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## THE TEMPLE AS SANCTUARY AND THE RIGHT OF ASYLUM

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### ABSTRACT:

The entry deals with some aspects of the history of the concept of ‘temple’. In the Western tradition, the temple coincides, at least to some extent, with the territorialisation of the sacred. It is a sacralised part of space that is qualitatively different from the political territory in which it is located: it is subject to a different normativity and can be seen as an extraterritory characterised by inviolability. This is clearly demonstrated by the right of asylum, which has usually been associated with sacred spaces, from Greek temples to Christian churches. In modern times, this reference played an important role in the shaping of some political and legal concepts, including the extraterritoriality of diplomatic premises

### 1. *Territorialising the sacred*

The exploration of the history of the word “temple” shows that the concept of temple refers first and foremost to a physically delimited and sacralised space, with respect to which the profane space is derived<sup>1</sup>. From an etymological point of view, *temple* derives from *templum*, which is probably derived from *temulus*. The latter, in turn, can be traced back to the Greek root τεμ- of τέμνω (to separate) and τέμενος. In the Greek lexicon, it denotes a closed enclosure sacred to the gods: within it, the sanctuary (ἱερόν) rises, i.e. the building or complex of buildings or monuments associated with the cult of the worshipped deity, whose statue is kept in the cella (ναός)<sup>2</sup>. τέμενος and ἱερόν are thus not synonymous<sup>3</sup>. On the other hand, the Romans used *templum* to denote the area of the sky in which the flight of birds was observed, as well as the pseudo-territory represented by the liver of a sacrificed animal. *Templum* recalls the idea of a 'separate portion' of space, whether real - such as that of an enclosure or a cavern - or imaginary - such as the circle traced by the augur in the sky with his hand<sup>4</sup>.

As we can see, in the ancient lexicon the emphasis is not on the sacred structure but on the area on which it stands. From this point of view, the temple is to be understood first and foremost as a delimitation, as a boundary. In this respect, the political significance of the term is immediately apparent. To delimit, to draw boundaries, means to identify a *rex*, that is, the one who, as Émile Benveniste writes, *regit fines*, «[draws] the frontiers in a straight line»<sup>5</sup>, and thus delimits interior and exterior, sacred and profane, proper and foreign territory. This is an artificial and eminently political act: as Carl Schmitt's *Nomos der Erde* shows, the occupation of land is the archetype of a constitutive juridical process<sup>6</sup> that leads to the affirmation of territory as a place for the exercise of *ius terrendi* and subjection to a *nomos*. In this sense, *temple* and *definition of territory* seem to be intrinsically linked.

The temple thus coincides, at least in part, with the territorialisation of the sacred - thus, with the divinity appropriating a portion of land, creating a territory and making room for the exercise of its sovereignty. This produces an attractive (and repulsive) pole of relations and movement. Temples, in fact, have often determined the organisation of the surrounding city and have been the centre of

<sup>1</sup> See É. Benveniste, *Profanum et profanare*, in *Hommages à Georges Dumézil*, Collection Latomus 45, Brussels 1960, pp. 46-53. In addition, one must recall that, from an onomasiological point of view, there is a plurality of terms in the Greek and Latin language that correspond to the sacred place, including: ἱερόν, ναός, τέμενος, *templum*, *aedes*, *fanum*, *cella*, *sacellum*, *sacrarium*.

<sup>2</sup> Cf. *A Latin Dictionary*, ed. by C.T. Lewis and C. Short, LL.D. Clarendon Press, Oxford 1879, ad v. *templum*, and *A Greek-English Dictionary*, ed. by H.G. Liddell and R. Scott, Oxford University Press, Oxford 1968, ad v. τέμνω and τέμενος, p. 1774. However, Stefan Weinstock also refers to the meaning of cut wooden beam, recalling the structure under which the augur sat (*Templum*, in *Real Encyclopädie der classischen Altertumswissenschaft*, hrsg. v. A.F. Pauly und G. Wissowa, vol. V/A1, Metzlersche, Stuttgart 1934, coll. 480-85). Varro, *De lingua latina*, VII, §7 traces it back to *tueri*, "a tuendo primum templum dictum".

<sup>3</sup> Cf. L. Guerrini, *Temenos (τέμενος)*, in *Enciclopedia dell'arte antica*, 7 vols., dir. da R. Bianchi Bandinelli, Treccani, Rome 1958-1966, online at [http://www.treccani.it/enciclopedia/temenos\\_\(Enciclopedia-dell-Arte-Antica\)/](http://www.treccani.it/enciclopedia/temenos_(Enciclopedia-dell-Arte-Antica)/)

<sup>4</sup> According to Varro, «dictum templum locus augurii aut auspicii causā quibusdam conceptis verbis finitus» (*De lingua latina* 7, §6). A few centuries later, Servius Honoratus (late 4th cent.) again specifies that «templum dicitur locus manu auguris designatus in aëre, post quem factum ilico captantur auguria» Servius Honoratus, *In Vergilii Aeneidos Commentarius*, 1.92).

<sup>5</sup> É. Benveniste, *Vocabolario delle istituzioni indoeuropee*, tr. it. by M. Liborio, 2 vols., Einaudi, Turin 1976, vol. II, p. 295.

<sup>6</sup> C. Schmitt, *Il nomos della terra nel diritto internazionale del 'Jus Publicum Europaeum'*, tr. it. by E. Castrucci, Adelphi, Milan 1991, p. 25.

collective participation towards which pilgrimages and community movements have been directed - or, conversely, excluded. They are also places of clashes and power relations: they are certainly fully and actively part of the mobile fabric of political, geographical and historical relations that have allowed or hindered their construction and use - and still do, in the hot spots of international politics as well as in our cities.

## 2. Clarifications and ambiguities

With regard to this definition of 'temple', some clarifications are necessary in order to clarify its partiality<sup>7</sup>. From a historical point of view, the temple object proves to be as elusive as ever, in its functions and conceptions, even before it is a physical building, and it is necessary to bear in mind this indeterminacy, or rather the plural determinacy of the cultures and contexts in which a specific sacred space exists.

First, the designation of a space as a sacred place or building varies considerably, depending on the nature of the divinity, the location in relation to the city, the permanence or mobility, the naturalness or artificiality of the chosen site. The conceptualisation of this sacred space had taken different turns. Suffice it to recall that for the Romans as for the Greeks and earlier societies, the temple is a space *inhabited* by the divinity, and not a place for the *assembly* of the faithful. The assembly character will be the result of a slow - and in any case never definitive - process, linked to new insights into the way to worship and the criticism of bloody sacrifice, as well as to the rise of new religions that insist on the spiritual aspect of religious practice<sup>8</sup>.

Secondly, the architectural organisation of this space can be very different. From the 7th century BCE, the typology of the rectangular stone building on a stepped base, with pilasters, entablature, frieze and tympanum, became widespread: it would be the undisputed protagonist of Mediterranean architecture for centuries, before the arrival of Christian and Islamic forms.

Thirdly, the sacred space inhabited by the deity is not necessarily distinct and bounded. The distinction between the sacred *of the fanum* and the *pro-fanus* - and the related territorialisation - may not even exist when speaking of *Deus sive natura*. This theological understanding seems to open up an alternative paradigm to territorial sovereignty. And even if one maintains the distinction between the sacred and the profane, this distinction does not apply only to the spatial dimension. In this sense, *time time* is undoubtedly the first to be mentioned, and indeed *templum* and *tempus* have often been traced back to a single etymon: religious experience unfolds rather in the sharp discontinuity between liturgical time and ordinary time<sup>9</sup>. Secondly, sacred space has been traced back to the soul, *in interiore homine*, especially in the context of early Christian thought, which develops the theme of the abolition of the temple and visible worship at length, on the basis of some Gospel passages including *John 4:23-24*<sup>10</sup>. The Protestant Reformation would explicitly argue for

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<sup>7</sup> On this aspect see A. Vauchez (ed.), *Lieux sacrés, lieux de culte, sanctuaires. Approches terminologiques, méthodologiques, historiques et monographiques*, École Française de Rome, Roma 2000; W. Coster - A. Spicer, *Introduction: the dimension of sacred space in Reformation Europe*, in W. Coster - A. Spicer (eds.), *Sacred Space in Early Modern Europe*, Cambridge Univ. Press, Cambridge 2005, pp. 1-16; S. Ribichini, "Più volte mutò nome la terra Saturnia" (*Verg. Aen. VIII 329*), in X. Dupré Raventós - S. Ribichini - S. Verger (eds.), *Saturnia tellus: definitions of the consecrated space in Etruscan, Italic, Phoenician-Punic, Iberian and Celtic environments*, Proceedings of the International Conference held in Rome from 10 to 12 November 2004, National Research Council, Rome 2008, pp. 19-26. See also *Temples and sanctuaries*, in D.N. Freedman (ed.), *The Anchor Bible Dictionary*, 6 vols., Doubleday, New York 1992, vol. 6, pp. 369- 392.

<sup>8</sup> H.W. Turner, *From Temple to Meeting House. The Phenomenology and Theology of Places of Worship*, Mouton, The Hague 1979, part II, pp. 155-306.

<sup>9</sup> See M. Eliade, *The Sacred and the Profane*, cit., pp. 60-66.

<sup>10</sup> Cf. G. Gaeta, *Il culto "in spirito e verità" secondo il Vangelo di Giovanni*, in P.C. Bori (ed.), *In spirito e verità: letture di Giovanni 4, 23-24*, EDB, Bologna 1996, pp. 9-20; P. de Navascués, *Tempio*, in A. Di Bernardino (ed.), *Nuovo dizionario patristico e di antichità cristiane*, 4 vols., Marietti, Genova 2006-10, vol. 3, coll. 5215-17.

the spiritualisation of the sacred, also with reference to the same pericope. The ceremoniality of Catholic churches and the sacredness of places and objects of worship are indeed denounced in the Protestant context. As a result, a sharp distinction is drawn between the ‘temple’ as a place of assembly, stripped of ornaments, and the ‘church’, understood as a community of believers who meet to communicate with the divine.<sup>11</sup>

### 3. *The temple and the right of asylum*

Despite these limitations and differentiations, however, the significance of the temple as a territorialisation of the sacred is particularly relevant from a theological-political point of view: in urbanised societies, the temple is in fact a qualitatively different space and subject to a normativity of a different order. Its otherness is delimited by precise boundaries and is also symbolised architecturally by the fence or canal that separates it from the city. This also makes it an extraterritorial, at least partially inviolable, space in relation to the surrounding political territory.

The right to asylum, which has often been a prerogative of sacred places since ancient times, is striking evidence of this<sup>12</sup>. Asylum, as is well known, is a place of refuge where persons or things subject to coercion or persecution may, by virtue of law, privilege or custom, flee from such acts and find not only temporary hospitality but also safe shelter. In ancient Greece, the identification between temple and place of asylum seems particularly true. The sacred space was immune to all acts of violence, and anyone who entered the precincts of a temple or approached an altar thereby escaped violence and the law of the city: they were in the hands of the gods rather than of human beings. In fact, every sanctuary in Greece, from the Archaic period onwards, guaranteed a kind of immunity to those who found themselves there, allowing them to pray for protection and even food; inviolability was guaranteed by the priest and the local community, who took responsibility for protection and therefore for any reprisals that might follow<sup>13</sup>. The Hebrews, for their part, set aside entire cities as sanctuaries for those guilty of manslaughter, and there is evidence that the altar of sacrifice had a similar function; however, asylum was not a prerogative associated with the Temple in Jerusalem<sup>14</sup>.

The right of asylum was not widely known in Republican Rome. In it, a space was *sacer* according to the rite of consecration and was thus removed from human possession, reserved for the immortal gods and separated from profane space. This separation was entrusted to the intervention or recognition of human authority: temples, in other words, were to be understood as places inserted within the city and made available to the divinity, and it is understandable that the notions of extraterritoriality or asylum did not find application<sup>15</sup>. In 22 CE, however, the Roman Senate revised the titles granting asylums in the Greek territories: it recognised some of them but

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<sup>11</sup> Cf. W. Richard, *Untersuchungen zur Genesis des reformierten Kirchentertminologie der Westschez und Frankreich, mit besonderer berücksichtigung der Namengebung*, Francke, Bern 1959, pp. 72-85, and B. Heal, *Sacred image and sacred space in Lutheran Germany*, in *Sacred Space in Early Modern Europe*, cit., pp. 39-59.

<sup>12</sup> See the overview reconstructions offered by G. Le Bras, *Asile ou Asyle*, in *Dictionnaire d'histoire et de géographie ecclésiastiques*, sous la dir. de A. Baudrillart, Letouzey et Ané, Paris 1912-, t. IV, 1930, col. 1035-1047; G. Vismara, *Asilo (diritto di)*, in *Enciclopedia del diritto*, Giuffrè, Milano 1958ss., vol. III; U.E. Paoli, *Asilia. Greek law/Asilo. Greek and Roman law*, and P.G. Caron, *Asilo. Diritto canonico e diritto pubblico statutale, medioevale e moderno*, both in *Novissimo Digesto Italiano*, vol. I/2, Turin 1958, pp. 1035-36 and 1036-39; H. Wißmann, Z.W.. Falk, P. Landau, *Asylrecht*, in *Theologische Realenzyklopädie*, De Gruyter, Berlin-New York 1979, vol. IV, pp. 315-327.

<sup>13</sup> Cf. U. Sinn, *Greek sanctuaries as places of refuge*, in N. Marinatos, R. Haegg (eds.), *Greek sanctuaries. New approaches*, London NY 1993, pp. 88-109, and K.J Rigsby, *Asyilia. Territorial Inviolability in the Hellenistic World*, Univ. of California Press, Berkeley 1996, p. 2, collecting sources on places defined as inviolable (*asyilia*) between 260 BCE and 22 CE. See more extensively C. Traulsen, *Das sakrale Asyl in der Alten Welt: zur Schutzfunktion des Heiligen von König Salomon bis zum Codex Theodosianus*, Tübingen, Mohr Siebeck 2004, pp. 131-219.

<sup>14</sup> G.L. Prato, *Tempio, Gerusalemme, città di asilo. La geografia dello spazio sacro trasformata in una religione senza luogo*, in *La territorializzazione del sacro. Valenza teologico-politica del tempio* (Annuario di Politica e Religione 2016), ed. Tiziana Faitini (Brescia: Morcelliana, 2016).

<sup>15</sup> See J. Scheid, *Les espaces culturels et leur interprétation*, in “Klio” 77 (1995), pp. 424-432.

prohibited new decrees of territorial inviolability in the Greek peninsula. This was intended to limit the application of an unconditional right of immunity and protection to any sacred place which attracted insolvent debtors and delinquents, harming public order<sup>16</sup>. Later, during the imperial age, it became customary to grant protection to fugitive slaves, debtors to the public treasury and perpetrators of crimes both in places of worship and in the vicinity of the emperor's statues: towards the end of the 4th century CE, legislation repeatedly intervened in the matter seeking to limit the scope and the harmful effects of a right that did in fact exist.<sup>17</sup>

The same custom was adopted by the Christian communities: it was reiterated by a number of councils from the 4th century onwards and its legalisation was demanded. Originally, the protection applied only to the church, or even to the altar, but from the 5th century it was extended to a part of the space surrounding the building<sup>18</sup>. Through juridical and canonical elaboration, the violation of asylum ended up being considered lese majesty and sacrilege<sup>19</sup>; and it is significant to note that this was a real prerogative, belonging to the *place* and not to the *person* of the refugee (who could not have been arrested even if they had wanted to).<sup>20</sup>

As the Middle Ages progressed, the right of asylum was reaffirmed, but at the same time its scope was limited. Starting with pope Innocent III<sup>21</sup>, in fact, a series of decretals drew up lists of *casus excepti*, which became increasingly extensive over time. However, the right of asylum was always reiterated as a divine institution, the violation of which was tantamount to sacrilege and punishable by immediate excommunication.<sup>22</sup> As Francisco Suárez clarifies, with respect to temporal jurisdiction, the church is a «locus exemptus», that is, an «extra territorium» and, since «iurisdictio extra territorium non extenditur», when temporal power intervenes, it turns into violence and tyranny<sup>23</sup>.

In practice as in theory, the right of asylum in places of worship increasingly declined in the early modern age. The Protestant Reformation, which was critical of ecclesiastical privileges, also contributed to this. In the reformed territories, the granting of the right of asylum to certain places was incorporated in the royal prerogatives: the right of asylum was thus completely denatured, as the reference to another jurisdiction, which led to the identification of extraterritoriality, was lost. In any case, it was largely abolished throughout Europe by the middle of the 19th century.<sup>24</sup>

Alongside this disappearance, it is interesting to note the emergence of another form of extraterritoriality, that of embassies. This custom dates back to the development of resident diplomacy in the early modern period and has a key conceptual reference in the temple. The gradual legal recognition of extraterritoriality is achieved firstly through the question of the right of chapel

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<sup>16</sup> C.f. C. Traulsen, *Das sakrale Asyl in der Alten Welt*, cit., pp. 253-263, and K.J. Rigsby, *Asyilia*, cit., p. 4, who also reminds us that similar measures were taken against other Hellenistic territories.

<sup>17</sup> See A. Ducloux, *Ad ecclesiam confugere: naissance du droit d'asile dans les églises*, Boccard, Paris 1994, pp. 53-80.

<sup>18</sup> A. Ducloux, *Ad ecclesiam confugere*, cit., pp. 26ff. and 208-10. Other references to Longobard and Carolingian provisions in P.G. Caron, *Asilo*, cit., p. 1037). On the extensions introduced by later scholarship, cf. C. Latini, *Il privilegio dell'immunità*, cit., pp. 84-104.

<sup>19</sup> C.I. 1.12.2 and C.I. 1.12.3 speak of lese majesty and sacrilege respectively.

<sup>20</sup> That of the *ratione loci* turns out to be the majority interpretation of *immunitas* locale in medieval legal-canonical doctrine, cf. C. Latini, *Il privilegio dell'immunità*, cit., pp. 75-76.

<sup>21</sup> Cf. X 3.49.6; the whole of Title 49 of the Third Book of the *Liber Extra* deals with *De immunitate ecclesiarum, ceterum et rerum ad eas pertinentur* and there is also the list of *casus excepti* introduced by Gregory IX (X 3.49.10). As for previous sources, cf. many of the canons collected in *Decretum* C. 17 q. 4.

<sup>22</sup> Gregorius XIV, *Cum alias*, in *Bullarum privilegiorum ac diplomatum romanorum pontificum amplissima collectio*, Romae 1751, t. V/p. I, no. XVII, pp. 271-73. On the censures due to the secular judge and those who violate the asylum see C. Latini, *Il privilegio dell'immunità*, cit., p. 315-21, who at pp. 213-304 dwells at length on *casus excepti*.

<sup>23</sup> Cf. F. Suárez, *De Virtute Et Statu Religionis. Tomus I*, Lugduni 1609, Tr. II, Lib. III, caput XIII: *Quale crimen committant, & quam poenam incurrant iudices reos ab ecclesiis extrahentes*, p. 279.

<sup>24</sup> Cf. the overview given by P.G. Caron, *Asilo*, cit., pp. 1038-39 and C. Latini, *Il privilegio dell'immunità*, pp. 305-06, pp. 364-68 (with some significant sources quoted as to Protestant doctrine), as well as the extensive references to European practice therein in §3.4, pp. 330-75, and in §2.2, pp. 432-46.

(i.e. the right of the ambassador to celebrate Mass in the chapel of the embassy according to the rite of confession of the sovereign he represents and not of the sovereign in whose country he is). Secondly, it is achieved through the question of the right of asylum recognised in relation to the embassy building. The two arguments obviously inherit all the previous legal-canonical elaborations on the right of asylum<sup>25</sup>.

The concept of the temple and related practices thus bear important witness to the web of correspondences established between the theological and political concepts and institutions in the historical becoming.

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<sup>25</sup> D. Fedele, 'Templorum praerogativae cum Legatorum domibus communicabantur.' *The temple in the debate on the inviolability of the diplomatic seat in the early modern age*, in *The territorialization of the sacred. Theological-Political Valence of the Temple* (Yearbook of Politics and Religion 2016), ed. Tiziana Faitini (Brescia: Morcelliana, 2016), and B.H. Rosenwein, *Negotiating space. Power, restraint, and privileges of immunity in early medieval Europe*, Cornell University Press, Ithaca 1999.