and Leo issued laws that recognized a wider definition of ecclesial asylum.

REDEMPTION OF CAPTIVES

When Honorius and Theodosius II delimited the parts of ecclesial property that legally counted as places of asylum, they justified the need for the boundary lines

by claiming that refugees suffered from "imprisonment" under the then-current boundary limitations: "For when very many people flee from the violence of a cruel fortune and choose the protection of the defense of the churches, when they are confined therein, they suffer no less imprisonment than that which they have avoided."[90] While refugees willingly sought "imprisonment" in churches so that ecclesiastical administrators could intercede and negotiate on their behalf, captives were imprisoned outside the boundaries of the Roman Empire and relied on others to initiate the negotiation of their ransom and release.[91]

Only one extant canon addresses the issue of the redemption of captives.[92] The Council of Orleans in 511 decided that one permissible use of the donations of kings was for the redemption of captives.

The first extant law regarding the redemption of captives shows that churches were not only involved in the redemption of captives but were also involved in the process of rehabilitating them into their homes, and that captives were obligated to recompense their redeemers. Honorius in 408 wrote to Theodorus, the praetorian prefect of Italy and Illyricum, that ransomed captives had to restore the price of their ransom to their redeemer or render recompense through five years of service.[93] They could return to their landholdings, but if a conflict arose between a redeemed captive and an overseer, a chief tenant, or a procurator of his (the redeemed captive's) property, then the law requested that the clerics of the municipality petition the judges to enforce Honorius's law to the benefit of the redeemed captive.

Later laws regulated two specific methods for collecting ransom funds: the receipt of bequests made for this express purpose and the alienation of certain ecclesial property. Marcian and Justinian issued constitutions regarding the bequest of ransom money.[94] Justinian made exceptions to certain principles of inalienability for the sake of the redemption of captives. He allowed church construction funds to be redirected, sacred vessels to be melted down,[95] and the immovable property of certain churches to be sold. In 530, Justinian allowed funds for the construction of a church to be redirected to the redemption of captives.[96] Bishops could collect funds vowed for the construction of a church and use them instead to redeem captives. If the testator ordered a church to be built, the heirs had to provide for its completion within three years. But if that time elapsed and no church was built, the bishops were to "claim the funds left behind and [. . .] effect the construction of the most holy churches [. . .] or the ransom of captives."[97] In 535, Justinian permitted sacred vessels to be alienated for the same purpose, since inanimate utensils should not be valued over human souls.[98] In 544, Justinian gave express permission to churches in two locales to alienate immovable property for the redemption of captives.[99] The churches of Odessus and Tomis on the Black Sea could alienate immovable property for the redemption of captives, unless the property was expressly given on the condition that it would not be alienated.

The ways in which a church could serve as a protecting place were manifold, but the manumission of slaves, the asylum of refugees, and the redemption of captives were the particular acts of protection about which jurists and bishops drafted regulations, in part because these two groups of rule makers disagreed about how the church ought to protect the needy in relation to these practices. Their disagreement is particularly noticeable in the matter of asylum, since bishops advocated for expansive discretion in their capacity to offer refugees clemency, while jurists preferred to limit episcopal discretion in order to maintain the integrity of civil institutions. The manumission of slaves in churches required legal recognition for the purposes of ensuring social stability. The redemption of captives became a matter of legal concern because raising ransom funds sometimes required the exceptional alienation of ecclesial property. Though the protecting capacity of sacred things grew out of their protected nature, the case studies below show how interests in making the church a protecting space could conflict with the idea that it was a protected place.

THE USE OF ECCLESIAL PROPERTY TO PERFORM ACTS OF MERCY

In the fourth century, Cyril of Jerusalem and John Chrysostom acted on the same principle: that adherence to the rules that protected ecclesial property should not inhibit the performance of an act of mercy. Both bishops were summoned to trial for their actions; both refused to appear for trial; and both faced deposition. Their cases show that the alienation of ecclesial property was not easily justifiable, even when the welfare of the needy was at stake. The meeting of mercy and sacrilege in the alienation of ecclesial property created conflicts of interest and, in the cases of Cyril of Jerusalem and John Chrysostom, contributed to their deposition. As for John Chrysostom, he was not only accused of inappropriately using ecclesial property but also of failing to extend the protection of churches to particular refugees.

Ecclesial Textiles and the Trial of Cyril of Jerusalem

The historians Sozomen and Theodoret relate the circumstances of Cyril of Jerusalem's deposition in 357.[100] Both probably relied on Theodore of Mopsuestia's account in the fifth book of his *Against Eunomius*.[101] The historian Socrates disavows knowledge of the reasons for Cyril's deposition, but notes that Cyril refused to heed summonses for two years. After he was deposed in absentia, he became the first cleric to appeal an episcopal decision to a civil court.[102]

Sozomen describes Acacius of Contantinople's charges against Cyril, which concerned both matters of faith and ecclesial property.[103] Sozomen claims that it was the issue of misconduct that led to Cyril's deposition. He summarizes the charge of alienation of ecclesial property as follows. Cyril had to care for the poor suffering from a famine in Jerusalem and the neighboring countryside. To raise

funds, he sold the vessels and sacred curtains of the church (*κειμήλια καὶ ἱερὰ παραπετάσματα*).[104] A donor later recognized his ecclesial gift worn by an actress. When he inquired after it, he learned that Cyril had alienated his donation to a merchant, who had in turn sold it to the actress.

Theodoret identifies the donor as Constantine and claims that the charge of maladministration of an imperial donation moved Constantius II to convoke a small synod composed of Cyril's opponents.[105] Acacius's charge, according to Theodoret, was that Constantine had donated a vestment made with golden threads to Macarius, the bishop of Jerusalem, to use for the performance of baptisms.[106] Cyril sold that garment and it fell into the hands of an actor. Theodoret does not name a purpose for the sale. Sozomen and Theodoret's accounts diverge in the details of the transaction itself.[107]

According to Sozomen, the misconduct was cause for deposition; and, according to Theodoret, it was a means of making Cyril's case personal to the emperor Constantius. If the late antique historians are correct, Cyril of Jerusalem may have been deposed for alienating ecclesial property, even for the purpose of showing mercy to the poor; and he may have been the first bishop to appeal his trial at the imperial court.

Ecclesial Protection and the Trial of John Chrysostom

Like Cyril of Jerusalem, John Chrysostom was tried and deposed in absentia. John's supporters, like Cyril's, justified his alienation of ecclesial property on the grounds that the sale supplied the means for the performance of an act of mercy. According to his accusers, John not only failed to safeguard the protected nature of churches; he also abused certain individuals' access to the protecting nature of churches. When John appealed his deposition to Innocent of Rome, he leveled accusations of his own against his opponents. John's plaint named infractions made against the sacrality of the church in the course of his own arrest.

The Trial. The complete acts of the Synod of the Oak have not been transmitted, but the ninth-century bishop, Photius of Constantinople, summarized the acts of the synod in his *Bibliotheca*.[108] The empress Eudoxia had Bishop Theophilus of Alexandria preside over the Synod of the Oak at the Great Church of Saints Peter and Paul in the suburbs of Chalcedon. The council held thirteen sessions, the first twelve of which tried John Chrysostom. Five bishops presided as judges: Theophilus of Alexandria, Acacius of Beroa, Antiochius of Ptolemais, Severian of Gabala, and Cyrin of Chalcedon. Photius lists the accusations leveled by the deacon John and those by the monk Isaac against John Chrysostom.[109]

Deacon John named twenty-nine charges, eight of which regarded ecclesial property:

3. That John Chrysostom sold ecclesial property of value (*τὰ κειμήλια πλῆθος πολὺ διέπρασε*).

4. That John Chrysostom sold the slabs of marble that Nectarius had set aside for the decoration of St. Anastasia Church (*τὰ μάρμαρα τῆς ἁγίας Ἀναστασίας, ἃ Νεκτάριος εἰς μαρμάρωσιν τῆς ἐκκλησίας ἐναπέθετο, οὗτος διέπρασε*).
11. That John Chrysostom informed against the *comes* John in the sedition of soldiers (i.e., the coup of Gainas against the emperor Arcadius).
16. That John Chrysostom used the services of a certain Theodoulus to sell the inheritance that a certain Thecla bequeathed (*τὴν κληρονομίαν τὴν ἀπὸ θέκλας καταλειφθεῖσαν πέπρακε διὰ θεοδούλου*).
17. That no one knows where the revenues of the church have gone (*τὰ προσόδια τῆς ἐκκλησίας οὐδεὶς οἶδε ποῦ ἀπῆλθεν*).
21. That John Chrysostom handed over the presbyter Porphyrius to the grand chamberlain Eutropius to be exiled.
22. That John Chrysostom also handed over the presbyter Venerius with much force.
27. That John Chrysostom committed outrage in the Church of the Apostles by punching Memnon and offering him communion after his mouth bled (*γρόνθον ἔδωκε Μέμνονι ἐν τοῖς Ἀποστόλοις, καί ῥέοντος τοῦ αἵματος ἐκ τοῦ στόματος αὐτοῦ προσήνεγκε τὰ μυστήρια*).[110]

Four of Deacon John's charges name instances when John Chrysostom violated the principle that churches are protected by alienating various kinds of ecclesial property: valuable sacred vessels (*τὰ κειμήλια πλῆθος*), slabs of marble (*τὰ μάρμαρα*), a testamentary donation (*ἡ κληρονομία*), and revenue (*τὰ προσόδια*).

Another four charges were leveled at John Chrysostom, accusing him of violating the principle that churches protect. Three of them concerned the administration of churches as places of asylum. Charge 11 refers to the occasion of Count John's asylum at John Chrysostom's church. Charges 21 and 22 name two presbyters (otherwise unknown) to whom John Chrysostom failed to extend the protection of the church. In fact, he permitted the forcible seizure of one of them, Venerius. According to charge 27, John Chrysostom's physical violence created an unsafe, even bloody, ecclesial environment.

John Chrysostom was summoned four times to respond to Deacon John's charges and refused to comply. According to Photius's quotation of John Chrysostom's response to the summons, John protested the fairness of the trial and named a condition of his appearance in court: since the judges were his overt enemies, he would not comply with a summons unless a new set of judges were appointed.

The court examined four of Deacon John's charges, one of which was the twenty-seventh named above.[111] Then the synod received Isaac's *libellus*. Isaac leveled only one charge regarding ecclesial property (no. 9), which claimed that John Chrysostom granted asylum to pagans who harmed Christians.[112] While Isaac's charge admits that John Chrysostom respected the church in its protecting capacity by granting asylum, he argues that John offered such protection to

ineligible individuals, who were not only non-Christian, but also committed injustice against Christians.[113]

Then witnesses were heard. In support of Deacon John's charge 3, the archpriest Arsacius, bishop Nectarius's brother, and the priests Atticus and Helpidius gave witness. They along with priest Acacius gave witness to charge 4. The fact that discussions took place and that witnesses were heard suggests that John Chrysostom was not deposed for his refusal of the canonical summonses, but for the outcome of the trial that proceeded despite his failure to appear.

Responses to the Trial. Photius does not name the charges of which John Chrysostom was considered guilty and which led to his deposition, but three sources respond to the charges regarding the alienation of ecclesial property: two conflicting reports written by supporters and a third by an opponent. A funerary oration for John Chrysostom offers a defense regarding charges 3 and 4, as well as another charge unnamed in Photius's summary of the plaints.[114] Palladius's account of John Chrysostom's life responds to charge 3. Sixth-century sources contain information regarding a lost *liber* composed by Theophilus in defense of John Chrysostom's deposition, from which aspects of Theophilus's perspective on the accusations can be reconstructed.

The funerary oration refutes some of the charges leveled against John Chrysostom.[115] The author cites Deacon John's charges 3 and 4 as follows: "he sold some valuables and gifted others" (*καὶ κειμήλια τὰ μὲν πέπρακεν, τὰ δὲ ἐχαρίσατο*).[116] In response to this accusation about the alienation of inalienables, the orator says:

> And which bishop, tell me, does not have authority over the management of valuables (*κειμηλίων*)? In fact, he [John] gave some things to the poor bishops for their own and for the poor's sustenance, other things for the adornment of poor churches. He did not make an innovative sale, but, since those who followed the ancient custom said that they used the custom even now (namely, to gather together the surplus and make silver, due to the great number of people supported by ecclesial goods), there was no hindrance. And who is not aware of the fact that the selling and distribution of the sacred offerings of the church (*τὰ ἱερὰ τῆς ἐκκλησίας*) to the needy is also a practice (*νόμος*) among the fathers in the West? Nevertheless, the saint [John] did not even make use of such authority, but allowed things uncustomary and unnecessary for the [church] service to be administered for the support of not only the church properties, but also individuals (literally: the support of not only the material [*ὑλικῶν*] valuables but also rational ones [*λογικῶν κειμηλίων*]).[117]

The author employs three rhetorical strategies to defend the propriety of John Chrysostom's actions. First, he invokes John Chrysostom's authority as bishop to administer ecclesial property. Second, he argues that John Chrysostom's transactions used unnecessary ecclesial property for the benefit of the poor: John Chrysostom donated ecclesial property to furnish poor churches and to provide sustenance for poor bishops and poor laity. Third, he argues that there is precedent

among bishops in the western provinces to make the same kind of administrative decisions that John Chrysostom did. In other words, John Chrysostom's actions were not innovative but rather consistent with customary practices.

In contrast, Palladius's account of John Chrysostom's life claims that John Chrysostom in fact did not alienate the valuables about which he was accused. Palladius relates that a presbyter called Germanus and a deacon named Cassian submitted plaints (*γράμματα* [. . .] *ὑπομεμενηκέναι*) against the actions that took place in the church during John Chrysostom's second arrest.[118] The plaint included a copy of an inventory (*βρέβιον*) of the church's property, signed by five civil authorities as witnesses (Studius, the prefect of the city, Eutychianus, the praetorian prefect, John, *comes* of the sacred largesse, Eustathius, the quaestor, and a *tabularius*).[119] The purpose of including the inventory copy, according to Palladius, was to exonerate John of the charge that he alienated gold, silver, and textile valuables (*τὰ κειμήλια* [. . .] *ἔν τε χρυσῷ καὶ ἀργύρῳ καὶ ἀμφίοις*).[120]

To resist his portrayal as a sacrilegious administrator, John Chrysostom and his supporters used another important rhetorical strategy: they created vivid landscapes for their audiences to visualize. As we will see, verbal images of an altar defended John from the charges relating to asylum, while the depiction of a hospice rebutted charges concerning the alienation of sacred property.

The author of the funerary oration includes a response to a charge not mentioned in Photius's résumé: that John Chrysostom used the ecclesial grain allowance set aside for disabled persons for personal ends.[121] The author's rebuttal refers to a series of events surrounding a building project mentioned in earlier sections of the funerary speech.[122] To build a large, endowed home for lepers, John Chrysostom purchased a piece of land conveniently located at a riverside, where John envisioned the lepers could wash their sores.[123] The anonymous orator took his listeners on an imagined visit to the controversial building project. John Chrysostom focused his episcopal care on those who suffered from leprosy, "a disease that drives even a soul of steel to pity, but that scares away even the most philanthropic soul."[124] John bought land with "the finest air and a river flowing by" and began to build a hospice, but before the roof was installed, the project was halted.[125] The river proved to be the most controversial aspect of the charitable building project.[126] John specifically chose a riverside location so that the lepers could easily cleanse their sores, but his opponents convinced neighbors down the river that the waters would be polluted and would fill their properties with pus and disease.[127] According to the orator, John's opponents transformed the sacred, charitable landscape that he had envisioned into an unfinished project that could have only spread pollution. The orator sought to effect a visual shift in the minds of the listeners. In John Chrysostom's hands, the landscape consisted of fine air and a river and spread mercy to those persons most shunned. In the hands of his opponents, however, the landscape turned into an unfinished, abandoned building that could only have spread disease—even if it had been finished.

How did John Chrysostom's opponents succeed in halting the project? According to the orator, they claimed that he amassed funds for the hospice by alienating ecclesial property.[128] After reviewing their charges, the orator says:

> They added to the charges that he also took the grain allowance of the disabled brothers (supplied to them of old from the church) and spent it on personal luxury. And, O men, they said these things, they who censured and obstructed that great [expenditure of his] for them [the lepers], and even pillaged the expenditure. Those who feared their [the lepers'] proximity and suspected that the running river would become a sowing of misfortune against their properties (both the land and the persons) listened and were persuaded. Their mind hated, their tongue slandered the great lover of the poor, setting a façade of philanthropy, yet subtracting the things of the poor.[129]

The author's rebuttal reproaches the prosecutors for their hypocrisy. The prosecutors dared to accuse the bishop of embezzling funds for the disabled, even though they themselves had obstructed the bishop's major building project to house and support the disabled (namely, lepers). The orator argues that the accusation is outrageous and more aptly befits the character of the prosecutors than that of the defendant.

Palladius likewise records that John Chrysostom redirected ecclesial revenue (*ἀνάλωμα*) to support his founding of hospitals (*νοσοκομεῖα*).[130] Palladius makes no mention of controversy in the affair but nevertheless rhetorically defends John Chrysostom's choice of building project by censuring bishops, such as the "lithomaniac" Theophilus, for expending ecclesial funds on unnecessary constructions.[131] Such bishops "squander money that rightly belongs to the poor in hanging walls and water cisterns three stories high and disgraceful baths for effeminate men all hidden away, or [. . .] expend their money on buildings uselessly."[132] Palladius creates a foil of a landscape by comparing John Chrysostom's charitable use of church property to Theophilus's "lithomania" in building excessively luxurious sites.

John Chrysostom's supporters rhetorically created visual landscapes to depict him as a bishop who did everything he could to fulfill his primary duty as bishop: to care for the needy. For the orator, the very same image that exonerated John Chrysostom painted his opponents in the unfavorable light of selfish motives. For Palladius, the juxtaposition of a hospice with excessively luxuriant sites put John Chrysostom in the company of the pious, while leaving Theophilus with questionable motives.

Little apologetic survives from the writings of John Chrysostom's opponents, but what does survive hints at the importance of charges regarding his administrative conduct. Facundus of Hermiane published a defense of the Three Chapters shortly after Justinian promulgated an edict condemning them in 543/4. In it, Facundus cites Jerome's Latin translation of a liber Theophilus composed to defend the justice of John Chrysostom's deposition.[133] According to Facundus, Theophilus

said that John Chrysostom "surpassed the audacity of thieves in his crime" (*scelere suo latronum uicisset audaciam*) and was "chief among those who commit sacrilege" (*sacrilegorum principem*).[134] Facundus does not provide any further detail on Theophilus's position vis-à-vis John Chrysostom's administration of ecclesial property, but the few words quoted suggest that Theophilus addressed the charge of sacrilege in his liber.[135]

As for the charges related to churches in their protecting capacity, John Chrysostom himself preached on the asylum of the chamberlain Eutropius and the *comes* John, immediately anticipating objections to his discretionary decisions. Isaac's charge 9 and Deacon John's charge 11 fault him indeed for his actions concerning the two refugees.

Because Eutropius was not a Christian and, moreover, was instrumental in passing legislation to limit ecclesial asylum,[136] John Chrysostom expected that there would be many who would consider Eutropius unworthy of ecclesial asylum and who would object to John's reception of Eutropius in the sanctuary.[137] Even the historians Socrates and Sozomen cite resistance, like that of John's accuser Isaac, to Eutropius's asylum.[138] As Eutropius clung to the altar, John Chrysostom preached a homily. He responded to anticipated objections from the crowd by creating a vivid mental image for the audience to project over the scene at hand: Eutropius at the altar. John Chrysostom describes the church as a winged, protective creature whose embrace of Eutropius can transform him into a luminous ornament for the altar, provided that the audience joins John Chrysostom in an act of patronage. Although Eutropius had attacked the church, now that he is in need of protection the church hastens to snatch him out of the fishing net, to hold him securely under its wings and in its bosom, and to bear its shield before him.[139] With the church's power and philanthropy (*τὴν δύναμιν τῆς Ἐκκλησίας καὶ τὴν φιλανθρωπίαν*), Eutropius can become an ornament (*κόσμος*) for the altar that emits great light (*λαμπηδόνα μεγάλην*).[140] Despite Eutropius's faults, he would not defile the altar any more than the impure woman of Luke 23:34 defiled Jesus in grasping his feet.[141] John Chrysostom therefore invites his audience to join him so that together as patrons they might adorn the church (*τὴν ἐκκλησίαν κοσμήσομεν*) with Eutropius the luminous ornament by appealing (*παρακαλοῦντες*) to the emperor for mercy toward him.[142]

In the case of Count John, objections to John Chrysostom's actions were of the opposite nature—namely, that he did not grant asylum to a refugee.[143] John Chrysostom preached a homily in which he defended himself against the allegation that he failed to ensure the church's protection to Count John when he sought asylum during Gainas's military coup.[144] John Chrysostom argues that he did not deny Count John asylum; rather, Count John left the church premises of his own accord. Had Count John clung to the altar, he would not have been arrested.[145] John Chrysostom recycles the same evangelical image of asylum and aerial image of the church's protection he had employed in his homily on Eutropius

the previous year. The sinful woman of the gospels clung to Jesus's feet and was saved as a result; likewise, Count John would have been saved had he clung to the altar. Despite attacks made against the church and despite John Chrysostom's own arrest on the occasion,[146] John Chrysostom insists that the church's protection is eternal (*οὐδέποτε γηρᾷ*), ascending up beyond the heavens (*ὑπὲρ τῶν οὐρανῶν ἀναβέβηκε*).[147] The ever-victorious church would have protected Count John had he remained in it.

Both John Chrysostom and his supporters created and disseminated depictions of his ecclesial landscapes as epitomies of divine protection. In their accounts, John Chrysostom's use of ecclesial funds helped the poorest of the poor, and he did not hesitate to give everyone the opportunity to take shelter under the protective wings of the church. And not only did John Chrysostom offer asylum to all those who sought it; he went above and beyond the call of duty. He offered refugees themselves the chance to be transformed into sacred objects, to envision themselves as luminous ornaments at God's altar.

John Chrysostom appealed his deposition to Innocent of Rome, repeating three times in the course of his letter that his accusers acted contrary to the laws and canons.[148] John makes the case that his protection at the Great Church was violated, as he was forcibly seized twice. The first time, he was arrested by the chief of the urban police from a church in the middle of the city. The emperor expelled those who attacked the church and recalled John Chrysostom "to the church from which we [John Chrysostom and his supporters] were unjustly thrown out" (*εἰς τὴν ἐκκλησίαν ἧς ἀδίκως ἐξεβλήθημεν*).[149] John Chrysostom pursued legal action against Theophilus of Alexandria (the first president of the synod), but Theophilus left Constantinople and made excuses to delay a court appearance. In the meantime, John Chrysostom pursued legal action against the Syrians who had supported Theophilus, but for a second time he was forcibly seized. The arrest on this latter occasion involved the use of weapons in the church. John Chrysostom complains that soldiers surrounded the sanctuary with arms (*ἀθρόον στρατιωτῶν [. . .] ὅπλοις τὸ βῆμα περιεστοιχίζετο*) and so much blood was spilt that the baptismal pools were reddened by it (*αἵματος αἱ κολυμβῆθραι ἐπληροῦντο καὶ τὰ ἱερὰ [. . .] ἐφοινίσσετο νάματα*).[150] Innocent of Rome expressed in a letter to the clergy of Constantinople that he hoped an ecumenical synod could be convened to review the case of John Chrysostom, but no such gathering ever took place.[151]

The case of John Chrysostom shows there was a fine line between mercy and sacrilege. From the perspective of his accusers, John Chrysostom practiced sacrilege toward ecclesial property by alienating it, by denying its protection to clerics and a count, and by granting its protection to ineligible persons. From the perspective of his defenders (including himself), he practiced mercy by using ecclesial property for the benefit of the disabled, the poor, and refugees. Out of these competing discourses emerges an episcopal Robin Hood: a thief in the eyes of some; a philanthropist in the eyes of others.

In general, practicing acts of mercy to the needy was considered the primary role of the bishop. The bishop's main job description, insofar as he was chief administrator of ecclesial properties, was to administer property and revenue for the benefit of the needy first and foremost. The ways in which mercy could be practiced were many and varied in late antiquity, not restricted in scope to the three discussed in this chapter. Because the manumission of slaves, the asylum of refugees, and the ransom of captives necessitated close contact between bishops and civil authorities, bishops petitioned for legal regulation of these three ways of practicing mercy. The matter of asylum, the most contested practice, caused a considerable amount of friction between bishops and jurists. Bishops preferred full discretion in their decisions to grant asylum to criminals, fugitives, and all kinds of refugees. From the bishops' point of view, judges should have always permitted bishops to intercede for mercy in all cases and at any time. Jurists, on the other hand, insisted on maintaining due process in legal trials and restricting the populations eligible for asylum, especially when the fugitive, from the perspective of the fisc, was evading taxes. Churches legally offered sanctuary to those in need, and the fisc delineated the limits of mercy's reach.

The case studies I have presented on Cyril of Jerusalem and John Chrysostom's controversial practices of mercy show how the protecting role that churches acquired could conflict with their legally protected status. Despite the exception clauses to the rule against alienation of ecclesial property, these case studies show how difficult it was to justify exceptions.[152] In the next two chapters, I show that ritual practice inverted the relative priority of these two corollaries to the definition of *res sacrae*.