The Origins of a Political Trial: The Sanctuary Movement and Political Justice

Sophie H. Pirie*

INTRODUCTION

According to many accounts,[1] the Sanctuary Movement first arose in the United States-Mexico border region in response to a dramatic increase in the flow of Salvadoran refugees[2] to the United States in 1980. Churches responded by providing food, shelter and solace. At the time, all that most people knew about El Salvador was that its archbishop, Oscar Romero, had recently been assassinated after appealing to President Carter to stop sending arms to his country. The refugees, however, brought eyewitness and personal accounts of death squads roaming their country and of church and other humanitarian aid workers being tortured. These accounts provided a "traumatic awakening"[3] for many people, a trauma then intensified by the bureaucratic response of the Immigration and Naturalization Service (INS). Rather than recommending that refugees receive a temporary haven in the United States until hostilities in El Salvador abated and political conditions stabilized, the INS detained—essentially imprisoned—as many of the new refugees as it could

* I would like to thank Prof. Bob Gordon for encouraging me to believe in this article enough to submit it for publication, and the Yale Journal of Law & the Humanities for accepting it. I am also very indebted to the Journal's staff for their extensive editorial assistance.

1. *See, e.g.*, MacEoin, *A Brief History of the Sanctuary Movement, in* Sanctuary: A Resource Guide for Understanding and Participating in the Central American Refugees' Struggle 14 (G. MacEoin ed. 1985) [hereinafter Resource Guide].

2. In both United States and international law, "refugee" is a term of art which refers to people who have a "well-founded fear" that they will face persecution on account of their "race, religion, nationality, membership in a particular social group or political opinion" if repatriated. *See* Immigration and Nationality Act of 1952, § 101(a)(42), Pub. L. No. 82-414, 66 Stat. 163, 8 U.S.C. § 1101(a)(42) [hereinafter INA]; Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, T.I.A.S. No. 6577, 189 U.N.T.S. 137; Protocol Relating to the Status of Refugees, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6260, T.I.A.S. No. 6577, 606 U.N.T.S. 268. Colloquially, the term refers more generally to persons displaced from the security of their homes, families, and communities particularly because of military hostilities, political instability, or human rights abuses. People who have entered the United States without proper visas and whom the INS has not yet deemed to be "refugees" are called "illegal aliens." To avoid using this latter and pejorative term, this article will refer to people fleeing instability and human rights abuses in Central America and claiming to be refugees, whether or not they are aware of the law's technical requirements, as refugees. When "refugee" is used as a term of art, it will be so clarified either specifically or by context.

3. MacEoin, *supra* note 1.

arrest and then set about deporting them as fast it could arrange, only minimally observing their rights to legal counsel and an opportunity to petition for asylum in the United States.

In contrast to the relief efforts that followed such dramatic events as the Mexico earthquake and Cuba's 1980 expulsion of political prisoners and handicapped persons, local involvement did not wither this time. Rather, a church community had been awakened to two realities: The existence of widespread human rights abuses in Central America and the U.S. government's refusal to harbor people fleeing those atrocities—an interlocking and "institutionalized process of injustice obviously call[ing] for organized counter measures."[4]

The Tucson Ecumenical Council and later the Chicago Religious Task Force on Central America organized the sheltering and hiding of as many refugees as possible in church basements and "safehouses" in their communities. They also initiated a continuing public proclamation of the religious motivation of many of the people providing charity and sanctuary to the refugees. They solicited community-based legal services and immigration attorneys to assist the refugees to obtain asylum in the United States. They raised funds to bond refugees out of INS detention centers while their asylum claims were pending. Finally, and most significantly for the political importance of the Sanctuary Movement, the Chicago and Tucson groups organized the dissemination of the refugees' message and summoned other faith communities and later whole towns, cities, and even states to consider providing similar charity assistance and sanctuary.

These efforts helped some refugees find a haven in the United States and avoid deportation back to Central America.[5] But they had no discernible ameliorating effect on immigration practices or policies concerning Central Americans. But this failure does not mean that these efforts were only significant as stop-gap or band-aid measures. Sanctuary participation taught people about certain political, religious, and legal realities from which they formed new perceptions about their world, their responsibility, and possibilities for action. "Sanctuary" began to carry a double meaning: It embraced not only sanctuary for those fleeing oppression, but also the sanctuary of the church as a forum from which to act upon political beliefs. Direct confrontation between prophetic witnesses and potential participants in intimate but communal surroundings characterized this forum. Sanctuary work gave rise to the sense of a shared commitment to and participation in politicized moral activity. It also provided participants with a sense of belonging to a tradition of empowerment, rather than one based only in protest or charity.

---

4. *Id.*

5. Estimates of the number of refugees "successfully" harbored by the Sanctuary Movement range from 600 to 3000. Ryan, *The Historical Case for Sanctuary,* 29 J. Church & St. 209 (1987).

As the Movement spread its relief activities across the country, and propelled whole cities and some two hundred congregations into offering their confines as sanctuaries for Central American refugees, it ran increasingly and flagrantly afoul of United States immigration law which prohibits harboring "illegal aliens."[6] After first ignoring or dismissing the Movement as an expression of frivolous and misguided piety, the government became increasingly affronted by how the churches publicized their sanctuary activities. Such publicity became a "trademark of the movement."[7] In response, federal agencies undertook the extended, undercover "Sojourner" investigation that led to the criminal indictment of various of the Movement's leaders and church workers. As the following pages will argue, the confrontation between the government and the Movement suggests that the interaction between the Movement's inner dynamics and its national and international environments had significant implications, not just for refugees seeking asylum, but crucially for the nature and quality of political participation in the United States.

Rather than providing a participant-oriented telling of *the* Sanctuary story based on purportedly exhaustive, systematic, or statistically sound research, the following pages seek, on the basis of what facts and stories are presently known and available, to understand the Sanctuary Movement and its criminalization as a socio-political phenomenon with significance for practices of legality, social protest, humanitarian charity, and communitarianism in the United States. To so analyze the Sanctuary Movement, it is obviously necessary to "interpret" the various stories told by the Movement's participants, government actors, the media, and other observers.

Although the mass media, by its claim to "all the news that's fit to print," often provides a useful source of information for penetrating a contemporary phenomenon like the Sanctuary Movement, the media is neither the sole creator nor the most accurate reflector of an event's contemporary or historical significance. Sometimes the creation of meaning and the writing of history are done by a political movement's own practices and self-reflective dialogues. But once one abandons the distilling homogenization of media sources of fact and interpretation, the problem becomes not just penetrating the stories of and about a phenomenon, but managing their diversity and multiplicity. Which story of the many constituting or concerning the Sanctuary Movement is the best one to retell? Whose viewpoint should inform that selection and retelling? One's inter-

6. *See supra* note 2.

7. Helton, *Ecumenical, Municipal and Legal Challenges to United States Refugee Policy*, 21 Harv. C.R.-C.L. L. Rev. 493 (1986). These statements have also been interpreted and promoted as efforts by Sanctuary participants to bear " 'public witness' to the belief that their actions are morally and legally justified." *See* Christic Institute, Information Package on Religious Sanctuary and Rights of Refugees (Apr. 15, 1985); Godar, *The Sanctuary Movement: An Analysis of the Legal and Moral Questions Involved*, 30 St. Louis U.L.J. 1221, 1224 (1986).

pretive purposes or goals can guide selection, but perhaps too teleologically. Alternatively, a phenomenon's outstanding features may suggest foci and principles of selection and ordering. The Sanctuary Movement seems to present such a case.

One finds extraordinary and alarming features in the government's treatment of the Sanctuary Movement: The legal briefs presented to the United States Court of Appeals by those convicted in the Tucson Sanctuary Trial, argue, for example, that the defendants were denied their constitutional rights to prepare and present available legal defenses and to testify on their own behalf, and that they were found guilty after a trial in which the court allowed no mention of conditions in Central America, the 1980 Refugee Act, or the Geneva Conventions on wartime humanitarian obligations. The briefs also argued that the trial court allowed the government to prove its case with evidence it had obtained by paying spies to infiltrate the private confines of church meetings and engage in the very illegal activities for which it was prosecuting the defendants.[8]

Whether or not such procedures and court rulings were technically legal is not the issue here. Rather, when we see the government and the courts treating callously and distrustfully people whom even government-sanctioned popular culture associates with meekness and innocence—nuns and churchgoers as opposed to "leftist radicals" and burglars—something seems seriously disturbed in the civic universe which we share with these people. Our powers of association may trigger memories about a spotty American tradition of subjecting supposedly treasonous political and social movements to ordeals of harassment and prosecution—to what I will call "political trials."

From the point of view of legal procedure, political trials are those trials in which political motivation rather than legalism drives the decision to prosecute, in which political considerations affect the outcome, or in which the participants behave so as to maximize the political consequences of using or appearing before the courts.[9] And from the point of view of substance, political trials concern what Otto Kircheimer calls "Political Justice"—that is, "justice in political matters"[10]—and involve affirming, challenging, or amending an existing or proposed configuration of political power—what I will call "political justice" writ small.

It is not unusual that the political issues at stake in a political trial should become or should seek channelling and expression in the legal system as an alternative or in addition to the political system. As Alexis de

8. *See* Brief for Respondents, United States v. Aguilar, 871 F.2d 1436 (9th Cir. 1989) (No. 86-1208).

9. *See* N. Dorsen & L. Friedman, Disorder in the Court, Report of the Association of the Bar of the City of New York, Special Committee on Courtroom Conduct 79 (1973), *cited in* J. Dugard, Human Rights and the South African Legal Order 206 (1978).

10. O. Kircheimer, Political Justice vii (1961).

Tocqueville wrote, "Scarcely any political question arises in the United States that is not resolved, sooner or later into a judicial question."[11] Almost two hundred years later, Kircheimer argued even more broadly that, in the modern era, whatever the dominant legal system, both governments and private groups bring issues about the balance of political power before the courts, with or without disguise.[12]

Despite many people's conceptions, political trials are not just peculiar and extreme phenomenon that occur, like Stalin's show trials, only in foreign and totalitarian societies or in response to movements with both revolutionary zeal and revolutionary capacity. Although Judith Shklar has said—in 1964 and again in 1986—that the United States federal courts have tried no political trials since World War II, there is something distinctive and important about the trials faced by Communist Party member Dennis,[13] the Vietnam War draft resisters, black activist Angela Davis, and now the Sanctuary workers—something that justifies grouping them with the trials faced by Nelson Mandela, the leaders of the Prague Spring of '68, and the post World War I Red Scare targets in the United States.

The distinctiveness of such trials is not only that they usually involve extraordinary legal procedures—bullied defendants, falsified evidence, or other deprivations of due process—or that they seek, often quite explicitly, to engineer political order and correctness for and in the larger community. Rather, I will argue, there is a distinctive character to the form, the amount, *or* the content of public participation in the phenomenon underlying such trials. It is distinctive precisely because the dynamics of that participation tend to outlast, overpower, or circumvent the resort to the courts, which often comes to seem irrelevant, futile, or even farcical. As Shklar has written, "It is not the political trial itself but the situation in which it takes place and the ends that it serves which matter. It is the quality of the politics pursued in them that distinguishes [political trials from other trials and] one political trial from another."[14] If the courts do not employ procedures and render judgments affirming or resonant with deep-seated notions about right, wrong, and fair play, they cannot render political justice, in the sense of a balancing of political power that will sit at least tolerably well within the body politic. As the following exploration of the Sanctuary Movement will show, whether political justice or Political Justice is done depends not only on how political foes are defined, but crucially on how well judicial responses (regulating disturbances caused by these foes) conform to narrower concepts of justice like "legality"—the adherence to legitimate, authoritative, and fair rules-ordering polities.

---

11. A. de Tocqueville, Democracy in America 290 (1960).
12. O. Kircheimer, *supra* note 10, at 47.
13. Dennis v. United States, 341 U.S. 494 (1951).
14. J. Shklar, Legalism: Law, Morals and Political Trials 145 (2d ed. 1986). The first edition of this book appeared in 1964.

To understand the Sanctuary Trials as political trials requires elucidating the sources of the Movement's emergence as a political challenge to the U.S. government. Thus, the following pages will focus on the background out of which the Movement arose and on the style of interactive behavior which came to characterize Sanctuary fora and Sanctuary-government relations. Section I will further explore the origins of Sanctuary with a particular view to its situation within the biblical tradition of sanctuary and to the inherent politicization of its various activities. It is important to realize that this politicization existed from the beginning, alongside and regardless of the religious motivations claimed for or attributed to these activities. It originated in the Movement's disagreement with various procedural and substantive aspects of United States policy regarding refugees and Central America, and in previous internal disputes over other foreign policies such as those leading to the Vietnam War. Section II will discuss the development of the U.S. government's response to the Sanctuary Movement and the construction of the Sanctuary Trials as political trials. In turn, this discussion will serve as background for my concluding argument that the socio-political significance of the Sanctuary Movement resides in the empowerment which its participatory activities provided its members and which existing legal and political regimes and procedures could not accommodate.

As a form of legal sociology, the following pages offer one of the chapters that a book aiming to provide an understanding of the Sanctuary Movement might include. As the chapter seeking to understand the Movement as the socio-political context for a political trial, it inevitably overemphasizes the political and legal nature of the Movement's actors, activities, experiences, and theoretical underpinnings, just as the chapter on the Sanctuary Movement as religious challenge and praxis would overemphasize its religiously portentous aspects. Such overemphasis does not intend that this analytical perspective is somehow the best for grasping the rich social text and significance of the Sanctuary Movement. Rather, by providing one of many overlapping explanations of the Movement, it seeks to balance some of the impressions created by the strong emphasis on the faith-based and apolitical origins of the Movement in many of the more widely available accounts of Sanctuary.[15] And it seeks to provide a framework for a broader and much needed discussion of appropriate responses to the government's extraordinary legal practices in prosecuting Sanctuary workers and of the challenges posed by Sanctuary as a new participation-intensive socio-political movement in the United States.

---

15. *See, e.g.*, I. Bau, This Ground is Holy: Church Sanctuary and Central American Refugees (1985); R. Golden & M. McConnell, Sanctuary: The New Underground Railroad (1986).

I. Birth of the Sanctuary Movement

The account of the origins of the Sanctuary Movement which introduces this article provides the basic "facts" or contours but little sense of an ab initio and inherently political dynamic. It leaves open whether Sanctuary did or had to constitute a new movement of socio-political importance rather than remaining "just" another punctuation in the history of church-state relations.[16] The account invokes admiration for the spontaneous and pious charity of those involved and appreciation for the Tucson and Chicago church groups in an almost guilt-relieving fashion: Thank goodness someone did something for those "poor" people fleeing torture and threats of being "disappeared."

Political confrontation, awareness, and motivation seem to have been both afterthoughts and products of happenstance, rather than inherent, inevitable, or sought-after dimensions. If these refugees had been the distraught and displaced, fleeing flood or famine rather than political violence, churches in the welcoming communities would undoubtedly have reacted similarly in providing sustenance, shelter, and safety. And they would have provided this succor regardless of whether the needing people were American citizens, properly documented foreigners, or "illegal aliens." That the INS had border patrol powers and personal jurisdiction over the Central American refugees was irrelevant to the inclination of the local church groups to offer charity. That church aid conflicted with the "illegal" status of the refugees was not the determining source of Sanctuary's politicization or political significance, at least not in the perspective of many of the Movement's early workers.

Neither was this conflict between charity and "law" fully determinative of the Movement's significance in the eyes of government authorities such as the INS. Throughout history, churches and the concept of sanctuary have filled important gaps in individuals' lives, which their relationships with the state—whether lordly, liberal, or bureaucratically welfaristic—have not or could not fill. Such gap-filling has been variously a welcome supplement to state welfare activities, a source of conflict with state policies allocating resources and ordering social relations, and an escape valve for domestic conflicts concerning political, social, and legal issues. The technical legality of providing such aid or sanctuary has rarely determined when it would constitute a political challenge to the state, its procedures, or its policies.

---

16. *See* Nichols, *Favour in the Wilderness: Sanctuary Politics and the Shaping of American Refugee Policy*, 2 Refugee Issues 1 (Aug. 1985); Brief for Respondents, United States v. Aguilar, 871 F.2d 1436 (9th Cir. 1989) (No. 86-1208).

A. *The Biblical Tradition of Sanctuary*

In ancient times in the Levitical lands, for example, sanctuary provided a means to avoid the interminable violence of blood-for-blood feuding and modify the harsh punishments characteristic of local law or custom. Criminals fearing execution or amputation could seek sanctuary at the altar of local deities or in the tents of desert Arabs, at least on a temporary basis.[17] Having had to flee their kin or clan into conditions of insecurity and dependence, they did not escape all the pain of punishment. But having fled, they no longer forced their prior "government" to either execute the traditional sentence or risk the undermining of its authority and social structures.

Sanctuary became less dependent upon personalized appeals to specific civic or religious personalities when Moses built whole cities of refuge in the biblical lands. These cities provided refugees, particularly those fleeing the vengeance of their victims' kin, access to a regularized form of asylum: If, for example, they had killed a person or committed some other grave offense, local custom would have tolerated or expected retributory killing by injured family members. The system of sanctuary cities, however, made it possible for transgressors to secure the de facto commutation of their death sentences into a relatively comfortable life imprisonment within the boundaries of a sanctuary city.[18]

At one level, such sanctuary certainly conflicted with the notion of retribution and the power structures it supported. But sanctuary also helped to minimize the violence characteristic of quid pro quo vengeance, which rarely stops after a first round of transgression and retribution. Because retributory justice could lead to feuding, pitting clan against clan over long periods of time, it threatened the tenuous bonds of social cooperation uniting peoples in geographical areas like the Levant, as much as it also resolved disputes expeditiously and reinforced those communal bonds by imparting a sense of the high costs attending the transgression of their supporting norms.

Sanctuary thus provided a safety valve to accommodate the inevitable and self-destructive pressures of a flawed system of justice in the ancient biblical land. It has done likewise in many other parts of the world at various times throughout history, including pre-seventeenth century England,[19] ancient Greece and Rome, the islands of Polynesia prior to European colonization, and in the Hanseatic cities of pre-modern Germania.[20]

---

17. I. Bau, *supra* note 15, at 127-28.

18. *See* Ryan, *supra* note 5, at 211-12 (1987).

19. *See* Harding, Social History of England 120 (1966); Note, *The Underground Railroad and the Sanctuary Movement: A Comparison of History, Litigation and Values*, 60 S. Cal. L. Rev. 1429, 1432-33 (1987).

20. *See* Ryan, *supra* note 5. *See also* J. Schildhauer, The Hansa: History and Culture (K. Vanovitch trans. 1985).

But the Judaeo-Christian tradition is the most important for present purposes, since Sanctuary leaders often referred to it explicitly as they engaged in the dialogues and justificatory practices and constructed the Movement's social meaning for participants, observers, and opponents.

In view of this tradition, it is possible to interpret the government's initial downplaying of the Sanctuary Movement as an implicit, subconscious, convenient, or perhaps merely coincidental recognition that church sanctuary had the potential to actually reinforce wider community policies. In the early 1980s, the Reagan Administration was escalating its activity in Central America. Past experience seemed to show that framing Central American events and politics as a hemispheric battle against communist encroachment provided the best chances for a quiet and plentiful flow of needed funds from Capitol Hill. The mass media's ability to bring a war home to the United States was well documented. Archbishop Romero's assassination, for example, could have been made into a communicative event or symbol as powerful and unequivocal as the self-immolation of a Buddhist monk in downtown Saigon years before. The media had only to present the testimonials of fleeing Salvadorans to popularize these refugees as overland "boat people" and evoke protests at their deportation not unlike the outcry over Malaysia's refusal to allow the Indochinese onto their shores in 1975.

But in fact, the media's early focus on the *Christian* and *charity* aspects of Sanctuary activities and on the U.S. government's denials of asylum to the Central American refugees diverted attention from the role of the U.S. government in perpetuating the human rights abuses and instability which caused the refugees's northward flight. That early Sanctuary was tied to community church groups meant that its sources of information and interpretation could, accurately enough, be described as religious relative to purportedly more accurate and "balanced" political sources, and so Sanctuary was portrayed as within the escape valve tradition of biblical sanctuary.

The sanctuary tradition, however, represents far more than a mere political escape valve through which a government resorts to alternative procedures for destructive conflicts. It also includes the notion of tolerating appeals to alternative concepts or codes of substantive justice. Biblical sanctuaries offered respite, not merely from the procedures of local custom or law, but also from its norms.

For example, biblical rather than customary laws governing the egregiousness of particular actions would determine the eligibility of asylum applicants for sustenance, shelter, and safety. In determining guilt and exculpability, biblical justice often emphasized individual motive and fault rather than status relations, inter-clan or inter-tribe boundaries, and the needs of social harmony, as was typical of customary law. Perpetrators of negligent or accidental homicides could receive sanctuary once a refuge

city had judged them both eligible and in need.[21] Once within the sanctuary walls, refugees apparently became community members, largely undifferentiated by origin or entry.[22] They had entered the realm of an alternative code of justice as asylees, rather than pardonees or skulking fugitives.[23]

Similarly, the Sanctuary Movement invokes biblical law as an alternative to INS rules for determining asylum eligibility. Whereas the Immigration and Naturalization Act focuses on whether refugees will likely face persecution if they return to their homelands,[24] the Bible commands care and respect for the "ger" or refugee,[25] and emphasizes the innocence of those who shun violence or use it only for biblically cognizable ends. It welcomes Central American refugees not only to a safe haven but also as members of a shared faith community.

As a movement avowedly based on the biblical tradition, then, Sanctuary need not be viewed as committing civil disobedience by adhering to some *higher* law without the interpretive mediation of a temporal government. Rather, offering sanctuary, as a religious proposition, involves presenting an *alternative*[26] to United States immigration law not inconsistent with the fullest sense of separation of church and state. The substantive norms and procedures of that secular law of biblical sanctuary aim as much to harmonize intra- and inter-community relations as did righteous vengeance for the tribes in the Levant. And, as in biblical times, competing conceptions of justice need not be duelling visions, even when they operate within a given territory without the hierarchy of federalism to express the terms of their coexistence. Just as Sanctuary's alternative *procedures* for realizing justice could provide a safety valve to protect the government's ability to realize various macro and micro political aims, so the *substance* of biblical justice could provide a safety valve to help the United States better accommodate the inconsistencies and rigidities within its own substantive law and flickering world view.

Even when the Sanctuary Movement later supplemented its biblical vision with a secular vision of justice drawn from international humanitarian and refugee law, it still did not inevitably politicize its activities in a manner or to a degree that would cause a breakdown in Kircheimian political justice. That alternative secular vision could coexist with domestic

---

21. *See* I. Bau, *supra* note 15, at 125-26 (1985). *See also* Ryan, *supra* note 5, at 211-12.

22. *See, e.g., Leviticus* 19:33-34 ("The stranger who sojourns with you shall be to you as the native among you, and you shall love him as yourself. . . .").

23. One sees this transmutation of status in other sanctuary traditions as well. Serfs who reached one of the German Hansa or cities and resided there for twenty four hours would acquire status as a free person linked to the network of these free trade cities.

24. *See supra* note 3 and accompanying text.

25. *See Leviticus* 19:33-34.

26. Of course, Sanctuary workers say and always have said that the alternative law is a higher law. That, however, underscores the political aspect of their work. *See infra* notes 35-57 and accompanying text.

political law as international law has always done—in tension, perhaps, but not threatening to existing configurations of political power.

The political problem posed by Sanctuary was not its relation to state policy per se. If one views modern sanctuary as a movement of faith and charity based on biblical tradition and offering an alternative justice—even a critique of United States legal and substantive justice—one cannot explain why, from its very inception, it was a political movement destined to cause or explode a crisis in American political justice. Alternative explanations of the politicization of Sanctuary-government relations—whether a chosen tactic, the result of Sanctuary bursting the limits of coexistence, fallout from its appropriating secular laws to supplement biblical teaching, the result of INS overreaction, the ripple effect of events in Managua, San Salvador and Washington, D.C., or the result of the emergence of secular sanctuaries—seem forced or incomplete. Each of these factors certainly added to the political force of the Movement, but none were necessary or sufficient to foist Sanctuary into the political trial annals. Rather, as a result of the "quality of the politics being pursued" by both Sanctuary and the government—as a result of the broader legal and political background of United States refugee policy to which the Sanctuary Movement was responding, if at first somewhat unwittingly—the Movement could not benefit from the notion of peaceful coexistence.

B. *United States Refugee Policy and Law*

Between United States withdrawal from Southeast Asia and the onset of North Vietnamese and Khmer Rouge oppression, "boat people" flooded the Indochinese sea, Malaysian beaches, Hong Kong harbor, and the Thai border. Sympathy-arousing stories swamped the media. American aid money flowed to the non-governmental organizations aiding refugees and many communities and local church groups geared up to assist and resettle the refugees. And, with little dispute, Congress passed the 1980 Refugee Act[27] to regularize and apoliticize United States refugee policy in accordance with the dictates of international law[28] and liberal legalism. The Refugee Act provided for the supposedly apolitical adjudication of individual asylum cases under a neutral and humanitarian legal standard, namely the "well-founded fear of persecution" standard used in international law to determine who is a refugee.[29] But the structure and adminis-

27. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified in scattered sections of 8 U.S.C.A.).

28. *See, e.g.*, H.R. Rep. No. 608, 96th Cong., 1st Sess. 18 (1979) (reaffirming Congress' intent to "conform the language of 243 [the deportation withholding section of the INA] to the Convention [on the Status of Refugees, *supra* note 2], . . . so that U.S. statutory law clearly reflects our legal obligations under international agreements").

29. *See supra* note 2.

tration of the Refugee Act soon reflected important ambivalences in American politics about using legalism to create and protect rights for vulnerable people, particularly where those rights impinge national macroeconomic or geopolitical concerns.

One problem with the Act has been the vagueness of the definition which refugees must satisfy. What is a "well-founded fear of persecution" after all? And, more specifically, what exactly is encompassed by the term "persecution"? This vagueness has allowed the refugee determination process and its outcomes to be manipulated by Cold War thinking and practices: Victims of relatively trivial and barely founded economic deprivations, like Martina Navratilova, receive asylum, so long as they "flee" communist regimes, while victims with written death threats and the physical scars of previous torture are unlikely to receive asylum, especially if fleeing a United States ally.[30] Lawyers representing refugees have been co-opted into spending vast amounts of effort debating technicalities rather than fighting for an expanded definition of political refugee or for a determination process that would give the promise of political asylum more substantive reality.

It is significant that the United States, a country largely constituted of refugees, the indentured, the enslaved, and their descendants, a country that has preached far and wide the evils of "persecution," and a country preoccupied with legalistic standards, has contented itself with such a manipulable notion of who is a refugee, of who has been or fears being "persecuted." Persecution is most definitely not the only term in American political and legal culture which is vague, manipulable, and manipulated, yet crucial to the realization of someone's rights: "Cruel and unusual punishment," "clear and present danger," "discrimination on the basis of race or gender," and "equal opportunity" are others. As the litigation history of these other terms shows, it is precisely when the political "understandings" and compromises wrapped up in these words are laid bare as illegitimate, non-existent, or obsolete that legalism is unmasked and political trials may occur.[31]

That the Sanctuary Movement concerns such an unravelling of understandings and unmasking of compromises becomes evident if we examine the implications of the U.S. government trying to administer the Refugee Act to Latin Americans. Vague as the United States' definition of persecution may be, lawmakers, the INS, and judges early developed a consensus that persecution, at least for asylum purposes, does not include generalized poverty—even when the poverty is so severe as to deprive its victims

30. *See* Note, *The Need for a Codified Definition of "Persecution" in United States Refugee Law*, 39 Stan. L. Rev. 187 (1986).

31. With regard to "clear and present danger," for example, one thinks of the "Red Scare Trials" of the 1950s, and with regard to "cruel and unusual punishment," the trials involving corporal punishment and other degradations of slaves and then later blacks in the South come to mind.

of basic needs or is attributable to government malfeasance or neglect. This consensus, however, assumes that the economic and political causes of human misery and flight are distinct, or at least distinguishable with the aid of some reasonably coherent legal fiction.

INS and judicial interpretations have also taken advantage of the vagueness of the refugee definition to deny asylum to Central Americans in a manner strikingly similar to how judicial interpretations of such terms as "equal opportunity" and "racial discrimination" have largely eviscerated the promises of the Civil Rights era for minorities and women. Particularly harmful has been the interpretation requiring asylum applicants to prove that they have been personally targeted for persecution, that their danger is different and greater than that which people in their region experience. On its face, distinguishing between "persecution" and the more generalized ravages of a guerrilla-fought civil war may seem tenable. In practice, though, people fleeing war zones have to demonstrate harsher circumstances to warrant protection than did people fleeing non-war zones like Cuba and the U.S.S.R.

The bureaucratic nature of the asylum process further exacerbates the problem of (flawed) legalism in the human rights context: Many Latin American individuals could convince the average American and even the average INS official in the comfort of his home or place of worship of the severity of the ill treatment that they faced in their homelands and that this treatment was because of reasons that American political theory and popular myth view as prototypically political—reasons like membership in a certain political party. Yet, if they are fleeing regimes friendly to the United States, they will not likely convince most judges or INS officials in their official capacity that they are refugees. Judges and INS officials, like other bureaucrats, tend to view members of groups whom they must "process," but about whom they know very little, as similarly situated. They recast individual applicant's stories to fit the patterns set by others in the same nationality group. This, of course, hinders asylum seekers in showing that they face individualized persecution.

In addition to their own previous decisions concerning other members of a given group, bureaucrats also rely on official sources of information, which usually claim that Central Americans are economic migrants facing merely the "normal" dangers of civil war. The main source of information relied on by INS judges is the State Department, which issues advisory opinions in every asylum case. Throughout the 1980s, both these opinions and the Department's annual country reports denied that widespread and politically motivated human rights violations—that is, persecution—existed in countries like El Salvador. Such denials, however, ignored extensive evidence to the contrary reported by organizations with strong reputations for objectivity and political neutrality such as Amnesty International. Yet such denials, by their very authoritativeness as State Depart-

ment emanations, carried considerable persuasive power not only in INS and judicial refugee determinations. They also often persuaded the press and public opinion which for so long resisted the testimonial truth which Central American victims were trying to promulgate.

That politicized "facts" should be allowed or encouraged to affect the refugee determination process is not accidental. Many immigration and foreign policy makers believe that acknowledging someone as a refugee casts aspersions on the political capacity or moral worth of her home government,[32] implying—quite rightly—that that government either persecutes or cannot prevent the persecution of its nationals. Governments supposedly resent such aspersions as meddlesome or insensitive to the political realities they face, and this resentment supposedly poisons amity to the detriment of both accused and accusing nations. This is of particular concern for United States-Latin American relations. Sacrificing a "few" Central Americans to whatever dangers they face upon deportation is supposed to be worth the cost of keeping hemispheric allies investment-friendly and politically pliant. But this strategy sacrificed both the liberalism—the refugees' right to not be deported when truly threatened—and the legalism—the refugees' right to fair procedures when determining asylum eligibility—which supposedly govern our self-imposed humanitarian duties toward persecuted people.

But while the legal fictions about economic migrants and the ever more expeditious deportations had increased popular unease regarding United States refugee policy and practices, they had done so indirectly. The realities of Salvadoran death squads and the Central American wars had to be "brought home" in order to arouse Americans' suspicion about government honesty and provide them with the information—the power—to question and rebut government accounts. While the mass media provided the most provocative counter-information in the Vietnam era, the congregation-to-congregation dissemination of information by Sanctuary workers and refugee testimonials played a key role in causing Americans to analogize this country's involvement in Central America to its involvement in Vietnam. This analogizing connected to memories of the enormous refugee flows produced by destabilization in Southeast Asia and the perceived moral callousness of countries like Malaysia when they refused to offer even temporary asylum. It was a short step in the political intellect of some Americans from the unpopularity of United States involvement in Central America to the conviction that, despite government contentions to the contrary, fleeing Salvadorans were refugees, not economic migrants, and that providing them sanctuary was a just and a humanitarian duty. Ironically, this was precisely the assessment which the government's ef-

32. *See* Note, *supra* note 30.

forts to ignore, trivialize, and later threaten the Sanctuary Movement sought to preempt.

To a large extent the public's analysis never penetrated to the political and legal contradictions outlined above and inherent in United States refugee law. Rather, it tended toward a generalized distress about the inhumane effects of a supposedly humanitarian refugee law, while perhaps linking the increasing salience of refugee and Sanctuary news to the increasing American involvement in Central America. But even this limited analysis was sufficient to cause many Americans to question their political elites, and the underlying political and legal contradictions prevented those elites from providing satisfyingly coherent rebuttals.

It does not take much questioning, particularly questioning frustrated by unsatisfactory answers, to activate political consciousness. And it does not take much activation to provoke a crisis in political justice. Noam Chomsky, Michael Parenti, and others have argued that in the United States political justice (writ small) depends significantly on mystification and keeping the citizenry factually ignorant and analytically unconfident, a phenomenon in which the media plays no small role.[33] Thus, when the public asked about the relationship between United States involvement in Central America, the refugees' stories, and the need for sanctuaries, this created a dilemma for those who must act or answer in some manner to nip questioning in its delicate bud. Existing practices of political discourse and compromise just could not accommodate, let alone resolve, the threats to existing political justice that were implicit in the juxtaposition of the questions being asked and any relatively candid answers. That the government sought to gag the active and quash the curious in prosecuting the Sanctuary Movement is remarkably unsurprising.[34]

C. *Birth of the Political Sanctuary Movement*

In contrast to the charity and faith aspects of Sanctuary which standard accounts of the origins of the Sanctuary Movement emphasize, the *political* aspects of traditional Sanctuary and the conflicted status of United States refugee policy demand inquiry into the extent which political awareness, perhaps only latently political, can be said to have given birth to the Sanctuary Movement. In explaining how refugee testimonials and INS treatment of Central Americans and their American sympathizers struck a political chord rather than, or at least in addition to, a religious chord, this inquiry does not seek to deny the sincerity of many Sanctuary workers' religious beliefs or deny that religious discourse, by making the

33. *See* Chomsky, Manufactured Consent (1986) (Silha Center for the Study of Media, Ethics, and Law, Working Paper No. 86114); M. Parenti, Inventing Reality: The Politics of the Mass Media (1986).

34. Sanctuary defendants Jack Elder and Stacey Merkt, for example, were prohibited by court order from discussing their trials or Sanctuary activities with anyone but their lawyers.

political issues so ascertainable and transmissible, was crucial in motivating Sanctuary workers and to the Movement's threat to political justice. But we should be open to the possibility that threat grew out of Sanctuary churches refusing to seek coexistence with local and national secular regimes (as had their biblical models), if coexistence would endanger either the refugees or their own moral integrity—as had happened when many of them had failed to actively help refugees fleeing Naziism.

It seems undeniable that, from early on, the Movement's agenda was broader and more challenging than that of the biblical sanctuaries that provided alternative procedures and norms of justice, even though many Sanctuary workers saw their main task as providing relief rather than challenging policy or policy making. Firmly held religious beliefs may have dictated the need for Sanctuary action, but the *Movement* sought to challenge substantive policy and policymaking procedures, including, in particular, the participatory role of affected groups and individuals. It also sought to educate people in political affairs—in Central American realities and the role of the U.S. government in that region. And, most importantly, it sought to empower people as critics and actors in their environments and vis-a-vis their government. These goals seem much broader than what a faith-based response to the refugees' needs would evoke.

The initial *church* responses to the increased refugee flows were arguably apolitical and did not seek to challenge any secular status quo, including, the status quo of local church-state relations. Standard versions of the Sanctuary story are correct in implying that Rev. John Fife's Southside United Presbyterian Church in Tucson would have given hospice to the now well-known group of refugees who were found, almost dead from dehydration, after having been abandoned in the desert by their coyote[35] in late 1980 just as surely if they had been Mexican economic migrants in search of better paying jobs or local Hispanic Americans roughed up by the police for some reason. The border churches, after all, worked in communities where INS apprehension, detention, and deportation of Mexicans and other Central Americans was routine. Apprehension was invariably abusive, regardless of whether a particular Latino was a United States citizen or a foreigner. Many of the early Sanctuary workers had long provided church-based charity visits to the INS detention centers, bringing food and the like to the detainees.[36] But deportation, at least according to the myths supporting the local practice of "acquiescence" to INS rule, had a loophole for those facing persecution: according to the

35. "Coyote" is the modern, originally slang, term to denote those people paid to escort aliens into the United States without formal INS inspection. Coyotes have a reputation of charging exorbitant prices for their services and often subjecting their clients to horrendous transport and shelter conditions.

36. *See* Brief for Petitioner, United States v. Aguilar, 871 F.2d 1436 (9th Cir. 1989) (No. 86-1208).

myth, INS procedures would filter out most Mexicans as economic migrants and deport them, but would protect the truly persecuted and offer them a haven.

This church "acquiescence" to INS rule was not necessarily the result of inflexibility or insensitivity to the political and economic realities which Central American migrants and early refugees faced. Rather, it reflected, like the many other routines or response patterns which constitute daily practices everywhere, a somewhat happenstance complex of adaptive compromises struck by the necessity for at least a minimal regularity and stability in communal procedures and boundaries. In the American tradition of fairly conservative Christian churches, local churches (including those who were anything but "conservative" in their general outlook on social issues) had usually policed a strict church-state boundary themselves. This tradition was what the Sanctuary Movement both denied and had to overcome.

On one level, the churches' role in the regime of legalism prior to the emergence of the Sanctuary Movement was similar to that of the biblical sanctuaries: They provided an alternative, but coexisting, source of charity to that which the secular community could provide or would approve. But the strength of the myth of legalism in the modern era, in contrast to its near non-existence under the regimes of the Levitical era, obviated the need for the border churches to provide alternative procedures and norms of justice to those offered by an external but flawed system of justice as existed under customary, clan-oriented law. Legalism, in other words, had obviated the need and the room for the church to play an insistent and daily political role.

This accepted or (depending on one's perspective) imposed apoliticism of the church does not mean that church members were not political beings—and active ones at that. It is rather that many Christian and Jewish Americans either treat political beliefs and religious commitments as autonomous of each other or constantly reinterpret the religious to accommodate rather than question political conceptions and interpretations of concrete reality. Thus, while the refugee testimonials caused the charity donors, as people of Christian faith, to increase their support and "emotional aid" to those claiming refuge beyond what they routinely accorded, for example, Mexican migrant labor, their most significant role was in awakening the political selves of various people both in and outside of the church relief effort. This awakening—or "conscientization"—was crucial in enabling Sanctuary workers to understand and act upon the refugees' fundamental message that Christianity is very, very political. This awakening of their political selves was a prerequisite to the politicization of their religious selves that became most visible in the conversion of religious shelter and doctrine to serve political ends in the legitimation, and

often the endorsement of the doctrines and practices of Liberation Theology.

That political conscientization was born out of the interaction between awakened political concern about refugees and United States involvement in Central America and the political backdrop and legal structure of United States refugee law and foreign policymaking is evident if one looks at the experiences and claims of Jim Corbett, the Harvard Quaker and self-professed "unbeliever" who was among the first to convert his own buildings into sanctuaries, help refugees cross the Rio Grande undetected by the INS, and provide the nascent Sanctuary Movement with a vision and a voice. He was a man deeply involved with cultural and political phenomena of the border region and certainly aware of the reality of INS detention and deportation practices. Some chroniclers of the Sanctuary Movement claim that "Corbett was understandably shocked at the discovery that the INS was ready to stoop to such trickery to avoid fulfilling its obligations toward refugees"[37] by denying him access to detained Salvadorans to help them secure legal representation. But even these chroniclers will admit that Corbett at an earlier visit to the Nogales jail in Arizona had used the subterfuge of passing as his namesake, a former Mayor of Tucson, to gain access to refugees detained there. Corbett was skilled at using legalism to fight INS practices that hindered refugees' access to legal aid. He had, for example, secured court injunctions improving lawyers' access to detention centers to help refugees file asylum petitions.

But from the very beginning, Corbet was not willing to settle for just keeping the INS within the rule of law when that rule of law was actively being used to subvert substantive humanitarian law. He realized that the only hope for protecting refugees was to help them cross the border and remain undetected by the INS. To help him and the refugees, Corbett called on Fife, and then an ever increasing circle of *politically* sympathetic churches and communities, rather than on the closest, most charity-oriented or resource-endowed churches and communities. Too many of them might have turned the cause down as precisely that, a cause, rather than a call for charity.

It is also significant that Corbett and with him Fife and others relied on churches and towns to provide sanctuary. They "went public" with their activities. The underground of illegal alien existence, an underground with substantial connections throughout the Southwest, would probably have provided more security from INS detection and apprehension than did the self-publicized sanctuaries. But Corbett and others involved in Sanctuary as a political activity had other purposes in mind than mere protective refuge. They wanted sanctuaries that were impregnable but

37. *See* MacEoin, *supra* note 1, at 18.

highly visible as political platforms from which to lay bare the hypocrisies and lies they saw in United States foreign policy and domestic liberalism. It was in this spirit that, on March 24, 1982, on the second anniversary of Archbishop Romero's death, Fife draped his church with banners reading, "This is a Sanctuary for the oppressed of Central America" and "Immigration: Do not profane the sanctuary of God." Fife also wrote to Attorney General William French Smith to inform him that Southside Church would violate the harboring aliens law to counter the "immoral, as well as illegal" administration of United States refugee law.[38] And Sanctuary's famous "underground railroad" for transporting refugees from the Southwest to northern states or to Canada was anything but underground. The tenor and style of the railroad resembled more the Civil Rights Movement in the South in the 1960s than the anti-slave underground railroad of the previous century: As they travelled into the Northeast, many of the refugee transporters draped their cars with signs proclaiming their activity and mission. In addition, Sanctuary refugees often presented their testimony publicly—albeit with bandannas tied over their faces—not only to church congregations considering Sanctuary, but also to broader audiences interested in a less filtered and alternative version of Central American reality to that promulgated by the State Department and popularized by the press. As Corbett explained:

> We decided to go public because we had all become aware that a full-scale holocaust was going on in Central America, and by keeping the operation clandestine we were doing exactly what the government wanted us to do—keeping it hidden, keeping the issue out of the public view.[39]

The birth of the Sanctuary Movement, then, did consist of both religious and political elements with respect to both its concrete activity and its motivating forces. But from the perspective of an agenda focusing on Sanctuary's implications for political justice, the religious charity involved was, at least at the birth of Sanctuary, only a complementary element and unlikely to have spawned the Movement. Local regimes of church-state coexistence were based on a legalism that, at least in appearance, obviated the need for such alternative procedures and norms of justice as the Levitical sanctuaries had provided.

The problem for the initiation of a faith-based response was that, under the tranquilizer of legalism, many Christians had stopped reading the Bible with their eyes open, so that now their perception was blurred and

---

38. R. Golden & M. McConnell, *supra* note 15, at 47-48. *See also* P. Lernoux, Cry of the People: The Struggle for Human Rights in Latin America—The Catholic Church in Conflict with U.S. Policy (1982).

39. R. Golden & M. McConnell, *supra* note 15, at 47.

their reactions dulled.[40] Shaking off the deep-rooted narcosis of interpretations of the Bible calling for meekness, patience, passivity, and obedience to secular authority in secular affairs required a challenge from outside of the prevailing church doctrine and practice.

The challenge to political justice could not come from the lawyers qua lawyers who were involved in trying to secure asylum for Central Americans. In fact, their response was even more persistently legalistic than that of the church communities. For the most part, they were just as bound within the confines of a system of thought and practice sufficiently coherent, complete, and time consuming to obviate perceiving the need for or allowing the undertaking of a thoroughgoing reevaluation of their enterprise and their role vis-a-vis policymaking. The lawyers continued to debate the relative and absolute meanings of terms like "well-founded fear" or "clear probability" of persecution, while the government continued to deport refugees and escalate its military involvement in Central America.

Rather, it took conscientized *political* actors like Corbett and Fife to create an adequate and political response to the plight of the Central American refugees. It took politicized actors and political arguments to create the momentum to sweep church groups, cities, and others into a broadly-focused challenge to the hypocrisies and ambivalences of United States foreign policy and policymaking that would also challenge the hypocrisies and ambivalences of United States domestic policy and policymaking in recognition of the fact that "foreign policy to an extraordinary degree reflects a government's attitude toward its own people."[41] It took, in other words, people who perceived their enterprise as inevitably political and confrontational. As Jack Elder, an early arrestee among the Sanctuary workers, said about his upcoming trial:

> I am looking for a confrontation. Not to be self-righteous about it, but there's a moral force behind what we're doing [in the Sanctuary Movement] that has the potential to focus some light on foreign policy. [The Administration] refuse[s] to look at the deeper issues. There's a war going on in El Salvador now; there are bombing raids financed by the U.S. government. This is the issue people are fleeing from. . . .[42]

While the handful of people involved in channelling the churches' faith-based charity response into a coherent movement seem to have had a distinctly political agenda, and while the tradition of church-state relations in the American polity seem to have precluded a (merely) faith-based origin to the Sanctuary *Movement*, this, of course, does not mean that those par-

40. *See* Wallis, *Waging Peace, in* Resource Guide, *supra* note 1, at 169.
41. Coffin, *The Tasks Ahead, in* Resource Guide, *supra* note 1, at 180.
42. *Cited in* R. Golden & M. McConnell, *supra* note 15, at 68-69.

ticipating in and constituting the spread of Sanctuary would also perceive of their enterprise in primarily political rather than religious terms. Nor does it mean that non-participants, and the government in particular, would necessarily perceive Sanctuary as a political movement. Yet, without these conceptions of the Sanctuary Movement as political, it would have been difficult for the Sanctuary Movement to have involved a political dynamic strong enough to threaten political justice and incur government attempts to marginalize and later silence its message.

In most cases, though, Sanctuary participants did perceive themselves to be politically engaged, even if a large part of their rhetoric was religiously referential. And at least as a partial result, the U.S. government also came to perceive of Sanctuary as politically significant, a reaction which only hardened, rather than diffused, the political convictions and motivations of those involved. But while these mutually reinforcing patterns of interaction between the government and Sanctuary participants seem to have provided much of the momentum to the threat to political justice which Sanctuary came to represent, the Movement and the government response also each had their own internal dynamics. Ultimately, it was the clash of these dynamics, rather than the spiralling interaction pattern thereby induced, that defined the need for a political trial.

In large part, the spread of Sanctuary as a political movement was the result of the awakening of Bible readers to the narcotic affects of legalistic notions about the separation of church and state. In particular, Bible readers rejected the idea that the church should have no opinion or responsibility regarding the United States' role in Central American human rights abuses. The people thus awakened realized that they had developed a political voice and had heard a political calling. Those that chose to heed the call by joining the Sanctuary Movement seemed to fall in two groups: Those for whom the politicization of their religious activities removed the barriers to participation in the political process—barriers imposed by their religion and its acquiescence in the regime of legalism; and, those who had always been politically awake but were too timid to act in political fora—Nicodemuses in the Gospel story.[43]

As already mentioned, the basic vehicle for the conversion of church groups to Sanctuary was refugees' testimony about Central American experience and arguments from Movement leaders like Corbett about INS deportation practices and government policies regarding Central America. Church groups considering Sanctuary would invite members of other sanctuaries, refugees, and often INS officials and immigration lawyers to make presentations about the pros, cons, and legal implications of Sanctuary involvement. The conversional success of these presentations seems to have rested largely on two factors: (1) The fact that the Sanctuary work-

43. *See* MacEoin, *supra* note 1, at 25.

ers and refugees had access to more convincing information about Central America than that which the press and INS officials promulgated, and (2) the immanence of the refugees' testimony when presented in the particular forum used by the Sanctuary Movement.

To be persuasive, the refugees' testimony had to be perceived as accurate and coherent. The refugees' audience had been hearing the U.S. government describe—and the press largely mimic—how the Central American refugees were really economic migrants coming to "el norte" to steal jobs from hardworking Americans. According to the official accounts, United States involvement in the Central American upheaval staved off Cuban and Soviet influence and helped protect human rights. Government spokespersons dismissed the endorsement of Sanctuary by the mainline religious denominations "as the action of misled do-gooders" who lacked the U.S. government's expert understanding of Latin America.[44] But the refugees brought personal knowledge rather than reports, and they brought it in person to the church congregations without the U.S. government, the press, or church pastors as reinterpretive mediators. According to the Movement's advocates, the stories told by refugees about conditions in their home countries and en route to the United States, and their oft repeated desire to return to their farms, their families, and their homelands, "cut right through the webs of deception spun by politicians and cold warriors."[45]

But how did the (mostly) middle-class Americans who participated in the Movement come to believe the refugees' message? How did they achieve a sense of personal responsibility and become aware and active? This certainly was not a simple process. As Sister Darlene Nicorgski, a defendant in one of the Sanctuary cases, writes: "The message of the prophets from the South [was] often hard for us to hear—we who love so much and live in a sense of righteousness and with the illusion of power and control."[46] From the perspective of people used to a firm separation of church and state concerns, the refugees' stories must have seemed a jumble at first: As Nicorgski says, "What appears [in those stories] to be religious is politics, [and] what appears to be political is faith lived in the public form."[47]

The refugees did not overcome this sense of jumble and confusion in their audiences through rational argument alone. Rather, by shaking the dominant world views of many in the religious community, the refugees provoked a widespread and often acute sense of cognitive dissonance among many considering Sanctuary. There was no choice but to search

---

44. Corbett, *The Covenant as Sanctuary*, in Resource Guide, *supra* note 1, at 193-94.
45. *Id.* at 194.
46. Sr. D. Nicorgski, *quoted in Statement of Faith of the Chicago Religious Task Force on Central America*, Basta!, Jan. 1985, at iv (Tucson ed.), *cited in* I. Bau, *supra* note 15, at 46-47.
47. *Id.*

for a new "world view" or "ideology" with which to make sense of the refugee stories. By taking their audiences through a process of "critically reflecting at deeper and deeper levels about how human beings live and die in this world," the refugees "conscientized" through their testimonials.[48] Those whom Sanctuary reached became not only conscientious about truth but confident in their own ability to appreciate alternative truths.

Much of the conscientization which Sanctuary encouraged came as a result of two aspects of refugee testimony which enhanced their coherence and acceptability. First, these testimonials were strongly influenced by Liberation Theology,[49] a new thinking in Latin American churches which emphasizes active opposition to all forms of oppression. This new, popularly-based thinking is a Christian discourse that is highly political and quite unlike any other Christian doctrine. When, for example, refugees said that they along with their audiences "are all in search of peace and justice," and that they "believe in this as Christians and as people,"[50] they were not trying to invoke a faith response as such from the northern Christian churches. Rather, they were offering to teach them alternative ways of actively seeing the world, of better understanding one's own as well as others' oppression, and of actively resisting rather than patiently relying on the belief that someday the meek will inherit the earth. Importantly, these teachings also provided a way to place the disturbing stories about torture and the U.S. government's role in Central America into some tolerably coherent world view that could order and interpret such stories and help to evoke and channel appropriate responses.

The testimonials encouraged conscientization, secondly, through their systematic analysis of phenomena. The refugees' stories, with their seeming mix of religion and politics and of macro foreign policy and individualized human rights abuses, disrupted many peoples' packages of concepts and assumptions for digesting world and community news, assessing responsibility, and determining duty. To be understood at a more than superficial level, these stories demanded that one adopt a new perspective that saw violence in Central America, not just as an aberration of a few "sick" torturers or ruthless dictators, but as the affliction of systemic and systematic violence.[51] As Philip Wheaton, an Episcopal priest and director of the Ecumenical Program for Inter-American Communication and Action, asserted at an early national gathering of Sanctuary workers:

---

48. R. Golden & M. McConnell, *supra* note 15, at 135. *See also supra* notes 35-37 and accompanying text.

49. *See, e.g.*, P. Berryman, Liberation Theology (1987); P. Berryman, The Religious Roots of Rebellion: Christians in Central American Revolutions (1984); G. Gutierrez, A Theology of Liberation (1985); P. Lernoux, *supra* note 38.

50. Berryman, *Living with Faith and Hope: Response to All Refugees, in* Resource Guide, *supra* note 1, at 155.

51. R. Golden & M. McConnell, *supra* note 15, at 136.

> [W]e are facing a system, not simply an exception to the norm in one country or another in Central America. . . . The struggle is not against one man named Ronald Reagan but against an acquisitive economic system based on the law of gain . . . and the degradation of human beings. We struggle against a system whose ultimate concern is not refugees and not dictators and not democracies but the maintenance of an economic order in which we Americans consume most of the wealth of the resources of this planet.[52]

The refugee stories, in conjunction with the political analyses of Corbett and other Sanctuary leaders, imparted a common sense about how the violence in Central America was caused (at least in part) by the United States' consistent treatment of its southern neighbors. This violence was not merely the result of the present escalation of American military involvement in Central America. If so, there would have been room for debate about the political merits of the government's Central American policies, but no recognition that involvement was symptomatic—in the same way as the Refugee Act's vagueness about refugees and the church's acquiescence in legalism were symptomatic—of compromises shrouding sharp divisions of interest, knowledge, and power in American society. The refugees, as well as the people (like Corbett) who translated their message, brought to bear their understanding and their common sense to explain the systemic nature of the United States' Central American asylum policy in terms of domestic political arrangements, in a way that was both radical and empowering. This was, at the same time, an external critique of the prevailing notion in the Christian churches that faith should not directly inform political democratic action by ordinary persons.

In comparison to the usual, highly mediated paths of transmission via which information flows and decisions are made in American society, the direct encounter with refugees in small intimate gatherings to consider Sanctuary was another and crucial source of the Movement's ability to convince ever more fora to participate. When refugees spoke directly about their own personal experiences while seated among their audiences, rather than relying on written reports or broadcast media to convey their words, they were reaching out to their listeners as individual fellow human beings, sharing and commonly ensnared in various systemic phenomena. Their presentation bridged that "great distance between those who make decisions and those who are affected by them, [which] tends to

---

52. Wheaton, *Response to Tamez: The Refugee Crisis, Sanctuary and the Bible, in* Resource Guide, *supra* note 1, at 46-47.

turn people into objects and to allow them to be treated as cases."[53] It was hard to disbelieve or discount testimony received under such conditions.[54]

But once within the directly confrontational fora in which Sanctuary issues were usually presented and debated, refugees and the Movement's leaders like Corbett did not blame their audiences for complicity or even passivity. By making people see that "foreign policy to an extraordinary degree reflects a government's attitude toward its own people," the refugees' testimony also suggested that the audience's situation was not, at a structural level, *so* different from that of Central Americans, despite the appearances created by the vast differences in material affluence. "And that," William Sloane Coffin suggested, "is what our government, consciously or unconsciously, fears the most. . . ."[55] The cognitive dissonance involved in holding both world views simultaneously made a choice necessary. But the outcome of the choice was not fully dictated: Many of the congregations did not choose to endorse Liberation Theology and reconceptualize their relationship to the refugees from one of charity to one of conscientized atonement and shared activism. Among those who did choose Sanctuary, some seem to have done so on such grounds as the relative palatability, coherence, or moral force of the new competing world view. But it seems that a fair number of people chose Sanctuary and its implications as members of a choosing group. And here, the fact that Sanctuary workers targeted churches may have been important: Churches, in contrast to town council meetings, are both intimate and solacing. People let down their guards more when in their chosen congregation than when among members of the community at large. Churches also offer greater psychological space for receiving difficult lessons, at least in part because there is a psychological comfort to be had in church that is rarely available in civic fora, at least for those who do not dominate such fora.[56] In civic fora, people are individuals, and expected behavior is atomistic; in church, people are brothers and sisters under God, and expected behavior

---

53. Shaull, *A Theology of Sanctuary from a Calvinist Perspective, in* Resource Guide, *supra* note 1, at 65. *See also* J.T. Noonan, Persons and Masks of the Law: Cardozo, Holmes, Jefferson, and Wythe as Makers of Masks (1976).

54. *See also* McGrath et al., *Bringing Sanctuary to Trial,* Time, Oct. 25, 1985 (quoting Gary Cook, associate pastor of the Central Presbyterian Church in Massillon, Ohio, saying that "We're a very conservative group of folks politically. But once we encountered the refugees face to face, we couldn't justify not taking them in.").

55. Coffin, famous for his anti-Vietnam War work while chaplain of Yale University, argued: "Our foreign aid today to Central America is making the rich richer, the poor poorer, and the military more powerful. Isn't that exactly what is happening in our own country? Are not the farmers who have been protesting . . . in Minnesota demonstrating that the need for land redistribution in this country is fast becoming as urgent as it is in El Salvador . . . ?" Coffin, *supra* note 41, at 180-81.

56. *See, e.g.,* Brest & Vandenburg, *Politics, Feminism, and the Constitution: The Anti-Pornography Movement in Minneapolis,* 39 Stan. L. Rev. 607 (1987).

is communal: "In an unredeemed world, we are all refugees in need of congregational sanctuary."[57]

Sanctuary, whose bottom line message was similar to that implicit in the Vietnam War resistance, seems also to have depended on the corporate nature of church congregations for its arguably greater success in mobilizing a voice of challenge from among traditionally "patriotic"—that is politically complacent—groups than characterized the anti-Vietnam War movement. Deciding for or against Sanctuary required people to vote for or against *their* church or *their* group becoming a Sanctuary. This involved active, democratic political participation and confronting stark, core issues, in contrast to the more circumscribed participation characterizing American politics in civic, especially national fora, where there is little moral censure for non-participation, where the "issues" are either highly abstract proxies for underlying conflicts or not issues at all, where individual votes are perceived to make so little difference. and where, as a result, people do not vote, speak, or act. Just deciding whether to vote pro or con about whether one's church becomes a Sanctuary includes more political thought and activism about an issue than many people had previously experienced.

II. The Government Response

When tackling difficult issues over which people really do disagree, American politics—with their strong emphasis on process and compromise, instead of substance and conflict—usually brand small, criticism-oriented groups, particularly ones whose agenda is as broadly focused as was that of the early Sanctuary workers, as radical and therefore illegitimate. But such groups or mini-movements have rarely experienced the wrath of court-based political trials. Of course, some small groups—the Communist Party, for example—have been subject to political trials, but the threat to political justice that they posed was not their message per se: The United States is fairly tolerant of radical views as long as their expression does not threaten the structure of existing power relationships.

Particularly in the early years of the Movement, many official, media, and other observers thought that Sanctuary was basically the extension of an initial charity response that was using a somewhat political rhetoric to express an essentially humanitarian distress about deportations to El Salvador and Guatemala. At one dispassionate level, Sanctuary did look a bit ridiculous: There was Southside Church, all 130 by 75 feet of adobe enclosed pews, draped with banners daring the U.S. government to take notice of the harboring activities going on inside. Furthermore, the letter to the government from the Southside congregation accompanying the initial

57. Corbett, *supra* note 44, at 196.

public declaration of Sanctuary merely asked that the government uphold the 1980 Refugee Act and stop deporting Central Americans.[58] It is perhaps not surprising that the government, and the INS in particular, "poohpoohed sanctuary for two years as an irrelevant gesture . . . that had a marginal impact at most on the INS task of protecting the nation's borders and that would disappear when the novelty wore off."[59] And, the Movement's momentum did slow down—but not until it had made quite some impact in the intervening six years, not on INS border control activities, but on the lives of otherwise quite ordinary Americans.

As soon became apparent, though, the Sanctuary Movement had a political agenda, one that sought more than the mere honest application of the Refugee Act. At a minimum, it "challenged American society to confront the disparity between law on the books and law in action," in recognition of the fact that "law cannot be defined by formal rules or doctrines, without regard for the way in which rules are interpreted and applied."[60] It sought official acknowledgement of the linkage between economic and political causes of misery in Central America and of the linkage between American involvement in that region and refugee flight. And, as a right based on international humanitarian laws like the Geneva Conventions[61] and on the sanctuary traditions of the Christian Church, the Sanctuary Movement claimed the appropriateness of offering sanctuary to those whom *it* deemed refugees under *its* reading of relevant law and moral principle, at least until the government made the demanded acknowledgements and reformed relevant law and policy. Sanctuary had moved from charity to challenging the use of legalism to delegitimize the church's role in political protest and to marginalize democratic participation in foreign and asylum policymaking.

The government responded with its barrage of well-publicized arguments about the illegality of Sanctuary, and by arresting and prosecuting Sanctuary workers for harboring and transporting "illegal aliens" in violation of the Immigration and Nationality Act. The court battle had begun.

But, at least in the context of political trials, battling in court is ultimately little different from battling in Congress or on the soapbox. It still involves either confronting or not confronting deeper issues. For instance,

---

58. Letter to William French Smith from the Rev. John M. Fife, dated March 23, 1982, *cited in* MacEoin, *supra* note 1, at 21-22.

59. MacEoin, *supra* note 1, at 14, 23.

60. Helton, *supra* note 7, at 598.

61. *See* Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949 (Geneva Convention IV), *in force* Oct. 21, 1950, 6 U.S.T. 3516, T.I.A.S. No. 3365. In conjunction with the Additional Protocols I and II to the Geneva Convention of Aug. 12, 1949, Relating to the Protection of Victims of Internal Armed Conflicts, *in force* Dec. 7, 1978, U.N. Doc. A/32/144/Annex II (1977), Geneva Convention IV requires ratifying countries to give temporary refuge to civilians fleeing internal armed conflict, prohibit their forced repatriation, and sanction private humanitarian initiatives on their behalf. *See* Helton, *supra* note 7, at 512-13.

why is the Refugee Act as vague as it is regarding who merits asylum, or why could not the United States simultaneously certify Salvadorans as refugees and certify Duarte's regime as making human rights progress, or whose voices should be heard in the foreign policymaking process. If past American experience with institutional racism, intervention in Vietnam, and other important issues are any guide, then it was the political nature of the Sanctuary Movement that made it likely that the government and the court would choose avoidance. But it was Sanctuary's character as an intensely participation-oriented, socio-political movement which rendered that avoidance hollow and irrelevant.

By the time of the prosecutions, it had become clear that a disjunction in the discourse of the protest had opened up: The Sanctuary Movement was no longer trying to directly influence the government. Rather, its agenda had become as much participation in the transformative experience of adopting a new world view and ideology of response to world events, as it was securing a safe haven for Central Americans. In other words, while protesting government policy and policymaking certainly remained one of the Movement's driving forces, their main goal had become protesting from outside the dominant discourse. This was both the implication and the significance of the fact that Sanctuary participants had found a new political voice in the course of hearing refugee stories and deciding whether to commit themselves to offering Sanctuary.

Thus, the government had not only to confront or avoid Sanctuary's challenges to its foreign and refugee policies in responding to the Movement. It had also to either silence that new voice or control the process by which that voice was being found. The government's first attempt to respond to this aspect of the Sanctuary Movement was to try to persuade the public that Sanctuary information and activity was misguided and "political" in some pejorative sense of the term. As Elliott Abrams from the State Department said:

> [T]he militant activists, are really just opposing American policy in El Salvador. I think they mislead many churchgoers . . . and others in human rights groups . . . [into] thinking that there is some horrendous 1930s-type situation and that if they don't act thousands will die by the end of the week. I've seen some of the material that is handed out by organizers to people in churches. It's horrendously misleading stuff. It's the kind of stuff that would lead any sensible person who reads it to jump into the sanctuary movement.[62]

Well, precisely. But trying to intimidate churchgoers by labelling as

62. *All Things Considered* (National Public Radio broadcast, April 9, 1984), *cited in* R. Golden & M. McConnell, *supra* note 15, at 88-89.

political their motives or those of their leaders was bound to be futile when those people had already experienced political conscientization.

The government's follow-up response after its failure to regain the moral and political high ground with respect to either the substance of the policy issues involved or the process of criticizing policy was to try to intimidate with silencing and terrorizing techniques. The employed techniques were strikingly similar in their legal aspects, if not in the intensity and frequency of their application, to those of the crass show trials under totalitarian regimes. They included paying informers with seedy backgrounds to infiltrate church meetings of both declared and potential sanctuaries and prohibiting some Sanctuary defendants from discussing their trials with even their pastors. The government did not resort to these tactics out of any need for information or to protect the "fairness" of the trials: Sanctuary was flauntingly public from the beginning. The government could have gleaned almost any information about Sanctuary it desired merely by asking Movement workers or reading their press releases and writings. And fairness in terms of a bias-free jury could have been secured by removing the cases to another, less involved area, while fairness as experienced by the defendants, the supposed beneficiaries of a fair trial, would have been better protected by more discussion. Rather, the government needed and sought to secure its control of discursive fora and practices from the threats of the newly acquired political voice and strident questioning involved in Sanctuary participation. But the Sanctuary Movement was too decentralized: "[I]t cannot be destroyed by chopping off the heads of its leaders. The work goes on as usual even while those indicted are in the dock."[63] Furthermore, Sanctuary was, "more than a place. . . . [It was] a series of acts. . . ."[64]—of acts whose effects on their *actors* could not be erased by criminal prosecution.

Given this impossibility of directly or effectively intimidating the new world view represented and actualized by Sanctuary, the government tried to control the presentation of that view in the courts to which it had forcibly tried to remove the debate about Sanctuary. In doing this, the government was certainly both mindful of the "unavoidable ambiguity of [the judge's] position as both defender of existing institutions and the guarantor of their fairness,"[65] and of such risks as jury sympathies for humble church-going folk. Given that its *political* case was not airtight, the government had to "[tear] the incident from history," if it was to ensure at least a legal victory for the existing configuration of political power and opinion. In Kircheimer's words, the political risks were such that "[t]he

63. MacEoin, *supra* note 1, at 28. In fact, the selective prosecution of the Movement's leaders may have caused a hero-martyr syndrome to surround the Movement and led to an increase in the size and commitment of its membership. *See* Note, *supra* note 19, at 1440.

64. Napier, *Hebraic Concepts of Sanctuary and Law*, *in* Resource Guide, *supra* note 1, at 33.

65. O. Kircheimer, *supra* note 10, at 176.

symbolic value of the intrepid march into court [had to] be allowed to stand for the actual battle in court."[66]

This is the origin of the government's now famous motion in limine,[67] a motion unusual for the prosecuting side to use in the United States—except in "political trials."[68] In the Tucson trial, the motion sought and obtained a prohibition on any mention before the jury of "international law, the Refugee Act of 1980, religious conviction, events in El Salvador or Guatemala, United States foreign policy, . . . stories of the refugees fleeing persecution," United States immigration policy, or the political bias characterizing asylum statistics.[69] The debate, as it was to be presented in court, had been narrowed and recast in terms of the dominant legalistic discourse: The only issue was whether the defendants had harbored or transported undocumented foreigners. (A parallel tactic can be seen in the Vietnam-era, conscientious objector cases, where the government managed to secure rulings that did not allow for any discussion of the particular foreign policy and policymaking involved: The only issue allowed to be discussed in court was whether the applicant for draft exemption resisted fighting in *all* wars or only in Vietnam.)

The only hope for the Sanctuary defendants vis-a-vis this carefully orchestrated attack on their activity was finding juries willing to convict against the "evidence" (an option that the government had largely removed from the Vietnam draftees by giving the Selective Service Board jurisdiction over the conscientious objector cases). But as Corbett explained: "Many of us will probably serve some time in jail before we reach the day when all juries impanelled to judge a sanctuary case will know that they are deciding whether the violation of human rights by the government necessitates sanctuary."[70] He was right. But that day of conscious and conscientious juries did not arrive in time: The guilty verdicts rolled in. The Supreme Court refused, without comment, to reverse the motion in limine and order a new trial allowing the presentation of a further range of considerations to the jury. And the Ninth Circuit Court of Appeals has upheld the decisions in the group of Tucson cases against a wide array of procedural challenges.[71]

But by "winning" this battle, the U.S. government hardly won its war

---

66. *Id.* at 110, 116.

67. A "motion in limine" is a "written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements." Black's Law Dictionary 914 (5th ed. 1979); *see* Colbert, *The Motion in Limine in Politically Sensitive Cases: Silencing the Defendant at Trial*, 39 Stan. L. Rev. 1271 (1987) [hereinafter *Politically Sensitive Cases*]; Colbert, *The Motion in Limine: Trial without a Jury—A Government's Weapon Against the Sanctuary Movement*, 15 Hofstra L. Rev. 5 (1986).

68. Colbert, *Politically Sensitive Cases*, *supra*.

69. R. Golden & M. McConnell, *supra* note 16, at 76.

70. Corbett, *supra* note 44, at 193.

71. *See* United States v. Aguilar, 871 F.2d 1436 (9th Cir. 1989), *modified*, 883 F.2d 662 (9th Cir. 1989), *petition for cert. filed*, No. 89-6214 (U.S. Dec. 1, 1989).

against the Sanctuary Movement. Its tactics of infiltration could not easily disarm the sanctuary which the church offered as much to Movement participants as to refugees. Its tactics only highlighted the impoverished persuasiveness of its substantive arguments about economic migrants and the spread of communism in Central America. Once again, the tendency of crass tactics to delegitimize further a government's viewpoint and thereby its process for arriving at viewpoints was proved. Furthermore, the U.S. government was facing a generation of people that had a tendency, once the ordinary ideology they endorsed was cracked from without, to swing quite wholeheartedly against the elites of that ideology and to view each governmental effort to shore up its position as further evidence of its error, illegitimacy, or complicity. As a result, the factual similarities between the Vietnam War, the War at Home, and even Watergate, on the one hand, and United States involvement in Central America, the Sanctuary Movement, and the Iran-Contra Affair, on the other, could only reinforce the government's fear of its own citizens and their suspicions of its "truths" and its legitimacy.

III. Conclusion: Empowerment, Political Justice, and Socio-Political Significance

The Sanctuary Movement, however, did not "win" its conflict with the government either. On one level, Salvadorans and Guatemalans continued to be deported at approximately the same 99% rate as previously. There was no referendum, however informal, on the issues surrounding Sanctuary: We do not know whether the majority of Americans wanted to grant asylum or temporary refugee to Central American refugees (as opposed to Mexican migrant labor and undocumented workers). We do not even know whether most federal officials endorsed the refugee policies and practices they administered. "All we know is that these policies [were] endorsed by the INS and by some people in the Reagan Administration—and that they [weren't] overruled by Congress"[72] or the courts.

Sanctuary was never really about whether Central Americans are economic or political refugees or about whether communism is encroaching in the region. The real challenge from Sanctuary was not that the U.S. government's contentions on these issues might be disproved either factually or logically.[73] The fundamental challenge came from Sanctuary's ability to provide an alternative but logically complete and coherent world view capable of offering at least as much intellectual and emotional satisfaction as did the politically dominant view. At an even more fundamental level, Sanctuary had a transformative potential for people who realized they

72. Nickel, *Ethical Issues of the Influx of Central American Refugees into the United States, in* Resource Guide, *supra* note 1, at 107.

73. R. Golden & M. McConnell, *supra* note 15, at 86.

could view and interpret the world in alternative ways. In demystifying a small part of the world, it enabled and encouraged them to see new possibilities, including possible new worlds.

But even using its own processes, Sanctuary failed to reach and convince most Americans on the issue of Central America and the attractiveness of its practices. Even if it attracted well over two hundred churches and synagogues, as well as many cities and a few states, most congregations never became sanctuaries and most Americans remained uninvolved; many were hostile to Sanctuary out of disagreement with its politics, precisely because it was so political or perhaps because the mass media interpretations of Sanctuary made them feel self-conscious about the religious form of their political activism or the political form of their religious activism. In part, Sanctuary's dependence on confrontation limited the scope of its transmissibility. The mass media was inevitably quite irrelevant for the *process* of Sanctuary but, in the United States, reliance on the media is unavoidable for reaching a large audience. More fundamentally, though, the problem seems to have been, as Abrams foresaw, that the Movement simply lost momentum. The explanations are diverse and interrelated: They concern as much the difficulty of the work and the demands of participation, as a host of other factors including the refocussing of American attention onto the Iran-Contra Affair.

That the Movement has waned does not mean that it was not part of a real threat to political justice. The waning of intense political phenomena is a recurrent theme in the politics of protest in the United States. Characteristically, this waning correlates with neither real nor even symbolic concessions from elites, nor with government success in the political trials usually heaved at those protest movements. On the contrary, the threat and significance of Sanctuary survives its waning because its power resides in its *mobilization politics* and its participatory style. As Kircheimer writes:

> Political claims eventually stand or fall on their own strength. A political trial might bring out and focus attention on areas of weakness or strength of a political organization or a cause. Yet the authority [or, as Shklar[74] would add, the legality] of the trial neither adds nor detracts from the fundamental justification of such political claims, namely, the justness of the cause.[75]

Like other similarly participatory movements which refuse both the process and the discourse of the American polity's dominant legalism, the Sanctuary Movement has done more than highlight the poverty of the politics which the American government has pursued. Sanctuary has also

74. J. Shklar, *supra* note 14, at 150, 145.
75. O. Kircheimer, *supra* note 10, at 430.

empowered a few people. Perhaps not many, but nonetheless some. This is both the majesty of Sanctuary and the source of its as yet still unrealized link with the finest of the naming and proclaiming movements in recent American history. This creation of an alternative political voice, forum, and power, no matter how small relative to the enormity of the dominant discourse, is also the source of its very significant threat to existing configurations of political power and process—to political justice writ small. At this level, Sanctuary even eclipses notions of winnable political conflicts: Each empowered person is a "victory"—but more for her own self than for Sanctuary or against the government.

This belonging to a tradition of empowerment, as opposed to protest or charity, seems to have been only partially realized by Sanctuary Movement participants. Corbett himself claims: "Initially, those of us involved in sanctuary assumed that, as non-violent direct action that government officials claim is unlawful, sanctuary is a variant of the civil disobedience that matured in the practice and reflection of Thoreau, Gandhi, and King." But "[m]isconceiving sanctuary as a variant form of civil disobedience blinded us to its actual dynamics as a socially constructive practice of our faith."[76] Such misconception, however, also blinds us to Sanctuary's significant similarity with, for example, the Black Pride Movement, the Indians at Wounded Knee,[77] and the new socio-political movements of the 1980s in the United States, which focus on empowerment and on substantive issues such as pornography, and subconscious and structural racism, rather than on legally framed issues like "anti-discrimination," "equal rights," and "due process".

Sanctuary, like the Civil Rights Movement, has shed light on the relative poverty of certain politics being pursued by the elites of the dominant liberal discourse. In the Civil Rights movement, those espousing equality for blacks won the moral, legal, and finally the political "high ground"; in the Sanctuary Movement, those espousing asylum for Salvadorans and non-intervention in Central American affairs possibly won the moral if not the political or legal high grounds. When such high grounds are won, the history of the dominant discourse usually seems to credit protest phenomena for some impact on the actual politics pursued by the dominant elite. But more important to the Movements and the realization of their goals is how it is channelled and limited.

The Civil Rights Movement, for example, was co-opted by the (now) dominant discourse of legalism: Mostly white, mostly male liberals, as a tacit price for their support, took control of much of the Movement's process—from the legal fights in Congress and the courts to organizing dem-

76. Corbett, *supra* note 44, at 189. *But see* Coffin, *supra* note 41, at 181.

77. Olsen, *Socrates on Legal Obligation: Legitimation Theory and Civil Disobedience,* 18 Geo. L. Rev. 929, 962 (1984).

onstrations and fundraising—and its substance—from what objectives and concessions would be fought for, to the decision to rely on liberal "rights" of *individual* equality to eliminate discrimination. Today, twenty years after the new civil rights acts and anti-discrimination court decisions, blacks have "equality before the law" but neither laws for equality nor equal access to the law; they have "equal opportunity" but no equal access to opportunity. The real significance of the Civil Rights Movement cannot (yet) be found in any full substantiation of rights for minorities. Rather, its significance seems to reside more in the disillusionment of many minorities with relying on the courts, Congress, and localities to implement and enforce rights with legalism and liberalism.[78]

Many of the early Sanctuary workers were cognizant of these civil rights experiences, and some even took active part in the Civil Rights movement. They saw similar phenomena occurring in the refugee and foreign aid areas. For them, Sanctuary was or quickly became a manifestation of their refusal to trust the government: They trusted neither the INS nor the courts to protect Central American refugees by adequately administering deportation laws. Nor did they trust the State Department to report accurately on Central American human rights conditions, for to do so would constrain its foreign policy objectives.

The Civil Rights Movement's legacy of disillusionment, however, extends beyond frustration with the manipulability and hollowness of liberal legalism and the concomitant distrust of the government it often engenders. The legacy also includes concern for the protection and empowerment of a movement's workers and beneficiaries. An important aspect of the Civil Rights era for many blacks was the sense of empowerment they granted themselves through their own processes of constructing a coherent world view and living it flagrantly in the midst of both the Ku Klux Klan and white liberalism.[79] Similar dynamics of conscientization and emphasis on self-empowerment characterize the new black consciousness, feminism, gay pride, and other socio-political movements of the 1980s. The Sanctuary Movement, like these other movements, is rooted in and uses small, protected fora to allow and encourage people to assert and name their experiences and concerns. It, too, is about controlling meaning in an environment in which the loss of such control to the dogmas of liberalism and legalism in the 1960s and 1970s subverted the substantive realization of the goals of the Civil Rights and other movements. Sanctuary involved "*doing* sanctuary . . . . [Part] of the process of doing sanctuary . . . was proclaiming or declaring"[80]—including proclaiming the very right to proclaim and act upon new world views and alternative moralities.

---

78. But, as some Critical Legal Studies scholars sometimes overlook, disillusionment with legalism and liberalism is different from disillusionment with the rule of law or with liberty.

79. *See* Olsen, *supra* note 77, at 962.

80. Murphy, *A Historical View of Sanctuary*, *in* Resource Guide, *supra* note 1, at 78-79.

The significance of this naming activity resides in the fact that control over meaning is power in a legalistic media-dominated society. At a crude level, if you have to secure your rights by presenting a claim in court, you can only prevail if the court-given meaning of that right and your claimed deprivation mesh: If you are a refugee, the reasons for your flight and fear must fit into the "political persecution" box or you will likely face deportation as an economic migrant. If you are a Sanctuary worker, your reasons for harboring "illegal aliens" must fit the *court's* definition of "necessity" or you will likely find yourself a convicted criminal. But control over meaning can also yield power: Even if Sanctuary did not succeed at controlling meaning in the INS and judicial fora, it did control it in its own fora against the onslaught of disparagement and alternative views offered by the government and media. And in so doing it created and controlled a source of power and political significance.

In evaluating the scope and significance of the Sanctuary Movement, it is thus not critical that some of the people who considered sanctuary "never [got] to the point of proclaiming or declaring."[81] They at least had the opportunity to hear the testimony of refugees and witness the process of Sanctuary—to hear and witness Sanctuary's self-empowered, but otherwise ordinary (i.e., non-elite) folk. But, self-empowerment is precisely what legalistic political justice cannot tolerate. The problem is not just that self-empowerment usually entails a thoroughgoing critique of the ideology and processes constituting the existing system of political justice. Nor is it just that the system has been named as or shown to be less than just, as less than Political Justice writ large. Rather, the main problems are that the empowerment that accompanies that naming creates a pocket of anarchy—a rupture in political justice—because it carries with it the power to cause at least some others to accept the new reality, as well as the power for its adherents to know their own power and apply or find it in other areas of socio-political life.

It is both to the existence of such ruptures and to the responses of political elites that extraordinary legal procedures of prosecutorial motions in limine and government infiltrations of church meetings orient our attention. They demand that we examine the fiber of our polity to see why such ruptures have occurred; to decide whether they should be cauterized, woven back into the socio-political fabric, or allowed to proceed further; and to determine whether the motives and means used by those seeking to stem or mend the ruptures should be accepted.

Bearing this focus in mind and the foregoing examination of the origins of the Sanctuary Movement, it is possible to contribute the following to the more standard accounts and analyses of Sanctuary that emphasize the

81. *Id.* at 79.

religiosity of its motivation and the illegality of its tactics: It is a phenomenon involving the conscientized empowerment of a few Americans who can now pierce the veils of liberalism, legalism, and mass media information and who have found a voice to name and proclaim what they find behind these veils. The Sanctuary Movement presented a *threat* to the status quo policies and practices concerning refugees, information evaluation, and democratic participation, particularly in foreign policymaking. As Shklar and Kircheimer appreciate, this aspect of the Movement's threat explains why its participants were tried criminally, and why their trials were political trials. But the fact that the Sanctuary Movement could not be silenced suggests that such political trials do not succeed in reestablishing control over the substance and processes of Political Justice—over "justice in political matters."[82] The ruptures caused by participatory movements always leave a residue of self-empowerment. This self-empowerment may not remain intensely activated and impassioned at all times, but neither is it easily eradicated.

It is the resilience of this self-empowerment, and not just the poverty of the politics being pursued or the crassness of the tactics used, which explains the ultimate unease with which we view political trials or pronounce their "success" or failure. In fact, all political trials seem ultimately to go down in history as failures, themselves as ruptures in political justice. The Sanctuary trials have yet to go down in history, but the story of their origins, at least when interpreted as the text for a political trial, makes it seem unlikely that the U. S. government will be able to disempower either the Sanctuary workers practicing the ideology of a transformed world view, or the refugees and their brothers and sisters in Central America. With this understood, perhaps now we can allow the Sanctuary Movement to proclaim its religiosity and understand what it thereby means. Perhaps now we can respond to the red flags of motions in limine, retrial denials, and deportation statistics. Perhaps now we can evaluate the "quality of the politics being pursued" by the Sanctuary Movement and the U.S. government, both in Central America and at home.

82. *See* O. Kircheimer, *supra* note 10, at vii.