



# Shooting Up Illicit Drugs with God and the State: The Legal–Spatial Constitution of Sydney’s Medically Supervised Injecting Centre as a Sanctuary

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## Abstract

In 1999, the Uniting Church opened a Medically Supervised Injecting Centre (MSIC) at the Wayside Chapel in the inner Sydney suburb of Kings Cross. The Uniting Church justified this overt act of civil disobedience against the State’s prohibitionist model of drug usage by invoking the ancient right of sanctuary. This invocation sought to produce a specific sort of spatialisation wherein the meaning of the line constituting sanctuary effects a protected ‘inside’ governed by God’s word – *civitas dei* – ‘outside’ the jurisdiction of state power in *civitas terrena*. Sanctuary claims a territory exempt from other jurisdictions. The modern assertion of sanctuary enacts in physical space the relationship between state and religious authorities and the integration and intersections of *civitas terrena* and *civitas dei*. This article draws upon conceptions of sanctuary at the intersection of the Catholic Christianity tradition and the State since medieval times to analyse the contemporary space of sanctuary in the MSIC, exploring the shifting and ambiguous boundaries in material, legislative, and symbolic spaces. We argue that even though the MSIC has now been incorporated into *civitas terrena*, it remains and enacts a space of sanctuary.

KEY WORDS *legal geography; sanctuary; illicit drug use; religion; New South Wales*

## Introduction

Sanctuary has been touched upon within geographies of religion (Park, 1994; Cloke and Beaumont, 2013), cultural and social geographies (Schroeder, 2015), political geography (Herbert, 2009), urban geographies (Ridgley, 2008), critical geographies (Day, 1999), and the emergent scholarship of legal geographers (Delaney, 2000; 2010). This scholarship spans diverse forms of sanctuaries as homes, places of religious devotion, cities, nations, and world heritage sanctuaries (Ridgley, 2008; Darling, 2010; Delaney, 2010; Hamylton, 2014). Delaney (2000, 25) defines these sanctuaries as ‘bounded space which, to the extent that they exist experientially, are the product of a certain sort of

spatialization wherein the meaning of the line constituting these sanctuaries effects a protected inside, outside the normal circuits of power’.

This article advances two aspects of the geographies of sanctuary. First, it furthers understanding of the role of religious traditions, particularly Catholic denominations, in the constitution of sanctuary within the context of state politics (Henel and Šakaja, 2009; Cunningham, 2013; Sanyal, 2014); and broader discussions on how religious traditions have maintained a geographically varied but nevertheless consistent presence in the constitution of place at various spatial scales within contemporary societies (Kong, 2001; Holloway and Valins, 2002; Yorgason and Dora, 2009; Wilford,

2010; Cloke and Beaumont, 2013). Secondly, it furthers insight into the role of law in the constitution of sanctuary (Delaney, 2000; 2010; Ridgley, 2008; Darling, 2010). Our exploration of the concept of sanctuary also contributes to a broader literature on the place and space of ethics whether in geography and/or law, such as Cloke's (2011; 2013) work on the interaction of the ethics of post-secular geographies and post-secular care. Other geographers have explored spaces of care and generosity such as work on drop-in centres and spaces of care (e.g. Conradson, 2008; Hester Parr, 2008; Evans, 2011). For example, Darling (2011) has considered the role that space plays in mediating and creating ideas of responsibility and generosity towards other people and other places. Running through our article is a tension between sanctuary understood as a legal terminology or status and sanctuary as a religious or ethical commitment or responsibility. Our article explores the tension between obeying a religious authority and a secular or state/legal authority in justifying and debating the drug injecting room. Whilst we are clear that the two are not necessarily mutually exclusive, the concept of sanctuary as a necessary and justifiable 'outside' from the law suggests a tension between the legal and the ethical, a tension that has been explored at length by legal theorists (e.g. Manderson, 2009). Derrida (1989) has considered the relationship between law and justice, where justice is not another normative order existing on a different plane from law, rather it becomes possible only through the existence of law and its deconstructible nature. We do not argue that there is any necessary relation between the conception of sanctuary and religion; however, our case study explicitly draws upon a religious conception of sanctuary to claim a space outside the law. Accordingly, we engage with the sizable legal and ecclesiastical literature on the constitution of sanctuary through the doctrines and beliefs of Christian denominations (Bau, 1985; Field, 1991; Bianchi, 1994; Edge, 2002; Begaj, 2008; McSheffrey, 2009; Smart, 2013).

This article extends this scholarship through examining the legal-spatial constitution of Sydney's Medically Supervised Injection Centre (MSIC) as a sanctuary. On 3 May 1999, a clergyman, former drug users, a former member of Parliament, doctors, and parents of drug users came together to establish an unofficial MSIC in the Wayside Chapel in the inner city suburb of Kings Cross, Sydney, New South Wales (NSW) (Wodak, 1999a; van Beek, 2004). Wayside Chapel is part of the Australian Uniting Church, which is a union of three religious authorities: the Congregational Union of Australia, the

Methodist Church of Australasia, and the Presbyterian Church of Australia. The unsanctioned MSIC was called the Tolerance Room, or the T-room. The T-room operated in direct disobedience of the *Drug Misuse and Trafficking Act 1985 (NSW)*, which expressed and empowered a prohibitionist model of criminal sanctions to regulate the use and trafficking of illicit drugs across NSW. The Uniting Church justified the act of civil disobedience of setting up and operating the T-room by invoking a right of sanctuary (Totaro and Humphries, 1999; van Beek, 2004).

In exploring this sanctuary, we highlight that the sacred and the secular are neither 'all-or-nothing' categories nor phenomena that are confined to separate spheres (Berger, 1999; Demerath, 2000, 4; Habermas, 2006). We examine how the 'so-called "formal" laws [of state] interact with informal customs and lore, social conventions and norms, religion and dogma' (Bartel *et al.*, 2013, 346). Although the concept of sanctuary is ancient, its boundaries are complex and ambiguous. The modern invocation of sanctuary by the Uniting Church enacts in a territorial space the complex interrelationship of *civitas dei* (God) and *civitas terrena* (man) (Gorringe, 2002). *Civitas* is not just the collective body of all citizens, it is the contract binding them all together, be it in the presence of man or God. The entanglement of these *civitas* has long been recognised – Augustine (1948) claimed that whilst there are two *civitas*, they are 'interwoven and intermixed in this era, and await separation at the last judgement', a journey that is ultimately 'a pilgrimage through time' (Augustine, 1948, Book 15, Chapter 1). The claim of sanctuary and explicit civil disobedience interrogates the relationship between Church and State spatially. The T-room's claim of sanctuary was explicitly associated with the territory and building of the Church. Moreover, sanctuary is conceptualised in spatial terms. The rich and ancient strand of jurisprudence of natural law asserts that civil disobedience is justified by some kind of higher 'law', against which the moral or legal force of human law can be measured. This conceptualises a topographical, spatial relationship, with the laws of God higher than man-made laws. Thus, Saint Augustine proclaimed: *lex injusta non est lex* – an unjust law is not law.

The legal theorist Robert Cover's (1983) classic analysis of civil disobedience is particularly apposite, as he focused upon religious groups and their justifications and effects of civil disobedience. Cover examines the application and sustaining of law in response to claims of alternative laws and/or meaning. Cover (1983, 53) notes that an activist

affirms a law that is contrary to official interpretation and thereby compels a choice and challenges the judge's implicit claim to authoritative interpretation. Acts of civil disobedience challenge the State's courts to change the meaning of the law articulated by officialdom (Cover, 1983, 46–48):

The community that disobeys the criminal law upon the authority of its own constitutional interpretation, however, forces the judge to choose between affirming the official law through violence against the protesters and permitting the polynomial of legal meaning to extend to the domain of social practice and control. The judge's commitment is tested as he is asked what he intends to be the meaning of his law and whether his hand will be part of the bridge that links the official vision of the constitution with the reality of people in jail.

For Cover, acts of civil disobedience interrogate not only the material relationships of State and protesters but also their different visions of society, the space that they imagine of what the world could or should be. Cover considers that acts of civil disobedience should be conceived as a conflict of laws, as they proffer 'radical reinterpretations' of the law. These acts of disobedience force a judge to choose between different interpretations and meanings of the law.

This article interrogates the relationship and intersections of *civitas dei* and *civitas terrena* in and through the invocation of sanctuary in material, symbolic, and legislative spaces. This interrogation draws on the combined training of the authors in their respective legal 'and' geographical traditions. In exploring the legal geography of this sanctuary, we acknowledge the 'temporalities of space', in that 'places come and go' as they are constituted and reconstituted through law and doctrine (Benda-Beckmann and Benda-Beckmann, 2014). Territories 'are characterized by a legal pluralism generated by the overlapping jurisdictional authority' (Blomley, 2012), which in the case of Sydney's MSIC included the NSW state government, local dioceses of the Uniting Church and Roman Catholic Church, through to the Vatican's Congregation for the Doctrine of the Faith over all Roman Catholic Christendom.

This study is based on archival research involving analysis of a broad range of published documents that present theological, political, and legal approaches to the constitution of the MSIC by these authorities. The types of documents retrieved in 2014 included NSW state

parliamentary debates, legislation, newspaper articles, letters, academic papers, and professional publications, dating largely from the period 1999 through 2005. We selected this time as it covers the period of transformation of the T-room from unauthorised sanctuary to legalised sanctuary. We supplemented and verified this data with informal discussions with two people involved in the MSIC's development. No direct quotes are included to protect confidentiality.

The findings from the interrogation are presented in six parts. First, the invocation and construction of *civitas dei* to justify the civil disobedience of the T-room are considered. Second, we consider the spaces and boundaries of sanctuary, drawing upon historic conceptions that underlie contemporary claims of sanctuary to highlight continuities and enrich the analysis of the MSIC. Third, an outline is provided of the historic conception of sanctuary as a 'holy place' and the question of whether there is still a space for sanctuary in the modern legal state. Fourth, an examination is made of the territorial space of the T-room as sanctuary and the State's reactions to these claims and then to consider reforms to *civitas terrena* that legalised the sanctuary but still required the accordance of *civitas dei*. The final two parts of the article consider the territory of the legalised sanctuary in terms of material and symbolic space highlighting the complex interrelationship of *civitas dei* and *civitas terrena*.

### ***Civitas dei, civitas terrena, and civil disobedience***

In Sydney's Kings Cross, the opening and operation of an unsanctioned MSIC were expressed in classic terms of civil disobedience, as made explicit when the Reverend Ray Richmond of the Uniting Church was interviewed about the T-room:

Sometimes you have to run foul of the law; that is why in Western democracies the Church [*civitas dei*] and State [*civitas terrena*] are separated ... sometimes we view things differently ... If our people are removed or intimidated, others will take their place. If there is no response from the Government, the service will open again. If we are closed down, we will open again. (Totaro and Humphries, 1999)

Reverend Ray's language about the explicit clash of *civitas dei* and *civitas terrena* was expressed in the natural law jurisprudential tradition of inexorability and timelessness – the church would not be bound by temporal sanctions of the secular world when following a higher law. In

opening an unsanctioned MSIC, the Uniting Church proposed an alternative law, based on a higher law from God.

Cover asserts that there are multiple coherent systems of meaning and interpretation among communities that are radically uncontrolled (Cover, 1983, 17). In his analysis of civil disobedience, he points to not only the meaning and interpretation of law, but also to how insular communities establish their own meanings and vision of the world through sacred narratives, including narratives about their relationship with the State. The T-room had to be justified in terms that were consistent with the *civitas dei* of the Uniting Church. Within the context of the laws of *civitas dei*, a central moral concern related to a distinction between drug abuse and drug addiction. Those being treated in an MSIC are overwhelmingly suffering from drug addiction, not abusing drugs. This distinction is critical in conducting a moral analysis of the degree of free will, culpability, responsibility, and sinfulness of drug use. Since the time of Thomas Aquinas, individuals who abuse a drug such as alcohol have been considered to have diminished free will whilst intoxicated, and this observation has, to some extent, been understood to (partially) mitigate their culpability (Aquinas, 1981). Christian churches have consistently preached against abuse of alcohol and other drugs. Drug addiction, by contrast, is almost universally considered as a dramatic impairment of the will of the addict, whether actively intoxicated or not (Gleeson, 1999b). The MSIC was and is directed to people who suffer mostly from substance dependence upon extremely addictive substances such as heroin and cocaine. In the context of addiction, the sinfulness of person using the drug is considered extremely diminished. The response to the fault of 'addiction' addressed in the MSIC for the Uniting Church comes from the perspective of grace and forgiveness. As the Uniting Church noted in regards to the MSIC:

When Jesus was asked about forgiving those who continue to offend against us, he said 'If another disciple offends you must rebuke the offender, and if there is repentance, you must forgive. And if the same person sins against you seven times a day, and turns back to you seven times and says "I repent" you must forgive' (S. Luke 17:3–4). Surely the appropriate Christian view is that a drug addict will respond best to those who understand his/her dilemma and struggle, and who accept that there are times when providing a supervised

environment for injecting is the only way of continuing to maintain contact and links with the addict and keeping him/her alive. (Herbert and Talbot, 2000)

This perspective proffered a conception of appropriate and just responses to drug addiction that was consistent with the sacred text and *civitas dei* of the Uniting Church and explicitly in opposition to the prohibition of the State, which offered only reprisal and judgment.

Cover (1983, 40) emphasises that whilst communities may construct their own interpretations and meanings, 'interpretation always takes place in the shadow of coercion'. Where there is a conflicting meaning, religious groups articulate a hermeneutics of resistance or withdrawal. A key consequence of the commitment to alternative interpretations and meanings can be violence, whether as perpetrators or victims. A legal interpretation cannot be valid if no one is prepared to live by it. When opening the T-room, the Uniting Church clearly expressed a willingness to suffer violence for its alternative worldview: 'if our people are removed or intimidated, others will take their place' (Totaro and Humphries, 1999). The Uniting Church was actively complicit in breaching the *Drug Misuse and Trafficking Act 1985 (NSW)* and justified its resistance to the State in the following terms:

It can be the case that the Church will be involved in breaking the civil [*civitas terrena*] law when it has a conscientious reason for doing so. For instance, hiding illegal migrants as has occurred in the United States in recent times. Also, the establishment by the Wayside Chapel of its [MSIC] was clearly an illegal act and Rev. Ray Richmond was subsequently charged by the police. In order to challenge the law [of *civitas terrena*] there are occasions when it is necessary to break the law. (Herbert and Talbot, 2000)

The Uniting Church asserted that breaches of *civitas terrena* were justified according to *civitas dei*, which also required them to be willing to suffer the violence of the State. The Uniting Church argued for a theology of practice to justify the T-room:

Given the complexity of the issues surrounding drug addiction, it is not surprising that there are differing views on the ethical aspects of operating a MSIC. However, the Board is not alone in the Church in wanting to test this issue in practice. Not all ethical issues can be determined

by book judgements [theological determinations through interpretation of scripture], but the practical experience of operation can assist a more definitive judgement ...

... The power and strength of the ministry of Jesus is ... his grace, acceptance, and forgiveness, before he ever offered a word of judgement. (Herbert and Talbot, 2000)

The Uniting Church proffered an alternative narrative to the State – of forgiveness and a refusal to judge, there was an articulate and coherent justification for civil disobedience that was consistent with the *civitas dei*.

This concrete and overt act of civil disobedience explicitly challenged the State as the authoritative maker and interpreter of laws. These acts of disobedience force the State to choose between different interpretations and meanings of the law. As Cover (1983) asks, ‘does the state reassert the existing laws and interpretations, or does it recognize alternatives?’ The issue of commitment to violence is raised in terms not only of the Uniting Church being willing to suffer the force of the State for its alternative interpretation but also whether or not the State was willing to use force and violence to suppress the alternative interpretations. It raised questions as to the proper relationship of Church and State – was it adversarial, supplemental, mutually exclusive, and/or integrated? These questions were enacted through and upon the territory of sanctuary.

In addition to the aforementioned justification for civil disobedience, members of the Uniting Church also considered issues of their complicity in the sin of drug abuse as a result of their involvement in the MSIC, although this type of arguing, as discussed later, is more significant to the moral tradition of the Roman Catholic Church. Cooperation is a general framework with a number of variations and differences of opinion regarding its application; cooperation can be formal or material (a simplification for this article). Formal cooperation requires that the cooperator share in the actor’s sinful intention to do evil. The Church did not explicitly intend that anyone should abuse or become addicted to injectable drugs as a result of its role in the T-room. The Church argued that the aim of the T-room was harm-reduction and that harm-reduction efforts could not reasonably be considered to constitute formal cooperation; this is because harm-reduction efforts typically begin with an explicit repudiation of the evil act. The

general case of the structure of a harm-reduction effort for the MSIC can be put thus: ‘I do not approve of you using “illicit” drugs, but I cannot stop you. So if you are to inject “illicit” drugs, please do it in a MSIC, where any adverse effects such as overdoses can be addressed and we can put you in contact with people who may help you with your addiction, in fact here is the MSIC for you to use!’

### **The historic conception of sanctuary**

Ancient conceptions of sanctuary underlie and inform the invocation of contemporary claims of sanctuary. A key aspect of the ancient concept of sanctuary was and is its association with place – whether an actual or symbolic place. In Latin, sanctuary is a ‘holy place’. A sanctuary was a sacred place where a fugitive was granted protection by a particular authority; the locale was held to be sacred because the fugitive was, as it were, made holy, sanctified by religious associations (Stastny, 1987). In English, ‘sanctuary’ is both a place and an institution. Sanctuaries offer a form of internal asylum, an immunity established in and by a particular regime (Stastny, 1987). The right of sanctuary in the western tradition was legally recognised in the fourth and fifth centuries following the legitimization of the Christian Church (Stastny, 1987, 290). It was regarded as a Bishop’s duty to intercede, to settle a dispute, or to ensure that a wrongdoer did not suffer a blood sanction. Sanctuary offered a temporary respite until formal inquisition could be made and judgment rendered (Olson, 2004, 480). Although the concept of sanctuary as a protected region, sought out by the persecuted and mistreated, is associated with religion, it is ubiquitous (Bau, 1985).

In England, Parliament and the Crown extinguished the Church’s right to grant sanctuary by 1624 (21 *Jam. 1 c. 28~7 (Eng)*). The abolition of sanctuary is frequently represented as a story of progress – once the State and more civilised procedures were secured, sanctuary became an archaic relic of the past (e.g. Trenholme, 1903, but contra Olson, 2004). On this account, with the development of modern law, sanctuary became superfluous. This superfluity was expressed most clearly in the abolition of the right to sanctuary with the French Revolution, in the form of a decree that asserted the unitary character of the law: ‘The right of asylum is being abolished in France, for now the law is the asylum of all people’ (quoted by Stastny, 1987, 293). Thus, there is no place or need for other and higher laws in the modern, centralised and unitary state, which is itself the sanctuary.

Under a purely unitary system of law that asserts a separation of Church and State, sanctuary ostensibly has no legal standing – there is no space for sanctuary in abstract conceptions of the modern state. Despite this lack, the concept of sanctuary continues to have contemporary resonance and power. Diplomatic asylum provides a geographic space for fugitives to seek refuge. The territory of a state within another's jurisdiction has been clearly depicted recently with Julian Assange's continued refuge in the Embassy of Ecuador in London, UK. Police remain outside the gates of the Embassy prepared to extradite Assange if he leaves the territory. There have also been clandestine, unofficial sanctuaries including the sanctuary for fugitive Jewish refugees in the French village of Le Chambon-sur-Lignon during World War II (Stastny, 1987, 293). In the 1850s, churches ran the underground railroad in the USA, providing refuge to slaves in defiance of the fugitive slave laws (Tomsho, 1987, 94). Cases of sanctuary also include instances where churches granted sanctuary to civil rights workers who defied the segregation policies and attempted to enforce the holding of *Brown v Board of Education* and to those who protested the draft during the Vietnam war (Colbert, 1986). Since 1982, a Sanctuary Movement has operated in the USA assisting refugees, with church workers explicitly declaring their grounds as public sanctuary (Bau, 1985; Colbert, 1986; Stastny, 1987; Tomsho, 1987).

### The territory of sanctuary

A characteristic most closely associated with sanctuary is that it is territorial or spatial. It occupies a specific geographical location and is conceptualised as a territory exempt from other jurisdictions. This characteristic is represented in the biblical concept of sanctuary articulated in *Numbers* Chapter 35: 'the accused must stay in the city of refuge'. Historically the idea of this territory was mobile and fluid, associated not only with land but also with a person, a cross, or a cemetery. People such as bishops and clerics who administered sanctuary could also be 'walking sanctuaries' (Olson, 2004, 514).

In Sydney's Kings Cross, the idea of a territorial space claimed as sanctuary was explicit in the original incarnation of the T-room. The T-room was located in a small room of the Wayside Chapel. It was to operate with a dozen volunteer staff and followed a medical protocol prepared in consultation with experienced staff of an official MSIC that had been operating in Europe. The T-room was the only room in the Wayside Chapel made available

for the purpose of injecting. It was small, and access was from a nearby lane. The room was fitted with stainless steel sinks, resuscitation equipment, and a few tables for injecting.

This claiming of territory drew upon historic constructions of church territory as sacred and inviolable – a sacred space immune from writs of the Crown (Olson, 2004, 486). Once the fugitive entered sanctuary, he or she was deemed to be under the protection of divine law, exceeding the control of 'worldly powers' (Bianchi, 1994, 138). The most dramatic violation of sanctuary occurred with the murder of Thomas Becket, the Archbishop of Canterbury (1170). This assassination involved a drive to consolidate monarchical rights and restrict church privileges, including sanctuary. However, the assassination had the paradoxical effect of preserving ecclesiastical prerogatives (Baker, 2002).

Where a sanctuary is claimed, the State has a choice whether or not to tolerate or accept assertions of a separate space of refuge that is outside the jurisdiction of the State. Recently, Australia and the USA have had different responses to claims of sanctuary. The idea of the T-room as sacred space was not respected by the police in Australia. During the 5 days of operation, there were three police raids at the T-room at the Wayside Chapel. People injecting drugs in the T-room were arrested. During the third raid, the room was sealed off, and the names and details of everyone in attendance were obtained. In the end, the clergyman and three people with prohibited drugs were charged and required to appear in court (Wodak *et al.*, 2003). In contrast, in America, the territory of the modern Sanctuary Movement has been respected. Although the government has infiltrated the movement and spied on members, the government waits until workers and refugees leave the sanctuary to arrest and charge them (Begaj, 2008).

The outcomes of these prosecutions were also different from those arising in the USA. In Australia, magistrates dismissed all charges associated with the cases. In contrast, in America, the prosecution has successfully requested that the court exercise judicial control to preclude the defence from using the courts to put the US Central American policy on trial, leaving the defence with no basis to argue that sanctuary was constitutionally protected. Sanctuary workers have been found guilty of conspiring to smuggle aliens into the USA and placed on probation (ranging from 3 to 5 years) (Stastny, 1987). In Cover's terms, in Australia, when confronted with an alternative interpretation, the magistrate engaged with an argument as to meaning and agreed with the claims

by the Uniting Church of a harm-reduction strategy. In contrast, in America, judges shut down alternative interpretations by claiming a ‘positivist hermeneutic of jurisdiction’ – that is, of deference to the hierarchy of law (Cover, 1983, 60). The American judges justified their decisions not by engaging with the substance of the argument but by arguing that they were compelled by law to interpret and apply precedent in a particular way. Although American police respected the territorial boundaries of the sanctuary, American judges accepted excuses to avoid disrupting the orderly deployment of state power and privilege. In contrast, Sydney police did not respect the territorial boundaries of the sanctuary, but the Australian magistrate was willing to hear and accept rational and theistic interpretations that clashed with state interpretations.

### **The process of the legalisation of sanctuary**

Those associated with the T-room claimed that its purpose was primarily symbolic – to highlight the irrationality and harmfulness of the existing prohibition regime (Wodak *et al.*, 2003). The aim of the T-room was to stimulate media attention, engage in moral (and rational) persuasion, and hopefully stimulate law reform by challenging the existing worldview and proffering an alternative normative world (van Beek, 2004). The T-room and police response generated intense publicity and public debate. Coupled with findings by the Wood Royal Commission that previously had highlighted police tolerance of ‘shooting galleries’, the NSW Parliament held a drug summit. One recommendation was that the ‘Government should not veto proposals from *non-government organisations* for a tightly controlled trial of medically supervised injecting rooms’ (Parliament of New South Wales, 1999, 46, emphasis added). Parliament accepted this recommendation and through the *Drug Summit Legislative Response Act 1999 (NSW)* reformed the *Drug Misuse and Trafficking Act NSW* to allow for one specified premise to be licensed (section 36E). This change created a formal legal and legislative sanctuary.

The complex interrelationship of *civitas dei* and *civitas terrena* is demonstrated in the process of attempting to create a legalised sanctuary. Religious debates about the legalised sanctuary even after reforms are a reminder that religious groups must act in a way that conforms with *civitas dei*. Just because the State had legalised an action did not mean that it was in accordance with *civitas dei* – an unjust law is not law. After enacting the

NSW Drug Summit recommendation, the NSW Government invited the Religious Sisters of Charity (RSC), a congregation of Roman Catholic nuns who ran a health service, to establish Sydney’s first official MSIC (Clifton, 1999; Fisher, 1999; van Beek, 2004, 5). The RSC health service proceeded to plan for the establishment of an MSIC with a committee that included members of the NSW Police Service, a representative from a government-funded drug users’ organisation, and a doctor from a nearby primary healthcare service for drug users (Wodak, 1999).

Work proceeded on several aspects of this complex project, including ethical considerations, site selection, protocol development, staffing requirements, and a budget. At the end of October 1999, in the midst of the planning, however, the RSC was instructed by Cardinal Ratzinger (Prefect of the Congregation for the Doctrine of the Faith in Rome) to withdraw its involvement in the official MSIC (Gleeson, 1999a). At the time, the reason for the withdrawal of the Roman Catholic Church from the MSIC did not address the ‘issue of more complex moral principles [e.g. complicity] but rather [focused on] the practical consequences of the services’ (Gleeson, 1999a, 2). Given the unproven benefit of such programmes, the risk of public misunderstanding seemed too great to recommend proceeding with the programme. At the time, the Vatican’s intervention was noted as ‘unprecedented in Australia, jeopardises the State Government’s trial of a medically supervised injecting room which had gained enormous political and moral legitimacy from the sisters’ imprimatur’ (Totaro, 1999). Whilst this early decision by the Congregation for the Doctrine of the Faith appeared to target the role of the church in *civitas terrena*, it took a further year for the Roman Catholic Church to explore the cooperation on ‘illicit’ drug use in the context of the moral laws of *civitas dei*. The Congregation directed that no Catholic organisation participate in the trial of a legal heroin-injecting room, stating that ‘the good intention and the hoped-for benefits are not sufficient to outweigh the fact of its constituting an extremely proximate material cooperation in the grave evil of drug abuse and its foreseeable bad side effects’ (Tataro, 2000). The cooperation was material in that some addicts would undoubtedly use the supplied needles and syringes to inject drugs for the purpose of obscuring consciousness. Such cooperation was mediate rather than immediate, in that the cooperation of the Catholic organisation would not be necessary for the illicit injection of the drugs.

This interpretation of the moral law of *civitas dei* came under question from a range of sources (Gleeson, 1999a; 1999b; Fisher, 1999). As pointed out at the time by Father Gleeson (1999b, 10), the ethicist for St Vincent's Hospital, it is important not to make the 'mistake of failing to distinguish between the conduct of the person taking drugs and the co-operative action of those providing an [MSIC]'. Formal cooperation would occur if the entire purpose of the MSIC was to provide a place for addicts to freely inject with no other significant motivations (Fisher, 1999). For the Congregation for the Doctrine of the Faith, the MSIC brought Catholic institutions too close to the act of drug use.

Although there was no requirement under *civitas terrena* that the MSIC be run by a religious organisation, following the withdrawal of the RSC, the NSW premier subsequently invited another non-governmental organisation, the Uniting Church, to establish the legal trial of the MSIC (Beck, 2004; Wodak *et al.*, 2003). Only now were the laws of *civitas dei* and *civitas terrena* in sympathy. The MSIC is completely in accordance with *civitas terrena* – it is sanctioned and authorised by an Act of the NSW Parliament. In the operation of the MSIC, the Uniting Church is acting completely within the laws of *terrena* (man) and *dei* (God).

### The boundaries of sanctuary

Although the MSIC is now associated with a specific building and is recognised at law, the MSIC retains territorial ambiguities that reflect characteristics of historic sanctuaries. Although associated with space, the geographical boundaries of sanctuary were not always clear and could be the subject of dispute, a matter engagingly examined by Shannon McSheffrey (2009) in her analysis of the sanctuary in London of St Martin Le Grand. McSheffrey writes of the boundaries of sanctuary as the subject of long-standing dispute between the city and St Martin Le Grand. Boundaries of sanctuary were mapped through practice and observance onto the tenements, streets, gates, and walls of London. At the time, urban space was conceptualised as urban space through a pedestrian approach. The boundaries of sanctuary were produced through custom, usage, and physical markers (such as walls, or where walls had been). McSheffrey (2009, 493) asserts that the boundary of sanctuary resembled a 'child's game' (albeit with very serious results) – 'a boundary post in the middle of someone's house beyond which a sheriff or his sergeant could not cross, or the

careful guarding of prisoners being tried before justices at St Martin's Gate from putting a toe over the boundary line into sanctuary can seem ridiculous. Similarly, once in sanctuary, a hand on a sanctuary boundary was like touching "base" in a game of tag. Let go of the post or the back wall of the tavern, and a sheriff or his servant could haul you off to jail'.

Although the modern sanctuary of the MSIC is associated with a specific building, it retains some of the territorial ambiguity of earlier sanctuaries. Section 36N specifies exemption from criminal liability for users of the MSIC. Police are provided with the authority to exercise a discretion not to charge a person with an offence under the Act if they are in possession of a prescribed drug or an item of equipment for use in the administration of a prescribed drug, 'while the person is travelling to or from, or is in the vicinity of, [the MSIC]' (s36N(4)). What constitutes 'travelling to and from' is left open to interpretation. From anecdotal information, the boundaries of sanctuary are shifting and the subject of custom and practice. New and/or out of the area police officers are more active in arresting users around the MSIC, whilst local police officers give a more respectful space.

### The symbolic legal terrain of sanctuary

Historical analyses highlight a complex relationship of Church and State expressed through sanctuary. Although sanctuaries claimed a space that was separate from state law, the relationship between Church and State was not necessarily mutually exclusive or adversarial. Many of these medieval sanctuaries were recognised by the sovereign through legislation (Olson, 2004; McSheffrey, 2009). Olson (2004) has argued persuasively that sanctuaries could be regarded as an extension of, or supplement to, the law of the State. Sanctuaries contributed to the power and legitimacy of the sovereign, demonstrating the imbrication of the State and God, as well as the King's mercy (Olson, 2000; Crofts, 2013). The MSIC exists in a symbolic space in the legal terrain. The legalisation of the MSIC also exists in the midst of the *Drug Misuse and Trafficking Act 1985 (NSW)* series of prohibitions. Part 2A is a separate and exceptional part of the legislation, specifying a series of exemptions from criminal liability for drug possession and use in awkward double negatives. The sanctuary of the MSIC with regard to criminal law is limited and does not apply to bail conditions.

Medieval sanctuaries expressed not only the relationship between Sovereign and Church but



also the relationship with other powers. McSheffrey (2009) has noted that sovereign recognition of St Martin's Sanctuary was one way for the sovereign to ensure that the city did not become too powerful. Under the *Drug Misuse and Trafficking Act*, the MSIC is 'permissible without the need for development consent under the *Environmental Planning and Assessment Act 1979*' either by local government or by the NSW Department of Planning through Part 5 (36Q [1] and [2]). As such local government is excluded from the governance of the MSIC through land-use laws.

The *Drug Misuse and Trafficking Act 1985 (NSW)* outlines a licensing system to govern the decriminalised space of the MSIC, which devolves responsibility for the governance of the MSIC to the non-government sector. As Levi and Valverde (2001, 825) note, 'as a technology of governance, ... licensing involves a certain devolution of responsibilities, including the responsibility to spot and define both current problems and potential, future dangers ... The license holders are held responsible for their own actions and those of their employees, not just in terms of civil liability but also in terms of what one might call a semi-legal "duty to know"'. In the case of the MSIC, the licence has been issued to a religious organisation rather than secular organisations, drawing upon historic conceptions of sanctuary and also perhaps providing a moral prop to legislative reforms. The *Drug Misuse and Trafficking Act 1985 (NSW)* permits 'only one license for one [MSIC]' (s36A [1][a]). The Act sets out detailed guidelines governing the licensee (36A–36KA) and the conduct of the professionally staffed health and welfare services that supervise those injecting (s36L) drugs that it is illegal to possess within other parts of Sydney. Whilst the Uniting Church continues to operate the MSIC, there is no requirement that the professional staff or drug users have any religious affiliation (McCann, 2008, for an analysis of secular debates on injecting sites in Vancouver).

The legal space of the MSIC remains complex. Only some existing laws apply, whilst others do not. In addition, new laws and regulations have been created, particularly in terms of the purpose and safety of the MSIC. Sanctuaries have always been contentious, and in the past abuses were pointed to as a way of attempting to restrict or close them down (Olson, 2004; McSheffrey, 2009). The *Drug Misuse and Trafficking Act 1985* outlines the purposes of the MSIC as an instrument designed to control the self-administration of prohibited drugs with the aim of 'harm minimization' (36B[a–d]). The MSIC suspends

criminal law but retains (and enhances) health regulations. To operate the centre and retain a licence, the MSIC must develop and adhere to operating procedures, including turning away anyone who is intoxicated. Detailed records are kept of who attends the centre, who is turned away, how many drug overdoses are attended to, and who goes on to rehabilitation. Although sanctuaries may be perceived as refuges carved out from the law, the MSIC is far from a lawless space. The MSIC remains in operation. Despite its perceived success, it remains the sole MSIC operating legally in NSW. It is heavily regulated and monitored, and it is still regarded as an exception in the midst of Australia's prohibitionist approach to illicit drugs.

### Conclusion

Although claiming a separation of Church and State, and asserting the primacy of the modern unitary state in governance, the history and development of the MSIC highlights that the relationship of Church and State remains complex. In developing the amendments through the *Drug Summit Legislative Response Act 1999 (No. 67)* to allow the operation of the MSIC in Sydney's Kings Cross, the NSW legislative council engaged in extensive debate. These debates highlight the continued relevance of the church in legal developments (NSW Legislative Council Hansard, 1999). Thus, the Hon. J. J. Della Bosca noted the

Complex series of judgments [that] must be made about public policy, and moral, health, policing and law enforcement matters before members can make a final judgment as to whether or not to support this trial. (NSW Legislative Council Hansard, 1999, 2253)

And that it had 'become fashionable to deal with religious issues in support of this matter' (NSW Legislative Council Hansard, 1999, 2255).

These debates brought to the fore within parliament the complex entwinement of the laws of *civitas terrena* and *civitas dei* that guided the development of the MSIC in Sydney. Della Bosca went on to quote at length the Gospel according to St Luke, recounting the story of two disciples of Jesus returning to their homes, who are joined by a stranger. Della Bosca concludes the recounting of the biblical story by stating:

I am always attracted to that passage because the greatest challenge of the Revelation in modern times is to recognise the risen Christ in those around and among us. This House knows that those who seek to look at these issues in the

context of the moral demands of the Christian religion should think seriously about whether or not they recognise the needs of the risen Christ in the lives of those marginalised addicts. Perhaps we need to test ourselves to see what we can do to make their lives more liveable through the physical redemption of being rehabilitated from their drug addiction and through the moral redemption that they might otherwise need. (NSW Legislative Council Hansard, 1999, 2256)

The MSIC demonstrates the continued relevance of the ancient concept of sanctuary in the modern state. The claim of sanctuary to open the T-room in overt civil disobedience of the State proffered an opportunity for the Uniting Church to provide a coherent, alternative worldview of responses to illicit drug usage. In response to this challenge, the State created a sanctuary that existed not only in the material bricks and mortar of the building but also in the legal and symbolic space. Moreover, in evoking this complex legal geography, we have interrogated the legal pluralism generated by the overlapping jurisdictional authority of the sacred and the secular providing a complex picture of the continued imbrication of *civitas dei* and *civitas terrena*. In the process, we have illuminated 'the wider sense of the sacred' that remains often hidden in plain view within the secular (Demerath, 2000, 2), adding to the emerging understanding of partnerships between people of faith and those of no religious faith who come together to offer care, sanctuary, and welfare (Yorgason and Dora, 2009; Cloke and Beaumont, 2013).

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