

Prof. Karl Shoemaker
Spring 2022

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Law and the Sacred in the Middle Ages

Course Description:

This course will explore the relationship between law and the realm of the sacred within the major legal traditions of medieval Europe. We will examine topics such as the divine ordeal, sanctuary, kingship, the relationship between law and theology in the medieval era, and a fictional lawsuit between Christ and the devil. In each instance, we will be asking a set of questions that seek to understand how medieval jurists and theologians understood the nature of law and its place in the world.

Because this is a research seminar, one of our primary tasks will be to acquire the necessary research skills to pursue the themes articulated in the syllabus. While there will be some specifically assigned readings in this course, a large portion of readings will be determined by individual research assignments. Among our primary tasks will be to frame a research question, construct a bibliography, engage with primary sources, engage with secondary sources, and write short a research paper.

Course Requirements:

In preparation for each week's class, you will be required to prepare a bibliography, compose a set of historical questions related to the week's topic, as well as complete some readings in order to prepare for discussion. A portion of the seminar will be dedicated to teaching you the techniques for completing these assignments. Ideally, the skills you acquire each week will assist you in completing the research paper that is also required for the course.

This course also requires the completion of a research paper on a theme related this course. The paper should use primary and secondary sources and should be approximately 20 pages in length. During the course of the semester, a list of suggested paper topics will be distributed. The paper will be due on the last day of class.

Texts: All readings are posted on the Canvas page corresponding to the name of the author.

Schedule of Themes

Week 1

Introduction of the course subject matter and general requirements.

Texts recommended for general background: 1) Brundage, 2) Helmholz, 3) Bellomo

Week 2

Judgment by Divine Ordeal; its origins, functions and demise.

Readings: 1) Bartlett; 2) Coleman; 3) Baldwin

Week 3

The Divine Ordeal (con't)

Readings: (con't from last week)

Week 4

The emergence of post-ordeal legal process in Medieval Europe

Readings:

1) Richard Fraher, "The Theoretical Justification for the New Criminal Law of the High Middle Ages;"

2) Richard Fraher, "Preventing Crime in the High Middle Ages: The Medieval Lawyers' Search for Deterrence;"

3) Richard Fraher, "IV Lateran's Revolution in Criminal Procedure;"

4) Langbein

Week 5

Sanctuary for Crimes; ancient Roman law and early Christianity

Readings: Shoemaker, "Sanctuary and Crime" Chap 1 and 2.

Week 6

Sanctuary for Crimes; Carolingian and Anglo-Saxon law

Readings: Meens 1 and 2; Riggs

Week 7

The Domestication of Sanctuary; English common law and sanctuary for crimes.

Readings: Cox; Rosser; Ives; Shoemaker

Week 8

Scheduled meetings to discuss individual paper topics

Week 9

Scheduled meetings to discuss individual paper topics

Week 10

The devil at law; early medieval theology and the "ransom theory."

Readings: Shoemaker, "When the Devil Went to Law School"

Week 11

Mascaron and Hell's lawsuit

Readings: *Processus Sathanae*

Week 12

Law, politics and theology in the later middle ages

Readings: Pennington, Bellomo, Kantorowicz, Cushing, Gratian.

Week 13

Week 14 Research Presentations

Bibliography

- 1) Richard Helmholz, The Spirit of the Classical Canon Law (University of Georgia Press, 1996).
- 2) James Brundage, Medieval Canon Law (Longman, 1995).
- 3) Robert Bartlett, Trial by Fire and Water: The Medieval Judicial Ordeal (Oxford, 1986).
- 4) Rebecca V. Colman, "Reason and Unreason in Early Medieval Law," 4 Journal of Interdisciplinary History 571 (1974).
- 5) John Baldwin, "The Intellectual Preparation for the Canon of 1215 against Ordeals," Speculum 36 (1961) 613-636.
- 6) Richard M. Fraher, "IV Lateran's Revolution in Criminal Procedure: The Birth of the Inquisitio, the End of Ordeals, and Innocent III's Vision of Ecclesiastical Politics," Studia in honorem Eminentissimi Cardinalis Alfonsi M.

Stickler, ed. Rosalio Iosepho Card. Castillo Lara (Studia et Textus Historiae Iuris Canonici 7; 1992): 97-111.

7) Richard M. Fraher, "The Theoretical Justification for the New Criminal Law of the High Middle Ages. 'Rei publicae interest, ne crimina remaneant impunita'," University of Illinois Law Review (1984) 577-595.

8) Richard Fraher, "Preventing Crime in the High Middle Ages: The Medieval Lawyers' Search for Deterrence," Popes, Teachers, and the Canon Law in the Middle Ages: Festschrift for Brian Tierney, edd. Stanley Chodorow and James R. Sweeney (1989): 212-233.

9) John H. Langbein, Torture and the Law of Proof: Europe and England in the Ancient Régime (1977).

10) Kathleen G. Cushing, Papacy and Law in the Gregorian Revolution: The Canonistic Works of Anselm of Lucca, (Oxford: Clarendon, 1998).

11) Gratian, The Treatise on Laws, trans. by Augustine Thompson, James Gordley, with an introduction by Katherine Christensen (1993).

12) Manlio Bellomo, The Common Legal Past of Europe, 1000-1800 (1995).

13) Kenneth Pennington, The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition (Berkeley-Los Angeles-London: University of California Press, 1993).

14) Rob Meens, "Sanctuary, Penance, and Dispute Settlement under Charlemagne: The Conflict between Alcuin and Theodulf of Orleans over a Sinful Cleric" Speculum vol. 82, p. (2007).

15) Rob Meens, "The sanctity of the basilica of St. Martin. Gregory of Tours and the practice of sanctuary in the Merovingian period" in Texts and Identities in the Early Middle Ages (2006) pp. 275-288.

16) Charles H. Riggs, Jr., Criminal Asylum in Anglo-Saxon Law (Gainesville, Fla., 1963).

- 17) J. Charles Cox, Sanctuaries and Sanctuary-Seekers (1911).
- 18) Gervase Rosser, "Sanctuary and Social Negotiation," in The Cloister and the World: Essays in Medieval History in Honour of Barbara Harvey. Edited by John Blair and Brian Golding.
- 19) E.W. Ives, "Crime, Sanctuary and Royal Authority under Henry VIII: The Exemplary Sufferings of the Savage Family," in On the Laws and Customs of England, ed. Morris S. Arnold et al. (Chapel Hill, 1981).
- 20) E. Kantorowicz, The King's Two Bodies: A Study in Mediaeval Political Theology (2nd ed. 1997).