H-Net Reviews
in the Humanities & Social Sciences

Karl Shoemaker. *Sanctuary and Crime in the Middle Ages, 400-1500.* New York: Fordham University Press, 2011. xiv + 269 pp. $65.00 (cloth), ISBN 978-0-8232-3268-0.

Reviewed by Greta Austin (University of Puget Sound, Department of Religion)
Published on H-Law (June, 2013)
Commissioned by Ethan Zadoff

Finding Refuge in the Middle Ages

Sanctuary–the practice of a wrongdoer taking refuge in a church to escape physical harm–was an important social practice in Europe from late antiquity well into the Middle Ages. Although the state no longer formally recognizes sanctuary, the practice regularly resurfaces in times of genocide and political injustice. The historical and biblical roots of sanctuary inspired some citizens of a small town in France during World War II to make their own town of Le Chambon into a sanctuary for Jews during the Holocaust.[1] Similarly, in the "sanctuary movement" in the 1980s in the United States, American churches sheltered illegal Central American immigrants fleeing violence.[2] Less happily, during the Rwandan genocide of 1994, the Hutu lured the Tutsi into church buildings by promising them sanctuary–an offer that clearly seemed plausible in their social setting. Tragically, the Hutu killed the sanctuary seekers: church buildings were the "killing fields" of Rwanda.[3] Sanctuary has mattered in significant ways even in modern history.

In *Sanctuary and Crime in the Middle Ages*, Karl Shoemaker surveys the history of the legal institution of sanctuary from late antiquity through the early modern period. Shoemaker defines "sanctuary" as law that "granted a wrongdoer who fled to a church protection from forcible removal as well as immunity from corporal or capital punishment." A sanctuary seeker "might be required to pay a fine, forfeit goods, perform penance, or go into exile, but almost without exception his body and his life were to be preserved" (p. ix). Shoemaker then asks the following excellent questions: "Why was allowing respite to a criminal who fled to a church considered an appropriate response to wrongdoing? How could such a legal practice flourish in European legal traditions for more than a millennium? And given that sanctuary survived for so long, why was it suddenly abolished throughout Europe in the sixteenth and seventeenth centuries?" (p. x).

Shoemaker argues that sanctuary made sense as a legal practice for particular reasons in different periods. In late antiquity, sanctuary provided a locus for clerical intercession, and was closely related to penance. In the early Middle Ages, sanctuary in Europe played an important role in what Shoemaker calls "the blood-feud" and enabled clerics to continue to intercede in these disputes. The power to grant sanctuary also reinforced the authority of the ruler, according to Shoemaker.[4] In a sudden and rather unexplained shift, Shoemaker then moves from early medieval Continental sources to the Anglo-Saxon sources because of their "rich material" (p. 78). In the twelfth century, the developing common law in England accommodated sanctuary into its framework, in part as a way to reinforce royal authority and law, which could "claim more of a monopoly on dispute settlement and legitimate violence than English kings had known before" (p. 116). Finally, he argues, high medieval canon law led to the end of sanctuary, because ideas about law and punishment changed. Around the year 1200, canon law developed a new criminal law of deterrence and punishment, with the canonical maxim first elaborated in the decretals of Pope Innocent III that "it is in the public interest that crimes do not remain unpunished" (*publicae utilitatis intersit ne crimina remaneant impunita*) (p. 163).[5] In the High Middle Ages, Catholic canon lawyers came to take a new view of crime, one that focused on retributive justice. Sanctuary came to be seen negatively as a legal mechanism that allowed felons (albeit not thieves, Jews, and other excluded categories) to evade punishment. The canonists' ideas leaked into the common law. The new retributive understanding of criminal law eventually led to the abolition of sanctuary under Henry VIII in England. And there the history of sanctuary as a formally recognized legal institution ended, although it continues to shape social practices informally even in the modern

period.

The book moves quickly and efficiently through this story. Shoemaker presents many excerpts of primary material in English translation in one monograph. He provides useful chapter summaries at the end of each chapter. By surveying1,100 years of history, Shoemaker allows us to see how sanctuary operated at different times and how attitudes toward it have changed. So often we as historians write only small fragments of history ("some thoughts on institution X from 1000-1020") that his wide-ranging but succinct survey provides a welcome overview of legal change over a long period of time.

Such a succinct history can be forgiven for failing to address all questions that the material might raise in the detail that one might hope. The problem, however, is that legal text follows legal text in *Sanctuary and Crime*– but what did these texts mean to the people who created these texts or copied them in particular contexts? Why should modern readers care about sanctuary and changing attitudes toward it? And how has the vast amount of scholarship that has been produced on the subject shape our current understanding of sanctuary? Shoemaker could have said much more about these questions. Quite remarkably, the book lacks a conclusion. Sanctuary, like many legal institutions, developed and changed in particular cultures and societies. Shoemaker writes, "Sanctuary protections resonated within broad cultural and legal contexts in the ancient world. They were intelligible on terms that were not wholly dependent on the theological justifications of the church" (p. 33). In practice, however, Shoemaker provides little information to help the reader understand sanctuary in its specific cultural contexts. For instance, as Shoemaker makes clear, the institution of sanctuary gave clergy the power of intercession. But he does not discuss the considerable scholarship on intercession and patronage in late antiquity and on the changing relationship at that time between the church and the Roman Empire. That scholarship could have illuminated why clerical intercession resonated so profoundly in the late antique world. Similarly, notwithstanding the author's claim that sanctuary met broader cultural needs, the book does not ask whether sanctuary could be best understood in light of the abundant scholarship that discusses ritual practices and social dramas in late antiquity or, for that matter, in any period he studies. Shoemaker does not consider how literature on the sacrality of space and the boundaries created by sacred space might be relevant, nor does he steer the reader to such literature.[6] It is indeed possible to write about sanctuary as a legal institution and still locate sanctuary in particular contexts, dramas, and spaces, as Rob Meens has done.[7]

Sanctuary and Crime lacks discussions of and sometimes even citations to the secondary literature that anticipates its arguments and that presumably would have informed Shoemaker's views. A sweeping but short historical survey cannot by definition engage in depth with all the questions raised by scholars studying sanctuary. Yet readers would surely want to know the important questions that have been raised and would want to be referred to additional reading. For late antiquity, Shoemaker acknowledges only in an endnote that others have long linked sanctuary and clerical intercession. One might expect to see that in the text.[8] In the text, he mentions the work of Anne Ducloux and Harald Siems, but does not clarify the relationship between their work and his argument. For the early Middle Ages, Shoemaker relegates Daniela Fruscione's *Asyl bei den germanischen Stämmen im frühen Mittelalter* (2003) to an endnote, where he describes it as "exhaustively" listing "the law code references to early medieval sanctuary" (p. 194n4). Fruscione does not simply "catalogue"; her theoretically ambitious book works to bring anthropological literature into conversation with the early medieval sources. In addition, when Shoemaker discusses the early modern period and the demise of sanctuary, he apparently repeats the arguments of Trisha Olson without crediting them in the manner one would expect (pp. 152-153).[9] Drawing on the work of Richard Fraher and Laurent Mayali, Olson argues that the medieval canonists developed new ideas about retribution and deterrence in criminal law in canon law, and thus sanctuary came to be seen as letting wrongdoers off the hook. Shoemaker uses the same explanation, citing Fraher but not Olson. Shoemaker clearly knew about Olson's work but refers to it only obliquely.[10]

In addition, Shoemaker does not cite literature that provides further nuances or possible challenges to his factual claims and analytical conclusions. The so-called blood-feud, for instance, is central to Shoemaker's argument. He writes that sanctuary during the central Middle Ages was "intimately connected to social contexts that historians generally treat under the rubric of blood feud" (p. 48). The reader might want to know about the recent, lively discussions of feud and vengeance in the secondary literature, some of which problematizes the term "blood feud."[11] The contemporary scholarship on feuds and violence shines an important light on the legal sources. It also complicates Shoemaker's conclusion that sanctuary played an important role in "the blood-feud," especially given that hostilities between groups and individu-

als took many different forms that the term "blood-feud" does not adequately address.[12] Not only does Shoemaker's failure to engage with much secondary literature make some of his arguments seem more original than they, in fact, are. But it also makes other arguments seem more obviously correct than they are.

Sanctuary and Crime describes the age-old debates about the institution of sanctuary as debates about restorative versus retributive systems of justice. Shoemaker's clearly written survey provides a wealth of excerpts of primary sources in English translation, along with concise descriptions of the ways in which that particular legal practice might have made sense in unique ways at particular times and places over 1,100 years. This will make the book attractive to teachers and to those who wish to begin their own research into the phenomenon of sanctuary. Hopefully, those who read it and those who teach it will bear in mind that there are a wealth of other secondary materials, not all of which are given the attention that they deserve. Anyone interested in the subject must look to the rich secondary literature and the primary sources as well.

Notes

[1]. Philip Haillie, *Lest Innocent Blood Be Shed: The Story of the Village of Le Chambon and How Goodness Happened There* (1979; repr., New York: Harper Perennial, 1994), 109-111. I am indebted to Judith Kay for this reference.

[2]. See, for example, Ann Crittenden, *Sanctuary: A Story of American Conscience and the Law in Collision* (New York: Grove Press, 1988). See also Landon Hitchcock and Christopher Mitchell, eds., *Zones of Peace* (Bloomfield: Kumarian Press, 2007).

[3]. Timothy Longman, *Christianity and Genocide in Rwanda* (Cambridge: Cambridge University Press, 2010), 4-5. I thank Kay for her help with this reference.

[4]. See Barbara Rosenwein's argument about immunities in *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Medieval Europe* (Ithaca: Cornell University Press, 1999).

[5]. Kenneth Pennington argues that jurists working in Innocent III's curia probably formulated this maxim, and not Innocent himself. Pennington also provides a precise explanation of the origins of the maxim. Shoemaker does not cite Pennington's work. Kenneth Pennington, "Innocent III and the Ius commune," in *Grundlagen des Rechts: Festschrift für Peter Landau zum 65. Geburtstag,* ed. Richard Helmholz, Paul Mikat, and Michael Stolleis (Paderborn: Schöningh, 2000), 349-366.

[6]. See, for example, Rosenwein, *Negotiating Space.*

[7]. Rob Meens, "Sanctuary, Penance, and Dispute Settlement under Charlemagne: The Conflict between Alcuin and Theodulf of Orléans over a Sinful Cleric," *Speculum* 82 (2007): 277-300. See also Rob Meens, "Violence at the Altar: The Sacred Space around the Grave of St. Martin of Tours and the Practice of Sanctuary in the Early Middle Ages," in *Ritual and Space in the Middle Ages: Proceedings of the 2009 Harlaxton Symposium*, ed. Frances Andrews (Donington: Shaun Tyas, 2011), 71-89.

[8]. He states in an endnote that "the close connection between ecclesiastical sanctuary and episcopal intercession has been recognized in the historical scholarship" (pp. 183-184n74).

[9]. Trisha Olson, "Of the Worshipful Warrior: Sanctuary and Punishment in the Middle Ages," *St. Thomas Law Review* 16 (2004): 473-549, esp. 478.

[10]. Shoemaker writes only, "Recent essays by Trisha Olson have also correctly stressed the conciliatory aspects of medieval sanctuary law, situating sanctuary practice within penitential discipline in the central Middle Ages and helpfully reminding us of the theological commitments that undergirded medieval sanctuary practices" (p. 4).

[11]. Paul R. Hyams, "Was There Really Such a Thing as Feud in the High Middle Ages?" in *Vengeance in the Middle Ages*, ed. Susanna A. Throop and Paul R. Hyams (Burlington: Ashgate, 2010), 156. See also Guy Halsall's discussion of the problems with the term "feud" and the variety of social interactions it could describe in "Violence and Society in the Early Medieval West: An Introductory Survey," in *Violence and Society in the Early Medieval West*, ed. Guy Halsall (Woodbridge: Boydell & Brewer, 1988), 1-45.

[12]. Shoemaker discusses the canon law collection of bishop Burchard of Worms (ca. 1015), which he incorrectly dates to the "late eleventh century" (p. 72). But he does not take advantage of Burchard's secular law collection, the *Lex familiae,* and its texts on feuds, nor the secondary literature.

Citation: Greta Austin. Review of Shoemaker, Karl, *Sanctuary and Crime in the Middle Ages, 400-1500.* H-Law, H-Net

Reviews. June, 2013.
URL: http://www.h-net.org/reviews/showrev.php?id=33219