Cities of Refuge: Citizenship, Legality and Exception in U.S. Sanctuary Cities

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Department of Geography
University of Toronto

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2010

Abstract

In the 1980s, in support of the Sanctuary Movement for Central American refugees, cities across the United States began to withdraw information and resources from the boundary making processes of the federal state. Inspired in part by a 1971 initiative in Berkeley, California to provide sanctuary to soldiers refusing to fight in Vietnam, “Cities of Refuge” issued statements of non-cooperation with the Immigration and Naturalization Service (INS). They passed policies that prevented police and service providers from asking the immigration status of the people they came into contact with in the course of their daily duties, and limited information sharing with the federal authorities. Drawing on archival research and interviews, this dissertation maps the shifting meaning of Sanctuary as a constellation of practices and logics which has troubled the boundaries of national citizenship.

Struggles to establish Cities of Refuge reveal the complex interplay between two different political trajectories in the United States: one deeply implicated with the state’s authority over migration controls and what Agamben has understood as the sovereign exception, and the other with city sanctuary, as a form of urban citizenship. The genealogy of city sanctuary
reveals the multiple and sometimes contradictory threads or genealogies that have been woven into American citizenship over time, raising questions about the ostensibly hardened relationship between sovereignty, membership, and the nation state. Exploring the interactions between the daily practices of state institutions and Sanctuary reveals the performative aspects of exception: it is produced and maintained only through the constant repetition of discourses and practices that maintain the boundaries of citizenship and reproduce the state’s authority to control the movement of people across its border. Bringing the study of sovereignty into the city, and exploring alternative assertions of sovereignty reveals the exception not as an underlying logic, but a geographically specific, ongoing struggle.
Acknowledgments

I am deeply grateful to the many people who have provided support and encouragement during the course of this research, and my time as a graduate student. This research would not have been possible without the contributions of the many archivists, municipal staff, activists and advocates who assisted with, and participated in, this project. I have been consistently inspired by the dedication and analysis of activists in the United States and Canada who continue to organize for the rights of migrants, particularly those with the courage to push the boundaries and open up space for a more robust challenge to the global system of migration controls. I am profoundly grateful for their continued engagement with these issues.

My supervisors, Sue Ruddick and Amrita Daniere provided me with an incredible amount of support over the years. I am grateful to Sue for the many hours of conversation and tough questions which helped shape this project, and my own intellectual growth. Amrita and Sue provided a great deal of encouragement over the course of my graduate studies, and, together with my other committee members, Kanishka Goonewardena and Jason Hackworth, created a home for me in the university. I thank Derek Gregory and Rachel Silvey, my external reviewers, for their thoughtful engagement with my work during the final stages of this process. I am also deeply indebted to several “unofficial” committee members and friends, including Deb Cowen, Emily Gilbert and Neil Smith, who have engaged with my work, and together with Scott Prudham, helped keep me focused on the politics of what I was doing.

Neil Smith generously hosted me for a year at the Center for Place, Culture and Politics at CUNY in New York City, providing me with a wonderful space and community in which to conduct my research there. I am grateful to everyone at the Center who made it such a rich experience. My dear friend and sometimes co-author, Justin Steil, was a fantastic research partner and travel companion during this time. The research we did together in Pennsylvania, although not directly written up in this dissertation, has shaped my understanding of immigration law and politics in significant ways. In California, I acknowledge the love and support of the folks from Wnaff Wac, who opened up Berkeley to me, and provided me with a home during several research trips to the Bay Area.
This research was carried out with financial support from the Canada-U.S. Fulbright Program, the Social Sciences and Humanities Research Council (SSHRC), the Department of Geography and School of Graduate Studies at the University of Toronto, and the Ontario Graduate Scholarship Program. At the University of Toronto, the wonderful staff in the Department of Geography provided critical administrative support throughout my PhD, and I am grateful for their patience and good humour. Likewise, I acknowledge the support and dedication of the folks who have been involved with CUPE Local 3902 and the Graduate Geography and Planning Student Society (GGAPSS). My experiences in graduate school have been shaped by the energy they have put into improving the learning and working conditions at the University of Toronto, and I am thankful for their efforts.

My family has given me much love and encouragement over the years, and I am extremely grateful to them for their continued support. I was lucky to travel through the PhD process with some wonderful co-conspirators, including Amy Siciliano, Vanessa Mathews, Patrick Vitale, Emily Eaton, Roger Picton, Lisa Freeman, Lindsay Stephens, Tom Young, and Derek McKee. Their brilliance, friendship, good humour, and engagement with their research has had a significant impact on my understanding of the world. Likewise, I am grateful to the continued love and support from Paul Jackson, Deb Mandell, Maggie Hutcheson, Ed Crummey, Danielle Layman-Pleet, Jessie Perlitz, Elinor Whidden (the Archduke), Jill Rogin, and Kurt Kerschl. They have filled my life with art and critical politics and love and good food, and words cannot express how thankful I am to have such amazing people with me on this journey.
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INTRODUCTION

Sanctuary work is a positive statement by people of faith that moral authority is protected, not owned, by the State.

Why Sanctuary? 1971

History has a more important task than to be a handmaiden to philosophy, to recount the necessary birth of truth and values; it should become a differential knowledge of energies and failings, heights and degenerations, poisons and antidotes. Its task is to be a curative science.

Foucault 1971: 90

Citizenship is a foundational but troubled concept for political geographers. On the one hand, it embodies inclusive notions of democratic engagement and political membership, and demands for citizenship have been a rallying call in struggles for equality and justice. And yet, citizenship as membership in the nation state is based on exclusion and inequality. This is what legal scholar Linda Bosniak (2006) has come to call citizenship’s basic ethical ambiguity. Legally sanctioned inequalities between citizens and aliens in access to health care, social security, work, due process under the law and freedom of movement is tolerated in ways that discrimination based on other axis of power such as race and gender are not. Tensions between the inclusive and exclusive aspects of citizenship are held in balance through the naturalization and seeming inevitability of the international system of migration controls, the often violent practices of detention and deportation, and the legal authority given to the federal state to define the conditions of membership.

My research on Cities of Refuge stems from a desire to explore already existing political trajectories that might disrupt the hold the current citizenship system has on our political imaginations. I came to this research on Cities of Refuge out of both frustration and hope. My graduate education corresponded with the intensification of the so-called war on terror in the United States and the resurgence of anti-immigrant politics in North America and Europe. As I encountered impassioned and thoughtful scholarly engagements with these trends, I became increasingly frustrated that the existence of border controls and the global regime of
differential citizenship ‘statuses’ seemed to always remain undisturbed. Geography, with its tradition of disrupting our taken for granted assumptions about territory and space, would seem a perfect discipline from which the state’s authority over migration controls and the citizenship laws which surround it could be interrogated. Compelling and useful work has been done on the border, citizenship, the racialized and classed histories of immigration policy, and the securitization of migration. This work has revealed how relatively new, historically specific, and highly politicized the global system of migration controls is. And yet, the authority or desirability of state control over the movement of people, and the regime of differential citizenship statuses that surround it, is still largely taken for granted in the discipline.

This research on Sanctuary and city sanctuary policies is thus rooted in a critique of this authority. The questions that surround this critique intersect, of course, with fundamental theoretical inquiries into the nature of sovereignty and territory, but they play out in practical terms in the materiality of immigration law, policy, and the practices which they inform. Local sanctuary policies have made their interventions at the borders of citizenship, in struggles over the terms and meaning of political belonging, and in exploring their genealogies, I hope to contribute some small part to the development of a more robust challenge to the seemingly timeless constellations of territory, citizenship and sovereignty that have naturalized the border and all it represents. It is a critique rooted in an examination of citizenship struggles as lived through the urban spaces of American cities, what Holston and Appadurai (1996) have called the spaces of insurgent citizenship, recognizing that if an alternative is to be found, it may well have to come from already existing logics, practices and politics.

In the mid 1980s, in support of the faith based Sanctuary Movement which was working to prevent the deportation of Central American refugees, a small number of cities across the country began fledgling efforts to withdraw information and resources from the boundary making processes of the federal state. Inspired in part by a local initiative in Berkeley, California from the 1970s to provide sanctuary to soldiers who were refusing to fight in Vietnam, cities passed policies that prevented local police and service providers from asking about the immigration status of the people they came into contact with in the course of their daily duties. They issued statements of non-cooperation with the Immigration and Naturalization Service
(INS) and offered support to the church congregations and organizations that had been working to prevent the deportation of Central American refugees. These early sanctuary policies restricted information sharing and joint operations between local and federal authorities which might lead to the arrest and deportation of Central American refugees, but they were also political statements, affirming an alternative discourse of rights, responsibilities and belonging that was rooted in a vision of urban citizenship.

As I discuss in this dissertation, the meaning of municipal sanctuary in the United States, and its relationship to federal law and policy, has shifted over time. At the height of the Sanctuary Movement during the 1980s, there were rumblings from the INS and some federal politicians about withholding federal funds to cities that implemented sanctuary policies, but for the most part the US government ignored these resolutions and ordinances as largely symbolic. As time has passed, however, many of these policies became embedded in longer term legislation and practices that have had an impact on how migrants and refugees access basic rights and services. In some cases, sanctuary policies have subtly affected the intake processes, record keeping, and day to day operations of local organizations involved in health care, education, municipal services, welfare, and policing. These changes became significant in the 1990s, when the passage of major immigration reforms at the federal level restricted immigrants’ access to entitlements and there was a growing focus on policing “illegal” immigration that targeted Latino communities. In these contexts, city sanctuary policies became a rallying point for urban struggles over immigrant’s rights and racial profiling.

More recently, in the post September 11 security climate, the legacy of municipal sanctuary has come into conflict with efforts to involve city workers in new forms of policing and surveillance. In many cities, local police, employers, social service providers and health care workers have been called upon to check the immigration status and other personal information of the people they come into contact with in the course of their daily duties, and to share that information with the federal authorities. The localization of immigration law enforcement has thus increased both the impact, and the contentiousness of city sanctuary policies, bringing Sanctuary once again into public debate and discourse.
This dissertation maps the shifting meaning and politics of Sanctuary in U.S. cities, and its relationship to broader discourses of citizenship and legality in the United States. With particular attention to cities in California and New York, particularly Berkeley, San Francisco, and New York City, I explore how Sanctuary has shaped, and been shaped by, the urban and political contexts in which it has been invoked at different historical moments. Local sanctuary policies represent a political trajectory, or constellation of practices and logics, which have often troubled the boundaries of national citizenship. Efforts to create sanctuary cities have come into conflict with the norms and practices of military discipline and warfare, federal refugee policy, and immigration law enforcement to bring subjects who exist at the limits of citizenship (the antiwar soldier, the refugee, and the undocumented migrant) back within the realm of political community. This story of municipal sanctuary, then, is about the intersections and divergences between different forms of regulation and resistance.

The history of municipal sanctuary reveals the multiple and sometimes contradictory threads or genealogies that have been woven into American citizenship over time, raising questions about the ostensibly hardened relationship between sovereignty, membership, and the nation state. Sanctuary represents a very different assertion of sovereignty than the logics that inform national citizenship regimes, immigration law enforcement and the territoriality of the border in the United States, but has always existed in relation to these, and as such, has shaped the relationship between citizenship and the nation state in sometimes subtle ways. This dissertation is thus offered as an alternative account of the constitution of American citizenship, the relationship between different scales of governance, and an exploration of the potential of urban citizenship.

It seems only appropriate to draw inspiration from Foucault in this project, who has offered us, in his genealogical inquiries, a consistent denaturalization and disruption of the taken for granted truths of modernity. I have focused my genealogical inquiry on citizenship and sanctuary, exploring the multiple trajectories of law and practice that have come together in Sanctuary to challenge or reconstitute the boundaries of citizenship produced by the state. As Foucault says in the quote above, however, the genealogical approach to history is meant to be a curative science. While trying to avoid romanticizing local practices of resistance, organizing
and activism, I hope in this dissertation to reorient the story of citizenship, to uncover alternative trajectories of law and practice that might provide a way out of current constellations of exclusion and securitization. Certainly one of the key lessons in municipal sanctuary is that it is very difficult to predict the impact of seemingly local or small scale political acts. The logic of sanctuary has traveled, moved about, ‘grown legs’ and evolved. Visions of the City of Refuge have been picked up to defend the rights of U.S. soldiers refusing to fight in Vietnam, to prevent the deportation of Central American refugees, and now to challenge what De Genova (2005) calls “the production of migrant illegality” in U.S. cities. In each moment and place Sanctuary has been mobilized as a form of urban citizenship, it has reconfigured the possibilities of political membership.

I approach the City of Refuge, then, with what Boaventura de Sousa Santos (2005) called the sociology of emergence. In his work on counter hegemonic uses of law and legality, Santos examines resistant initiatives and movements with the hope of revealing their emergent qualities:

> The traits of the struggles are amplified, so as to render visible and credible the potential that lies implicit or remains embryonic in the experiences under examination. This symbolic blow-up seeks to expose and underscore the signals, clues, or traces of future possibilities embedded in nascent or marginalized legal practices or knowledge. The contribution of this approach is to allow us to identify emerging qualities and entities at a moment in which they can be easily discarded (and are indeed discarded by hegemonic actors and mainstream social science) as idealistic, hopeless, insignificant, or past-oriented. (2005: 17)

It is with this spirit of emergence, then, that I explore the forms of urban citizenship implicit in efforts to establish Cities of Refuge. I believe their story has the potential to loosen the hold migration controls have on our geographical imagination, to open up a space for critiquing, and refusing, the authority of the state to define conditions of political membership. By paying attention to the lowly beginnings of Cities of Refuge, bringing to light the contingent trajectories out of which they have emerged, and identifying their implicit potential, I hope to not only recover lost threads and logics, but begin to explore hope they offer for alternative futures.
CHAPTER 1: Problematic

The history of a thing, in general, is the succession of forces which take possession of it and the co-existence of the forces which struggle for possession. The same object, the same phenomenon, changes sense depending on the force which appropriates it.

Deleuze 1983: 3, Nietzsche and Philosophy

Contemporary struggles over Sanctuary have taken place at the intersection of two very different political trajectories which have “struggled for possession” of citizenship in U.S. cities over the past 35 years. The first are the laws and institutional practices which Agamben (1998; 2005) has associated with the exceptional power of the state to legally suspend the law, placing certain subjects and spaces outside of the realm of the political. Agamben, building on Schmitt (1996[1927]), has suggested that this exceptional aspect of sovereign power is fundamental to the political order in which we live. For Agamben, it is impossible to understand the relationship between citizenship and the state without understanding the exception. In critical engagement with this scholarship, I explore the laws and institutional practices which have attempted to place the antiwar soldier, the refugee and the undocumented migrant in an exceptional relationship to citizenship, and how Sanctuary has intervened into these practices. Interrogating the sovereign exception through the empirical reality of U.S. cities and their encounters with the City of Refuge raises important questions about the performative aspects of the exception, and the way sovereign power interacts with alternative discourses of citizenship and sovereignty at the urban scale.

These alternative discourses represent the second political trajectory though which struggles over Sanctuary and efforts to establish Cities of Refuge have taken place. In the organizing, advocacy work and legislation that has surrounded city Sanctuary policies, supporters have drawn on alternative legal and religious traditions to withdraw information and resources from
the boundary-making practices of the federal state. They have advanced alternative ideas of belonging based on what Bosniak (2007) has called ethical territoriality: that all people who are in a particular space should have equal access to the rights and entitlements, regardless of their citizenship status. Sanctuary represents a very different assertion of sovereignty than the power over the exception explored by Agamben, and as such it troubles inherited ideas about the relationship between citizenship and the state. Given recent interest in the city as a key site for the constitution of citizenship and identity (Holston and Appadurai 1996; Holston 2000; Isin 2000; Staeheli 2003; Secor 2004; Varsanyi 2008), struggles over Sanctuary in U.S. cities offer unique insights to the practice and potential of urban citizenship, and its relationship to the exception.

My investigation of city sanctuary policies, and analysis of these two different political trajectories, has thus been guided by a number of research questions: What logics of citizenship and legality are produced and reinforced through Sanctuary? What tensions and convergences exist between local sanctuary practices and the production of exception? How have the logics of Sanctuary been incorporated into the legal and institutional frameworks of local governments in the United States? What lessons do city sanctuary practices in the United States offer to those who are seeking to expand or radically redefine citizenship in the current moment?

**Reading Agamben in the City of Refuge**

Italian philosopher Giorgio Agamben has become something of an iconic figure for scholars of citizenship, security, and migration. Haunted by Guantanamo Bay, the images of Abu Ghraib, the erosion of *habeas corpus* and due process provisions for non citizens in the United States, and the expansion of the immigration detention system, it is not surprising that Agamben’s accounts of the state of exception have captured the imagination of scholars. These extreme manifestations of state power remind us of Schmitt’s assertion about the relationship between sovereignty and the capacity to legally suspend the law in order to preserve and secure power. While this is made most visible in times of war or ‘emergency’ when executive power overtakes the normal democratic functions of the state, Agamben (1998; 2005) has reminded us that the
power to establish the state of exception and reduce people to bare life is ever present, and as such is fundamental to the political order in which we live.

In his work, Agamben has explored the connection between bare life and politics, suggesting that sovereignty relies on simultaneously capturing life while positioning certain subjects outside the realm of the political in a ‘zone of indistinction,’ or state of exception, where normal legal and juridical protections associated with citizenship do not apply. These subjects are reduced to bare life, evicted from the protections associated with membership in the polis, but are simultaneously captured by the sovereign through their eviction, existing in a state of “inclusive exclusion.” Refugees, colonial subjects, undocumented migrants, and non citizens have all been explored in relationship to the state of exception (Mbembe 2003; Diken 2004; Bigo 2007). In Agamben’s work, this state of inclusive exclusion is embodied in the figure of *homo sacer*, a subject of ancient Roman law who can be killed but not sacrificed: “the sacred man is the one whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide” (Agamben, 1998: 71). *Homo sacer* is thus reduced to bare life, evicted from the political but at the same time captured by the sovereign.

Building on Arendt’s analysis of statelessness, and Foucault’s work on biopower, Agamben thus challenges foundational ideas in political theory about the contract being the foundation of liberal democratic traditions, proposing instead that the inclusion of bare life into the political, and power over it, constitutes the original, but concealed nucleus of sovereign power (p.6).

The spatial manifestation of this power, territorialized and made permanent, is the camp. The exceptional logic of the camp is embodied in the brutality of the Nazi death camps, but theorized more recently through spaces such as Guantanamo and the Woomera Detention Centre in Australia, which holds asylum seekers and immigrants (Perera 2002; Minca 2005). As the public has become more aware of the proliferation of exceptional spaces, it is easy to forget Agamben’s point that logic of the exception is not simply present in these seemingly extra-legal territories produced by the state, but is generalized to the broader political order: “the camp intended as a dislocating localization is the hidden matrix of the politics in which we still live,
and we must learn to recognize it in all its metamorphoses” (Agamben 2000). In this context Agamben suggests we should view seemingly extreme exertions of state power not as spectacular, or unusual circumstances, but rather a continuation of political relations implicit in sovereign power.

Agamben’s work has much to offer the study of Sanctuary because it helps to identify the common logics and juridical traditions which have placed certain subjects outside of the realm of the political, on the borders of citizenship. He reminds us that these exceptional subjects are not simply excluded from citizenship, but are fundamental to it, and in this sense their position should not be viewed as contradictory, but as a kind of resolution or solution which enables the state-nation-territory trinity to continue. Once we understand the mechanisms through which subjects such as the antiwar soldier, refugee, and undocumented migrant are placed in an exceptional relationship to citizenship, we can begin to understand Sanctuary’s interaction with these operations of power.

In the United States, for example, the federal government has been granted plenary power over immigration matters, similar to the authority it possesses over foreign policy and warfare. Historically, this authority dates back to the days of the Chinese Exclusion laws, when the courts essentially positioned migrants as foreign agents of countries from which they were arriving (Wishnie 2001). In the arena of immigration, like warfare, the state does not have to adhere to normal legal principles. Plenary power over immigration removes it from judicial review, and allows the state to enact laws for aliens that “would be unacceptable if applied to citizens” (*Mathews v. Diaz*, 426 U.S. 67 at 80 [1976]). As Coleman (2007) says in his analysis of immigration law as geopolitics, from this perspective we might understand immigration law as somewhat of a misnomer:

Properly stated, the plenary power enables immigration enforcement practices which float—by design—separately from the rule of law. In this sense, the plenary power to make immigration law is about delineating a space of policing practices—a juridical void—which cannot be subject to constitutional review and/or protection, notwithstanding its reliance on the criminal justice system as well as its own formal codification as law in the INA. The point is that immigration law works less as a law and more as a sort of (permanent) state of emergency in which the concrete, authoritarian power
of the sovereign (in this case, lawmakers) comes down decisively—or, exceptionally—on migrant bodies, in the name of public security, via a selective deployment of the law. (pp. 62-3)

The image Coleman evokes here of sovereign power coming down on migrant bodies is useful because it highlights the fact that maintaining the state of exception relies on certain spatial practices. It is actively produced, not just through legal processes, or acts of territoriality that create extra-juridical places like immigration detention centers, but also the consistent and everyday material practices through which sovereign power must reproduce itself. Nevins (2002) captures this in his research on Operation Gatekeeper when he documents the role that visible, material acts of securing the border play in the development and affirmation of the U.S. nation-state. In my research, it is revealed in the everyday practices of immigration law enforcement and military discipline which have come into conflict with Sanctuary in U.S. cities. Exploring the interactions between the daily practices of state institutions and Sanctuary reveals the performative aspects of the exception: it is produced and maintained only through the constant repetition of discourses and practices that maintain the boundaries of citizenship and reproduce the state’s authority to control the movement of people across its border.

This is the aspect of state power that is missing from Agamben’s sweeping, and somewhat bleak analysis of sovereignty which is focused on the realm of law and political theory. By reading Agamben’s theorizations about the exception in relation to specific research sites, bringing the study of sovereignty into the city, and exploring alternative assertions of sovereignty such as those present in the Sanctuary Movement, we see the exception not as an underlying logic, but rather as a geographically specific, ongoing struggle. If bare life is included in the political, it is only because it is actively captured, not simply through legal norms, but through the daily geographies of militarization, immigration law enforcement, and boundary making. As Mike Davis said in his Preface to Nevin’s book: ‘Sovereignty’ it turns out, is as Sovereignty does…(xi).

The spatial and scalar sensitivity political geographers have brought to their study of state institutions and practices have a great deal to offer our understanding of the production of exception. Mountz’s (2004) institutional ethnography on the responses of Citizenship and
Immigration Canada to human smuggling, and Herbert’s (1997) research on the territorial practices of the Los Angeles Police Department (LAPD), for example, disrupt representations of the state as a coherent (and secure) entity, revealing the multi scalar and sometimes conflicting relations of power embodied in the every day practices of civil servants. These studies have allowed us to develop a more nuanced understanding of the state, reminding us how significant the embodied practices of people working in state institutions can be to the reproduction or contestation of power. Without these practices, life seeps out of sovereignty’s hold.

A focus on the actual mechanisms through which exceptionalism is produced and refused, also reveals the discourses of race, class, gender, and nation through which it is sustained. For Agamben, because we all exist in a similar relation to sovereign power, we are all potentially *homo sacer*. Politically, this may serve to bind people together in shared opposition to the exceptional power of the state, reminding us that there are common logics governing ideologies and political traditions that are seemingly distant from one another (Agamben 1998), but it also limits our understanding of the actual operations of power. While there is the possibility that we all may become *homo sacer*, in practice it has been racialized, classed, gendered subjects who are more likely to be vulnerable to exceptional operations of power. As Mitchell (2006) points out in her critique of Agamben masculinist assumptions, “there are clear figures of sacred ‘man’ and it is not *man* (98). For Mitchell, exceptionalism operates with impunity in our society because it is based on broad-based, widely articulated, commonsense understandings race and sex in western society, and Agamben’s assumption of *homo sacer* as an undifferentiated, interchangeable (male) figure, limits our understanding of how sovereign exceptionalism actually works. This is certainly true in the context of refugee and immigration policy and border security, where racial profiling and differential treatment based on national origins is not only accepted practice, but entrenched into law and policy. Paying attention to the geographies of racialized, classed, and gendered state and institutional practices associated with the production of citizenship and exception allows us to denaturalize those relations of power and think critically about the acts of refusal and resistance present in urban struggles that are attempting to redefine citizenship and illegality.
The City as a Space of Citizenship

In recent years, geographers have come to understand the city as a significant space where the substance and meaning of citizenship is given form, provoking a growing body of scholarship on urban citizenship (Isin 2000; Purcell 2003; Staeheli 2003; Secor 2004; Varsanyi 2006). This work is, in part, a response to the processes of restructuring that have occurred in liberal democratic states over the past several decades. As the state retreated from the provision of social security, health and education, the bonds of responsibility between the state and its citizens that accompanied Keynesian welfare regimes eroded, and scholars suggested the expectation that the state will provide for basic needs was becoming less and less a defining feature of national citizenship (Staeheli and Marston 1994; Brodie 1996; Isin 2000; Brodie 2004).

Together with mass migration to urban areas, and the increasingly significant role cities are playing in global economic, political and cultural processes, this has called into question models of citizenship framed in relationship to the national scale (Soysal 1994; Sassen 1996; Sassen 1996). While the recent economic crisis and global “stimulus” plans may once again be refiguring the relationship between citizens and the state in as yet undetermined ways, it is clear that cities are important sites through which people experience, define, and struggle over the conditions of political membership.

Scholarship in the fields of Geography and Citizenship Studies has thus moved beyond a focus on formal membership in the nation state to describe citizenship as both a practice and product of political struggle (Staeheli and Marston 1994; Isin 2002; Secor 2004). Research in these fields has documented conflicts over public space, housing, healthcare, and control over the built environment, highlighting new identities and spaces of politics in the city that disrupt inherited definitions of political membership (Brown 1997; Isin and Wood 1999). The expansion of international human rights regimes and the growth of immigrant populations in urban areas has created new forms of transnational and diasporic citizenship as well as intense struggles in cities over the rights of non-citizen residents (McNevin 2006). Indeed, because cities are significant reception areas for migrants, theories of urban citizenship are particularly pertinent for scholars of immigrant and refugee movements. Holston and Appadurai (1996) have suggested that as urban social movements challenge existing laws, practices and institutions,
asserting new forms of rights and criteria of membership, they not only change existing social relations, but often reconstitute the substance and meaning of citizenship in the process. This raises important questions about how struggles over migrant’s rights are reconfiguring the relationship between citizenship and its exceptional “others”.

As Varsanyi (2006) has recently reminded us, however, while citizenship can be seen as a process and a product of struggle, it is also still very much a legal status that has a profound impact on people’s lives. Yuval-Davis (1999) has suggested that there is an emerging international system of stratification, at the top of which are those who possess citizenship and passports from countries that are guaranteed the right of free movement, and at the bottom are those with no right to carry a passport at all. The right to mobility is governed in part by an international system of legal processes and formal citizenship “statuses,” which as Arendt and Agamben have pointed out, are sometimes the only thing maintaining the line between bare life and the political (Agamben 1998; Arendt 2004). As I will describe in Chapter 4, the policies and practices that maintain these differences exist not only at the site of the border itself, when travelers come into direct contact with customs, immigration, and security officials, but at a host of other sites people encounter in their everyday lives. Employers, social service providers, local police, and private citizens have increasingly been called upon to participate in the everyday practices of border security, to check the immigration status of the people they come into contact with in the course of their daily duties, and to report that information to the federal authorities (Ong 2003; Ngai 2004; Interview with Pham; Ridgley 2008). This localization of border security, and the involvement of what Coleman (2007) has called local proxy actors in the practice of immigration control, has only intensified in the post 911 security climate.

With the intensification of border security in the interior of the country, the day to day interactions between local service providers, municipal staff, and immigrant communities in American cities have become sites for the policing and surveillance of non citizens, spaces where the racialized boundaries of national citizenship are reinforced, and the exception is reproduced. In the context of immigration law enforcement, the production of migrant illegality (De Genova 2005) in the everyday spaces of the city is a key component in the production of exception. As Neuman has argued, the pervasive mobilization of migrant
“illegality” not only implies criminality, but “reduces the alien to a nonperson, and outlaw outside the protection of the legal system” (1441). And yet, it is exactly in these interior spaces that sanctuary policies have the potential to make concrete interventions, by limiting the use of local resources and information for institutional practices that maintain the citizen/alien, legal/illegal divides. We can see the city, then, as both a site of resistance and of regulation.

Research Sites and Subjects

In this dissertation, I read the production of the sovereign exception, the maintenance of the citizen/alien divide, and the bordering practices of the state through struggles over Sanctuary in Berkeley, San Francisco, and New York City. A focus on the production of citizenship and illegality in these different places provides insight into local political, economic, and social contexts shape the relationship between exceptional subjects and the sovereign state. Most writing on Sanctuary in the United States to date has addressed the faith based Sanctuary Movement of the 1980s which organized to support and protect refugees from Central America who were being denied asylum in the United States (Bau 1985; Golden and McConnell 1986; Crittenden 1988; Lorentzen 1991; Coutin 1993; Cunningham 1995). This work has explored Sanctuary as a social movement, a site where the authority of church and state came into conflict, and the legal and religious basis of sanctuary. Lippert (2005) has examined the governmental rationalities underlying Sanctuary in Canada as constituting what Foucault has called pastoral logic, although his research does not delve into Sanctuary in the United States, which he admits, has a somewhat different genealogy. Much less work has been done on Sanctuary in the United States during the Vietnam War, although Foley (2006) has written about the role it played in bridging civilian anti war organizing and GI resistance. To date, however, very little research has been done on the involvement of local governments in the politics and practices of Sanctuary, or the way the logics of Sanctuary have been incorporated into municipal policy.

In my research, Berkeley, San Francisco, and New York provide the fields through which to interrogate the figure of homo sacer and the production of subjects who exist on the borders of
citizenship. In these cities, over the past 35 years, the logics of Sanctuary have been invoked for different subjects: the antiwar soldier, the refugee, and the undocumented, or so-called “illegal” immigrant. All three of these figures exist at the limits of citizenship and legality in the United States, and all have a kind of hybrid character marked by their inclusive exclusion from the polity. As I will discuss, all three subjects were also re-imagined and re-constituted through their encounters with Sanctuary in the city.

These cities and struggles are not simply illustrative of the diverse ways sanctuary practices have been justified and implemented by local actors in the United States. Rather, they were chosen because they represent defining spaces and moments when both the meaning of Sanctuary shifted, and when efforts to establish Cities of Refuge have spoken back to, or reworked, the production of exception and citizenship by federal state institutions. Through its encounters with political struggles in each of these cities, Sanctuary was reconfigured. These struggles have thus had a significant influence on the way Sanctuary was constituted in the rest of the country. In this sense, these research sites were chosen not simply because they are reflective of broader discourses or movements of Sanctuary in the United States, but because they are constitutive of them.¹

In each site, I explore how legality is being defined, how citizenship is defined, and how the discourse and practice of Sanctuary shifted or was reconstituted according to the “succession of ___________

¹ These cities are also important sites because of the historical significance political struggles and policy changes in California and New York have had on the broader politics of citizenship and immigration in the United States. The debates surrounding California’s Proposition 187 in the 1990s, for example, reverberated throughout the United States, leading many other States to consider the introduction of similar legislation (Ono and Sloop 2002). Indeed, the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was significantly influenced by the debates surrounding California’s Proposition 187 (Ono and Sloop 2002). Because California and New York remain primary destinations for migrants to the United States (with the first and second highest population of foreign born residents respectively), public discourse about immigration in these areas has had a significant impact on federal immigration policy and legislative change. This is also true of the diffusion of Sanctuary policies across the country. Throughout the 1980s, lawyers and advocates in California shared their work and legal opinions on sanctuary policies with civil liberties organizations and sanctuary supporters across the country, and had a significant impact on the ways sanctuary policies were implemented over the past 25 years. The City of Berkeley, for example, sent materials to the City of Madison in 1984 which led to the inclusion of a clause preventing city employees from assisting with INS investigations or arrests. Berkeley, San Francisco, and New York City also all have accessible and documented histories of policy, legislation and public debate about Sanctuary policies that stretches from the beginning of the study period until the present.
forces” which took or struggled for possession of it. This necessitates both a geographical sensitivity to place, and attentiveness to the diffusion, or contagion, of Sanctuary across time and space. Rather than seeing these moments as isolated incidents, or spectacular responses to the production of citizenship by the state, this story gives us an idea of a sustained, long term movement, or trajectory, which has disrupted inherited ideas of political membership framed in relationship to the state-nation-territory. Because this trinity allegedly lies at the core of the State’s authority to control the movement of people across its borders, the genealogy of Sanctuary, as a political trajectory, provides a means through which denaturalize migration controls and the international system of citizenship statuses upon which it rests.

The history of sanctuary policies suggests the city is an important site from which to challenge the boundary making processes of the federal government. It also has direct relevance to contemporary political struggles, since intensified efforts at the federal level to implicate local police and municipal staff more deeply in the enforcement of immigration law has become a significant component of the War on Terror and the newly formed Department of Homeland Security. This has made sanctuary policies and local acts of noncooperation more contentious, but also potentially more significant as generative sites of resistance. The City of Refuge, then, is not only a space of protection from an increasingly anti-immigrant national security agenda, but also a potential line of flight out of which alternative futures can be materialized.

**Doing Genealogy**

Genealogy does not resemble the evolution of a species and does not map the destiny of a people. On the contrary, to follow the complex course of descent is to maintain passing events in their proper dispersion; it is to identify the accidents, the minute deviations – or conversely, the complete reversals – the errors, the false appraisals, and the faulty calculations that gave birth to those things that continue to exist and have value for us.

Foucault 1971:81

Foucault’s work provides a number of methodological tools, or sensibilities, that are useful to this project. The first are those associated with genealogical investigation, which involves a
shift away from tracing a singular origin of an object of study or a linear evolution. With meticulous attention to detail, Foucault’s genealogies reveal the varied and sometimes contradictory lines of development, discourses and histories which come together to produce a particular phenomenon, or subject. My goal is not, then, to trace the city sanctuary back to its origins in ancient biblical traditions or the organizing of the Sanctuary Movement, but rather to look at key episodes where citizenship and illegality were problematized and reconstituted through their encounters with Sanctuary. By focusing on the multiple and sometimes contingent trajectories which have solidified in particular moments and places, a genealogical approach has the potential to reveal how ostensibly stable ideas and logics such as citizenship shift through time, denaturalizing taken for granted truths or histories in the process. Recovering the lost threads of Sanctuary troubles Agamben’s assertion about an underlying logic or foundational act that has shaped the contemporary relationship between sovereignty and citizenship.

Geographers such as Isin (2002) have found genealogical methods particularly useful for understanding citizenship and political membership. Isin’s attention to historical specificity and the particular challenges to the dominant liberal democratic narrative of citizenship as the progressive inclusion of more and more pre-established groups into the polity, highlighting how citizenship requires the constitution of otherness and difference to become possible. Isin focuses on citizenship “from the perspective of its alterity,” investigating a number of historical moments when established ideas of citizenship were destabilized and reworked, ranging from the Roman Census, medieval politics, the regulation of prostitutes and vagabonds, to the technologies that govern the homeless in North American cities today. Through this work, Isin comes to conceive of otherness as immanent to citizenship, suggesting that understanding the shape and nature of citizenship in any given period is impossible without an understanding of whom the others were and how the struggles they were engaged in shaped citizenship and its subjects.

Isin’s genealogy illuminates how definitions of citizen and outsider are continually shifting and produced through struggle, revealing the instability that has been obfuscated by dominant narratives of citizenship as continuity: “If, then, there is a harmonious unity and unbroken
continuity in the images we are given of citizenship, it is not because of a natural growth, but a strategic emulation and appropriation – invention – of tradition that has made it possible” (p.31). By focusing on the way Sanctuary has intervened into the production of three “othered” subjects with an uneasy, or ambiguous relationship to citizenship (the antiwar soldier, the refugee, and the undocumented migrant), I hope to open up space for the disruption of this invented tradition, revealing something about the constitution of American citizenship in the process.

But how, exactly, does one do genealogy? Foucault calls genealogy “patiently documentary” and suggests it is dependent on a vast accumulation of source materials. My discussion in the following chapters is based on a diverse archive: Open ended interviews and the personal archives of key people involved with sanctuary movements and immigrants’ rights, theological documents, and the materials produced by the activists who have been involved in city sanctuary policies provide insight into the way sanctuary has been mobilized at different moments, and the relationships between different movements and organizations involved. Interviews with government representatives and local police, federal and local government records, correspondence between government representatives and faith organizations, and the records of court cases and government hearings where local policies were contested reveal struggles over the legality and legitimacy of sanctuary in particular moments, as well as timelines for policy changes and practices. Media coverage from the archives of national newspapers and television shows, as well as smaller local papers in California and New York reveal the public face of Sanctuary, and provide some insight into the way public discourse and debates about sanctuary policies have shifted over time. Secondary sources complemented this archive by providing insight into the faith based Sanctuary Movement for Central American refugees, background information on GI organizing during the Vietnam War, and the shifting geography of immigration law enforcement in the United States.

A detailed description of the process through which I collected and analyzed my archive can be found in Appendix A: Data Collection and Analysis, which includes a discussion of ethical considerations. The focus of the assembled archive is on the period from the 1970s, when the first sanctuary resolution was passed in Berkeley, California, to 2008. As mentioned above, this
is a time of significant upheaval for the traditional bonds between citizen and the nation state. A focus on this time period provides insight into the changing meaning of sanctuary practices as they have evolved from the moment when they first entered into public debates among local advocates and government officials, through the upheaval of U.S. immigration law during the nineties, to contemporary conflicts between sanctuary policies and post-911 security initiatives.

I have brought my research questions to this archive of city sanctuary policies to explore the mechanisms through which discourses, practices, and technologies of citizenship operate at multiple scales, in particular cities, and the changing definitions of citizenship and legality that are given legitimacy in the process. In my analysis, I have given attention to empirical details, even the seemingly inconsequential, which might allow me to identify important moments when the substance and meaning of Sanctuary was reconstituted, or reshaped. By focusing on actual practices of governance, I have used this archive to understand not only in the way sanctuary disrupted inherited ideas of citizenship and legality in law and institutional policy, but also how sanctuary intervened into the material practices that went into the formation of particular subjects: the military discipline and forms of isolation that produce the soldier, the everyday practices of immigration law enforcement that produce migrant illegality and deportability.

If Sanctuary creates particular kinds of spaces, it is also itself a bundle of practices, whether the small act of counseling a soldier who no longer wants to fight, providing shelter to someone avoiding deportation, or a refusal from a municipal staff person to share confidential information with the federal authorities. Part of the genealogy of municipal sanctuary, then, involves tracing the relationships between the practices of sanctuary and the practices of state institutions, most importantly for this project the daily routines of immigration law enforcement and military discipline that attempt to secure the boundaries of citizenship. In some ways, then, this story about Cities of Refuge is also about shifts in the governance of citizen’s others, particularly the urbanization of border security. A close study of the tensions and convergences between Sanctuary and the other spaces and scales of regulation provides insight into the complex technologies of governance that surround the construction of citizenship and illegality over the past 35 years.
Chapter Outline

In US cities today, there are a host of local laws, resolutions, ordinances, Executive Orders, and policy documents on the books that are in some way shaped by the logic of Sanctuary and the organizing of the people who have mobilized it. It would be impossible to fully capture the diversity of these policies, or the different urban contexts and histories out of which they have emerged. As mentioned above, I have focused most of my investigation on 3 critical moments in the genealogies of Sanctuary, each representing a struggle in a different city. In order to situate these moments within the broader contexts of Sanctuary in the United States.

Chapter 2 provides a broad historical overview of religious Sanctuary, exploring how it has been mobilized in the United States during three different waves of political organizing. I explore the underlying religious and legal logics of Sanctuary, and its relationship to federal law and policy. Drawing on the archives of the organizations, people and cities involved, this chapter explores the sources from which Sanctuary movements have drawn legitimacy, from biblical traditions and ancient references to the Cities of Refuge to more recent understandings of Sanctuary as civil disobedience or civil initiative: a civic upholding of the law where the State has failed to do so. As I discuss, underlying logics of territorality and intercession are common to historical mobilizations of religious Sanctuary. These logics have influenced efforts to establish city sanctuary policies, and are thus an important part of their genealogy. The purpose of this chapter is to recover Sanctuary as an assemblage of political practices and discourses, and to begin to unpack what Sanctuary’s relationship is to the constitution of citizenship in the city.

Chapter 3 focuses on the first moment of municipal sanctuary in the United States and the diffusion of Sanctuary practices and politics through different political struggles and organizing contexts. In 1971, the City of Berkeley, California declared itself a sanctuary for soldiers on board the navy aircraft carrier USS Coral Sea who were refusing to fight in the Vietnam War. The story of the Coral Sea represents the humble beginnings of city sanctuary policies. Few soldiers took the city up on its offer of Sanctuary, but Berkeley’s 1971 resolution went on to be used as a model by cities across the country in the 1980s who were trying to prevent the deportation of Central American refugees. I situate the events that led to Berkeley’s sanctuary
resolution in relationship to the broader context of anti war organizing within the U.S Navy and the history of Sanctuary in the United States, revealing this relatively obscure episode as a site which transformed both the politics of GI resistance, and the substance and meaning of Sanctuary itself. The organizing that surrounded Berkeley’s 1971 resolution called attention to the air war in Vietnam, and helped facilitate anti war organizing on board the Navy’s fleet of aircraft carriers. Most importantly, civilian movements to provide Sanctuary to antiwar soldiers disrupted the isolation of antiwar soldiers and the practices of military discipline which are so critical to producing the soldier as an exceptional subject.

Chapter 4 moves from the spaces of military discipline and antiwar organizing to illustrate how the city has become an increasingly significant space for a very different set of boundary-making practices: the production of migrant illegality (cf De Genova 2005) and the maintenance of the citizen/alien divide. This chapter documents the localization and criminalization of immigration law enforcement in the United States since the mid 1980s, and the intensification of efforts at the federal scale to involve local police, service providers, and employers in the everyday practices of border security. The city has become an increasingly important site for the regulation of non-citizens in the United States, and this, in turn, raises questions about the evolving significance of city sanctuary policies and the local acts of refusal and noncooperation they support.

Chapter 5 focuses on the evolution San Francisco’s City of Refuge Ordinance and its relationship to the changing geography of immigration law enforcement at the federal scale. While I document the dispersion of municipal sanctuary policies across the country, my discussion centers on the alternative discourses of citizenship and legality which have been mobilized by movements to establish San Francisco as a City of Refuge. This city’s approach to cooperation with the immigration authorities, first formalized in 1985, emerged out of efforts to support people from El Salvador and Guatemala who were in danger of being deported by the federal government. San Francisco’s initial City of Refuge resolution has since evolved into a broader based sanctuary policy entrenched into the city’s Administrative Code. It has also come into conflict with efforts at the federal scale to implicate local police and service providers in the everyday practices of immigration law enforcement.
In the advocacy work, organizing, and legislation that has surrounded San Francisco’s sanctuary policy, supporters have articulated a more inclusive vision of political belonging based on the idea that all people in the city should have access to the same fundamental rights, regardless of their immigration status. This resonates with Varsanyi’s (2006) idea of *grounded citizenship* or Purcell’s (2003) idea of a citizenship based on *inhabitance*, whereby membership is based on presence in the city. In this chapter, I use San Francisco’s City of Refuge Ordinance to explore the politics and potential of urban citizenship.

In *Chapter 6*, I focus on the history of New York City’s non cooperation policy, first introduced in 1985 by Mayor Koch to limit information sharing with the Immigration and Naturalization Service (INS). While New York City’s policy was not initially linked to Sanctuary, it has since become implicated in anti-sanctuary movements, and struggles around the legality and legitimacy of City of Refuge policies. Because the politics of non cooperation within local government institutions in New York have been so intimately connected to legal struggles between different levels of government rather than broad based organizing for Sanctuary, New York City provides useful site through which to explore the potential of formal policy mechanisms as means through which to establish new conditions of membership and legality. It reveals the limits to a politics of refuge which are not translated into everyday practices of refusal and broader based political commitments.
CHAPTER 2: Intercession and Territoriality: The Logics of Sanctuary

The tradition of sanctuary in both the Jewish and Christian communities is a living, evolving and transforming story. At different times and places, under varied circumstances, the significance of sanctuary has been recovered and has taken on new meanings.

Sanctuary: A Justice Ministry 198x

We don’t have a central plan or a how-to booklet on how to be involved in sanctuary...We began with a 3,000 year old idea and now we’ve discovered we have a movement on our hands.

Rev. J. Fife, qtd in Applebome 1986: A20

Introduction

City sanctuary policies have been shaped by secular political organizing and urban contexts that are somewhat different from faith based movements, but they share common logics, and supporters of city sanctuary policies have sometimes drawn legitimacy from ancient biblical and legal histories which are based in religious traditions. The logics of Sanctuary mobilized by church congregations and religious organizations in the United States have thus had an influence on efforts to establish city sanctuary policies, and are an important part of their genealogy. Indeed, church congregations in Berkeley, San Francisco, New York, and cities across the United States have played a role advocating for sanctuary policies, and many of the same congregations have a long history of providing religious Sanctuary in their church buildings. In following chapters, I describe how Sanctuary was taken up in the institutional and

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2 The University Lutheran Chapel in Berkeley, California, for example, provided Sanctuary for soldiers during the Vietnam War. This congregation was closely aligned with, and provided guidance to, Berkeley’s City Council when they passed their sanctuary policy for soldiers on board the USS Coral Sea resisting the Vietnam War. The City’s resolution expressed support for the University Lutheran Chapel, and stated that the nature of any Sanctuary
legal spaces of local governments. This chapter focuses on religious Sanctuary in the United States, which has been a constitutive element of this political history.

Lippert’s (2005) research on Sanctuary in Canada has drawn on Foucauldian understandings of governance and genealogical method to describe Sanctuary as a pastoral logic, a governmental rationality that Foucault has described as similar to the way a shepherd oversees his flock. This idea of pastoralism captures the focus church congregations in Canada had on caring for the lives of individuals, transforming individual refugee subjects into “sheep” under the care of sanctuary congregations as “shepherds” (2). Lippert’s research explores recent sanctuary incidents in Canada from 1983-2003, to reveal pastoral logics existing alongside and together with the dominant logics of liberalism in Canada.

The genealogy of Sanctuary in the United States is somewhat different than Lippert’s research in Canada reveals, both because Sanctuary in the United States has stronger roots in religious traditions and practices, a more geographically and historically expansive genealogy, and because it has had a much more conflict-ridden relationship to state institutions than has been the case in Canada. While there have been aspects of pastoralism present in movements for religious Sanctuary in the U.S., a close examination of these movements reveal practices and logics that do not map neatly onto broad categories of governance. My goal in this chapter is not to describe an overarching governmental rationality in religious Sanctuary, but rather to focus specifically on the logics and practices of citizenship and legality which have constituted it in relationship to the production of the exception.

This approach reveals religious Sanctuary in the United States as an assemblage of logics and practices which have crystallized during three distinct waves of political organizing. The first

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established by the city would be in line with and operate in accordance with Sanctuary as it was defined by the University Lutheran Chapel (see Appendix B). During the 1980s, representatives from many of the Sanctuary Churches in the Bay Area made deputations to the San Francisco Board of Supervisors which advocated for and expressed support for that city's City of Refuge Ordinance (San Francisco Board of Supervisors, Legislative File #97-89-42).
wave occurred when churches opened their doors to soldiers and draft resisters who were refusing to serve in the Vietnam War, the second was the Sanctuary Movement for Central American refugees in the 1980s, and the third is the recently launched “New Sanctuary Movement,” which is working to prevent the deportation of people with families in the United States. Activists and religious leaders participating in these three waves of organizing have mobilized ancient religious traditions of Sanctuary to support their work, often referencing biblical passages on hospitality and the ancient Cities of Refuge. While each wave has had somewhat different political goals and subjects to whom they have addressed their interventions, examining the three periods in relationship to each other exposes common threads and logics, revealing Sanctuary as a persistent political trajectory in the United States. While later chapters focus on the mobilization of Sanctuary in very specific historical and geographical contexts, the goal in this chapter is to provide a broad overview of religious Sanctuary and the logics of territory and intercession which inform it.

Foucault’s lectures at the Collège de France from 1974-1975, which have been published as the book *Abnormal*, are instructive for those interested in understanding the genealogy of religious Sanctuary and its connection to municipal sanctuary policies. In this series of lectures, Foucault explores the processes and practices of *normalization* which have occupied modern institutions, providing particular insight into the diffusion of logics between Christian traditions and the seemingly secular institutions of medicine and psychiatry. He documents how practices of governance, forms of control, and operations of power get picked up and translated into different contexts and institutions in order to address phenomenon or subjects that surface as “problems” for the practice of power.

Foucault describes a period in 17th Century France when possession emerged as a problem for the church, a form of religious and political resistance to which the church attempted to apply its mechanisms of control. To deal with possession, the church reactivated and reutilized the procedures and practices of the witch trials and Inquisition which had already begun to disappear – mechanisms of control which were developed to address a very different purpose. This shaped the way possession was understood, but it also presented a problem for the operation of power. Major changes had taken place within the Church itself since the time of
the Inquisition, primarily associated with the rise in spiritual direction in the 16th Century, and because of this, the forms of control associated with the Inquisition no longer functioned the way they used to. As Foucault says: “[i]t was a very costly operation because it had to call upon a type of jurisdiction that the civil power of the monarchy was finding increasingly difficult to tolerate” (216). As regression to inquisitorial methods of control failed, Ecclesiastical power increasingly appealed to medicine and doctors as a way to rid itself of the problem of possession. This marked a redistribution of medical and religious investments of the body and contributed to a re-positioning of sexuality within field of medicine (and, as a result, a major transfer of power).

The beauty of Foucault’s methods and examples in Abnormal are manifold. They highlight how practices are reconfigured and reactivated in particular historical moments to serve purposes that are perhaps somewhat disparate from their original relationship to power. Foucault’s genealogies help us understand how particular norms and truths evolve into being, disrupting what seems natural or taken for granted (how the body is positioned within medicine, for example, or how particular phenomenon become a concern for one kind of institution or another). Foucault’s lectures also call attention to the diffusion of norms from the church to seemingly secular institutions, revealing the evolution of logics and practices across time and space. The idea that particular political logics, practices and ideas are both contagious, and prone to mutation, is an ongoing theme in this dissertation as it traces how Sanctuary has been taken up in various contexts to address the relationship that different subjects have to sovereignty and the nation state.

A fascinating study on the geography of asylum and Sanctuary in ancient Western traditions could be written which explores the shifting spaces and territorial reach of Sanctuary in relationship to the expansion or encroachment of state and civil authorities into the arenas of authority traditionally held by the church. Although this kind of detailed genealogy of early religious Sanctuary is well beyond the scope of this project, it is worthwhile noting how contemporary supporters of Sanctuary have articulated some of these historical shifts, because these accounts reveal the understandings of space, sovereignty and intercession out of which contemporary sanctuary activists have constituted their political interventions.
As I will discuss, specific passages in the bible and interpretations of religious practice were given meaning and became a part of Sanctuary’s genealogy because of their perceived resonance and relevance at a particular time and space. References to and discussion of Biblical passages in the context of contemporary Sanctuary in the United States can thus be understood as a way of thinking through and interpreting the practice of religious Sanctuary in relation to religious norms and histories, local contexts, and the interests of specific congregations, rather than an adherence to strict doctrine. This “narrative” of ancient religious and legal traditions is outlined below, and it begins with biblical references to hospitality and the ancient Cities of Refuge.

The Narrative of Religious Sanctuary

The Biblical Cities of Refuge

The Bible, as an important touchstone of religious law and convention, was drawn upon as a source of authority and legitimacy during all three waves of religious Sanctuary. Of particular significance were those passages relating to hospitality and asylum. Passages in Leviticus and Exodus referencing the treatment of strangers were particularly poignant for Sanctuary congregations during the 1980s, when churches provided Sanctuary to Central Americans migrating to the United States:

And if a stranger sojourn with thee in your land, ye shall not vex him. But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt (Leviticus 19: 33-4, see also Exodus 22: 21)³

Religious writings, sermons, and publicity materials associated with the Sanctuary Movement during this time make frequent reference to biblical passages which problematize distinctions between strangers and native-born. The Sanctuary movement engaged with the Old Testament to think through and challenge the differential treatment of, or distinctions between, alien and

³ All biblical excerpts are from the King James Bible, accessed online from The Electronic Text Center, University of Virginia: http://etext.virginia.edu/kjv.browse.html. Accessed July 8, 2009.
citizen, or sojourner and native-born, and the very idea of the documented versus undocumented migrant:

The Hebrew term for alien, the sojourner (who certainly may be the immigrant or the refugee), is ger. It repeatedly appears tied immediately to another word, ezrach (“home-born, native, indigenous”). There is no suggestion of concern about how and why the ger is among us, no interest in differentiation by pre-residence background. There is nowhere any suggestion of propriety of presence, that is, “documentation.” (Napier 1985: 36)

In contrast to federal immigration law and politics which is rooted in divisions between citizens and aliens, and the host of practices and “papers” that sustain it, in the interpretation adopted by many Sanctuary advocates, there was no distinction in how the law should be applied to stranger or native-born (ger or ezrach) (Napier 1985: 36).

Movements for Sanctuary in the United States have also referenced biblical passages on the ancient Cities of Refuge (arey miklat), set aside for people who sought protection from punishment if they accidentally killed someone:4

Then ye shall appoint you cities to be cities of refuge for you; that the slayer may flee thither, which killeth any person at unawares.

And they shall be unto you cities for refuge from the avenger; that the manslayer die not, until he stand before the congregation in judgment.

And of these cities which ye shall give six cities shall ye have for refuge.

Ye shall give three cities on this side Jordan, and three cities shall ye give in the land of Canaan, which shall be cities of refuge.

These six cities shall be a refuge, both for the children of Israel, and for the stranger, and for the sojourner among them: that every one that killeth any person unawares may flee thither. (Numbers 35: 10-14)5


5 Other passages related to the Cities of Refuge from the bible mobilized by supporters include Deuteronomy 19:1-21, 41-2; Josua 20: 1-9; and Exodus 21: 13. They echo the passage from Numbers cited here.
By bringing these biblical passages into public discourse, and drawing parallels between ancient and contemporary Sanctuary, advocates both signaled and drew authority from the idea that there was a historical and religious tradition of spaces where the normal processes of law were suspended. In most accounts associated with all three waves of Sanctuary, the ancient Cities of Refuge provided protection to people in order to assuage blood vengeance at a time when it was accepted under law that close kin could avenge the death of their relatives. In Bau’s (1985) interpretation:

When the accused manslayer reached the City of Refuge, he had to first prove through a trial by the “congregation,” probably the elders of the city that acted as a court, that the killing had indeed been accidental. (125)

The Cities of Refuge have been understood by Sanctuary supporters as spaces where the exceptional circumstances surrounding the killing could be considered by the religious authorities, the pace of justice slowed down, and the harshness of the blood feud or vigilante violence could be mitigated. When Sanctuary workers in the United States talked about the ancient Cities of Refuge, then, they often talk about their role in helping to secure a just trial, as places to which people could flee until demands of justice could be met (MacEoin 1985; Murphy 1985; Hennessey nd).

While Sanctuary was portrayed by supporters as a part of the world (an act of the congregation or faith community), it was also described as a place set apart from the space of ordinary existence in which a higher power was the authority:

In the Old Testament and the New Testament, sanctuary is a place of life-giving mystery. Sanctuary was to be a place separated off from the world in which quite different arrangements than those of the world would occur. Sanctuary is a place of holiness – a place where things, people or events could be sanctified; claiming them for God and God’s purpose. The sanctuary is a place where the ultimate authority of God is clear that we worship and recognize in action a law higher than that of government or commerce. (Chicago Religious Taskforce on Central America nd: 2)

This higher authority was sometimes portrayed as God, but it was also sometimes the moral authority the church believed it had a historical responsibility and privilege to uphold (Why Sanctuary? 1971). In addition to the biblical references which provided legitimacy to Sanctuary
as a religious practice, then, supporters of religious Sanctuary in the United States have linked their practice to a long narrative (and historical necessity) of spaces that were partly outside the authority of the civil arm of law, or at least existed in a special relationship to it.

As I will discuss, the temporal and geographical span of church asylum in these accounts speaks to an understanding of Sanctuary as an ongoing and widespread practice of intercession and territoriality. It was territorial in the sense that Sanctuary established sacred spaces which had an exceptional relationship to civil law. This territory existed both inside and outside the State. It was sometimes sanctioned by secular authorities, but was also a space into which those authorities could not reach. The Sanctuary narrative thus speaks to both a historical tension, and somewhat symbiotic relationship, between civil and religious authorities, and a constant re-negotiation of the moral authority of the church. It also speaks to the idea of Sanctuary as a practice: of religious authorities actively interceding on behalf of people who had allegedly transgressed the law in some way.

Ancient Sanctuary: Intercession and Territoriality

The historical narrative of Sanctuary mobilized by supporters includes the traditions of asylum among ancient peoples, including the ancient Phoenicians, Syrians, Greeks, and Romans, who were all cited as respecting the sanctity of particular spaces or shrines in which fugitives could find protection. These ancient traditions, church Sanctuary in Medieval Europe, and early references to the privilege of Christian Sanctuary in English common law constituted a narrative of a long and established Judeo-Christian history of religious asylum which has been intermittently mobilized by churches and synagogues to support or explain their actions (Murphy 1985). People involved with movements for Sanctuary in the United States reflected upon and drew legitimacy from these traditions, framing their interventions as a continuance of this history. This was particularly true during the 1980s, when debates about the history, substance, and meaning of Sanctuary within faith communities reached a unique intensity due

\[\text{6 See note 4.}\]
to the expansion of the movement across the country, the legal struggles of some of its members, and its visibility in the popular media (see Chapter 5).

In the minutes from a meeting of Sanctuary churches during the 1980s, for example, the commitment to Sanctuary as a faith-based practice is apparent in discussions about whether the movement should be open to secular participation:

> We agree that groups participating in Sanctuary – whether religious or secular – must be those for whom Sanctuary is deeply rooted in their tradition and heritage. By reaching back into our roots we more sharply define ourselves, our identity, and gain a degree of authenticity that is imperative as we journey into the Sanctuary movement. Unless the declaration of sanctuary is rooted in tradition, it has the great potential of being a weak decision. We must not be exclusive but we must include others with great care and clarity. We must also recognize that the Church is not a vanguard movement. Sanctuary, in terms of the history and tradition of the Church, is a unique expression of church solidarity. It is a dynamic movement that is no longer just place but more than place – an event and a community.⁷

This expression of church solidarity was sometimes framed as a divine form of political community, in contrast to the limits of allegiance that exist in relation to the secular state:

> From the earliest times, sanctuary has had a deeply religious political significance. It is the recognition of the moral limits of a civil order and the ultimacy of the divine claim on human allegiance.⁸

References to alternative forms of political membership and responsibility are thus pervasive in the discourse of movements for Sanctuary.

Part of this discourse involved a strategic mobilization of history to support the work being done by movements for Sanctuary in the present. Many Protestant religious leaders cited the Shock Hertzog Encyclopedia of Religious Knowledge’s references to Sanctuary and asylum, for example, which states “among practically all nations is found an early belief that places

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dedicated to the spirit of the divine being require sanctity which makes it an inviolable place of
refuge to people pursued by their enemies.” The narrative of Sanctuary mobilized by its
supporters begins in Ancient Greece, when the divine spaces of temples allegedly provided
protection to people who committed crimes, although as in biblical traditions, it was
acknowledged that Sanctuary during this time was eventually limited to people who had
committed crimes that were unpremeditated (or who were in danger of what Carro (1985) calls
“cruel and summary vengeance” 751). According to scholars and activists involved with the
Sanctuary movement, the Roman conquest of Greece limited the rights to Sanctuary, and it
became focused on “protection for the unfortunate and needy who might not be able to live
through the often harsh and merciless application of the criminal law” (Bau 1985). Again, this
narrative of Sanctuary reinforces the historical existence of places where normal legal
procedures could be slowed down, and consideration could be given to the impact of the law
on the vulnerable accused.

The Sanctuary narrative continues with the expansion of Christianity and Constantine’s
conversion in the early 4th Century, when the Christian Church gradually became more
institutionalized in the governance of the population, and in 313 A.D., churches were granted
permission to extend Sanctuary to fugitives under Constantine’s *Edict of Toleration*. Christian
Sanctuary gradually took over from the Roman and pagan practices, and was associated with
the Christian sacred. Regulations on the provision of church Sanctuary were included in the
Theodosian Code of 392, where it appears the right of Sanctuary had extended beyond the
church itself to the walls of churchyards and cemeteries (Bau 1985; Murphy 1985).

Together with protections for the accused and claims about the inviolability of the sacred place,
the story of Sanctuary accounted by supporters talks about a shift in Christian traditions, where

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there gradually grew a right of intercession on the part of the priest or custodian of the church or shrine (Bau 1985; Murphy 1985:75; Hennessey nd). Scholars suggest this intercessory role of advocating for the accused and securing pardons for people who entered into Sanctuary was eventually entrenched into Canon Law. According to Bau, the Papal decree of Pope Leo I in early 5th Century formalized a change in religious Sanctuary from the space of the church to the person of the church official (p.132), and the extension of Sanctuary beyond the space of the church to the churchyard walls and the houses of bishops and clergy reflected this shift (Bau 1985; Carro 1985). Here, then, Sanctuary is viewed in part as a sacred space attached to the body of the cleric, but also a practice of intercession on behalf of the religious authorities.

Locating their practice in relationship to this historical right of intercession on behalf of religious leaders can be seen as a narrative strategy for contemporary Sanctuary movements in the United States, who eventually expanded the idea of intercession from the [personas] of the religious leader to the congregation, or faith community more broadly. This was true during the Vietnam War, when religious leaders asserted their capacity of the congregation to judge the legitimacy of a person’s someone’s claim to Conscientious Objection:

Now, if churches in the Middle Ages could offer sanctuary to the most common of criminals, could they not today do the same for the most conscientious among us? Are the churches not competent to decide whether or not a man is conscientious in his objections? (Coffin 1968)

It was also true in the mid 1980s, when congregations in the Southwestern United States began to make determinations about the legitimacy of a refugee’s claim for asylum before interceding and offering them Sanctuary (Coutin 1993). Indeed, Coutin’s detailed research documents how the screening procedures used by Sanctuary congregations both mirrored and built upon asylum hearings in the sense that they “elicited knowledge about immigrants’ lives and used legal definitions of “refugee” to evaluate this knowledge” (112), while at the same time giving authority to private citizens to assess asylum claims.

The blurred relationship between religious Sanctuary and Western legal traditions can been seen in the history of English Common Law, where, similar to biblical passages on the Cities of Refuge, Sanctuary was for a time recognized as a refuge for the accused out of which due process, under law, could be established. Religious Sanctuary in this context was thus not
entirely separate from, but rather played some role in civil legal processes, although this role
appears to have shifted in relationship to the expansion of secular authorities. According to
Bau, in the late Anglo-Saxon and Norman periods when the institutions of church and state
clashed in English society, tensions ensued around the distinction between Sanctuary as a place
and Sanctuary as something associated with a persona. Churches and clergy claimed the
privilege of Sanctuary was rooted in the sanctity of the place, and was thus irrevocable by the
monarch, whereas the King’s authorities would claim that the privilege was a personal privilege
granted to the clergy at the King’s will (p.141). Religious privileges of Sanctuary in England were
all but abolished in law in the early 17th Century as it was seen to be abused by debtors and
“common criminals” (Villarruel 1986), and then entered a steep decline in practice as the civil
authorities continued to distance themselves from the religious authority of the church
(Murphy 1985; Crittenden 1988: 62).

While formal recognitions of Sanctuary were eventually abandoned by the state for these
reasons, vestiges of Sanctuary remained in a religious and legal doctrine. Murphy (1985)
suggests that the idea of embassies as spaces of asylum is connected to the history of church
Sanctuary, and the Catholic Church continued to claim the inviolability of sacred premises long
after it was no longer recognized in secular law (77). Sanctuary was also maintained in Canon
Law, which laid down punishments for those who violated it. 10

Importantly, during the three waves of Sanctuary in the United States, supporters have very
rarely suggested that these ancient traditions held any legal bearing on their actions, except to
the extent that the Sanctuary Movement in the 1980s drew on these traditions to establish
Sanctuary as a religious practice protected by the First Amendment (see below). Sanctuary was
never incorporated into U.S. law, and there is no legal recognition of it. Nevertheless, the
biblical references and religious histories accounted above served as a reference point for
activists to think through the substance and meaning of contemporary religious Sanctuary - a
narrative which both informed, and provided a counterpoint to, contemporary practice.

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10 The last vestiges of Sanctuary were removed from Canon Law during the last major reforms in 1984.
Contemporary Religious Sanctuary in the United States: Three Waves

First Wave: Sanctuary and the Vietnam War

The first wave of religious Sanctuary in the United States was during the Vietnam War, when left-leaning congregations offered Sanctuary to Conscientious Objectors, draft resisters and soldiers who were protesting the war and/or refusing to fight (Crittenden, 1998, Foley 2003, 2006).\(^\text{11}\) It began in the late 1960s in the Northeastern United States and soon spread across the country (Foley 2006). According to Willigan (1970), religious Sanctuary was first invoked on October 16, 1967 at a “Service of Acceptance” at the Arlington Street Church in Boston, when nearly 300 draft resisters turned in their draft cards. William Sloane Coffin, Jr., then Chaplin of Yale University, talked about ancient spaces of Sanctuary when he addressed the crowd, invoking both the territory and intercessory aspects of Sanctuary:

As men have always felt certain times to be more sacred than others, so they have also felt certain places to be more sacred. Closely associated with these more sacred places has been the belief that there a man should find some sanctuary from the forces of a hostile world….In Exodus we read that the altar of the Tabernacle is to be considered a place of sanctuary, and in Numbers and Deuteronomy we read of “cities of refuge.”

During the Middle Ages all churches on the continent were considered sanctuaries, and in some instances, in England, the land within a mile of the church was included. According to the Justinian Code, sanctuary was extended to all law-breakers…with the exception only of those guilty of high treason or sacrilege.

\(^{11}\) In the 1970s and 80s, church congregations and supporters who invoked Sanctuary sometimes connected their actions to the organizing of the Underground Railroad for fugitive slaves in the period before the Civil War, referencing this as another moment when civil and religious communities acted outside the law to uphold humanitarian or moral values. In this sense, the Underground Railroad is also part of the Sanctuary narrative. Indeed, there is some evidence that churches and religious communities participated in the Underground Railroad (particularly the Friends) in defiance of the Fugitive Slave Act of 1850, although I do not include it here as one of the significant ‘waves’ of religious Sanctuary. For a discussion of ideas of Sanctuary and refuge mobilized during the time of the Underground Railroad, see Altemus (1987/88) or Willigan (1970). For a discussion of the connections between the Underground Railroad and the Sanctuary Movement for Central American Refugees, see Villarruel (1987).
Coffin called Sanctuary “an act of religious conscience” and suggested clergymen offer Sanctuary to conscientious objectors “so that this country can see the nation is in violation of our basic laws” (Gansberg 1967). After this event, Coffin was found guilty of conspiring to counsel, aid and abet those refusing induction into the army (and sentenced to 2 year imprisonment and $5000 in fines), although to conviction was later overturned (Graham 1968).

In May of 1968, on the day Coffin’s trial began, the Arlington Street Church opened its doors to provide Sanctuary to a draft resister and an army “deserter” who objected to the war in Vietnam (Foley 2003, 2006). Robert Tamlanson and William Chase entered the church, where they were joined by hundreds of supporters who put themselves between the two men and the authorities. Several days later, when three US Marshalls arrived at the church to arrest the men, they were met by Anthony Mullaney, a Roman Catholic priest, who told them they were “about to violate a moral sanctuary” (Foley, 2006). The men were eventually removed and arrested by federal marshals, but the incident sparked significant press attention and public interest, setting off a wave of other Sanctuaries across the country (See: Army Acts 1968; AWOL Soldier 1968; Bau 1985; Bigarts 1968; Bigarts 1968; Evader of Draft 1968; Fenton 1968; Fiske 1968; Foe of War 1968).

In the 15 months that followed, 54 men (including 49 AWOL servicemen) took Sanctuary in churches in Boston, New York, Philadelphia, Chicago, San Francisco, South Bend, Indiana, Columbus, Ohio, Providence, Rhode Island, and Honolulu, Hawaii, and Sanctuary eventually spread to some University campuses and student residences (Foley 2006). Although more substantive research on Sanctuary during the Vietnam War remains to be done, this first wave appears to be less extensive than the national movement that organized for refugees more than a decade later, with fewer and less coordinated incidents.

Church Sanctuary during this time served a number of purposes. Some congregations and activists hoped the Military Police would be less willing to enter religious spaces to arrest men

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12 In addition to Coffin, antiwar activist Dr. Benjamin Spock was also being tried on this day, along with 3 other people facing conspiracy charges. The choice of dates was a political tactic, then, as the event called attention to the parallel criminalization of activists just as supporters of Sanctuary were asserting the legality of their actions.
who were conscientiously objecting. Others used Sanctuary more symbolically, to make public and "dramatize the religious and moral basis of opposition to the war in Vietnam" (Fiske 1968; Foley 2006):

The offer of sanctuary means what the medieval church offered to individuals who were being persecuted, namely the moral protection of the Christian community. The doors of the building are open to those who have taken a conscientious stand of non-cooperation with the Selective Service System. Food and lodging will be offered so that if there is to be an arrest, it can take place in the church building where the moral confrontation will be obvious. ¹³

As Rev. John Neuhaus, leader of Clergy and Laymen Concerned About Vietnam, was quoted in the press as stating: "(T)he point is not to evade or to prevent arrest, but to illuminate its meaning by forcing a confrontation of legal and moral power" (Fiske 1968).

Duncan’s (1978) now famous work on the spatial tactics of “tramps” has contributed to our understanding the geographies of moral order that overlay the space of the city, and his observations are useful to unpacking the territoriality of Sanctuary, and its relationship to citizenship. Duncan uses the concept of moral order to capture “the feeling that a group has that the way it organizes the world is inherently correct.” Overlaying the city are sets of customary relations, or etiquette, which govern the landscape, stipulating “what people under what circumstances are allowed to engage in what activity”. This moral order operates alongside the complex geographies of State law and the enforcement practices of local police to shape social relations and constitute identities (See also Blomley 1994)

While Duncan’s work focuses on perspective of tramps, his analysis is illustrative of the ways marginalized groups are both subject to the moral order, and use these geographies to carve out a space for themselves in the city. The tramps in Duncan’s piece, much like people participating in Sanctuary, understand the social value (or lack of value) dominant groups attach to particular landscapes or places, and use this to their advantage. The tramps talked about the profit of panhandling outside church on a Sunday, where people have “that Jesus feeling” in

¹³ Declaration made at the St. Andrew United Presbyterian Church, Marin City, California, quoted in Willigan (1970: 533).
them, but how that feeling (and potential profits) dissipate even a few blocks away from the
church building. Duncan describes these parts of the city around the church as pockets of
natural law, where the value of human beings as such (and “all men are equal”) comes into
tension with the dominant market ideology of the city which is intolerant of panhandling. In
these spaces adjacent to the church, the tramp is viewed as a fellow citizen, returning to the
realm of the political, if only for a brief period of time. Putting aside Duncan’s distinction
between natural law and market ideology, an important observation in this piece is the way the
moral order of the city is “pocketed,” constituted locally by sometimes conflicting logics, which
are then negotiated and used strategically by marginalized groups.

For many of its supporters, Sanctuary during the Vietnam War was a form of civil disobedience
against immoral laws, and part of its significance was that the performance of conflict between
injustice and resistance would take place in the physical space of the church. Because of the
value attached to the church in the moral order of the city, the activities which take place there,
while possibly “illegal,” are leant legitimacy because of where they occur. Interestingly, the
position of the church in the moral geography of the city was, in part, constituted through the
narrative of religious Sanctuary described above, a narrative which established a long tradition
of sacred places “set apart from the space of ordinary existence” where the moral authority of
the church offered protection to those in conflict with the law of the state.

Importantly, as subjects occupy particular spaces in the moral order of the city, their subject
position within this order is, in turn, constituted through their relationship to these spaces. 14
The tramps in Duncan’s analysis slept in alleyways and focused some of their panhandling
activity close to skid row because dominant social groups associated such activities with these
marginal landscapes, and police were therefore less likely to harass them there. In Duncan’s
analysis, by occupying marginal space, the tramp both acts out and reconfirms his social
marginality. In contrast, the resistant soldier or draft resister, in occupying the space of the
Sanctuary church, acts out and confirms his identity as a member of a political and faith

14 This is well documented by other scholars as well. For example, in Anderson’s (1991) work on the production of
racial categories in Vancouver’s Chinatown.
community and a Conscientious Objector. Moral value is given to their acts of resistance against the war because of where it occurs, and this, in turn, disrupts the practices of state institutions which position the antiwar soldier as a subject outside of citizenship, and therefore subject to the exceptional norms of military law (see Chapter 3). These interventions during the Vietnam War are then referenced by future waves of religious Sanctuary to reinforce the constitution of the church as a space where just and moral intercession into state law occurs. In the practice and politics of civil disobedience, then, space and citizenship mutually constitute each other.

In this context, the transformation of the church into a space for alternatives, solidarity, and moral confrontations with the state (backed by all the symbolic weight attached to the sacred space of the church) was probably more significant than any attempt to directly prevent the authorities from arresting people who were refusing to serve. In practice, Military Police, federal Marshalls, and local police often entered churches to make arrests, and, while supporters invoked the ancient privilege held by churches to provide Sanctuary, they generally acknowledged that Sanctuary had no recognition under U.S. law. While those who sought Sanctuary did not always evade arrest, their actions dramatized what they viewed as the immorality of the war and the failure of the system to recognize the rights of Conscientious Objectors (Fiske 1968).

The significance of establishing a space of Sanctuary was held not just in the localized geography of the church, but in the impact it had on the organizing and activist work that might be taking place in other spaces and contexts. Sanctuary during this time dramatized an alternative form of community, as people gathered together in the church to stand between the authorities and war resisters, creating a space of convergence (Routledge 2003) where civilian antiwar activists, religious communities, and resistant soldiers could come together and build a movement in opposition to the war. Foley (2006), who conducted very detailed

15 As Victor Jokel, Executive Director of the Arlington Street Church stated: “While the invocation of sanctuary can have no legal force – nor should it have – in our society, this historical concept, as renewed today, has the force of a moral imperative on the side of life and man.”
research on Sanctuary at the Arlington Street Church in 1968, captures this aspect of Sanctuary space in his description of the events:

Within hours of its start, the sanctuary began to take on a life of its own. At times, it seemed like an ongoing teach-in: participants discussed issues surrounding the war and the draft incessantly. At other times, the crowd focused on preparing for the authorities who would inevitably come. On occasion it also took on the characteristics of a big party. Several hundred people turned out on the first night for a communal dinner in the church basement. Organizers showed films of past draft card turn-ins and musicians played the blues for the crowd. A couple of nights later the rock band Earth Opera (led by future bluegrass greats Peter Rowan and David Grisman) performed on the stage in the basement of the church. More than 70 people spent the first night in the church awaiting the police, and the crowds grew each night. Every day people could be found sleeping, eating, cooking, giving speeches, and having “endless conversations.” Some roamed around trying to keep everyone’s spirits up, trying to build solidarity. And reporters mingled throughout the building, interviewing as many participants as they could. ...In addition to diehard activists...some members of the church helped, and several women came in from the suburbs with sandwiches for everyone. In this way, sanctuary attracted new supporters to the movement.

Through Sanctuary, then, the physical space of the church was transformed into a place for encounter and organizing. Of course, the significance of the church as a space of convergence in this context is intimately connected to the meaning it holds in the moral geography of the city, and to a certain degree such a convergence was made possible because of it. But the impact of Sanctuary as a site of organizing extended beyond the boundaries of the Sanctuary itself. Foley believes that the convergence of so many different people in the space of the Arlington Street Church served to bridge civilian and GI resistance movements, demonstrating that the antiwar movement, religious organizations, and American servicemen were not antagonists (Foley 2006: 416). As we shall see in Chapter 3, Sanctuary in the San Francisco Bay Area during this time played a similar role, bringing civilian activists in contact with emerging antiwar organizing taking place within the Navy.
Second Wave: Sanctuary for Central American Refugees

...We live in a time of encroachment...

Sanctuary: A Justice Ministry, 198x: p.2

During the 1980s, ancient traditions of religious Sanctuary were once again invoked by church congregations and religious organizations in the United States. This time, it was to provide assistance to people fleeing violence and persecution in Central America and to challenge the policies of the Immigration and Naturalization Service (INS). During this period, hundreds of thousands of people fled civil war and political upheaval in El Salvador and Guatemala. Many made their way to the U.S.-Mexico border and crossed into the United States (Cunningham 1995). Along the Mexican border in Arizona, Americans encountered the migrants as they travelled north, and some were exposed to the migrant’s accounts of repression by right wing paramilitary death squads and the armed forces (Coutin 1995; Cunningham 1995). The Sanctuary Movement was, in part, a response to the U.S. government’s refusal to grant asylum to the refugees, many of whom were imprisoned and deported back to face the violence in their countries of origin (Altemus 1987/8).

At the time, the United States was supporting governments in El Salvador and Guatemala with significant amounts of military and economic aid, making it politically unviable to acknowledge these governments were involved in the persecution of their own citizens (Golden and McConnell 1986; Davidson 1988; Coutin 1993; Cunningham 1995). From 1980 to mid-1985, for example, only 626 of 10,000 applicants from El Salvador were granted political asylum and many more did not make a claim, knowing their application would be rejected (Crittenden 1988). While Conservative politicians and federal immigration authorities cast the refugees who stayed in the country without status as illegal or criminal, the Sanctuary Movement held that it was US government who was transgressing the law by detaining and deporting people

Before 1980, U.S. policy on refugees was intimately tied to Cold War politics. Between WWII and 1998, for example, over 90 per cent of 2 million refugees were admitted from countries the United States government deemed to be communist (Cunningham 1995). The Refugee Act of 1980 was supposed to eliminate the ideological and geographical dimensions of the refugee process and bring U.S. policy in line with UN Conventions. In his signing statement, President Carter said the new Act would provide “a new admissions policy that will permit fair and equitable treatment of refugees in the US regardless of their country of origin” (emphasis mine). Despite formal changes in law, throughout the 1980s, Cold War foreign policy considerations and thus national origins were still guiding the refugee determination process and the activities of the INS (Helton 1986; Villarruel 1987; Simon 1998). From the middle of 1983 to September of 1986, 2.6% of Salvadorans and 0.9% of Guatemalans who applied were granted asylum, compared to 60.4% of Iranians, 37.7% of Afghans, and 34% of Poles. The average approval rate for all nationalities at this time was 23.3% (Crittenden 1988).

The federal government’s refusal to recognize the asylum rights of Salvadoran and Guatemalan refugees, and the unjust treatment of migrants by immigration authorities in the Southwest, eventually led a number of churches and activists to intervene. The Sanctuary Movement started as a group of church congregations that organized to assist people evade arrest and deportation, providing housing, legal assistance, transportation, and other basic services to asylum seekers. Often in conflict with the work of the Immigration and Naturalization Service (INS), many of the congregations involved justified their interventions by invoking ancient religious traditions, humanitarianism, international human rights regimes, or a civic upholding
of federal law. The assassination or Archbishop Romero in 1980\textsuperscript{16}, and the rape and killing of 4 church women from the United States made the situation in El Salvador particularly poignant for some religious communities in the U.S. (Altemus 1987/8). In this context, Sanctuary was a humanitarian response to the immediate needs of people fleeing violence, and as such was closely aligned with biblical ideals of hospitality and refuge already discussed.

The first congregation to declare Sanctuary was the Southside Presbyterian Church in Tucson, Arizona, which opened their doors to refugees in 1981. In March of 1982, on the second anniversary of the assassination of Archbishop Romero, twelve congregations across the country joined Southside, issuing a joint declaration of Sanctuary (Coutin 1995), and in July of 1982, 60 Chicago area churches formed the Chicago Religious Task Force on Central America, which soon took on a coordinating role in the movement (Villarruel 1987). The pastor of the Wellington Avenue United Church of Christ in Chicago invoked ancient traditions of Sanctuary when he announced their participation in the movement:

\begin{quote}
This is the time and we are the people to re-invoke the ancient law of sanctuary, to say to the government, ‘You shall go this far and no further.’ This is the time and we are the people fleeing the blood vengeance of the powers that be in El Salvador. We provide a safe place and cry, ‘Basta! Enough! The blood stops here at our doors.’ This is the time to claim our sacred right to invoke the name of God in this place – to push back all the powers of violation and violence in the name of the Spirit to whom we owe our ultimate allegiance. At this historic moment we are the people to tell Caesar, ‘No trespassing, for the ground upon which you walk is holy.’ (Reverend David Chevrier, Pastor of the Wellington Avenue United Church of Christ, Chicago, Illinois, July 24, 1982, Quoted in Bau, 1985)
\end{quote}

By 1986, approximately 300 churches and synagogues across the country were directly involved in the Sanctuary Movement, with important areas of activity in Arizona, Chicago and California. Sanctuary congregations included Roman Catholic, Protestant, Jewish and other religious communities (Altemus 1987/8). While religious Sanctuary during the Vietnam War was primarily offered by left-leaning churches, in the 1980s, conservative congregations also

\textsuperscript{16} Romero was killed just after sending a letter to President Carter which asked him to stop sending military aid to El Salvador.
participated (Applebome 1986). Between 1982 and 1985, the movement arranged for the housing of an estimated 3,000 people from Central America. For every congregation that declared Sanctuary, an average of ten endorsed the action, meaning thousands of congregations across the country were involved in the movement in some capacity (Altemus 1987/8). As the Sanctuary Movement expanded geographically, it also grew into a broader based social justice movement. Sanctuary workers organized against U.S. foreign policy, military activity in Central America, and advocated that the immigration status of Extended Voluntary Departure be granted to Salvadorans and Guatemalans (Coutin 1993).

**Civil Initiative and Civil Disobedience**

The movement rooted its practice in the narrative of religious Sanctuary discussed above, and biblical references to hospitality and refuge. This was significant not only because it provided historical context for Sanctuary. In some cases, particularly after participants began to be arrested and charged for their activities, references to the Old Testament and the right of intercession on behalf of religious authorities were used to support the legitimacy of Sanctuary as a religious practice, and thus worthy of Constitutional protections under the First Amendment. For example, if, according to their understanding of Leviticus (above), the scripture demands the protection of the stranger, then congregations are fulfilling the requirements of their faith by providing Sanctuary, and the federal government’s interference was thus an infringement on Constitutional rights. While this defense was not always heard in the courtrooms, it became part of the Movement’s discourse and advocacy work. The Sanctuary narrative described earlier thus became a significant part of the struggle between the church and the federal government.

Because the Sanctuary Movement was also based on the individual decisions and actions of the congregations who became involved, however, there was some variability to the way Sanctuary was understood across the country. Close to the Mexico border in Tucson, for example, where people were more likely to encounter the immediate needs of people crossing into the United States, the discourse of humanitarianism was more pervasive, whereas Chicago congregations and organizations has a deeper focus on Sanctuary as a means to organize against U.S. activity
in Central America. Reports from different Sanctuary Churches across the country documented in the minutes of a meeting in Tucson reflect these different emphases of Sanctuary congregations across the country:

[Arizona] The development of Sanctuary in Tucson, Arizona is in some ways the reverse of the experience in most of the country. We started with a great need of the 100s of refugees coming through. Refugees tend to set the agenda. Our work is crisis to crisis work. We didn’t start with analysis, but from being faced with individuals in need and being called to respond. Priorities were set as a function of need.

And;

[Chicago]...Our main goal is to end U.S. intervention in Central America by creating a large, grass roots movement. One of the issues that must be addressed is the issue of leadership. Finally, quoting Jim Corbett, it is our belief that “law abiding protest only helps us live with atrocity.”

Minutes from meetings and the materials produced by the Movement also reveal somewhat different understandings of the legality of Sanctuary, and its relationship to the federal state. Some of these differences can be captured by the distinction between civil initiative and civil disobedience. The Sanctuary Movement argued the United States government was breaking the law because it denied 98 percent of Salvadoran and Guatemalan applicants their request for asylum (Coutin 1995). While the Sanctuary Movement claimed refugees from El Salvador and Guatemala met the criteria of a “reasonable fear of persecution” laid out in federal and international law, the federal government asserted most of them were “economic migrants,” fleeing poverty, not repression (Cunningham). These different understandings of legality, and the apparent disjunction between federal law and its allegedly “illegal” practice of denying asylum was at the core of the Sanctuary Movement’s idea of civil initiative as a civil upholding of the law. In the mid 1980s, this idea of Sanctuary as a civil enforcement of the law informed

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18 For a detailed analysis of the Movement’s legal argument, see Villarruel (1987).
the passage of municipal sanctuary policies, which often had references to the UN Conventions and Refugee Act of 1980 in their preambles (See Chapter 5).

Sanctuary thus involved attempts to work within the legal system in order to call on the federal government to uphold the law. In 1985, a group of religious organizations, many with strong links to the Sanctuary Movement, filed a suit against the U.S. government, including the INS, the Executive Office for Immigration Review, and the Department of State (*American Baptist Churches et al. v. Thornburgh*, 760 F. Supp. 796 N.D. Cal. 1991) alleging the U.S. government’s policy of denying Salvadoran and Guatemalan asylum application was in violation of the 1980 Refugee Act (Cunningham):

> Significantly, in July of 1990 when it looked as if the court was going to rule in favor of the churches, the U.S. government sought and obtained an out-of-court settlement with the Sanctuary churches which altered existing refugee determination procedures and granted de novo adjudication to thousands of Salvadorans and Guatemalans (see Cunningham, 1998:205-06)

While some people involved with the Sanctuary Movement understood their actions as a civic upholding of federal and international law, others portrayed Sanctuary as an act of civil disobedience and a struggle against the encroachment of the State. This was particularly true of the materials produced by the Chicago Religious Task Force on Central America, which placed a critique of U.S. foreign policy, and historical connections to movements of civil disobedience such as the Underground Railroad and the Civil Rights Movement at the forefront of their organizing. As one Pastor at the Wellington Avenue Church in Chicago was quoted as saying:

> In deciding to become a “public sanctuary” for refugees from El Salvador, we are responding faithfully to God’s call and in the best American tradition. We do not take breaking the law lightly. Yet our congregation voted to meet the needs of these, the least of our brothers. We believe that it is against the law of God to send the Salvadorans back to imprisonment, torture and execution. We resist these unjust laws, just as church people gave sanctuary to runaway slaves prior to the Civil War. (qtd in Villarruel 1987: 1434).

Importantly, these two different perspectives on Sanctuary’s intercessions (civil disobedience and civil initiative) were not necessarily mutually exclusive. As one participant said:
We are engaged in civil disobedience to the extent we are at odds with the constituted authorities. But we, ourselves, believe we are in full compliance with the law. (Minutes, 1985)

Cunningham (1995; 1998), who conducted extensive research on the subject, reads the Sanctuary Movement for Central American as a conflict between Church and State, arguing that it was because the church’s activism directly challenged the government’s hegemony in the arena of foreign policy that Church and State, as categories of authority, were brought into conflict (1998: 373). This is certainly a component of Sanctuary during this time, but I want to build on this understanding to frame it less as a conflict between two different forms of authority, and more as an act of intervention against the encroachment of the State. This aspect of Sanctuary was to become increasingly significant in the mid 1990s and in the post 9/11 security climate, as state practices of border security have gradually become more pervasive in the interior of the country, and in the everyday life of those without full citizenship status in the United States (see Chapter 4). This focus on Sanctuary as a challenge to encroachment addresses Agamben by revealing the incomplete, “pocketed” nature of sovereignty.

Archives from the Sanctuary Movement in California during the 1980s reveal an understanding of Sanctuary as an act, or practice, designed to moderate the activities of the secular government: “Asylum itself is really a function of sovereignty. It’s an assertion of sovereignty independent of the sovereignty of the state.”

Reverend Gustav Shultz, long time pastor of the University Lutheran Chapel in Berkeley, California, drew parallels between biblical of Sanctuary as protection from vengeance and blood feud, and the encroachment of the state:

   In the Old Testament Cities of Refuge were primarily to protect a person from revenge of the relatives of the person who was accidentally slain. But who will protect one from the revenge of a powerful government?

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The movement articulated a need to respond to the national security mentality which was perceived to be at the root of the federal government’s actions, and the impact this mentality was having on the capacity of churches to respond to humanitarian need. In essence, foreign policy considerations were interfering with what Massey more broadly might call the “geographies of responsibility” adopted by participating churches, who, in their own view, were attempting to uphold their obligations to people who were being displaced by the actions of the U.S. government. As I will discuss in Chapter 4, this resistance of Sanctuary churches to the national security mentality of the 1980s sowed the seeds for the mobilization of Sanctuary against some aspects of the federal government’s post 911 homeland security agenda and the processes of securitization which accompanied it.

If Sanctuary in the 1980s was sometimes framed as a challenge to state encroachment within the territorial borders of the United States, at the same time the movement represented a critique of U.S. encroachment into Central America and American imperialism. Many people involved with the Sanctuary Movement argued the United States had a unique responsibility to refugees from El Salvador and Guatemala because U.S. military and economic aid was contributing to the violence that caused people to migrate (Coutin 1995):

> The law [of God] in its successive major codifications, and clearly under prophetic tutelage, consistently demands particular concern and compassion for the weak, the powerless, and the dispossessed and, perhaps most emphatically, the immigrant, the alien, the sojourner, and the refugee. And this, of course, is what brings people into sanctuary: our national, corporate, reprehensible responsibility for the creation of conditions that cause refugees to flee here: our knowledge of the law of God; our irrepressible conviction that we must give sanctuary in whatever way we can.  

As the Sanctuary Movement expanded, the importance of addressing the causes of mass displacement became incorporated into the work of many congregations, and Sanctuary was mobilized to challenge U.S. imperialism in Central America. As Reverend Gus Shultz said at a

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meeting of Sanctuary churches in Tucson, Arizona in 1985, “Our task is to stop the war machine and to convert Central America into a Sanctuary for its own people.”

The Third Wave: The New Sanctuary Movement

The third wave of Sanctuary is much more recent, and like Sanctuary during the Vietnam War, relatively under-explored by scholars. It began in part as a response to the escalation of immigration raids that accompanied the post 911 security climate, and the introduction of legislation such as HR 4437 at the federal level which sought out tough new penalties for violations of immigration law (Interview with Michael Ellick 2007, See also www.newsanctuarymovement.org). Although with the election of a new Congress and President, HR 4437 never became law, its passage by the House of Representatives in December of 2005 incited mass marches and protests in 2006, and a growing movement for immigrants’ rights that many in the United States began to call “the new civil rights movement” (Geissinger 2006; Kevin 2006; Mangaliman and Rodriguez 2006; Johnson and Hing 2007; Pulido 2007; Bacon 2009). As I will discuss in Chapter 5, this was a period of heated debate about immigration reform which led to a renewed focus on immigration law enforcement in the interior of the country.

The passage of HR 4437 had particular significance for faith communities and charitable organizations that were providing services to immigrants. Section 202 of the legislation made it a crime to “assist” someone “reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States...”21 While the

21 HR 4437 was sponsored by Rep F. James Sensenbrenner, Jr. It was introduced 12/6/2005). Section 202 of HR 4437 read: Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended to read as follows: Alien Smuggling and Related Offenses Section 274 (a) Criminal Offenses and Penalties: (1) Prohibited Activities: Whoever--

....(C) assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;
provisions were arguably introduced to strengthen “anti smuggling” provisions, many service providers, religious organizations, and legal professionals who worked with immigrant communities argued that they too could face charges if they “assisted” someone to stay in the country by providing health care, food, clothing or shelter.

The American Nurses Association, for example, came out strongly against HR4437 because of concerns that it would subject nurses to severe criminal penalties if they provided health care to undocumented aliens, or “sheltering” an undocumented migrant in an emergency department (McKeon 2006: 31). In opposition to what some activists portrayed as the criminalization of humanitarian work, Cardinal Roger Mahony of the Los Angeles Archdiocese announced in March of 2006 that he would instruct his priests not to obey the law if it was enacted, saying “[d]eny ing aid to a fellow human being violates a law with higher authority than Congress – the law of God.” (McLemore 2006).

Mahony’s public act of refusal gained widespread media coverage, and many people involved with New Sanctuary Movement believed it changed the terms of public debate about immigration in the country, “a significant catalyst in awakening the general public and legislators to the moral and human dimensions of the question.” They also helped stimulate the emergence of a third wave of Sanctuary organizing.

In November of 2006, a coalition of faith based organizations and congregations based in New York, Los Angeles, and Chicago launched the “New Sanctuary Movement”

(D) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, where the transportation or movement will aid or further in any manner the person’s illegal entry into or illegal presence in the United States;

(E) harbors, conceals, or shields from detection a person in the United States knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States;

(F) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from one country to another or on the high seas, under circumstances in which the person is in fact seeking to enter the United States without official permission or lawful authority; or

(G) conspires or attempts to commit any of the preceding acts
(www.newsancreatymovement.org). This new wave has some similarities with the organizing that took place in the 1980s, although it is not directed specifically at refugees. The New Sanctuary Movement focuses on non citizens more broadly who are facing deportation. A major focus of this third wave has been efforts to prevent the separation of family members who might have differential immigration or citizenship status, for example, when undocumented or out of status parents of U.S. citizen children are arrested in immigration raids or other enforcement activities, and threatened with deportation (Beltran 2007; Groups Plan 2007; Lochner 2007; Prengaman 2007; Prengaman 2007; Robinson 2007; Sahagun 2007; Sahagun 2007; Duin 2008; Duin 2008; Rozemberg 2008).

The New Sanctuary Movement represents itself as having the following goals: To protect immigrant workers and families from unjust deportation; To change the public debate; To awaken the moral imagination of the country; and, To make visible immigrant workers and families as children of God:

We are united in opposing the current series of raids and ensuing deportations, and we agree to call for an end to these practices as they separate children from their families until our broken immigration system is fixed.

This focus on maintaining the unity of families is pervasive in the discourse of the movement:

We stand together in our faith that everyone, regardless of national origin, has basic common rights, including but not limited to: 1) livelihood; 2) family unity; and 3) physical and emotional safety. We witness the violation of these rights under current immigration policy, particularly in the separation of children from their parents due to unjust deportations, and in the exploitation of immigrant workers. We are deeply grieved by the violence done to families through immigration raids. We cannot in good conscience ignore such suffering and injustice.

So, while the subjects of Sanctuary during the Vietnam War were soldiers and draft resisters, and during the 1980s, refugees from Central America, religious Sanctuary in recent years has been directed specifically at families that have undocumented members who might be facing deportation. Despite the differences in the subjects to whom Sanctuary movements have addressed their interventions, however, there are similarities to the way Sanctuary has been articulated by its supporters, particularly around the norms of hospitality, moral authority, and
political membership. The New Sanctuary Movement describes its acts of “prophetic hospitality” as follows:

As an act of public witness, the New Sanctuary Movement will enable congregations to publicly provide hospitality and protection to a limited number of immigrant families whose legal cases clearly reveal the contradictions and moral injustice of our current immigration system while working to support legislation that would change their situation.

These families will be in the deportation process, include citizen children, have adults with good work records and have a potential case under current law. The Center for Constitutional Rights is working with a broad network of lawyers across the country to provide expert legal counsel and support to each family. Participating congregations will offer a family hospitality for a limited period; the family will rotate from one congregation to another as needed until their case is resolved. Because the family's identity will be public, the congregations will not be violating federal law.

Judson Memorial Church in New York City has taken on a significant organizing role in the New Sanctuary Movement, becoming, as one Minister put it, “the nervous system” for Sanctuary in the New York area. In an interview, a Minister at Judson discussed the process through which the congregation decided to take a family into Sanctuary:

We went through this whole process where we had to bring it to the congregation. We are a congregational church, which means that everyone has to vote on it. And that we are a community. You know, it’s not top down stuff. There was a lot of committees and discussion. But eventually Judson passed it unanimously.

The decision-making processes by which a congregation welcomes families into their political communities are often quite extensive, involving long periods of consultation and reflection (Interview with Ellick 2007). They echo similar processes during the Vietnam era and in the 1980s, where individual congregations assert their authority to determine conditions of membership that are often in defiance of those framed in relationship to the nation state. While the federal immigration authorities portray those who have sought Sanctuary as deportable and illegal, the movement has used Sanctuary to reframe their subject position as legal members of the community protected by the moral authority of the congregation.
While the three waves of religious Sanctuary have been somewhat different in purpose and organization, there has also been some continuity in the churches involved. For example, the Arlington Street Church in Boston, Massachusetts, was the first church to provide Sanctuary to a soldier and a draft resister during the Vietnam War (Foley, 2006). In 1987, this church granted Sanctuary to a refugee from Guatemala as part of the Sanctuary Movement for Central American refugees, and in January of 2008 joined the New Sanctuary Movement (Arlington Street Church, 2009; Crawford-Harvie, 2003). The University Lutheran Chapel in Berkeley, California, offered Sanctuary to Navy soldiers resisting the Vietnam War in the 1970s, and many people involved with this congregation provided leadership in the movement to provide Sanctuary to refugees from Central America. As of June 2009, the University Lutheran Chapel’s website stated that they had “taken steps to work with the New Sanctuary Movement” (University Lutheran Chapel, 2009).

**Conclusion**

The meaning of religious Sanctuary has shifted over time and space depending on specific political, legal, social and cultural contexts, but there are common threads, or lines of interpretation, out of which Sanctuary’s ideas of citizenship and legality have been constituted. The narrative of religious Sanctuary mobilized by movements in the United States has emphasized logics of intercession and territoriality which challenge the state’s perceived monopoly on justice, legality, and the conditions of membership. In this narrative, religious Sanctuary has been understood as a sacred space or territory, “set aside from the space of ordinary existence,” (Encyclopedia of Religion, 2nd Ed.), but also a practice, or act of intercession, by religious authorities and communities.

These two understandings of Sanctuary were mobilized by supporters of resistant soldiers during the Vietnam War, for Central American refugees during the 1980s, and more recently in response to the intensification of immigration law enforcement practices which have accompanied the securitization and criminalization of border security in the United States. During these three waves, the practice of Sanctuary has been understood as an act of civil disobedience against unjust laws and the sovereign authority of the nation state, but at other
times as a form of civil initiative: the civic upholding of federal and international law where the State is failing to do so. As will become increasingly clear in the following chapters, these spaces and practices of Sanctuary have been a consistent, albeit subtle, counterpoint to the dispositifs of illegality and exception around which the bordering practices of the federal government are organized. Over time they have also shaped city sanctuary policies and the ideals of urban citizenship which have been articulated through them.
CHAPTER 3: Refuge, Refusal and Contagion: The City as Sanctuary for Soldiers Resisting the Vietnam War

Little did we know at the time of our decision that what began as the conscientious act of one Christian congregation would soon infect an entire city. But so it is with acts of holy contagion.

Rev. John Elliot (1985: 54)

If there is a moment when the logics of Sanctuary became embedded in municipal policy in the United States, it would be in California in November of 1971: The City of Berkeley, California, declared itself a Sanctuary for soldiers on the aircraft carrier USS Coral Sea who refused to serve in the Vietnam War. Berkeley’s 1971 sanctuary policy emerged out of a several different trajectories of political and faith based organizing: The SOS movement, or “Stop Our Ship,” was just starting to establish itself on board the USS Coral Sea as a campaign of navy soldiers trying to prevent U.S. aircraft carriers from deploying to Vietnam. The civilian anti-war movement in the Bay Area was in the process of responding to the simultaneous withdrawal of ground troops and the escalation of the air war in Vietnam, and a handful of churches in the United States were invoking ancient biblical traditions of sanctuary and refuge to assert their authority to protect soldiers who were refusing to fight in the war. But how did the political spaces of ship, church, and city converge to produce the first municipal sanctuary policy in the United States? And what was the legacy of this convergence?

At first glance, Berkeley’s 1971 sanctuary resolution may appear an insignificant topic for investigation. Few soldiers took the city up on its offer of sanctuary, and the local act of rebellion was met with little more than derision and a few threatening letters from federal authorities and the military police. But situate this event within the broader context of anti war organizing within the U.S Navy, and the longer genealogy of Sanctuary in the United States, and this relatively obscure episode reveals itself as a site where several movements and histories
came together to transform GI resistance within the Navy, and the substance and meaning of Sanctuary itself. It was, as Rev. John Fife pointed out in the quote above, a moment of contagion, when political practices and discourses developed in very different spaces and circumstances converged and infected each other. Out of this convergence emerged the first city sanctuary policy in the United States.

This chapter explores the political practices of refuge and refusal that led to Berkeley’s Sanctuary policy as acts of citizenship which attempted to reconfigure the ethical and political constitution of the soldier during the Vietnam War. Sanctuary was mobilized to challenge what some have called the soldier’s position as an exceptional figure of warfare (Cowen 2008), to provide a space where soldiers who were considering a refusal to fight could seek counseling and support, away from the isolation of their ship and the everyday practices of military discipline. Providing a space where anti-war soldiers could assert their political rights and reclaim their citizenship under the authority and protection of the church, the city, and its residents facilitated anti-war organizing within the Navy at a time when aircraft carriers such as the USS Coral Sea were taking on greater responsibility for the war in Vietnam.

And yet, the significance of this incident is not limited to the impact it had on resistance to the Vietnam War. Sanctuary was itself reconfigured through its contact with the USS Coral Sea and the anti-war organizing taking place in the Bay Area during the early seventies. The movement to support the sailors grafted national narratives of the United States as a refuge for the persecuted and Constitutional rights to Conscientious Objection onto ancient biblical traditions of Sanctuary, transforming the practice and politics of Sanctuary in the process. Although a seemingly isolated incident, Berkeley’s 1971 declaration brought biblical and faith based logics of refuge into the spaces of municipal politics. This not only added legitimacy to acts of defiance against US involvement in Vietnam, it also marked a secularization of Sanctuary. In the longer term, Berkeley’s 1971 resolution was significant not only because it supported refusal among military personnel, but because 13 years later, the city’s policy became a model for city sanctuary policies that were introduced across the United States to protect the rights of a very different group of subjects: refugees from Central America who were being threatened
with deportation. It is these contagious, or transformative aspects of Sanctuary that are of interest to me in this chapter.

**Background**

When the USS Coral Sea docked at NAS Alameda in the Fall of 1971, significant changes were occurring in the landscape of US military operations in Southeast Asia and, as a result, the politics of American resistance to the Vietnam War. In the previous two years, the American plan for ‘Vietnamization’ had shifted greater combat responsibilities, and greater risk, onto the South Vietnamese forces (Wells 1994). From July 1969 to December 1971, the number of troops stationed in Vietnam declined from 543,000 to 156,000, but the return of ground troops was accompanied by an escalation of the air war and thus a greater reliance on the Navy’s fleet of aircraft carriers and the thousands of soldiers who served on them. These changes were sparked, in part, by a desire to reduce the U.S. casualty rates that were fuelling domestic opposition to the war (Cortright 1975). They were also motivated by what Col. Robert D Heinl Jr. called the “near mutinous” state of the ground troops in Vietnam, where acts of resistance and refusal were increasingly interfering with operations (Heinl 1971; Lewes 2003).

As Cortright’s (1975) book on GI resistance during the Vietnam War has documented, the plans for ‘Vietnamization’ and the intensification of the air war had a number of implications for organizing against the war, both within the armed forces and in civilian movements. The return of ground troops from Southeast Asia made it appear to the American public that U.S. involvement in Vietnam was winding down, reducing U.S. casualties and making the war less objectionable, potentially “numbing the populace into acceptance of continuous conflict” (p.106). The Navy and Air Force, branches of the military that were increasingly responsible for bombing operations in Vietnam, had not been active sites of GI resistance up until this point, as it was infantry soldiers who had experienced direct combat who were the most likely to engage in acts of refusal (Lewes 2003).

The pilots stationed on the aircraft carriers flew through combat areas, but they were more distant from the everyday violence and brutality experienced by the ground troops, and the
thousands of support troops on board were even more detached from direct combat. Support troops were predominantly third world and white working class youth who had enlisted in the Air Force or the Navy to escape being in the Army: “There was widespread anti-war feeling among these crews, but...they were not in the direct line of fire, they neither killed nor risked being killed, and consequently they had less motivation to rebel than did ground troops.” (Rinaldi, 1973: 43; see also Cortright, 1975). The carrier crews’ distance from combat, and the challenges of maintaining active resistance in the isolated military space of the aircraft carriers made observers skeptical that any resistance to the air war could be sustained (Cortright, 1975: 106). By 1971, “Vietnamization” had thus reconfigured the possibilities and practices of resistance to the war.

It was in these contexts that the USS Coral Sea arrived in the San Francisco Bay Area with fledgling resistance efforts on board in the form of a Stop Our Ship (SOS) campaign, and, despite these challenges, left several months later with over a third of its crew having signed a petition against deployment to Vietnam and at least 35 crew members refusing to participate in the air war.22 (Elinson, 1971; A Statement, 1971a; Jennings, 1971). After the Coral Sea left the Bay Area, the SOS movement spread throughout the Navy’s fleet of aircraft carriers (A Statement, 1971b; Cortright, 1975; Wells, 1994). The Coral Sea’s encounter with the City of Berkeley and Sanctuary had a part to play in the expansion of the movement.

22 Note that according to soldiers involved in the SOS movement, as many as 250 sailors did not sail with the ship, but there is no official record of this. Thirty five is the number given by the military to the press the day the ship left. The actual number is likely somewhere in between. See “A Statement to the Press by Crewmembers of the USS Coral Sea.” 1971b. December 9. Container 8, Folder 23, Pacific Counseling Service and Military Law Office, 1969-1977. Bancroft Library, University of California, Berkeley.
Stop Our Ship (SOS) and the Soldier-Citizen

We GIS’s [sic] need the civilians to defend us. If there weren’t a civilian’s anti-war movement, there wouldn’t be a GI one. The civilians need us...to destroy that last bullshit argument that opposing the war means you’re not supporting the servicemen.

Qtd. in Lewes (2005: 62)

In September of 1971, GI resistance on board the USS Coral Sea was just beginning, organized around the Stop Our Ship (SOS) campaign to stop the Coral Sea from making its scheduled November 12 return to Vietnam. Just prior to its arrival in the Bay Area, members of the crew circulated a petition demanding the USS Coral Sea not participate in the war. Through this petition, sailors asserted their rights not only to express their opinions about the war, but also their obligations to determine the deployment of their own ship:

In our opinion there is a silent majority aboard the ship which does not believe in the present conflict in Vietnam. It is also the opinion of many that there is nothing we can do about putting an end to the Vietnam Conflict. That because we are in the military we no longer have a right to voice our individual opinions concerning the Vietnam War. This is where we feel that the majority of the Coral Sea has been fooled by military propaganda. As Americans we all have the moral obligation to voice our opinions.

We the people must guide the government and not allow the government to guide us! In our opinion this action is even more justified for the military man because he is the one who is taking personal involvement in the war.
The Coral Sea is scheduled for Vietnam in November. This does not have to be a fact. The ship can be prevented from taking an active part in the conflict if we the majority voice our opinion that we do not believe in the Vietnam War. If you feel that the Coral Sea should not go to Vietnam, voice your opinion by signing this petition. (SOS Petition, 1971)

Reaction to the SOS movement was harsh and persistent. The first version of the petition was confiscated by the ship’s Executive Officer and several of the sailors who had circulated it were put into the brig. A ship’s regulation was introduced which prohibited the distribution of literature not first censored by the Captain, a move that many of the sailors involved saw as a violation of their Constitutional right to free speech (A Statement, 1971a; Anon., 1971c; SOS Petition, 1971). One officer who publicly announced his opposition to the war described this suppression of information as key to the ship’s method of fighting dissidence:

This particular chain of command seems to be deathly afraid of any opinions or ideas that run contrary to the official policies of the administration. Their method of combating the ‘problem’ of dissent seems to rely heavily on strict suppression of information, such as censorship of internal news, and the release of news to the public. It appears that they are afraid to face reality, preferring to hide in the dream world of traditions, regulations, and hierarchy. (Coral Sea Officers, 1971)

Attempts to contain the SOS movement also involved mundane practices of harassment:

All of a sudden when SOS comes on board no buttons are allowed anymore. Any person passing anything out would be written up under Article 82, willful disobedience of a direct order. Gathering in a number or in small numbers we couldn’t get more than three in a group without the pigs coming by and telling us we couldn’t have meetings. Sitting in the chow hall they have some big round tables, you fit eight people at it. We would usually get six or seven of us to sit at one of these tables some of us without buttons and probably non SOS people. Every meal we noticed that we were being watched by the Master At Arms. Almost a meal didn’t go by without some form of harassment, somebody walking by and saying hurry up and finish eating, people need your trays and table. Or this isn’t a place for a meeting. Or they would come over and tell us, you need a haircut or quit smoking. If you were walking down the hallway and saw two people that you know – the hallways are pretty big, some of them are ten feet across – a Master at Arms or a lifer would come up and say, you can’t congregate here. You’re blocking the hallway. (Anon., 1971d)
Thirteen of the crew were eventually put into the brig for distributing antiwar newspapers, petitions, and other actions associated with the SOS campaign, and it was not uncommon for anti war soldiers to be given duties that would keep them separate from each other, or for active resisters to be transferred away from the ship (A Statement, 1971a ; Anon, 1971c; McGall, 1971).

The everyday practices and forms of discipline directed at anti-war soldiers demonstrates the restricted nature of political space on board the aircraft carrier, and the challenges faced by soldiers who were trying to assert their political rights within military spaces. It also reveals the ambiguous relationship to citizenship these soldiers occupied.

On the one hand, the soldier has historically been portrayed as a model citizen: the ultimate national subject whose service and sacrifice in defense of territoriality and state interests makes the very existence of the nation state a possibility. In this way, the subject of the soldier is woven into narratives of nation and citizenship. President George Bush’s recent Veteran’s Day proclamation highlights this vision of the soldier citizen:

> On Veterans Day, we pay tribute to the service and sacrifice of the men and women who in defense of our freedom have bravely worn the uniform of the United States. From the fields and forests of war-torn Europe to the jungles of Southeast Asia, from the deserts of Iraq to the mountains of Afghanistan, brave patriots have protected our Nation's ideals, rescued millions from tyranny, and helped spread freedom around the globe. America's veterans answered the call when asked to protect our Nation from some of the most brutal and ruthless tyrants, terrorists, and militaries the world has ever known. They stood tall in the face of grave danger and enabled our Nation to become the greatest force for freedom in human history....Their selfless sacrifices continue to inspire us today as we work to advance peace and extend freedom around the world. (Bush, 2008)

Scholarship on soldiering has explored the connection between the subject of the soldier and the nation, not so much through affirmations of these patriotic ideas of service and sacrifice, but by revealing the generative role warfare has played in the production of forms of social organization, citizenship, and national identity. Cowen’s (2008) explorations of military work highlight the way warfare and soldiering shaped national social welfare systems and contemporary citizenship after the Second World War. Other research has revealed the
importance of the soldier as a figure deeply implicated in securing the highly racialized and
gendered national identities of colonial settler states (Razack, 2004; Enloe, 1990; 1993).
Soldiering, then, has been constitutive of national citizenship, while at the same time
embodying exceptions to the very values of freedom and democracy they are supposed to
fortify.

If the narrative of the soldier as a model citizen obscures the gendered, racialized, and colonial
forms of national citizenship being produced through warfare, it also obscures the everyday
reality experienced by most of the soldiers who fought in Vietnam. The soldier may be held up
as a defender of democracy and freedom in veterans’ memorials, but for most of the low
ranking soldiers who served as ground troops or in the Navy during U.S. operations in Vietnam,
the space of the military was far from these ideals. Soldiers had very little control over the
conditions of their labour, and were restricted in their ability to speak out against the war
(Lewes 2003). In the accounts of those involved in the SOS movements, soldiers who
transgressed the norms of military discipline on board the USS Coral Sea to express opposition
to the war were disciplined, beaten, transferred, or incarcerated (A Statement, 1971a,b; Anon.,
technologies in military space maintain the soldier’s ambiguous relationship to citizenship.
Reflecting on Huntington’s (1957) assertion that the soldier is outside of citizenship because he
or she is “governed by laws, duties, expectations, economies and cultures that are antithetical
to liberal and democratic membership in a capitalist political economy,” Cowen (2008) reminds
us political and economic rights are suspended for soldiers who cannot unionize and who aren’t
subject to labour law in any meaningful way. For anti war soldiers on board Navy aircraft
carriers, the space of the ship was often one of isolation and insulation, a space where even the
simply political act of circulating a petition or literature, or writing a letter to Congress became
a transgression.

While the soldier is held up as a model citizen, then, they are at the same time often unable to
enact or access the very political and legal rights they are supposed to be defending, subject to
the extraordinary norms of military “justice”. For the anti war soldier, law is legally suspended,
and at particular moments the soldier thus exists in a state both inside and outside of
citizenship, likened to what Agamben, drawing on Schmitt, has called a state of exception (Agamben 1998, 2005).

Out of Agamben’s work, a wealth of scholarship has emerged on exceptional subjects who allegedly exist outside of the norms of the political. Refugee claimants, prisoners at Guantanamo Bay, sex workers, undocumented migrants, and subjects of colonial rule have all been theorized as existing in a state of exception, a state where the law is legally suspended, and the incorporation of bare life into sovereign power is revealed. Many have likened these subjects to the figure of *homo sacer*, the figure of ancient Roman law which Agamben uses to describe the position of one *who can be killed but not sacrificed*, the figure that embodies the relationship between sovereignty and bare life. It may seem strange to situate the soldier in this context, a subject who embodies the state’s monopoly on the legitimate use of violence, but dating back to Clausewitz, political theorists have often portrayed war as a space of exception outside the political and this has, in turn, justified curtailing the capacity of soldiers to be political subjects: their access to due process under the law, their protection from discrimination and harassment, their ability to engage in lobbying, protest and dissent, and the violence inflicted on them during their training and service. If the soldier sometimes enacts the sovereign exception through the violence and killing of warfare, they are themselves subjects for whom the law is suspended, not just in what they are “allowed” to do in their role, but how they are treated as they do it.

Scholars engaged with the field of Geography have been particularly interested in the spatial aspects of the exception, demonstrating, analyzing, and critiquing Agamben’s understanding of the legal suspension of law by revealing spaces and moments where the logic of exception seems to have crystallized (Diken and Laustsen 2006; Ek 2006; Gregory 2006; Minca 2007; Mitchell, 2006; Pratt, 2005;). In the context of antiwar organizing on board the USS Coral Sea, and the eventual welcoming of resistant soldiers into the political space of the city, a sensitivity to space and territory suggests the exceptional state of the soldier is not simply the result of the underlying logic of the exception, but rather constituted through everyday material practices of military discipline which situate them outside the realm of citizenship. As Dickinson et. al. (2008) have discussed, attention to everyday practices allows us to understand how citizenship
acts accumulate and produce the conditions under which political membership is experienced, bounded, and resisted. The subject position of the soldier does not simply flow naturally out of the soldier’s relationship to warfare or the sovereign state, but must be continually reproduced. Exception, in this context, is performed through the repetition of military discipline and practices of isolation. This raises questions about the importance of everyday state practices in the production of exceptional subjects. It also highlights the significance of practices of refusal and alternative acts of citizenship and territoriality such as those embodied in the politics of Sanctuary and refuge.

Figure 2 "A Warship Can Be Stopped," Newspaper from the Stop Our Ship Movement, Author and Artist Unknown, 1971?

Refuge and Refusal: “A Ship Cannot Sail Without Her Crew”

In the Fall of 1971, the isolation of antiwar soldiers on board the USS Coral Sea was eased somewhat when it docked at the Alameda Navel Air Station and the SOS campaign intersected (in not always harmonious ways) with the civilian anti-war movement in the Bay Area. For two months, as the ship engaged in sea trials and prepared for its departure to Vietnam, anti-war sailors did outreach beyond the ship while they were on leave. A number of joint protests and vigils were held just outside the Alameda naval base which attempted to bring the SOS campaign together with the civilian movement, including several actions designed to slow down traffic outside the base (Anon, 1971b). Joint protest marches organized by civilians were also
held in San Francisco and Berkeley in support of the SOS campaign (SOS, 1971; Stop that Ship, 1971). On Sunday, October 31st, people living in the Bay Area gathered together with sailors from the USS Coral Sea for a “Non Voyage Picnic” to show support for the SOS campaign. Much of the leafleting, newspaper, and organizing materials promoting these joint actions drew on democratic ideals, and attempted to place the soldiers at the forefront of efforts to end the war:

> It has become apparent that the majority of the Americans oppose the war in Vietnam. But the government has refused to be guided by public opinion. It has also become clear to many that the responsibility for ending the war will fall on those more directly involved: the military. The military man is given the task of carrying out the policy of the government without an effective means of influencing that policy...We are going to stop our ships. And we, the military men, are going to stop this war. (A Statement, 1971a)

While cooperation between anti war soldiers and civilians provided a means to escape the isolation of the ship and the suppression of information on board, collaboration had its challenges. Independent newspapers at the time suggest there were divisions between the various movements, disorganization, and a lack of cohesive approach to organizing (Anon, 1971a). During one action in October, when the ship returned from sea trials, 40 to 70 sailors spelled out SOS on the deck of the ship as it sailed through the Golden Gate. Civilian anti-war demonstrators were called upon to hang an SOS banner from the bridge as the ship passed under, but by most accounts the civilian side of the action fell apart and there was no one on the bridge to support the sailors, document the event, or communicate to the press (Stop that Ship, 1971).

Failed attempts at cohesive actions were particularly sensitive for military personnel involved with the SOS movement, given the risks they faced when they participated. One civilian organizer’s reflections on a demonstration held in front of NAS Alameda gives some indication of the difficulties of merging different cultures of anti-war organizing: “It was too much a “Berkeley” type demonstration – relatively undisciplined, little focus on the real issues and too many “freak” types who were unable to evidence solidarity with the struggles of the sailors...” (Miller, 1971)
The precarious position of the anti war soldier on board the aircraft carrier meant that civilian solidarity had to move beyond joint protest actions, particularly as more sailors faced disciplinary action and charges for their involvement with the SOS campaign. Broader based civilian supports became even more critical as many sailors publicly announced that they wouldn’t sail if the ship was going to return to duty in Southeast Asia. It was through Sanctuary that civilians, church congregations, and eventually the City of Berkeley itself were called upon to provide an alternative to soldiers who did not want to fight in the war. Sanctuary was an attempt to ameliorate the impact of reprisals while providing legitimacy, protection and material supports to soldiers who were considering a refusal to return to duty.

The Contagion and Mutation of Sanctuary Logics

One issue important in this case is that young men who have entered the military and encountered unexpected circumstances have changed their views concerning war. Now they face almost impossible alternatives: continue to participate in killing, start the long and uncertain process for obtaining CO status, while processing CO continue to participate in killing, or become a federal criminal by taking unauthorized absence or going AWOL… Killing or crime; that is the choice they are given. Traditional civil and religious sanctuaries are the place for arbitrating and exposing such injustice.

Rev. Gus Shultz, qtd. in One Man, 1971

In October of 1971, the University Lutheran Chapel in Berkeley joined with 17 congregations in California and announced they would provide Sanctuary to soldiers refusing to fight in Vietnam “(i)n order to fulfill our religious heritage and facilitate the liberties guaranteed by the First Amendment of the Constitution of the United States, and to provide one alternative for military personnel who wish to act on their beliefs” (Berkeley Church, 1971?). The majority of these congregations were located in San Diego or the Bay Area, close to the naval bases which had
become important sites for the support, training, and deployment of the aircraft carriers which were providing critical infrastructure to the air war (ref).

Proponents of Sanctuary during this time were mostly Christian church congregations who rooted their politics and practice in ancient legal and biblical traditions. The book of Exodus 21:13 (I will appoint for you a place to which he may flee...), was an important source of legitimacy for Sanctuary churches, which states that God will appoint a place for a person to flee if he kills without intention. The churches also drew on the ancient practices of Sanctuary which were supposed to have been practiced by the Phoenicians, Syrians, Greeks, and Romans, who were all cited as respecting the sanctity of particular spaces or shrines in which fugitives could find protection (Sanctuary Caucus, 1971b).

Although the Sanctuary movement drew legitimacy and authority from the Sanctuary narrative outlined in Chapter 2, Sanctuary was never incorporated into U.S. law and there was no legal recognition of it. Recognizing this, the network of churches issued a statement saying that while they were not encouraging persons to desert the military or encouraging them to take Sanctuary, they didn’t believe anyone should be “required to participate in an immoral, illegal, and undeclared war such as Viet Nam, nor be required to participate in any military action which for reasons of conscience, religious or political belief he cannot condone” (Berkeley Church, 1971?). Supporters drew on the moral authority of the church, ancient biblical traditions of Sanctuary and Refuge, and the very public nature of Sanctuary with the hope that military and civilian police would be less willing to enter the Sanctuaries to arrest soldiers who were refusing to fight. Ancient logics and practices of Sanctuary were recovered, in a somewhat mutated form, in order to bring the antiwar soldier back within the realm of the political.

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23 University Lutheran Chapel, Berkeley; Sacred Heart Catholic Church, San Francisco; St. Benedictine Catholic Church, San Francisco; Mary Help of Christians Catholic Church, Oakland; the Session of the First Presbyterian Church, Palo Alto; St. Andrew’s Presbyterian Church, Marin City; the Community of St. Ann’s, Pal Alto; Hayward Area Friends; Berkeley Friends; The Jesuits for Peace, Berkeley.
In Berkeley, the University Lutheran Chapel became an important Sanctuary church, close enough to the Alameda air base to be accessible to the Coral Sea sailors, and with a progressive congregation linked to the UC Berkeley campus and city wide peace movement. The Chapel’s pastor, Reverend Gus Shultz, went on to become an important advocate in the 1980s for refugee rights and a key organizer in the Sanctuary movement for refugees from Central America. For sailors from the USS Coral Sea, Sanctuary at the University Lutheran Chapel provided a space where they could seek counseling, legal advice, and support from each other, connecting with a part of the civilian movement rooted in faith based traditions. The Sanctuary in Berkeley was a very different kind of space than that of the aircraft carrier, representing a very different assertion of sovereignty. Organizers emphasized the idea that Sanctuary was not just for the protection of those who refusing to return to duty, but a space for was place for soldiers to come and reflect, to seek counsel, and discuss their options:

> Our reason for offering sanctuary is that men find themselves trapped. Our churches have recognized the right of people to selective conscientious objection; our government has refused to. This refusal places men in the anguish of impossible alternatives. Either they counter their conscience and continue to kill or they accept that status of criminals for refusing. It is to offer these men a new alternative that the churches involved reflected on their history and remembered the experience of sanctuary: providing a place where people, free from harassment and pressure, can reflect and understand and decide. And where, in their decision, they can feel a fellowship and sense of support.

The space of sanctuary created by the University Lutheran Chapel was informed by a commitment to peace, but also by a desire to provide a space where those who could not abide by the norms of the sovereign exertion of power could go and seek refuge. Given the huge risk and costs faced by soldiers resisting deployment to Vietnam, the Sanctuary church represented a space to provide support to these soldiers, to take on some of the burden of the “non-choice.”

While the history of civilian anti-war organizing in the San Francisco Bay Area may have made it easier for churches to take an active role in supporting soldiers who did not want to serve, the provision of Sanctuary was not without controversy. The University Lutheran Chapel’s declaration, for example, set off a debate within the Lutheran church more broadly. Rolph
Hough, the Executive Director of the California and Nevada District of the Lutheran Church – Missouri Synod, wrote a letter to its Bay Area Congregations which indicated it was reconsidering its support for the University Lutheran Chapel:

The University Lutheran Chapel is an organized congregation of the Lutheran Church – Missouri Synod and has a right to make decisions of its own. However, we can and do question the possible adverse effect of any decision involving laws of the land as well as basic concepts of Christian rights and privileges held by our members. The District grants subsidy for this campus ministry. The District also holds title to the Berkeley property. The course of action taken by the Chapel must direct our attention to the whole matter of continuing campus ministry in this area. (Rolph, 1971)

In the context of these challenges faced by the University Lutheran Chapel, the involvement of the City of Berkeley in providing support the Coral Sea Sailors was significant. It raised the public profile and legitimacy of Sanctuary. In the end, the University Lutheran Church did not desist in its sanctuary activities, but rather became implicated and involved in the city’s offer of Sanctuary.

“To Liberate the Spot of Ground on Which We Stand”

The most we can do if we don’t liberate the world, is to liberate the spot of ground on which we stand.

Howard Zinn, speaking to draft resisters at the Arlington Street Church in 1968 (quoted in Foley (2006))

On November 8, 1971, just before the USS Coral Sea was scheduled to set sail to the war in Vietnam, the City of Berkeley passed a resolution offering sanctuary to the Coral Sea sailors (See Appendix B). The resolution declared the city’s support for the men who were refusing to serve, and stated that the City would provide its own facility for Sanctuary. The policy thus represented an expansion of Sanctuary into the space of municipal politics. In the resolution, the City of Berkeley called on all residents in the city to assist with the provision of Sanctuary, asking them to donate bedding and food, legal and medical services, as well as friendship and
counseling, attempting to bring the soldiers who were refusing to serve within the realm of responsibility of the city and its residents.

Most important for the legacy of municipal sanctuary in the United States was the seemingly inconsequential 5th point of the resolution:

5. That no Berkeley City Employee will violate the established sanctuaries by assisting in investigation, public or clandestine, of, or engaging in or assisting arrests for violation of federal laws relating to military service on the premises offering sanctuary, or by refusing established public services. (City of Berkeley, 1971a)

It was this provision, the refusal to involve municipal staff (including local police) in the enforcement of federal law, which later became a model for municipal sanctuary policies passed to protect the rights of refugees in the 1980s (Interview with Bau, Ridgley 2008). These policies not only restricted the involvement of local authorities in the enforcement of immigration law, but also limited information sharing between municipal and federal authorities.

Berkeley’s resolution for the Coral Sea sailors passed 6-1 with one abstention, and the city started searching for an appropriate place to establish a sanctuary (City of Berkeley, 1971b). In the meantime, the University Lutheran Chapel continued to serve as main sanctuary space, now supported practically and politically by the City itself, as well as the 12 other Bay Area churches (GTU).

The City’s assertion of Sanctuary was a fairly popular initiative, but it did not go forward without threats and criticism which contested both its legality and practicality. Berkeley’s City Manager, William Hanley, who had long had disagreements with the left leaning members of City Council, announced he was against the Sanctuary initiative. “We cannot and will not provide such facilities,” he said, “It would be improper to spend one dime on any of this.” (Moore 1971). In response to the lack of support on the part of the City Manager, some of the members of City Council said they could call for the dismissal of municipal staff who did not respect the sanctuary of the city, “If the city manager and the chief of police don’t act as we
direct them,” Councilor D’Army Bailey said, “we will have to take steps to fire them.” (McGall 1971).

The move sparked debates in the press and at public meetings about the involvement of a city government in what was seen by many as a federal arena of responsibility. Religious leaders in the Bay Area responded to these criticisms by suggesting that the city was exerting its moral authority and responsibility where traditional procedures at the level of the federal state had failed:

Some have raised the question of the right of our City Council – or any local unit of government – to become involved in what is essentially a federal jurisdictional matter. Technically this may be questionable but given the ambiguities of our age, and the essential moral character of the issue, it would seem equally fair to ask how any unit of government can fail to get involved. When traditional procedures are not functioning adequately and injustices go un-remedied, those who see the issue clearly are amiss if they do not take every action within their power. I feel our City Council has acted within this frame of reference. (Jennings, 1971)

In a press release, the City held up not only its moral responsibilities to act in the face of what many perceived to be an illegal and unjust war, but emphasized the way the war was interfering with the practical concerns of city government: “The purpose of this decision is to dramatize to the federal government the depth of the anti-war feeling and to indicate the belief of the Berkeley City Council that the continuation of the war adversely affects the city’s ability to deal with important urban problems.” (City Council Supports, 1971?).

Then United States Attorney James Browning also threatened to prosecute members of the Berkeley City Council for encouraging desertion. Referring to the 5th point of the resolution, Browning suggested that Berkeley’s Sanctuary policy conflicted with the “policemen’s oath of law of the land,” and many other critics equated it with “un-American” activity (Moore, 1971). Edward Kallgren, one of the more moderate members of city council, clarified that the resolution was simply to ensure employees of the city would not violate the sanctuary: “If the Federal Government takes action, that’s fine, but our officers will not cooperate with them as they normally do” (1971).
In face of suggestions that the city was overstepping its jurisdictional or legal boundaries, supporters drew on a narrative of American citizenship linked sanctuary to foundational aspects of US Nation building. Raymond P. Jennings, the Pastor of the First Baptist Church in Berkeley, came to the defense of the City and its right to establish sanctuary, making links between the idea of the City as a space of Sanctuary, and national histories of refuge and the legal right to conscientious objection:

To equate support for Conscientious Objectors with un-American activity is an indefensible betrayal of our historic uniqueness... To call for the resignation – or even to be severely critical – of City Council members who have voted in keeping with their own consciences, is to irresponsibly undermine the foundation of our common life and national integrity. These are critical days in which we live. WE must individually and corporately think clearly, act rationally, and, above all else, protect the touchstone of true humanity: the individual conscience. This calls for openness, not closed hearts and minds; for building bridges, not the deepening of chasms between people. (Jennings, 1971)

The narrative of religious Sanctuary was thus grafted onto a nationalist narrative about the historical uniqueness of the United States as both a haven for the persecuted, and a space where individual conscience is protected:

The use of the word “sanctuary” is probably a misuse of the term. We have no such a concept in our American tradition, and for good reason. Many cultures including the Hebrew culture of the Old Testament do. It was a simple concept providing for the dramatic appeal of a person who through he was unjustly accused (See Kings 1:50-51 and 1 Kings 2:28-34). This was different from the cities of refuge to which criminals could flee (Numbers 35). A bit of both of these concepts was built into the American dream and the early colonies were both a place of sanctuary and a refuge. Man came to the New World to escape punishment for both unjust persecution and obviously criminal acts. America was, historically, proud of this kind of sanctuary. Safeguards against the injustices of the Old World systems were built into our system. The entire concept of Conscientious Objection to war is an outgrowth of this history, even through many people tend to equate conscientious objection with disloyalty. Our system recognizes and protects the right to conscientious objection.

Forging narratives of nation onto the City’s assertion of Sanctuary was significant in the context of threats from the federal authorities, and criticism that the soldier’s acts of refusal were “un-
American.” Mobilizing these discourses of nationhood and individual conscience served to legitimize Sanctuary as an act of citizenship.

### The Coral Sea Sets Sail...

At 12:31 pm, November 12, 1971, the USS Coral Sea set sail for Vietnam. The ship sailed without 35 of its crewman, although none of the missing sailors from the Coral Sea ended up publicly taking the City of Berkeley up on its offer of Sanctuary. In the press, one Coral Sea sailor expressed appreciation for Sanctuary offered in Berkeley, but said it would be “a direct bust by the federal authorities,” and suggested that the majority of people will go underground (McGall 1971). Nevertheless, for both the civilian and military anti-war movement in the Bay Area, the organizing around the USS Coral Sea was considered a success:

The USS Coral Sea sailed sometime after noon today but will never again be a trusted instrument of war. When the ship left a lot of people decided they could not go. Many men came to the University Lutheran Chapel to get help in making their decision. The movement to stop the Coral Sea has accomplished several important things:

The men on the ship learned about their rights to speak out and act against the war.

The men and other GIs in the Bay area who supported our struggle built a strong bond of unity with the civilian anti-war movement. As many as 2000 civilians came to Alameda naval air station at 5am to support the men.

This focused attention on the continuing genocidal air war. SOS focused civilian anti-war activity on the efforts that can really end war like stopping ships.

Important new commitments against war like the resolutions of Berkeley city council and the sanctuary caucus, set up by the Bay Area churches, were established. (Press Release, 1971)

An estimated 40 Coral Sea sailors came to the University Lutheran Chapel seeking counseling and support, and one soldier, not from the Coral Sea, eventually did seek longer term sanctuary in the space of the church (Sanctuary Caucus History, 1971?). As the Coral Sea set sail, the Lutheran Chapel issued the following statement:
This church, in offering sanctuary, sees it in a larger perspective than merely the here-and-now situation surrounding the departure of the Coral Sea. For us sanctuary is the beginning of a movement and a new hope. We will judge its success not finally in the number of men who choose to accept it, but rather in the alternative our offer provides to men in the dilemma of choosing. To the men who do come now and who will come in the future, we offer space, sustenance and support. Federal authorities who might violate our sanctuary would do well to remember that support for it has grown now to include 13 churches, nearly two thousand church people, a city council, and a Congressman. (One Man, 1971)

The organizing in the Bay Area also had an impact on resistance within the Navy itself. Despite all attempts to discipline those involved with the SOS Campaign, the petition was eventually signed by over a quarter of the sailors on board, and after departing Alameda in November, the Coral Sea sailors, as well as sailors on other aircraft carriers, continued their involvement in the anti-war efforts, including publishing underground newspapers, and meeting with mainstream journalists to get their story out. David Smith, reflecting on efforts to stop the Coral Sea, said “Maybe we didn’t stop this one, but the movement is spreading. And a ship can’t run without sailors.” (qtd. in Elinson, 1972). In an interview with journalist in March of 1972, sailors serving on the Coral Sea reported from the Philippines, saying that over 30 men had been discharged or transferred from the ship for SOS activities (Elinson, 1972). One of the sailors described their ongoing efforts to fight the isolation of the military:

They try to keep everything from us – they never let us know how many missions the ship flies, how many villages have been wiped out. So we started putting out a paper called ‘We Are Everywhere’ with statistics about how much ordinance we carry, how many people had been killed. We print it right on the ship and spread it all around. We’ve had three issues so far, they can’t figure out who’s doing it….We have meetings every night on board (qtd. in Elinson, 1972)

Most importantly for the anti war organizing on board the aircraft carriers, after the Coral Sea set sail, the SOS movement spread to other ships, including the USS Hancock, which was scheduled to deploy to Vietnam in January 1972. Soldiers involved with SOS made connections on the USS Midway, Oriskany, Ranger, Constellation, J.C. Owens and Okinawa, and collectively they began efforts to stop the deployment of the Hancock (Press Release, 1971; Wells, 1994; Cortright 1992). By 1972, there was an active SOS movement throughout the Navy.
Outside of the military, the SOS movement and its intersection with Sanctuary in the City of Berkeley ended up contributing to a more surprising trajectory of political organizing. The quote opening this paper referencing acts of holy contagion is from a speech given by sanctuary worker Reverend John Elliot in 1984 to people involved with the Sanctuary Movement for Central American refugees. Hundreds of sanctuary workers from church congregations and synagogues across the United States were gathered together in Tucson, Arizona to discuss the future of the movement. Fourteen of their colleagues had just been indicted on felony charges for their work providing refuge to Central Americans, and the movement was gathered together for several days of reflection and discussion on the religious, political and practical aspects of Sanctuary.

In his discussion about the future directions of Sanctuary, Elliot evokes Berkeley’s 1971 Sanctuary resolution for soldiers on the USS Coral Sea, and the way Sanctuary spread from church congregations to the city itself. Little did he know at the time that the infection would spread further, and the people gathered together in Tucson would take Berkeley’s 1971 resolution back to cities across the United States and push their local governments to adopt sanctuary policies for Central American refugees. While municipal sanctuary was initially conceived of as a space where anti war soldiers could reclaim their citizenship, the idea of the City of Refuge was later mobilized to create a similar space for an entirely different group of subjects.

Conclusions

In recovering this seemingly insignificant moment in the genealogy of Sanctuary in the United States, I have attempted to call attention to the struggles over citizenship that surrounded
Berkeley’s encounter with the USS Coral Sea, particularly efforts to reconfigure the soldier’s relationship to democratic practice and political community by bringing resistant soldiers from the isolation of the aircraft carrier under the protection of the City. The campaign to establish Sanctuary called attention to the air war, and the critical role played by the thousands of Navy troops who were needed to support the bombing. It was also rooted in the everyday realities of soldiering on board the USS Coral Sea, and the recognition that military discipline and the norms of military justice placed dissenting soldiers in a state of “non choice,” criminalized if they asserted their citizenship and acted with their conscience, or forced to contribute to the killing if they accepted their role as a subject outside of the realm of the political. In many ways, Sanctuary was an attempt to alleviate this contradiction.

The acts of refusal and refuge which constituted these struggles (the refusal of soldiers to participate in the air war, the refusal of the city to cooperate with the federal authorities, and the establishment of alternative spaces for soldiers to assert their rights, and the national narratives of refuge invoked by supporters of sanctuary) played a role in disrupting the everyday practices of military discipline that maintained the soldier’s isolation and exceptional relationship to political membership. This raises important questions about the political potential behind everyday acts of refusal and refuge, revealing how the boundaries of citizenship are produced and re-constituted, not through an inevitable or singular relationship to sovereignty, but the material practices and everyday spaces of political life.

The practices which established Sanctuary in Berkeley were rooted in the specific political contexts of anti-war organizing in the Bay Area, and the shifts taking place in the administration of the war in Vietnam. And yet, many years later, this model of municipal sanctuary was invoked to prevent the deportation of refugees fleeing a very different kind of military operation in Central America. By the mid 1980s, over 22 cities across the United States had declared themselves sanctuaries for Central American refugees, many invoking discourses and practices of refuge that emerged during the Vietnam War. While maintaining sensitivity to the way citizenship struggles manifest themselves in particular places and moments, this case demonstrates how political practices and the logics behind them have the potential to travel beyond the specific geographical and political contexts out of which they emerge to
unexpectedly play a role in other struggles. As acts of citizenship, then, the practices of refusal and refuge were contagious.

As I will discuss in the following chapter, the trajectories of Sanctuary and citizenship that crystallized around the SOS movement in the early 1970s have since run up against somewhat different technologies of citizenship than those directed at the Navy soldiers of the USS Coral Sea. Over the course of just over two and a half decades, the everyday practices of border security have become localized in the interior of the country, in urban areas, as local service providers and police have become more and more implicated in policing and surveillance of non citizens. The city is now an even more important site where the boundaries between citizenship and alienage, legality and illegality are both maintained, and refused.
Two months after the events of September 11, 2001, U.S. Attorney General John Ashcroft issued a memorandum to local police departments requesting assistance with the questioning of roughly 5,000 Middle Eastern men, most of whom were in the United States on temporary visas. The men were not suspected of any crime, but were selected because they fit “criteria of persons who might have knowledge of foreign-based terrorists,” based on factors like gender, age and national origin (Office of the Attorney General 2001, p.1). The memo asked local law enforcement to help the FBI collect information on the political beliefs of the men on the list, including how they felt about the attacks of September 11, and whether they were aware of anyone who had sympathy for the hijackers or their causes. Local police were also asked to obtain the names and phone numbers of all friends and colleagues in the United States.\footnote{24 On November 27, 2001, The New York Times published an excerpt from the Department of Justice, which listed the following guidelines for the interview:

TELEPHONE NUMBERS You should obtain all telephone numbers used by the individual and his family or close associates.

RESIDENCE You should ask the individual where he is residing and about any other residences that he has used since his arrival in this country. If he lives with others, you should inquire as to their identities. You should note any information that would assist in locating the individual in the future.

FOREIGN TRAVEL You should ask the individual what foreign countries he has visited, the dates of those visits and the reasons he went to those countries. You should inquire specifically whether he or anybody he knows has ever visited Afghanistan. . . .

REASON FOR THE INDIVIDUAL’S VISIT The individual should be asked about his reasons for visiting the United States. If the individual is here to attend school, you should learn what you can about his studies and future plans. If the individual is here as a tourist, you should inquire as to the cities, landmarks and other sites that he has visited or plans to visit. You should ask when the individual plans to leave the United States and where he plans to go. You should also ask the purpose of any trips the individual has made outside of the United States since his entry.

REGARDING THE EVENTS OF SEPT. 11, 2001 You should ask the individual whether he knows, or is aware of anyone who knows, anything about the Sept. 11 attacks or the perpetrators.

REACTION TO TERRORISM You should ask the individual if he noticed anybody who reacted in a surprising or inappropriate way to the news of the Sept. 11 attacks. You should also ask him how he felt when he heard the news.}
The plans for mass questioning sparked protest from civil liberties and immigrant rights groups who were concerned about racial profiling, mass detentions, and the targeting of immigrant communities in the post 9-11 security climate (Chadwick 2001, Wilgoren 2001, Richissin 2001, Glaberson 2001). The detention and questioning of men who had not been accused of any crime based on their citizenship status and national origins served as a powerful reminder of the capacity of the sovereign state to introduce exceptional measures under the auspices of national security which would not be acceptable under normal circumstances, or if applied to American citizens. While the interviews were framed as a voluntary contribution to nationwide antiterrorism efforts, the Department of Justice (DOJ) would not guarantee that there would be no consequences for men who did not agree to participate. The DOJ also asked local police to call the Immigration and Naturalization Service (INS) if they suspected interviewees were in violation of any immigration related regulations, and to detain without bond anyone found to be guilty of such offenses.

Most local police departments agreed to assist the DOJ with mass questioning in 2001, but a handful of cities refused. In many cases, federal efforts to have local police assist with the interviews ran headlong into state and local sanctuary policies and non cooperation ordinances which prevent local police from collecting information about a person’s immigration status if they have not been charged with any crime. Some of these policies were introduced during the 1980s in support of the Sanctuary Movement for Central American refugees. Others were

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25 Including, but not limited to, Portland and Corvallis, Oregon; San Francisco and San Jose, California; and Seattle, Washington (for coverage, see Associated Press, 2001; Bailey and Kuruvila, 2001; Cobb, 2001; Herel, 2001; Jones and Simpson, 2001; Madhani, 2001; Shepnick, 2001; Yardley, 2006).

IN VolvEMENT IN TERRORISM You should inquire whether the individual knows anybody who has had involvement in advocating, planning, supporting or committing terrorist activities, and whether he has ever had any personal involvement in such activities.

KNOWLEDGE OF WEAPONS The individual should be asked whether he or anybody he knows has access to guns or to any explosives or harmful chemical compounds, or has any training in the development or use of such weapons. You should also ask if he knows of anyone who is capable of developing any biological or chemical weapons such as anthrax. (Wilgoren 2001)
passed after the passage of IRCA in 1986 in order to build trust with immigrant communities at a time of rising nativist sentiment. It was during this time that the frenzy over an “invasion” of illegal aliens and the criminalization of refugees in public discourse had led to new immigration enforcement practices targeting Latinos in the United States, often leading to serious violations of civil rights.

While the DOJ framed the mass questioning as a national security initiative, some local police forces saw it as a potential threat to already strained relations with the immigrant communities upon whom they relied for information (Associated Press, 2001; Bailey and Kuruvila, 2001; Cobb, 2001; Herel, 2001; Jones and Simpson, 2001; Madhani, 2001; Shepnick, 2001; Yardley, 2006). There were fears that if police are seen to be collaborating with the INS, and the racial profiling practices of the DOJ, immigrants and people associated with immigrant communities would become even less likely to come forward as witnesses or victims of crimes. In the post-911 security climate, local ordinances, resolutions, and Executive Orders passed in very different historical moments, in the interests of quite different subjects, have been invoked to challenge the exceptional powers associated with securitization.

The following chapters focus on the two different trajectories of law and practice which came into conflict when the DOJ requested local police assistance with the interviews of Muslim and Arab men. Both have played a role in defining the appropriate responsibilities of municipal police and service providers with regard to the enforcement of immigration law, and both represent and reinforce very different ideas of citizenship and urban life. In one trajectory, the city has become an increasingly significant site for the regulation of non citizens and the maintenance of the citizen/alien divide. With the criminalization of immigration and the intensification of enforcement practices in the interior of the country, the day to day interactions between local service providers and immigrant communities have become sites for the policing and surveillance of non citizens, spaces in which the racialized boundaries of national citizenship are reinforced and the significance of formal citizenship status is felt in very palpable ways. And yet, over the course of the past 25 years, this localization of the border has come into conflict with a second trajectory of law and practice: the sanctuary policies, non cooperation ordinances, and local acts of refusal which have attempted to limit the
participation of local actors in the practices of border security. As I will discuss in the following chapters, these policies and practices, with their unlikely roots in religious Sanctuary, Vietnam war resistance, and the struggles of Central American refugees, have recently re-emerged center stage in debates about national security and the exceptional practices of governance that are seeping into urban life.

Policing the Border in the City

My core argument in this chapter is that the city has become an increasingly significant space for the boundary making processes of the federal state. This has occurred through changes in law, politics and practice associated with the criminalization of migration and the localization of border security. Over the past 25 years, the criminalization of migration has been entrenched into law and policy at the federal level, increasingly situating immigration as a law-and-order issue, while at the same time maintaining migration controls as an exceptional form of governance, “which float – by design – separately from the rule of law” (Coleman 2007).

Criminalization has been accompanied by a localization of immigration law enforcement in the interior of the country which has opened up space for the involvement of local police and municipal service providers in the everyday practices of immigration law enforcement: checking the immigration status of the people they come into contact with and sharing that information with the federal authorities. As a result of these interconnected processes of criminalization and localization, the city must be understood as an important site for the regulation of citizenship, a space where the boundaries between citizen and alien are maintained, and what De Genova calls the “production of migrant illegality” is reinforced.

De Genova uses the language of production in his work to disrupt the naturalization of migrant “illegality” as a mere fact of life, “the presumably transparent consequence of unauthorized border crossing” (2004: 161). His research documents the historical changes in law and policy which have rendered the status of Latinos in the United States as “illegal.” By doing so, De Genova shifts our focus away from the “individual choice” model of understanding undocumented migration, and onto the state policies which have produced the racialized
I build on De Genova’s approach here to highlight the geography of these processes, focusing on the specific sites and urban spaces through which the subject of the illegal alien is produced, particularly the laws and practices that have opened up space for the involvement of municipal civil servants and police in immigration law enforcement. Coutin’s (2000) rich ethnographic work has explored some of the ways Salvadorans in the United States have negotiated their legal status, through court battles and political movements, but also everyday practices such as going to school, working, obtaining an address or forming a family that establish presence and belonging (p.41). Her work highlights the spatialized and contested nature of illegality. In this chapter, I want to return to the legal and political geographies of the state, to highlight the processes through which the city has become a kind of factory for the production of illegality, a space where migrant labor is marginalized and migration increasingly securitized through the everyday practices of service providers, local police, and employers. I focus great deal of my discussion on local police involvement in the enforcement of immigration law because it is one of the sites where the insurgent potential of the City of Refuge intersects with the growing significance of citizenship as a legal status that designates access to rights.

The regulation of immigration in the United States involves complicated legal terrain, I focus my analysis on three definitive moments of policy change: the passage of the Immigration Reform and Control Act (IRCA) of 1986, the major federal immigration reforms of the 1990s, and contemporary security measures introduced in the context of the “War on Terror.” Focusing on federal legislation, judicial decisions, and legal opinions, I discuss how the convergence of crime control and immigration control serves to justify the involvement of municipal police forces in the day to day practices associated with border control. By exploring how migrant “illegality” is produced (cf. De Genova, 2002) both through federal law and the daily practices of policing in the city, I show how this trajectory of criminalization helps legitimize withholding some of the most basic civil rights from noncitizens, including due process, prohibitions on detention without charges, and freedom from discrimination. The fact that the process of criminalization
relies so intimately on the participation of municipal staff and service providers in the governance of non citizens reminds us how important the city is as a potential site for refusal.

Local Police and the Enforcement of Immigration Law

Although state and local police have historically cooperated in various ways with immigration enforcement, particularly when it came to the criminal provisions of the Immigration and Nationality Act (INA), this involvement was often discretionary and locally specific. In U.S. law, the power to make immigration policy falls under federal jurisdiction—an authority tied to the federal government’s control over relations with foreign powers. In the past, the U.S. Supreme Court has struck down state laws that sought to regulate migration on the grounds that they violate the Equal Protection Clause of the Constitution as well as the principle of federal preemption. The questions of authority that surround enforcement, however, have been much less clear (Wishnie 2004). When the INA was established in 1952, its founding legislation never addressed whether state and local police had the authority to enforce federal immigration law, and subsequent revisions of its legal charge failed to fully clarify this issue. Since the late 1970s, the question of whether municipal police officers should be engaged in immigration enforcement has been resolved in law through a series of judicial decisions, legislation, and legal opinions that have established distinctions between civil and criminal provisions of the INA (Pham, 2004; Wishnie, 2004). Being present in the United States without authorization, whether following an illegal entry or overstaying a visa, is generally a civil issue, whereas entering without inspection (EWI) or willfully disobeying an order of removal are considered criminal offenses. Historically, local police have also played a role when it comes to “criminal aliens,” including undocumented individuals who were convicted of crimes in the United States or legally present immigrants whose criminal convictions made them subject to removal. As I will discuss, in the post 9-11 security climate in 2002, when the DOJ issued an opinion stating that local police have an “inherent authority” to enforce all aspects of immigration law, the Department was going against several decades of legal traditions that limited police authority in immigration matters (Kanstroom, 2004; Keblawi, 2004; McKenzie, 2004; Pham, 2004; Wishnie, 2004). By blurring the distinction between criminal and civil offenses, it expanded the arenas of
immigration law enforcement local police could legally participate in, opening up space for a
deeper involvement of local service providers in the boundary making processes of the federal
state.

A 1978 press release from the DOJ stated that INS officers were uniquely prepared for
enforcement because their special training enabled them to negotiate the fine distinctions and
complexity of immigration law, and so “the responsibility for enforcement rests with the INS,
and not with state and local police” (U.S. Department of Justice 1978: 306). Gonzalez v. City of
Peoria (1983) established that local police were not authorized to enforce the civil provisions of
the INA, in part because they constituted so complex a regulatory scheme that Congress had
left no room for state activity, while criminal provisions at the time were fewer in number and
relatively simple in their terms (Bau 1994).

The separation between the civil and criminal provisions of immigration law established in
Gonzalez has been a part of most related legislation and legal opinions ever since, including
those issued by the DOJ in 1983 and 1996, which affirmed the limitations on police participation
in the enforcement of the civil aspects of immigration law (Appleseed 2006). For example, the
1996 DOJ Office of Legal Counsel Opinion stated that “state and local police lack recognized
legal authority to stop and detain an alien solely on suspicion of civil deportability, as opposed
to a criminal violation of the immigration or other laws” (U.S. Department of Justice Office of
Legal Counsel 1996). What has changed, particularly since the major immigration reforms of
1996, has been an increase in the number and complexity of the criminal provisions, as certain
civil violations have become criminalized, and many more criminal offenses have been added.
This is part of the process that Coleman (2007) has called the criminalization of immigration
law.

Because of this legal history, municipal police have cooperated the most with the INS (or more
recently Immigration and Customs Enforcement, or ICE) only when there was an intersection
between the criminal justice system and immigration law. But local police participation in
immigration enforcement activities can take many different forms, including investigating a
person’s immigration status at routine traffic stops, sharing information with the INS,
accompanying agents on raids, and in some cases detaining people who are suspected of being in the country without authorization. This is because police participation in immigration enforcement is determined by more than judicial decisions and legal opinions. On the ground, it is affected by the practicalities that surround day to day policing practices, including limitations on staff and resources, local political climates, and the discretion of individual police departments or officers. This has led to an uneven geography of enforcement across the country, even down to the neighborhood level in a particular city. For example, immigrant rights groups have long complained that immigration enforcement has disproportionately targeted poor Latino neighborhoods, reinforcing public perception that Spanish-speaking immigrants living on low incomes are “illegal.” Romero’s (2006) research on Chandler, Arizona, explores how local police cooperation with the INS in 1997 was connected to urban redevelopment efforts, with raids focusing on Mexican–American neighborhoods targeted by the city for redevelopment. The micro geographies of immigration law enforcement, then, play into the processes of both the production of migrant identities as “illegal”, but also, in some cases, urban space itself.

Layered onto the extremely complicated map of enforcement practices is a tension between pressures to enforce immigration law, capture and deport people who are in the country without authorization in order to assert control over national sovereignty and territorial boundaries, and the reliance on the cheap, insecure labor force that illegality produces. De Genova (2005, p. 215) points out that it is deportability, not deportation, that must be produced in the daily practices associated with immigration enforcement. “Some are deported,” he writes, “in order that most may ultimately remain (un-deported)—as workers, whose particular migrant status has been rendered ‘illegal’.” Illegality is therefore crucial to the control of a flexible and precarious labor force. As Calavita (2003: 402) says about immigration enforcement, “It is not so much the state’s power to control immigration and shore up the border that is at issue (a power that in any case has proven ephemeral at best) but rather its ability to control and marginalize immigrants, defining them as alien outsiders and thereby heightening their potential contribution to capitalist economic relations.” The everyday practices of immigration law enforcement are thus tightly bound to the production of citizens
and their alien “others.” Whereas much contemporary discussion about the appropriate role of local police in immigration enforcement focuses on the “confusion” of law, and a need to “clarify” authority (e.g., in the recent debates around the CLEAR Act\textsuperscript{26}), the confusion surrounding immigration enforcement is far from random. It is contradictory in part because America’s relationship to undocumented migrants is necessarily contradictory, producing what Ngai (2004) calls “impossible subjects,” whose inclusion in the nation is a social and economic reality, while at the same time being a legal impossibility.

The contradictions and unevenness of immigration enforcement also exist because different state institutions at various scales, and in different geographic locations, have differing interests when it comes to the policing and surveillance of noncitizens, and do not always act in concert with each other. Wells (2004) described how the multilayered structure of the U.S. nation-state creates openings for “alternative interpretations and concretizations of federal policy” that are rooted in local political and institutional contexts. Local governments and law enforcement agencies have been an important part of what Wells called the grassroots reconfiguration of immigration policy as they negotiated their relationship to immigrant communities, local political contexts, federal and state institutions, and the law. As many proponents of such local policies point out, the sensitive nature of police relations with immigrant communities calls for a separation between local policing practices and the technologies of policing and surveillance associated with border control. Victims and witnesses of crimes are often fearful about contacting police if they believe they, or the people they know, could be handed over to the immigration authorities. Immigrant women who are being abused by their partners or spouses are often fearful of reporting their situation, or accessing the services they need if they have irregular immigration status (Interview with Saucedo, Interview with Hwang).

\textsuperscript{26} The CLEAR Act was introduced in 2003 and had a number of provisions which would have increased local police involvement in the immigration law enforcement, stating that state and local police had full authority to enforce immigration law. It was sponsored by Rep Charles W. Norwood, and introduced 7/9/2003.
The recognition that people should be able to use emergency services, report crimes, provide information to the police, access basic entitlements, and participate in community life without fear has led some cities to implement policies that maintain a clear separation between policing and immigration enforcement. Moreover, the complexity of immigration law and lack of training means that most local police are unqualified to play a major role in enforcement. When they do, they often deploy profiles based on race or ethnicity to draw conclusions about a person’s immigration status, which has led to a history of civil rights abuses and occasionally litigation against the police forces involved (Schwartz, 1995; Kanstroom, 2004; Pham, 2004; Romero, 2006). Combined with limitations on local staff and resources, these issues have historically constrained many cities in playing a significant role in the enforcement of immigration law.

An important side observation can be made here about the way the localization of immigration law enforcement over the past 25 years has come into conflict with parallel shifts in the politics and practice of policing, especially the spread of “community policing” models of crime control during the 1980s and 1990s. Community policing involves establishing closer relations between community members and police, and greater resident participation in the prevention of crime (Greene and Mastrofski 1988, Trojanowicz and Bucqueroux 1994; Skogan and Hartnett 1997). At the heart of this model is an attempt to mobilize the capacity of neighbourhoods to exercise informal social control in the service of the state (Herbert 2001; 2005). Herbert (2001), who analyzes community policing as a form of neoliberal governance, discusses how its underlying principles brought together communitarian ideals about participation and local autonomy with policing to enhance the state's control over space. Theoretically, under the community policing model, local police develop stronger trust and relationships with residents, and are thus able to tap into residents as a potential source of information and legitimacy. In many immigrant communities, it is these relationships that become jeopardized when police begin to play a bigger role in the everyday practices of border security.

It is interesting to note, then, that since the 1980s, as the federal government has attempted to devolve more immigration related responsibilities onto local police in the interest of securing the territorial boundaries of the nation state, municipal police forces were in the process of
enlisting proxy actors of their own, in this case civilian residents, in more localized forms of territorial control. While a detailed analysis of the tensions and convergences between these two shifts in governance is beyond the scope of this project, it does suggest that the mandate of different state agencies, and the multiple positions occupied by police as enforcers of the law and service providers to the community, has been troubling the structural coherence of governmental logics. As will be more obvious in the following chapters, advocates and activists in many cities have been quite attentive to the spaces of insecurity and inconsistency in governmental mandates. Indeed, to some degree, the City of Refuge may only be possible because of them.

Before exploring this idea further, I first want to outline the broad changes in federal law, policy and practice that have served to erode the division between municipal policing and migration controls over the past 25 years, focusing on three major periods of policy change: the introduction of the IRCA in 1986, the major immigration reforms of the mid-1990s, and contemporary initiatives introduced in the context of post 9/11 “War on Terror.” Although the post 9/11 security climate has sparked renewed energy for laws and practices that manage migration through crime control, current federal initiatives should be situated within broader legal histories that have reconfigured the geography of immigration enforcement in the United States, including the growing involvement of local service providers in the policing and surveillance of noncitizens and the criminalization of immigration law (Coutin, 1993; Welch, 2003; Ngai, 2004; Coleman, 2007).

The Immigration Reform and Control Act of 1986

A rising preoccupation with illegal immigration in public discourse during the 1970s and early 1980s was institutionalized in federal law in 1986 with the passage of the Immigration Reform and Control Act (IRCA), an extensive piece of legislation that focused specifically on addressing the issue of undocumented migration. The IRCA contained provisions for a large-scale legalization program and represented an intensified focus on enforcement, dramatically increasing resources for the INS. Indeed, the budget and staff of the INS doubled between 1986 and 1990 during a time when many other government agencies experienced significant
cuts to funding (Wells 2004). The expanded resources allocated to immigration enforcement, together with a rising national obsession with “illegal aliens” during this time, led to waves of immigration raids in many U.S. cities, sometimes conducted with the assistance of municipal police forces, staff, and local officials. Because the figure of the “illegal alien” was associated with Mexican migration, the increase in enforcement activities had a particularly punitive impact on Latino communities, which experienced growing incidents of discrimination and racial profiling from the INS.

The passage of IRCA also introduced an employer sanctions program to provide penalties for employers who hired people unauthorized to work, making employers responsible for checking and maintaining records on the immigration status of their employees, including U.S. citizens. The purported goal of the employer sanctions program was to remove the magnet of jobs that drew undocumented people to the United States in the first place. In a move that presaged 1996 legislation that made immigrants ineligible for many federal assistance programs, the IRCA added a new aspect to immigration controls which focused on restricting, even criminalizing, access to jobs and services by making these sites of surveillance where immigration and citizenship status were monitored. Whereas the enforcement of the employer sanctions program over the years has been insubstantial, further marginalizing migrant workers instead of actually penalizing employers due to widespread discrimination, the IRCA did represent a new focus on expanding immigration enforcement beyond the country’s borderlands to sites and scales not previously associated with border security. As Coutin (1993) pointed out, it was during this time that employers as well as other private citizens faced increasing legal liabilities for the immigration status of those whom they hired, drove, and assisted:

The 1986 Immigration Reform and Control Act requires employers to document the work authorization of every new employee. Immigration statutes make it illegal to knowingly house, transport, or further the presence of an illegal alien. Vehicles used to bring aliens across the border may be confiscated by Immigration officials, even if the driver is unaware that the passenger is undocumented and if criminal charges are never filed. Procedures that detect and deny services to illegal aliens are increasingly performed by individuals who are not part of the INS. In Arizona, the Systematic Alien Verification for Entitlement [SAVE] program screens welfare applicants by tapping into INS computers. College admissions officers
sometimes require proof of citizenship from applicants. Hospitals and physicians sometimes check patients’ immigration statuses. (Coutin, 1993, p. 97)

In a trend that continued with the major immigration and welfare reforms of 1996, surveillance and policing was thus displaced from immigration officers to private citizens and local service providers—what Coleman (2007) calls local proxy forces—who then became implicated in not only in the enforcement of immigration law, but also the production of illegality and the subjects who are associated with it.

The 1996 Immigration and Welfare Reforms

The mid-1990s was a time of comprehensive reform to immigration policy in the United States which straddled not only the traditional institutions of border security and citizenship policy, but also welfare reform and crime control. Across the country, rising anti-immigrant sentiments were reflected in the passage of a number of state laws that made English their official language. During this time, many city and state governments were protesting that they bore an overly heavy burden of unauthorized immigration, and were putting pressure on the federal government to implement stricter migration controls. In public discourse, immigrants were blamed for the erosion of the social safety net, as noncitizens (both undocumented and legally present) were positioned along with poor and racialized groups (who can sometimes be understood as de facto non-citizens) as abusers of the welfare system.

Grace Chang (2000) has made an important observation about the gendered rhetoric of anti-immigrant politics during the 1990s, suggesting this moment marked a shift from the idea that male migrant labourers were stealing jobs from ‘native’ workers to a greater focus on the burden immigrant women (particularly Latinas) were allegedly imposing through high birth rates and dependency on the welfare system. To some degree, she argues, anti-immigrant politics were responding to changes in Mexican migration patterns. Prior to the 1970s and 1980s, the majority of Mexican migrants to the United States were male, unaccompanied, seasonal workers. As more and more Mexican women began to settle and raise children in the United States, anti-immigrant politics, and the discourse of threat that accompanied it, focused
more and more on the institutions of social reproduction: the burden on schools, on healthcare, on social assistance. As Lindley (2002) says, “immigrants went from being job stealers to resource depleters,” a shift in discourse that intersected quite powerfully with the broader processes associated with the restructuring of the welfare state.

There was a convergence during this time, then, between welfare criminality and immigrant criminality which crystallized around discourses of burden and the entitlements of citizenship. Immigrants, poor people, and people of colour, were presented as a threat to the state’s ability to provide for its “deserving” citizens, and thus it is not surprising that the institutions of social reproduction and service provision became the important sites where the boundaries of citizenship were maintained. As De Genova (2005: 206–207) pointed out, anti-immigrant racism operated:

in tandem with what was, in effect, the inherent racism and sexism of the assault against welfare—because it was disproportionately identified with African Americans, and especially women (and their children). The anti-immigrant politics of the 1990s were therefore profoundly connected, both in discourse and its implementation, with the furious ideological condemnation and practical dismantling of the social welfare safety net for impoverished U.S. citizens.

A rising anti-immigrant rhetoric in the late 1980s and early 1990s was fueled by the debates and eventual passage of Proposition 187 in California in 1994, which sought to deny immigrants (including those who were legally present) access to basic entitlements. Although Proposition 187 was eventually ruled unconstitutional, the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA or Welfare Reform Act) in 1996, made many of its provisions redundant anyway. Together with the passage of the Anti-Terrorism and Effective Death Penalty Act (AEDPA), rushed through after the 1995 Oklahoma City bombing, federal legislation gave policy expression to the political discourse that associated a lack of border control with crime, gangs, the erosion of the social safety net, and a loss of cultural hegemony. While the enforcement provisions of the 1986 IRCA focused on the policing and surveillance of the undocumented, the 1996 reforms expanded the criminalization of immigration law in ways that directly constricted the rights of all noncitizens in the United States. As I will discuss, they also
created more openings for local police to participate in immigration enforcement, and attacked local laws such as sanctuary policies that attempted to limit cooperation with the INS.

The IIRIRA and PRWORA reduced immigrant eligibility for social services, requiring verification of citizenship status for some of the most basic entitlements. This affected not only undocumented migrants, who were made ineligible for almost all federal programs, but also immigrants who were legally in the country. Immigrants who did not have full citizenship status were restricted from Supplemental Security Income (SSI) and food stamps, and excluded from many federal assistance programs for five years after entry. States were also granted the power to restrict immigrant eligibility to Medicare. These reforms were more than just a cutback on entitlements, but resulted in the introduction of new bordering practices into the space of the city, as the significance of formal citizenship status as an arbiter of access was strengthened during this time. As part of its focus on reducing undocumented migration, the IIRIRA instituted a pilot program that curtailed the issuance of drivers’ licenses to people who were in the country without authorization. It also restricted access to higher education, requiring colleges to collect information on foreign students’ status and share that information with the INS.

With the passage of this legislation in 1996, then, workers in social services, law enforcement, health care, and education thus took on further responsibilities for verifying the immigration status of the people they served, and were placed under increased obligation to share that information with the immigration authorities. This further localized the day to day practices associated with immigration law enforcement, as the checking and confirming of immigration status became an increasingly pervasive component of interactions with state institutions. In an interview, Ignatius Bau identified the change in attitude that occurred at the INS which has brought border security more intimately into the space of the city, saying:

I think the INS since [the 1980s] has really shifted its view and its communications people, its philosophy as an agency, and again, this is bipartisan, regardless of Democratic or Republican administrations, it is a different mentality, especially since the 1990s federal immigration laws has really changed, and they are much much more on this message that no, we want all cooperation with everyone. And so it is now a slightly different tone. But at that point, up through 1989, they were kind of hands off.
The 1996 reforms, like California’s Proposition 187, were in part based on the assumption that restrictions on access to entitlements and the everyday practices of surveillance that accompanied them would make life so difficult for undocumented migrants and legally present people who relied on state support, that they would simply “self-deport” (Neuman 1995). In practice, it is more likely they drove people underground, contributing to the production of a more exploitable and precarious workforce. As Grace Chang (2000) has illustrated in her research, for example, the same policies that evicted large numbers of racialized women from state support also created a large, feminized and exploitable workforce who then took on the work of social reproduction just as the state was allegedly retreating from it.

In a direct attack on local sanctuary policies, and a move that facilitated the further diffusion of federal boundary making processes into local spaces, the IIRIRA of 1996 voided local laws that prohibited state and local agencies, including local police, from sharing information with the INS (See Chapter 6). It stated that “a Federal, State or local entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the INS information regarding the citizenship or immigration status, lawful or unlawful, of any individual” (IIRIRA, Section 1373, 1996). Section 434 of the Welfare Reform Act had a similar provision. These provisions were “designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS” (HR Conference Report Number 725, 104th Congress. 2nd session. 383 [1996]). The 1996 immigration reforms thus made it more difficult for cities to prevent their employees from turning in undocumented migrants who had sought out essential services such as medical care, education, and police protection.

The 1996 reforms also deepened the criminalization of immigration law. The AEDPA and the IIRIRA increased penalties for immigration violations and expanded the list of crimes for which legally present noncitizens could be deported, so that even minor crimes committed decades ago could serve to initiate deportation (now legally called removal). Removal procedures were reformed, due process rights were restricted, and deportation proceedings were pushed further outside of judicial review, severely limiting the rights of noncitizens who had been
convicted of crimes. Increased resources were also made available to the INS for detention spaces, staffing, and resources in order to enforce the new provisions. As Ngai (2004) pointed out, since 1996 “legal permanent residents now remain in a condition of permanent probation because they may be deported for certain offenses regardless of how long they have lived in the country. In effect, the legislation of the 1990s reconfigured the line between legal and illegal alienage, enlarging the grounds that turn legal immigrants into illegal aliens and making it nearly impossible for illegal aliens to legalize their status” (268–269).

The sweeping legislation introduced in 1996 provided for the use of secret and unlawfully obtained evidence in deportation hearings for legal resident aliens. It was the anti-terrorism provisions in the IIRIRA and AEDPA (which had rarely been mobilized previously) that established the legal backbone for the mass arrests and detentions of noncitizens without charges that followed the 9/11 attacks. The USA PATRIOT Act of 2001, and more recently the Military Commissions Act of 2006, both intensified the constriction of due process and other legal protections, in many cases expanding the provisions of the AEDPA to apply to U.S. citizens. Over the past 20 years, federal legislation has thus gradually eroded legal protections and due process, for undocumented migrants in the 1980s, for legally present noncitizens in the 1990s, and most recently for those with full citizenship status, raising an important point about the diffusion of the practices that produce the exception across different spaces and subjects.

**Local Police and the 287(g) Program**

In addition to reforming legal protections, the IIRIRA and AEDPA provided a number of mechanisms for state and local police to become involved in the enforcement of civil immigration law. It authorized state and local police to participate in emergency cases where there was a “mass influx” of foreign nationals, as long as such participation was sanctioned by state or local governments. AEDPA also allowed local police to arrest and detain immigrants who are illegally present if they had been previously convicted of a felony and deported from the country, and permitted the FBI to include records of previously deported felons in the National Crime Information Center (NCIC) database, a database used by police in the course of their daily duties.
IIRIRA established an optional process for state and local police to enter into written agreements with the U.S. Attorney General—a Memorandum of Understanding (MOU)—whereby local officers would receive special training to enforce the civil provisions of immigration law. This later became known as the 287(g) program. While this program was enabled by 1996 immigration reforms, before 9/11, no local police department had ever formalized a 287(g) agreement with the DOJ. This changed in the post-911 security climate for two reasons. First, as I will discuss below, under the guise of national security, the federal government began more active efforts to have local police participate in civil immigration law enforcement. Second, resistance by some local police forces lessened as they themselves began to explore the potential contributions they might make to “national security” efforts, and the criminalization of migration law brought border management more closely in line with the law and order agenda of some local forces. As immigration law has become increasingly criminalized, the idea that local police should play a larger role in its enforcement has become increasingly naturalized.

In some ways, then, the 287(g) program is like that seemingly innocuous section of Berkeley’s Sanctuary policy from 1971 which limited cooperation between local and federal officials during the Vietnam War. At the time it was passed, Berkeley’s policy had little significance or impact on the daily practices of police, but was later reborn in the 1980s in City of Refuge ordinances and sanctuary policies across the country to limit cooperation with the INS. Similarly, the 287(g) program was largely dormant for years until changes associated with the 9/11 security regime, particularly attempts to localize the surveillance and policing of non-citizens, renewed its relevance. In contrast to their failure to establish a Memorandum of Understanding (MOU) between 1996 and 2001, following 9/11 more than 34 MOUs27 have been signed with the DOJ that extend local police involvement in immigration enforcement, acting on the provisions enabled by 1996 legislation, and increased pressure from the INS (and now ICE) to become “proxy actors.”

Post-9/11: Immigration as Security Risk

Efforts at the federal level to increase local police involvement in immigration enforcement have intensified since 9/11 as the policing and surveillance of noncitizens in the United States has become a significant site where the War on Terror has been made manifest. In Congress, a number of pieces of legislation have been introduced over the past few years to authorize local and state police to enforce the civil provisions of immigration law, including the CLEAR Act and its Senate version, the Homeland Security Enhancement Act, the original version of the Intelligence Reform Act of 2004 and H.R. 4437 (The Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005). Much of this legislation would also have penalized cities with sanctuary policies by withholding funds to local governments who restricted their police from participating in immigration enforcement.

As discussed in Chapter 2, it was this legislation, especially H.R. 4437 which sparked the mass protests for immigrants’ rights across the country in 2006 and 2007. Whereas all were eventually defeated in the face of widespread opposition and organizing, the introduction of these pieces of federal legislation did represent more Congressional support for local police involvement and a renewed interest in challenging sanctuary policies. Despite the fact that Congress has been unable to pass this legislation, federal and local governments have implemented several other initiatives that more closely tie police to the enforcement of the civil provisions of immigration law, including a controversial opinion from the Department of Justice which stated that local and state police have an “inherent authority” to enforce all aspects of immigration law.

The “Inherent Authority” of Local Police to Secure the Border

In 2002, U.S. Attorney General John Ashcroft announced that local and state police had an “inherent authority” to enforce immigration law, and representatives from the DOJ began to urge local police to utilize that authority to contribute to the fight against terrorism (Ashcroft 2002). This statement, based on a legal opinion issued by the DOJ earlier that year (U.S. Department of Justice Office of Legal Counsel 2002), which outlined that states, by virtue of
their status as sovereign entities, had authority to enforce all federal laws, including immigration laws, unless specifically preempted by Congress (U.S. Department of Justice Office of Legal Counsel 2002). The opinion went against more than two decades of legal opinions and judicial decisions that held that enforcing the civil provisions of immigration law are solely the responsibility of federal authorities (U.S. Department of Justice, 1978, 1983; U.S. Department of Justice Office of Legal Counsel, 1996; Gonzalez v. City of Peoria, 1983). The convergence between immigration policy and national security that accompanied the “war against terror” had opened up space for a rethinking of the role of that local police had in the everyday practice of border security, as the securitization of the city and the securitization of the border became more closely connected (Interview with Bau, Interview with Pham).

In a move that frustrated many immigrant rights groups, the DOJ refused to make public the text of the 2002 Opinion until September 2005, when a number of organizations sued under the Freedom of Information Act to have it released. Since then, civil liberties groups have challenged the validity of the DOJ opinion, arguing that it “willfully obscured” the distinction between criminal and noncriminal enforcement, ignored cases and legislation that suggest Congress had preempted state and local immigration arrest authority, and contained the “absurd” implication that state and local police had an inherent authority to arrest individuals for any violation of a federal statute, including those related to taxation, environment, finance, or food safety (ACLU, 2005). Subsequently, the American Civil Liberties Union (ACLU) found that “the OLC’s selective and misleading survey of the law results in an opinion that is much more of a political document than neutral and reliable legal advice” (ACLU, 2005, p. 5).

The War on Terror has also been used to justify new information sharing arrangements that impact the day to day interactions between local police and immigrants. The NCIC, which is accessed by police officers in the course of their daily duties, now contains immigration information. In 2001, the INS announced that records related to certain categories of civil

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immigration violations were going to be entered into the database—alleged “absconders,” or people believed to have ignored an order of deportation. Priority was given to the entry of records of absconders from “countries in which there has been Al Qaeda terrorist presence or activity” (U.S. Deputy Attorney General 2002: 1). Since then, the quantity of immigration-related information in the NCIC has increased to include people who have not complied with the requirements of the National Security Entry-Exit Registration System (NSEERS). NSEERS is the program, announced by Attorney General Ashcroft in 2002, that required selected categories of people (mostly men and boys from Muslim Southwest Asian countries) to report so that they could be registered, fingerprinted, and photographed. As Wishnie (2004: 1102) pointed out, the entry of immigration information into the NCIC raised serious concerns about racial profiling:

Only men of a certain age and national origin—essentially men born in predominantly Arab or Muslim countries—were required to comply with NSEERS call-in registration. The universe of potential NSEERS violators is therefore overwhelmingly Arab and Muslim men, and so a request that local police arrest “NSEERS violators” is tantamount to a request to arrest Arab and Muslim men.

Because failure to meet NSEERS requirements is not a criminal offense, the entry of these immigration records into the NCIC also raised concerns that local police would end up detaining or arresting people for charges which they had no—or at most very questionable—legal authority to enforce. In 2003, the Department of Homeland Security also announced they would begin to add records of student visa violators into the NCIC if they had violated the Student and Exchange Visitor Information System (SEVIS)—for example, if a student failed to report a change in course load or address change (Wishnie 2004)—although the agency in late 2008 seemed to be in the process of reconsidering this use of the database.

Aside from these formal measures, there are some indications that the promotion of the “inherent authority” position from the DOJ and the construction of immigration enforcement as a national security issue have had an impact on the discretionary duties adopted by local police, leading to a further localization of federal boundary making practices. As Bau said, the language of national security exerts a powerful influence on local officials:
It is very, very hard, politically, if you introduce a national security element into it, it is very hard for anyone to resist that, and to publicly resist that, because it is such an overriding stop.  [the idea that ] whatever in the name of national security we have to do, we do. (Interview with Bau)

Indeed, the interviews I conducted with local police and immigrants’ rights advocates working on policing issues suggest that the pervasive discourse that equates migration controls with the War on Terror may well be leading individual officers to greater involvement in the day to day practices associated with immigration enforcement, regardless of the legal basis of their activities:

As a general matter, after 911, the federal government officials were making announcements about the war on terror and the need to crack down on immigrants as a way of winning this war on terror, and a big part of this was getting state and local officials to help them.

And there were a series of events and announcements that the federal government made, statements made, which signaled to state and local officials that “we need your help, you are valuable, you can be extremely valuable in this war on terror, and part of that assistance really means enforcing our immigration laws...helping us enforce our immigration laws, Particularly when it comes to individuals from what we consider to be targeted communities, the Middle Eastern community.

But at the same time not necessarily saying definitively that is the only place we need your help.  I think there was some ambiguity left in there intentionally...that you can still enforce immigration laws perhaps in other contexts, involving other sets of immigrants, we are not closing the door to that.  What we are really doing is opening the door to this kind of enforcement.

....And part of that has really just been the attitude adjustment....If someone suggests to state and local officials they shouldn’t be doing immigration enforcement, some state and local officials will respond with, “well, what about the war on terror, can’t we be of assistance in that vein?”  And I think that attitude adjustment, when combined with some of these policy changes, have resulted in increased incidents of enforcement. (Interview with Hwang)

Or, as one officer with the San Francisco Police Department, “no officer wants to be the one to let someone go who is then the next 9/11 attacker” (Interview with SFPD Officer 2006).  The process through which the border is brought into the city, then, is facilitated by bringing the full weight of national security to bear on the everyday practices of local police.
In addition to the discourse that equates immigration law enforcement with the war on terror, proposed immigration reforms have also involved policy changes that would facilitate a greater involvement of local police, particularly attempts to shift civil offenses of immigration law into the criminal arena. As immigration enforcement has been wrapped more tightly into the discourse on law and order, and as migrants themselves and their activities have become increasingly criminalized, the assumption that local police have some role to play in the surveillance, capture, and deportation of those with irregular immigration status has become widespread. As Hwang has said:

By making immigration violations crimes, the Senators hope it will be easier to enlist state and local officials to enforce...because state and local officials will see criminal law enforcement as more their mandate.

Conclusion

Recent debates concerning the involvement of local police in immigration enforcement should be situated within a longer history of law and enforcement practices that merge migration and crime controls and thereby situate immigration as a law-and-order issue. This trajectory of policy change can be characterized by the criminalization of immigration law, growing restrictions on access to social assistance, the erosion of legal protections such as due process, and the involvement of local and nonstate actors in the day to day practices associated with the production of migrant illegality. At the federal level, this history is visible in the major immigration reforms of the past 20 years—the passage of IRCA in 1986, the immigration and welfare reforms of 1996, and the new security initiatives introduced in the context of the War on Terror. During these three moments of heightened anti-immigrant sentiment that have linked migration to security concerns, federal policy entrenched the significance of formal immigration status, widening the gap between the rights of citizens and noncitizens in the United States.

In the city, this gap is reflected and reinforced through daily encounters with service providers, local police officers, and private citizens who are now implicated in monitoring the immigration status of the people with whom they come into contact. Through the daily practices of these local actors, illegality is produced, the marginalization of migrant workers is maintained, and
the boundaries of political membership and citizenship are secured. As McNevin (2006, p. 140) pointed out, the discourses and practices surrounding immigration enforcement should be understood as strategies and technologies of citizenship (cf. Isin, 2002), that “the articulation of irregular migrants as illegitimate outsiders, along with each act of interdiction, incarceration and deportation reinforces the particular account of political belonging from which the state gains its legitimacy.” Understanding the geography of immigration law, then, with its multiple spaces and scales of enforcement, is also a way to understand how the boundaries of U.S. citizenship are forged, both in legal histories and through everyday encounters in the city.

But the presence of the border in the city is not inevitable. As Nevins (2002) illustrated in his book on Operation Gatekeeper, the local politics surrounding immigration can have broader impacts on the way that the boundaries of the U.S. nation-state are produced and policed at other scales. Whereas Nevins focused on the rising nativism and anti-immigrant politics that produced boundary-making projects such as Operation Gatekeeper, the history of sanctuary policies and local non cooperation ordinances suggests that local actors can contribute to more progressive projects that challenge the law-and-order approach to migration as well as restrictive definitions of national belonging being advanced at the federal level. In some cities, political organizing in support of sanctuary and non cooperation policies has attempted to limit the use of local resources and information for the institutional practices that produce migrant illegality, and the history of these efforts reveals geographical variations to the processes of localization and criminalization. On the ground, the strategic practices of state territoriality and citizenship outlined above are thus more of a patchwork than a cohesive form of sovereignty.

As I will describe in the next two chapters, if the city can be seen as a factory for the production of migrant illegality, it is a factory whose machines have run into some difficulties. They are mechanical troubles, in the sense that the seepage of state boundary making into the space of the city has run into resistance from local actors who have conflicting interests in the practice of governance. But they are also political troubles. The ideas of political membership that have been put forward by supporters of sanctuary policies at the local level represent a potential challenge to the ideas of security and citizenship being reflected in law and policy at the U.S.
federal level. In the next chapter, I focus on these insurgent forms of citizenship in order to understand their emergent potential.
CHAPTER 5: San Francisco: City of Refuge

Every nation has the absolute power to control its borders, to determine who comes in this country, when they come in, where they come in, how long they are going to be here, what they are going to do, how they are going to support themselves and when they are going to leave.

Reno, the federal prosecutor who tried 11 sanctuary workers (U.S. v. Aguilar 1986: 14191, qtd. in Coutin 1993)

When an alien resides in your land, do not molest him. You shall treat the alien who resides with you no differently than the natives born among you; have the same love for them as for yourselves; for you too were once aliens in the land of Egypt

Leviticus 19:33-34

Introduction

Although changes in the geography of immigration law enforcement have made the city an increasingly significant space where the boundaries between citizen and alien are maintained, the urbanization of border security has been an uneven and contested process. In some cities, sanctuary policies and non-cooperation ordinances have worked against the federal government’s efforts to involve local police and service providers in the day to day practices of immigration law enforcement, disrupting the production of migrant illegality. By preventing local actors from asking questions about immigration status, working towards ensuring all residents can access city services, and restricting information sharing with the INS (and now ICE), these local policies have the potential to limit the significance of immigration status in everyday life. In many local campaigns to implement sanctuary policies, advocates, activists, and local politicians have also mobilized alternative discourses of citizenship and legality that have challenged ideals of political membership held solely in relationship to the sovereign authority of nation state. Movements for sanctuary policies in the San Francisco Bay Area, for example, have been based on the idea that all people territorially present in the city should
have access to the same rights and services, regardless of their citizenship status. Municipal sanctuary thus represents an emergent challenge to the production of exceptional subjects such as the undocumented migrant and provides a site through which to examine the politics and potential of urban citizenship.

The discourses of political membership and legality mobilized by the city sanctuary movement also have direct relevance to contemporary political struggles, since intensified efforts at the federal level to implicate municipal police more deeply in the enforcement of immigration law has become a significant component of the “war on terror” and the majority of federal immigration reform proposals. The genealogy of city sanctuary policies represent the second trajectory of law and practice which came into conflict when Attorney General requested assistance with the mass questioning of Middle Eastern and Muslim men in 2001. The resurgence of municipal sanctuary as a response to new security initiatives at the federal level has recently made sanctuary policies and local acts of noncooperation more contentious, but also potentially more significant as generative sites of resistance. The City of Refuge, then, is not only a space of protection from an increasingly anti-immigrant national security agenda, but also a potential line of flight out of which alternative futures can be materialized.

In the United States today, more than 45 cities and several states have policies in place that discourage local staff and police from participating in the everyday practices of immigration law enforcement. Although the history and content of these policies vary from city to city, many have their roots in the organizing of the Sanctuary Movement for Central American refugees during the 1980s. The resolution that laid the groundwork for San Francisco’s current City of Refuge Ordinance, for example, was first passed by the Board of Supervisors in 1985. It was a response to the federal government’s refusal to grant asylum to people from El Salvador and Guatemala, and a statement of support for sanctuary workers who had been indicted for the assistance they were providing to people the federal government deemed as “illegal.”

San Francisco’s 1985 resolution, which addressed the asylum rights of people from these two countries, evolved into longer-term legislation, political discourse, and institutional practices designed to ensure all residents in the city had fair access to municipal services. Most recently,
the older City of Refuge Ordinance was revived in the organizing against HR 4437 and efforts at the federal level to have local police participate more directly in immigration law enforcement.

Below, I focus on the evolution of San Francisco’s City of Refuge Ordinance and the advocacy work which has surrounded it. My goal is to bring to the surface the alternative discourses of urban citizenship that local governments, activists, and advocates have attempted to make possible through these laws. Municipal sanctuary in San Francisco is unique in the sense that it evolved from a resolution in the mid 1980s to an active policy embedded in the city’s Administrative Code. Throughout changes in the geography of immigration law enforcement in the United States, it has served as a focal point for political organizing, and a model for other cities and policy initiatives.

The legacy of San Francisco’s sanctuary policy is rooted in local geographies of Latino migration to the city, and the history of well established movements for immigrants’ rights in the Bay Area. But the story of San Francisco as a City of Refuge is also deeply connected to the genealogy of religious Sanctuary. Before a more in-depth discussion of San Francisco, then, I examine two critical events in this genealogy that sparked the spread of city sanctuary policies. Both occurred in January 1985, both shaped the progression of the church based movement, and both facilitated a means through which the logics of Sanctuary expanded into the institutional and political spaces of local government. The first was the indictment of 16 people involved in the Sanctuary Movement on charges of conspiracy and alien smuggling. Contrary to the goals of the INS, these indictments dramatically increased awareness and support for the struggles of Central Americans in the United States and the church based Sanctuary Movement. The second event was the large gathering of Sanctuary workers in Tucson, Arizona that occurred later that month. It was here that Berkeley’s 1971 resolution on the USS Coral Sea was discussed and disseminated and later became a model for municipal sanctuary across the country. In the discussion below, I pick up the theme of contagion from Chapter 3 where the story of the USS Coral Sea left off, further exploring the “succession of forces” which took hold of Sanctuary as it circulated through religious and urban contexts.
 Event #1: The Indictment of Sanctuary Workers

While early declarations of Sanctuary among church congregations and synagogues in 1981 seemed to evoke minimal reaction from the federal authorities, this began to change as the movement expanded, developed a more trenchant critique of U.S. foreign policy in Central America, and was sympathetically covered by national media (Cunningham 1995). In January 1985, tensions between the federal government and the Sanctuary Movement reached a hereto unseen intensity when the Justice Department indicted 16 people on felony charges of conspiracy and alien smuggling. In a massive sweep, they also arrested more than 60 people as “unindicted co-conspirators,” many from Central America, picking up people in Phoenix, Tucson, Seattle, Philadelphia and Rochester (Taylor 1985). The unindicted were eventually granted immunity and notified they would be called upon to testify for the prosecution against the nuns, priests and other sanctuary workers facing felony charges (MacEóin 1985).

As the story unfolded, it became clear that the indictments were the result of an extensive joint undercover operation between the FBI and the INS called Operation Sojourner. Two confidential informants and two undercover agents secretly recorded church gatherings and organizing meetings in Tucson, Nogales and Phoenix, producing more than 40,000 pages of transcribed materials which was then used as evidence against the accused (Coutin 1995); (Shapiro 1985; Taylor 1985). Charges against several of the people indicted were eventually dropped, and one person pled guilty to a lesser charge, but 11 people involved with the

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29 Villarruel (1987) said: “There is also much evidence that the U.S. government has actively prosecuted those in the Sanctuary movement primarily because of their expressed political criticism of U.S. foreign policy. Evidence in the Nicgorki trial showed that Arizona rangers engaged in the very same actions of transporting, harbouring and sheltering aliens were not prosecuted and, in fact, were informally granted immunity from prosecution from the US attorney in the area.” According to Cunningham (1995), criminal investigations against the Sanctuary Movement were initiated after widely viewed television coverage, including a CBS 60 Minutes show, consistently portrayed the movement in a sympathetic light, in contrast to the callousness of the INS and federal government. Harold Ezell, (title – district director of INS?) was enraged by the coverage, and by Spring 1984 there was an ongoing undercover operation against the Sanctuary Movement.

30 The extent of the arrests was unprecedented, although on two different occasions in 1984, sanctuary workers in Arizona were arrested and charged with felony offenses related to the unlawful transportation of undocumented aliens, signally a growing willingness on behalf of the INS to pursue criminal charges against people involved in the movement.
Sanctuary Movement, including many nuns and priests, were finally tried in a high profile case that was covered by media across the country (*United States v. Aguilar 1986*). The mass prosecutions became known as The Sanctuary Trial.

While the federal prosecutor and representatives from the INS hoped the criminal charges would deter people from becoming involved in or supporting Sanctuary for Central Americans, the secret surveillance, arrests, and well-publicized trial actually had the opposite effect. The arrests did create fear and anxiety among some participants in the movement, but national media coverage of the indictments also brought a lot of attention to Sanctuary and U.S. involvement in Central America. Progressive congregations across the country rallied around those who had been arrested, and meeting minutes suggest many churches experienced a significant increase in calls from potential volunteers interested in participating in the movement. During the trial of those indicted, the number of sanctuary congregations doubled (Basta! Quoted in Coutin 1995).

In my interview with Ignatius Bau, he reflected on the role the refugees themselves played in contextualizing and diffusing the fear created by the federal governments’ actions:

> One of the best moments, I thought, of exposing U.S. ethnocentrism was a conversation in the middle of the Sanctuary criminal prosecutions where there were Central American refugees, sitting with all the folks who were getting nervous about how they were going to respond to the indictments. And the refugees were like: “We’ve been wire tapped, we’ve been kidnapped, we’ve been tortured, and you guys are afraid of...what?...An arrest warrant?” It was, like, reality check time! “[D]on’t worry about it. It’ll be ok. You might get thrown in prison, but you are not going to get tortured and killed.” ...it was a huge check on what kind of risk people were taking and what was really at stake. (Interview with Bau)

Indeed, during the trial, as the details of *Operation Sojourner* were revealed, supporters of the Sanctuary Movement compared state practices of secret evidence gathering, the infiltration of religious observances, and the surveillance of nuns and priests with the actions of other

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31 It is clear from comments made by representatives from the INS and Justice Department to the press that the federal authorities hoped the indictments (and subsequent, less spectacular arrests), would dissuade people from getting involved in or supporting the Sanctuary Movement.
repressive governments, signaling once against the movement’s resistance to the encroachment of the state:

Maybe it is a good educational experience for us that we now have a tiny inkling of the first steps of what it is like to live under repressive governments in El Salvador, Guatemala, the Philippines, Chile, Soviet Russia, or to employ an analogy that is increasingly important to those of us born in the 1920s or before, the Germany of the 1930s. (Brown 1985: 55)

The Rev. John Fife, the indicted Pastor of Southside Presbyterian Church in Tucson, was quoted in the press as saying “The Government has planted body bugs on its agents and has infiltrated the church from within…We expect that to happen in Russia, Eastern Europe and in totalitarian countries” (qtd. in Taylor 1985).

What the churches’ ministry is about is aiding refugees from murder, torture, rape, and the death squads in Central America….When the U.S. Government makes it a felony to give food, shelter and medical care to helpless people, then something's wrong with the Government and its policy and what we've become as a people. (New York Times 1985)

Note here the parallels this critique of the criminalization of assistance to undocumented migrants has with the contemporary debates about HR4437 discussed in previous chapters. Both cases represent a criticism of the encroachment of the state and its attempt to regulate these practices.

Coutin (1994, 1995) talks about the social, political and legal implications of the Sanctuary Trial as it was lived beyond the law and space of the courtroom, highlighting how state practices of prosecution and surveillance opened up space for resistance, even as they repressed (549):

[S]anctuary activists manipulated these proceedings to define themselves as law-abiding. From the inception of the movement, sanctuary workers incorporated legal discourse into movement actions [Coutin 1994]. When they were indicted, movement members used their trial to refine and promote their legal arguments. And after being convicted, activists used their awareness of surveillance and legal discourse to act in ways they felt would define sanctuary work as legal. In short, in some regards, being prosecuted and placed under surveillance enabled movement members to enhance the legitimacy of their claims. (550)
In the process, the criminalization of sanctuary workers served to increase the number of congregations involved in the movement, as religious communities across the country sought ways to support the people who had been arrested.

The indictment of Sanctuary workers also opened up space for the expansion of Sanctuary into the institutional and political spaces of local governments, as advocates and supportive officials pushed back against the criminalization of Sanctuary work, adopting resolutions that expressed official support for local congregations in their communities that had become involved in the movement. Similar to Berkeley’s 1971 resolution about the Coral Sea soldiers, many city sanctuary policies passed during this time had language that “commended” the congregations who were offering Sanctuary to refugees, establishing some legitimacy to their allegedly “illegal” actions.

One can speculate the increased press coverage of the situation in Central America which followed the arrests in 1985 also raised awareness about the implications of deporting refugees back to their country of origin. In 1985, the ACLU and the National Center for Immigration Rights testified before the U.S. House Judiciary Committee’s Subcommittee on Immigration that more than a hundred of the refugees who were repatriated to El Salvador between 1980 and 1985 had been killed by security forces or death squads (ACLU, 1985), and this report received some coverage in the press that surrounded the Sanctuary Trial. In my interview with one advocate in the San Francisco area, he talked about the growing anxiety local officials had during this time that they might be implicated in federal enforcement practices that would lead to abuses of human rights: “local cities such as San Francisco felt that it wasn’t right for San

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32 For example City of Berkeley, Resolution No 52,596-N.S Declaring Berkeley a City of Refuge (1985), City of Los Angeles, Sanctuary Resolution, November 27, 1985 (original resolution), Oakland Resolution No 63950 C.M.S. (July 8, 1986), and City of Madison, Wisconsin, Resolution reaffirming support for efforts to refugees fleeing El Salvador and Guatemala (1985). Olympia, WA, Ithaca, NY, and Burlington VT passed policies commending sanctuary workers (see Applebome 1986). Takoma Park, MD and Madison, WI’s policies bar city workers from assisting INS actions against refugees housed in church sanctuaries in their cities (Applebome 1986). Berkeley’s policy (See Appendix B), lists the local congregations who had publicly declared sanctuary, and stated “these groups and individuals have acted in a way they consider morally and legally correct and in the best traditions of our country, which was founded on the principles of providing a safe haven for those fleeing political oppression, and that the City of Berkeley reaffirms its support for the principle of sanctuary and for those groups which engage in this time-honored tradition of humanitarian assistance.”
Francisco to be participating in any way in facilitating immigrants from being removed from the country and possibly being killed or tortured.” (Interview with Hwang). The federal government’s attempts to suppress Sanctuary through surveillance and criminalization, and the increased public interest in the movement that followed the arrests in January 1985 thus served as catalysts for the expansion of Sanctuary into new spaces.

The highly publicized arrests were not the only event that month that opened up space for the wave of city sanctuary policies that followed. The emergence of a city sanctuary movement was also facilitated by an important gathering which occurred in Tucson shortly after the indictments.

**Event #2: The First Inter-American Symposium on Sanctuary**

Before the mass arrests at the beginning of January, Sanctuary workers in Tucson had been organizing a symposium to bring together people from all over the country who were involved with the Sanctuary Movement. The symposium was planned for Jan 23-24, 1985, and before the indictments were announced, 300 people were registered to attend. After the indictments, the number of people registered increased dramatically, and in the end, 1300-1500 people attended what became a five day period of prayer, discussion, reflection, organizing and mobilization (MacEoin 1985). Participants discussed how the movement should respond to the arrests, how refugees themselves could take on a greater role in directing the movement, and how they might work out internal divisions within the movement (Minutes 1985).

This was an important event in the genealogy of city sanctuary. Rev. Gus Shultz from the University Lutheran Chapel in Berkeley, who was now involved in Sanctuary for Central American refugees, attended. He brought Berkeley’s 1971 resolution offering Sanctuary to the soldiers from the USS Coral Sea to the symposium, and spoke about how this earlier declaration of city sanctuary had shaped his congregation’s involvement with Central American refugees:

33 Interestingly, one indication of the connection to earlier Sanctuary efforts is the keynote speaker for the symposium: Rev. William Sloane Coffin Jr., who is mentioned in Chapter 2 because of his invocation of ancient Sanctuary traditions during the Vietnam War.
The Berkeley resolution of 1971, which incidentally was introduced by a Republican councilman, was the thing that led us in the Bay Area to begin looking at the Sanctuary issue in relation to Central American refugees. And we did it at a Bible study group that met every Tuesday morning....Later, Marilyn Chilcote from Saint John’s Presbyterian Church came to me and said that her group had been talking about this issue and that she had received a letter from John Fife in Tucson, Arizona, saying that his congregation was doing the same thing. We realized that people all over were doing sanctuary, and there was no official office, no national coordinator. Sanctuary is a grassroots thing, and it takes place on the local level. (Murphy 1985: 79)

City Sanctuary in the San Francisco Bay Area thus has an interesting trajectory unseen in other parts of the country: Church Sanctuary during the Vietnam War sparked the City of Berkeley to declare itself a Sanctuary, and this municipal policy, in the 1980s, then served as an inspiration for church congregations who declared themselves Sanctuary for Central American refugees. After the symposium, the 1971 resolution became a model for city sanctuary across the country. Many people at the symposium took Berkeley’s policy back to their communities and adapted it into local government resolutions designed to provide some protection to refugees from Central America (Interview with Bau).

From 1985 to 1987, more than 20 cities and two states (New York and New Mexico) adopted resolutions declaring themselves as sanctuaries for Central American refugees, many issuing statements of noncooperation with INS. In drafting municipal resolutions, supporters drew upon biblical references to the Cities of Refuge which assured protection for accused people who were seeking justice. Whereas sanctuary resolutions varied from city to city, most expressed support for the Sanctuary Movement and declared that city resources or employees, including local police, should not be used to assist with the investigation of alleged violations of immigration law by Salvadoran and Guatemalan refugees. Many included the 5th provision of

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34 These cities included Berkeley, Los Angeles, Oakland, San Diego, San Francisco, and West Hollywood, California; Burlington, Vermont; Cambridge, Massachusetts; Chicago, Illinois; Ithaca and Rochester, New York; Madison, Wisconsin; Olympia, Washington; Duluth and St. Paul, Minnesota; and Takoma Park, Maryland.
Berkeley’s 1971 resolution which restricted cooperation with the federal authorities (see Chapter 3).  

If city sanctuary policies were partly fuelled by the arrests of people involved with the movement, they also spoke back to the federal government’s attempts to criminalize Sanctuary. In one court case, for example, a sanctuary worker named Remer-Thamert was allowed to argue that because the governor of New Mexico had declared the state a Sanctuary for Central American refugees, he had believed his actions were legal. He was acquitted on all charges (Associated Press, 1988). As I will discuss in the example of San Francisco, municipal Sanctuary resolutions often included sections reflecting the legal arguments of the Sanctuary Movement that justified their practices under the Geneva Conventions and the Refugee Act of 1980. As a result, the legal justifications for Sanctuary practices became a part of the media coverage and public discourse that surrounded the resolutions.

While on a practical level it was much more uncommon for local police and staff to assist the INS at this time than it is now, the passage of Sanctuary resolutions nonetheless served as a mechanism for organizing and public education. They were a way for advocates to bring attention to the violence in El Salvador and Guatemala, and educate people about U.S. foreign policy in Central America. As the case of San Francisco will demonstrate, these initial resolutions also laid the institutional and political groundwork for future non cooperation policies that became more practically relevant with the localization of immigration law enforcement. As Rev. Gus Shultz said when speaking to the press, “you see (the sanctuary issue) moving from religious groups to cities, and my hope is that it will move toward pushing the country back to being a sanctuary as a whole.” (quoted in Merina 1985)

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35 Berkeley was one of the first cities, along with St. Paul, to pass a resolution declaring itself a Sanctuary for Central American refugees. Berkeley’s resolution commended the congregations and groups that had declared sanctuary for Central American refugees. Other cities wrote to Berkeley to request copies of their resolution and documents. These letters can be found in the Gustav Shultz Sanctuary Collection at the GTU, UC Berkeley.
San Francisco: Sanctuary City

The Board of Supervisors of the City and County of San Francisco passed its first Sanctuary resolution in December of 1985. The original resolution was drawn up without a great deal of planning for how it might impact the everyday operations of the city: “It was more a political statement at that point, as opposed to what eventually became a non cooperation policy….But it served as an organizing point for activists and community members to do testimony, to raise visibility and get some additional media attention…” (Interview with Bau).

The preamble of the resolution affirmed U.S. obligations to the Geneva Conventions, the United States Refugee Act of 1980, and UN Protocols Relating to the Status of Refugees, commending the congregations and religious orders that were upholding these laws by providing support, protection, and advocacy to Salvadoran and Guatemalan refugees residing within the city (Leg. File #495-85). The resolution recognized the estimated 60-100,000 people from El Salvador and Guatemala living in San Francisco lived “with constant fear of persecution and deportation,” and had some language around restricting cooperation with the INS:

That the City and County of San Francisco urge The Mayor to request the Police Commission and the Sheriff of San Francisco to take no action such as relaying information regarding identity and residency status which would facilitate the arrest and detention by the INS of Salvadoran and Guatemalan refugees; and

That the City and County of San Francisco urge The Mayor to request each of her commissions and departments, and, through the Chief Administrative Officer, to request each of his departments to not cooperate in any direct way with INS which would jeopardize the safety and welfare of any Salvadoran or Guatemalan refugee within San Francisco. (Walker et al., 1985, p. 4)

San Francisco’s first resolution had a lot of public support. The San Francisco Bay Area was an important arena of Sanctuary organizing during this time, an “epicenter for immigrants rights struggles,” as one member of the San Francisco Board of Supervisors said [Interview with Daly].

The Bay Area was one of critical places for where there was a lot of activist around Central American issues. Obviously Berkeley churches were some of first churches across the Bay to declare Sanctuary along with Arizona churches. Because the Latino population here in San Francisco in the Mission
District is very well organized politically, there was also a lot of immediate support from the church community here. (Interview with Bau)

At a special hearing of the Human Services Committee on the City of Refuge resolution, the Board of Supervisors heard testimony from legal experts, human rights advocates and health professionals, who all spoke in support of declaring San Francisco a City of Refuge. 36 Letters of support also come from the Sherriff, Michael Hennessey, and from representatives at the San Francisco Department of Public Health, who argued it would result in cost effective public health interventions as people sought primary care without fear of being arrested and deported (San Francisco Board of Supervisors, Legislative File #495-85). The resolution passed by the Board of Supervisors thus reflected a broader based movement of support.

When the first municipal sanctuary resolutions of this period were being debated, there were suggestions from some individuals at the INS and the federal government that federal funds should be withheld from cities that passed such resolutions, and critics publicly accused local governments of breaking the law or trying to make their own immigration policies (Becklund, 1985). US Senator Alan K. Simpson (R-Wyoming) attempted to cut off federal funds to these cities (San Francisco Board of Supervisors, Legislative File #495-85), and Harold Ezell, Director of the Western Regional Office of the INS, was quoted as saying San Francisco’s resolution was “irresponsible activity” and that elected officials who supported such actions were “going against their oath to uphold the law” (Associated Press 1985). For the most part, however, the federal government tended to ignore these first sanctuary resolutions as largely symbolic. During the 1980s, the INS rarely depended on city resources or service providers to assist with

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36 Among the people who spoke at the hearing were: Reverend Peter Sammon spoke on behalf of Archbishop John R. Quinn, Rev. Robert McKenzie, Chairperson of the San Francisco Sanctuary Covenant, a representative from the Central American Refugee Community with the pseudonym Juan, Rabbi Allan Bennet, President of the Americna Jewish Congress of Northern California, Rev. John Moyer, Executive Director of the Northern California Ecumenical Council, Sister Kathleen Healy, Sisters of Presentation and Associate Pastor of St. Teresa’s Parish, Agenda (1985). Representatives from the Asian Law Caucus, the National Lawyer’s Guild, Kathleen Purcell, Constitutional Law Specialist, and the Nick Rizz, West Coast Director of Amnesty International. See “Special Hearing on a Resolution to Declare San Francisco a City of Refuge for Guatemalan and Salvadoran Refugees.” Human Services Committee of the San Francisco Board of Supervisors. San Francisco, Unpublished. December 18, 1985. Available at: Gustav Shultz Sanctuary Collection 1971-72, 1981-90. Graduate Theological Union, University of California, Berkeley.
the enforcement of immigration law, and federal legal opinions and judicial decisions during this time, as noted in Chapter 4, supported only a very limited role for local police.

Perhaps more significant than any concrete withdrawal of resources from the INS in this moment were the discourses of citizenship and legality which surrounded the City of Refuge campaign, which stood in contrast to the growing criminalization of refugees. The resolution and advocacy work that surrounded it challenged the way the federal government attempted to characterize Central American refugees as “illegal aliens” by calling on the U.S. government to adhere to its national and international legal obligations to provide asylum. The campaign thus opened up space to advance alternative interpretations of the law and call attention to the federal government’s complicity with the violence in Central America.\(^{37}\) It also laid a path for future organizing against the localization of immigration law enforcement.

In the years that followed, however, a growing preoccupation with illegal immigration in the United States and the 1986 passage of the IRCA began to influence the way immigration enforcement was carried out in the interior, leading to increased cooperation between local law enforcement and the INS. As discussed, new interior enforcement practices disproportionately impacted Latinos because the figure of the illegal alien became associated with Mexican and Central American migrants (De Genova 1998). In San Francisco, growing complaints about civil rights violations by INS personnel from 1986 to 1989 made local police cooperation with the INS increasingly contentious, and by mid-1989 immigration rights advocates were testifying before the San Francisco Board of Supervisors that the Latino community was under a “state of siege” (Romero 1989). Of particular concern were raids and enforcement activities which targeted neighbourhoods such as the Mission District that were racialized as Latino – a reminder about the micro geographies of immigration law enforcement, and how the production of illegality often takes place in specific sites of the city. The city

\(^{37}\) Sanctuary policies at the state level seem to have had a similar impact. In Coutin’s (1995) discussion of legal conflicts between the sanctuary movement and the U.S. government, she points out that when Reverend Remer-Thamert was prosecuted for his involvement with the sanctuary movement in 1988, part of his defense included the argument that he believed his actions were legal, because the governor of New Mexico had declared the state a sanctuary for Central American refugees. He was acquitted on all charges.
sanctuary movement adjusted to new enforcement practices, and San Francisco’s initial resolution evolved into a local ordinance with more direct implications for the day to day operations of local governance.

1989: Boundary Wars

Two incidents in particular sparked public outrage and eventually led the city to reintroduce the City of Refuge Policy—this time as a municipal ordinance that was formally added to the city’s Administrative Code (Bau 1994; Wells 2004). The first occurred in June of 1989 at a meeting held between the Consul General of El Salvador and a delegation of Salvadoran refugees, local attorneys, and religious leaders. Newspapers reported that at some point during the meeting, the Consul’s secretary started to take photographs of the participants. When a number of people protested, fearing that the photos might help Salvadoran security forces find and harm the family and friends of refugees in the United States, a sergeant from the San Francisco Police Department (SFPD) took the camera and started taking photos himself, eventually passing the camera over to the Consul General (Associated Press 1989; Lempinen 1989; Pimsleur 1989). The incident sparked an outcry, raising concerns that the police were cooperating with the surveillance practices of foreign governments. As one member of the Board of Supervisors said, the incident had a “chilling effect on constitutional rights of city residents” (Lempinen 1989, p. A2).

The second incident in San Francisco that triggered revisions to the City of Refuge policy was a raid at the Club Elegante nightclub, involving the INS, the California State Office of Alcohol and Beverage Control (ABC), and the San Francisco Police Department (SFPD). During a busy Saturday night, officers surrounded the club, blocked the exits, and refused to let people leave until they had provided the officers with identification. During the raid, around 200 patrons were detained for over an hour, including one city commissioner, who then became a plaintiff in a civil suit against the INS and California ABC for civil rights violations during the raid. Critics accused the INS of conducting a raid without a warrant or reasonable suspicion that illegal aliens were present, linking the raid to broader attacks on Latino communities in the city (Miyasato 1989, Bau 1994, Wells 2004).
In response to the massive public outcry that followed these events, the San Francisco Board of Supervisors held public hearings at which representatives from organized labor, business, religious organizations, immigrant advocacy groups, and churches urged the city and its police force to distance itself from the INS. In the hearings and the press coverage, the discourse around the San Francisco’s City of Refuge policy shifted from the focus on Central Americans seen in 1985 to the racialization and civil right abuses of Latinos more broadly. Those who testified at the hearings recounted other incidents of racial profiling in the Bay Area, suggesting that people had been increasingly stopped and questioned based on the color of their skin, their accent, the clothes they wore, and their dental work (Romero 1989). One participant described an incident in suburban San Rafael, where local police had assisted with an immigration raid in a Latino community. Lawfully present minors who were walking on the sidewalk were stopped and questioned because of their Latino appearance:

INS agents subsequently handcuffed, physically abused, and humiliated them, causing the minors emotional harm. As a result of these tactics, members of the community were outraged at the INS, and were consequently hesitant to frequent public parks, churches, shopping areas, and schools for days. (Tanayo 1989, pp. 2-3)

If the localization of immigration law enforcement and the targeting of Latino communities shaped access to public space in the city, the boundary making of the state also entered the space of people’s homes. Representatives from immigrant rights groups reported raids on apartment complexes where the majority of tenants were Latinos, and where the INS entered the homes of several Latino families without a search warrant. Manuel Romero of the Mexican American Legal Defense and Educational Fund stated:

To give deference to such [practices] is to sanction the outright denial of the constitutional protections of due process and equal protection to a whole class of persons simply because of their race or nationality. And if we are prepared to do that, then the rights of the entire community are placed in jeopardy, as evidenced by the Club Elegante raid, where White or Anglo-Americans were unlawfully detained simply because they exercised their first amendment right to associate with persons in a Latino business establishment. (Romero 1989: 4–5)
Testimony at the hearings and comments in the press thus represented a critique of the production of the racialized category of migrant illegality, and highlighted the implications such policing practices had for other residents of the city.

Out of the organizing and public outcry that surrounded these incidents, plans for a strengthened City of Refuge Ordinance developed which eventually entrenched a more rigorous policy into the city’s Administrative Code. As Bau said:

> It was at that point that I and others were involved in drafting the ordinance. To try to draft it in a way, because we didn’t need to make another political statement, because the 1985 resolution was here. But here was an opportunity to actually in our view, put into law, into city law, what was in fact already the practice…..to put some teeth into that. (Interview with Bau)

The “teeth” were put into San Francisco’s City of Refuge policy in September 1989, when the San Francisco Board of Supervisors unanimously adopted a revised City of Refuge Ordinance, which is now Chapter 12H of the city’s Administrative Code. Under the 1989 Ordinance, local police, city, and county staff could not inquire or disseminate information about a person’s immigration status unless affirmatively required by federal or state statute, regulation, or court decision. The 1989 policy also required city officials to review and if needed revise all applications, questionnaires, and forms to remove questions about immigration status, wherever possible, and charged the city’s Human Rights Commission with ensuring compliance with the Ordinance (SF 375-89). A General Order was issued by the Chief of Police reflecting the policy change and memos were circulated to all city departments that made it clear employees failing to comply would be subject to disciplinary action (San Francisco Board of Supervisors, Legislative File 97-89-42).

Advocates who supported a stronger policy asserted that the new law was not just a refugee protection measure:

> it is in its essence a civil rights ordinance. If adopted it sends the unmistakable message to the INS and Border Patrol that San Francisco believes in the principle that all persons residing within the city and county have fundamental human, civil and constitutional rights which must be respected. It also sends an equally important message that the violation of such rights by city and county agencies and personnel acting in their official capacity will not
be tolerated. And by so doing, San Francisco will set the example for the entire country to do the same, for ultimately a more humane immigration policy will come about only through the gallant efforts of both community and local governments working together to defend the human and civil rights of all persons in the community. (Romero 1989: 5)

The legal logics and discourse here drew on a vision of urban citizenship based on the idea that all persons residing in the city should have equal rights regardless of their citizenship status, and linked this normative ideal to the public good. Supporters pointed to the implications the attacks on immigrant rights had for the broader safety and security of the community, stating that “[i]f local governments do not distance themselves from the INS, residents and visitors to the city will be hesitant to request city services or to report crimes – either as witnesses or victims” (Tamayo 1989: 3). The Board of Supervisors declared the ordinance important for the security and well-being of all people in the city:

> The City and County of San Francisco seeks to promote the interests of all persons living here. If immigrants and refugees residing in San Francisco view city and county officials as agents of the INS, capable of facilitating their arrest and deportation, the results would be detrimental to the interests of all San Franciscans. Immigrants and refugees would be afraid to report crimes and illnesses to city and county officials which, in turn, would jeopardize the general public health and safety. (San Francisco Board of Supervisors 1989, p. 3)

In addition to the well-being of the city itself, the public discourse that surrounded the 1989 ordinance continued to draw connections between U.S. foreign policy in Central America and the responsibility of the community to provide security and protection to those who had fled their home countries. For example, Section One of the ordinance stated:

> The people of the United States owe a particular responsibility to political refugees from El Salvador and Guatemala because of the role that the United States military and other war related aid has played in prolonging the political conflicts in those countries. (City and County of San Francisco 1989, p. 1)

We can see here how the discourse that surrounded city sanctuary policies and the wording of the ordinance itself echoed earlier logics of territoriality from religious Sanctuary movements which made connections to displacement and the encroachment of the U.S. state into Central America. Although the law was rooted in local community concerns about safety and security
in the city, organizers working on these issues also articulated a transnational awareness—an understanding of political membership and justice that extended beyond the borders of the United States and recognized American complicity in the intensification of forces that induced people to emigrate.

This expanded idea of the geography of responsibility (Massey 2004) stands in stark contrast to the criminalization of migration, which has positioned those with irregular status as “illegal aliens,” outlaws to whom the state and the community have no obligations (Neuman 1995, p. 1441). As Neuman argued, the pervasive mobilization of “illegality” not only implied criminality, but also “may be interpreted as implying that the alien’s presence can give rise to no legal duties toward him [sic] because he should not be here in the first place. Like an illegal contract that creates no obligation, duties toward the alien are void or voidable. This notion reduces the alien to a nonperson, and outlaw outside the protection of the legal system” (1441). Through the organizing and advocacy work that surrounded the City of Refuge Ordinance, the city sanctuary movement challenged the ejection of undocumented migrants from community responsibility, advancing alternative ideas of political membership that recognized expanded obligations and legal protections toward those without full citizenship status, and critiqued U.S. foreign policy. As a form of urban citizenship, the organizing that surrounded the City of Refuge movement was both territorially based in the city, but at the same time an emergent or potential challenge to American Empire.

Although revised at times, San Francisco’s 1989 City of Refuge Ordinance remains in effect. It has, however, come under significant fire during two periods of heightened anti-immigrant sentiment: in the 1990s and more recently in the post-9/11 security climate. During the early 1990s, reflecting the growing convergence of the anti-crime and anti-immigrant discourses, San Francisco’s sanctuary policy was publicly attacked by opponents who accused the city of protecting criminals and attracting illegal immigrants who were draining city resources. In public debates, critics blamed the city’s sanctuary policy for overcrowded jails. The California Office of Criminal Justice Planning threatened to withhold up to $4 million if the Ordinance was not repealed. As a result of the controversy, Chapter 12H was revised to remove some prohibitions on police identifying or reporting people suspected of violating the civil provisions
of immigration law if they were in custody after being booked for the alleged commission of a felony (Ord. 282-92, Ord. 238-93; also see Bau 1994, for a detailed account of events surrounding these changes).

More recently, however, there are some indications that public education and advocacy work done in support of sanctuary resolutions has increased the resistance of law enforcement organizations themselves to participate in the everyday practices of border security. In recent debates around the CLEAR Act, the International Association of Chiefs of Police, the Major Cities Chiefs Association, and the California Police Chief’s Association all issued statements against the involvement of local police in the enforcement of immigration law (IACP 2004; National Immigration Forum 2006). Although these law enforcement organizations may not share the vision of political community being advanced by the city sanctuary movement, their opposition recognizes the serious safety issues associated with using police to enforce civil immigration law. Several of the people I interviewed linked this opposition to a longer history of organizing around city sanctuary policies:

I think over the past couple decades there has been an educational process and we are now at a place where there certainly seems to be more consensus among key agencies, non profits, and community organizations regarding the sanctuary ordinance. To be honest I am not sure if that level of understanding/consensus was really there during the early 80s. (Interview with Hwang)

And;

Based on those 20 or something years, when you have these provisions come forward, you have Police Chiefs and Sheriffs in unlikely places standing up and saying to Congress (and this is in some conservative districts) saying this is a bad idea....And, again, that didn’t come out of the blue. That has been decades of working on those relationships and getting those police chiefs and sheriffs to be comfortable enough to take those public positions. (Interview with Bau)

The legacy of city sanctuary, dating back to the 1980s, has thus helped lay some groundwork for police resistance to being implicated in the everyday practices of immigration law enforcement.
The Mundane Practices of Refuge and Refusal

When interviewed, a number of people from organizations that provided services to immigrant communities described the impact the City of Refuge Ordinance has had on the city. Renee Saucedo (2006) from La Raza Centro Legal talked about how women trying to leave abusive and violent situations now had some reassurance they could call police without fearing they would be forced to reveal their immigration status. According to another interviewee, because service providers could tell women that they would not be asked about their immigration status, women could “come forward and take whatever steps are necessary to protect their lives and their children’s lives and their family’s lives:”

It certainly helps on service provider level. Particularly on domestic violence context, where organizations that might be working with victims of domestic violence and encouraging victims of domestic violence to get assistance from these organizations and in some cases to get assistance from the police or to get assistance from the courts in filing restraining orders. And these organizations can at least tell their clientele, look, you don’t have to be afraid of going to the police or talking to the courts. You won’t be deported. And explain there is a Refuge Ordinance that is there to protect them. And that there is, you know, from a legal perspective, there isn’t much that they should be concerned about.

The Ordinance thus makes a difference in the micro practices of service provision and everyday negotiations with the justice system, where there are now mechanisms in place to ensure that encounters associated with accessing protection or entitlements do not become sites of border control.

The City of Refuge Ordinance may also offer some protection for a different aspect of urban citizenship, namely being able to participate in political organizing and protests regardless of your immigration status. My interview with Renee Saucedo was conducted at the height of the protests against HR 4437, and the mass mobilizations for immigrants’ rights that took place in 2006. She suggested that, locally, the Ordinance had some relevance to these movements, because people involved in political organizing and protest activities could now do so with less fear that the local police they encountered on the streets would question them about their immigration status.
Indeed, sanctuary policies became an axis of organizing during struggles over HR 4437, and the large scale demonstrations for immigrants’ rights that occurred across the country in 2006 and 2007. Despite increased pressures from the federal government to mandate more local police involvement in the enforcement of immigration law in the post-9/11 period, cities across the nation have reaffirmed their sanctuary policies in recent years, and some have even introduced new resolutions to condemn federal legislation such as the CLEAR Act (NILC 2004). Local sanctuary policies have also provided a model for local governments who passed resolutions against the new powers granted to the federal government under the USA PATRIOT Act. As described in the previous chapter, sanctuary policies have been revived in the context of the Department of Justice’s efforts to involve local police in the questioning of Arab and Muslim men.

Of course, while sanctuary policies have become a kind of lightning rod, or organizing point, for contemporary struggles over the rights of non citizens in the United States, at a local level, the Ordinance is only as good as it is enacted and enforced – the extent to which service providers and police refrain from asking about immigration status in the course of their daily duties and
refrain from sharing this information with the immigration authorities. As one member of the Board of Supervisors said when I interviewed him in 2006, “it is not the strongest force of law because basically... its only as good as the city makes good on it.” (Interview with Daly). I will talk about this issue more in the next chapter, but I signal it here as a reminder about the limits of law and policy which are not, in turn, supported by concrete practices of refuge and refusal. In order for the Ordinance to be effective, however, it has to have a presence outside of the institutional and legal frameworks of local government.

Speaking about the extent to which police in San Francisco respect the sanctuary policy, Supervisor Daly recognized that connections between members of different law enforcement agents and the nature of police work in the context of a revived “national security agenda” may well lead to informal violations of the Ordinance: “Some guys who are officers and some lieutenants who are gung ho about it. That is when you get violations. Officers have relationships with fed officers on an individual level, and they routinely work with DEA.”

Several legal advocates who work around immigration rights whom I interviewed the same year echoed the Supervisor’s statements, saying that although the City of Refuge Ordinance does, on paper, what it is supposed to do, problems lay with the enforcement of the Ordinance: “There needs to be better accountability, better discipline... There needs to be a better system, to send a message to immigrant communities that the ordinance will be taken seriously.” (Interview with Hwang)

It is possible that some of these issues shifted in 2007, when San Francisco’s City of Refuge Ordinance once again entered into public debates and the city launched several initiatives to ensure it was followed. In response to growing attempts at the federal level to have local authorities participate in immigration law enforcement, the Mayor of San Francisco, Gavin Newsom issued an Executive Directive in March of 2007 which reaffirmed San Francisco’s City of Refuge Ordinance, and provided some mechanisms for monitoring and evaluation. He ordered:

1. Departments must ensure that departmental rules, regulations and protocol adhere with San Francisco’s Sanctuary City status, as designated by
Chapter 12H of the City Administrative Code. Key provisions of this local law include:

a. No department, agency, commission, officer or employee of the City and County of San Francisco may assist Immigration and Customs Enforcement (ICE) investigation, detention or arrest proceedings unless such assistance is specifically required by federal law.

b. No department, agency, commission, officer or employee of the City and County of San Francisco may require information about or disseminate information regarding the immigration status of an individual when providing services or benefits by the City or County of San Francisco except as specifically required by federal law.

2. Departments that provide public services must keep updated written protocols that describe compliance with Chapter 12H of the Administrative Code. A written description of current departmental protocols, and subsequent updates to these protocols, must be copied to the Human Rights Commission and the Immigrants Rights Commission of the City and County of San Francisco.

3. The Human Rights Commission and the Immigrants Rights Commission of the City and County of San Francisco shall maintain updated versions of these written departmental protocols and shall make them available to the public by request.

4. Departments are instructed to incorporate education on the City’s Sanctuary City status into regular employee trainings and orientations.

5. Departments are also instructed to incorporate education on the City’s Sanctuary City status into regular community outreach, and engage in proactive community outreach on this subject where appropriate.

In addition to these policy mechanisms, in 2008, the city allocated $83,000 for a public relations campaign that would promote the city’s status as a Sanctuary, with outreach materials such as the poster seen here printed in 5 different languages. In a climate of growing anti-immigrant politics, the idea behind the campaign was to reassure immigrant communities in the city that they could still access city services and speak to the police without being reported to ICE. More current research on the renewal of San Francisco’s Ordinance, and the Executive Directives, which were put in place a couple of years ago needs to be done in order to assess whether
these efforts have addressed the concerns about enforcement raised by advocates several years ago, but there are indications that movements to establish and maintain San Francisco as a City of Refuge are still active, even within the institutions of local government.

**Conclusions**

In the 1980s, municipal sanctuary policies became a mechanism for city governments to limit the use of local resources, particularly those related to policing, to support the enforcement activities of the INS. They were also used to challenge the federal government for its failure to uphold its domestic and international legal obligations. Through city sanctuary policies, activists and advocates pushed their local governments to express support for the congregations and organizations who were directly involved in providing sanctuary to Central American refugees - a significant endorsement at a time when many involved with the movement were facing criminal convictions for their activities (Coutin 1993). Early sanctuary resolutions also became a mechanism for organizing and public education, a way for advocates to bring attention to the violence in El Salvador and Guatemala and educate people about U.S. foreign policy in Central America. By providing some provisions for the confidentiality of immigration status within the city, the city sanctuary movement challenged the exclusion of noncitizens from substantive rights such as housing, health care, education, police services, employment and social assistance, advancing alternative ideas of citizenship in the process.

Although it remains to be seen how sanctuary policies will stand up to concentrated efforts at the federal level to involve local police in immigration enforcement and the more generalized
securitization of the city, the history of sanctuary policies reveals that openings exist within the institutional and legal frameworks of local governments to challenge the criminalization of migration and to support alternative visions of citizenship - openings that have been pried open by a history of organizing and mobilization by migrants and their advocates. The history of sanctuary policies reveals how local acts of noncooperation have the potential to withdraw information and resources from the boundary-making projects that maintain a marginalized labor force and isolate the United States from the implications of its foreign policy. Should they be maintained and enforced, sanctuary policies can increase access to basic entitlements in the city, and reduce the fear that prevents people from full participation in social and political life. The City of Refuge movement has challenged exclusionary articulations of political belonging and the criminalization of migration by withdrawing consent and advancing alternative ideas of citizenship rooted in different geographic sensibilities and legal histories. The ideas of political membership mobilized by supporters of San Francisco’s City of Refuge Ordinance resonate with Varsanyi’s (2006) idea of grounded citizenship, or Purcell’s (2003) call for a citizenship based on inhabitance, in that they articulate ideas of membership based on physical presence or residence in the city rather than formal citizenship status, while at the same time calling attention to the global processes that produce migration in the first place.
CHAPTER 6: New York City: A Cautionary Tale

Illegal alienage is not a natural or fixed condition but the product of positive law; it is contingent and at times unstable. The line between legal and illegal status can be crossed in both directions. An illegal alien can, under certain conditions, adjust his or her status and become legal and hence eligible for citizenship. And legal aliens who violate certain laws can become illegal and hence expelled, and in some cases, forever barred from reentry and the possibility of citizenship.

Ngai 2004: 6

Introduction

The story of New York City’s non-cooperation policy is different from movements to establish San Francisco as a City of Refuge, but it intersects with the trajectories of politics and policy outlined in previous chapters in significant ways. While most local officials in New York City would deny it has ever been a “sanctuary city” in the same way San Francisco is now advertising itself to its residents, it has had policies in place designed to regulate cooperation with the immigration authorities since the mid-1980s. Like San Francisco, New York City has been an important immigrant reception area, and its recent history reflects more progressive approaches to immigration policy than what has dominated recent policy discussions at the federal level. Because a significant percentage of the population is foreign born, the politics of immigration have been a significant force in local politics, and to a certain degree achieving political success in the city now necessitates some assurances to the city’s significant population of non citizens that they will not be subject to unreasonable infringements on their rights. As I will discuss, non cooperation policies that aim to restrict information sharing with the immigration authorities and ensure greater access to city services for residents have thus been a part of local policy since the mid 1980s.

Over the past 25 years, there have been moments of legal and political struggle over these policies which offer important lessons for those interested in the emergent potential of a local
politics of refusal and refuge. If my approach to the City of Refuge in previous chapters seems hopeful at times, tempered as it is by De Sousa Santos’ (2005) *sociology of emergence*, then the story of New York City’s non cooperation policies plays the role of a more cautionary tale in this dissertation. In New York City, the politics of non cooperation have been somewhat contained within legal and policy struggles between different levels of government, rather than the arenas of broader based organizing. This chapter explores the competing discourses of law and political membership which have been mobilized in these struggles, and their potential impact on broader based movements for immigrants’ rights and the practices of urban citizenship in the city. New York City provides a useful site through which to explore the potential of formal policy mechanisms and struggles as a means through which to establish new conditions of membership and legality, and reveals the limits to a politics of refuge which are not translated into everyday practices of refusal and broader based political commitments. To borrow from Davis’ sentiments here, the story of New York City reminds us that “Sanctuary is as Sanctuary does.”

There is nothing inevitable, then, about the emergence of the City of Refuge. While supporters of local non cooperation policies in New York City have certainly challenged various waves of anti-immigrant politics and policy making, they have not translated into a broader based movement that would protect residents from efforts to enlist local proxy actors in the day to day practices of immigration law enforcement. Efforts to establish limits on co-operation with immigration law enforcement have often mobilized a vision of urban citizenship that is less about ensuring rights for all residents, and more about protecting the health and safety of those who are legally present (For example, that undocumented migrants should be able to access immunizations, not because they have a right to healthcare, but because it would be bad for the health of legally present residents if the undocumented did not receive their immunizations). As I will discuss, in an effort to prevent local resources from being used in the everyday practices of border security, local officials have also reinforced the general consent about federal authority over migration controls.

While the story of Berkeley as a City of Refuge began with the subject of the antiwar soldier, and city sanctuary movements in San Francisco with the refugee, the subject of the
undocumented migrant, or “illegal alien,” has always been at the center of municipal sanctuary in New York City. In this chapter, then, I am most interested in the extent to which local non cooperation policies in New York City have been able to disrupt the production of migrant illegality and the exceptional relationship the undocumented migrant has to citizenship.

The city’s first attempt to define the role that municipal staff, police and service providers should play in immigration law enforcement was in 1985, when Mayor Koch issued a controversial memorandum to all city departments declaring city employees should not report their contact with someone who is undocumented to the INS unless the person “appears to be engaged in some kind of criminal behaviour” (Koch 1985). Koch’s directive was one of the first comprehensive policies in the country restricting communication and cooperation between city staff and the immigration authorities, and it laid the groundwork for New York City’s policies on sharing information with the INS for years to come. It was later formalized into Executive Order 124 and reissued by Mayor Dinkins and Giuliani.

There were likely multiple factors motivating Koch’s memo. It came down from the Mayor’s office during the period of heated debate about immigration reform at the federal level that led to the passage of the IRCA in 1986. Along with the growing tensions between the Sanctuary Movement and the federal immigration authorities discussed in the previous chapter, more general debates about so-called “illegal immigration,” and the presence of “illegal aliens” within the territorial boundaries of the United States had emerged as an intense national policy concern at this time. The Mayor’s spokespeople denied the memo had anything to do with Sanctuary, but other city officials told the press it was, in part, a response to public hearings that involved discussions about the situation of Central American refugees and the movement that had emerged to support them (Merina 1985). Indeed, by October 1985 a handful of cities across the United States had already issued symbolic declarations of Sanctuary, the faith based movement was expanding in New York City. 38

38 See, for example, the New York Times article dated December 23, 1985, where New York City was listed among Sanctuary Cities such as Madison and San Francisco (Robert Lindsey “Aid to Aliens Said to Spur Illegal Immigration. New York Times. December 23, 1985. A1. Also, Peter Kerr “Koch Memo Directs City Workers Not to Report Illegal
As I will discuss below, regardless of any immediate connections Koch’s memo might have had to the genealogy of Sanctuary during the 1980s, by the time Congressional representatives were discussing the anti-sanctuary provisions that were included in the 1996 immigration reforms, New York City was coming up regularly in policy debates as an example of a “sanctuary city” that should be targeted for sanctions. Under Giuliani’s leadership, the City of New York unsuccessfully challenged the anti-sanctuary provisions of the 1996 reforms in a federal lawsuit (City of New York v. United States of America), and, in recent years, New York City has become a target of the anti-sanctuary campaigns supported by large anti-immigration advocacy groups. The legacy of Executive Order 134 and conflicts over the localization of immigration law enforcement in New York City are thus important parts of the genealogy of city sanctuary in the United States.

**Executive Order 124 and the Public Weal**

Koch’s 1985 memo, *City Policy on Undocumented Aliens*, recognized the presence of a large number of undocumented aliens in the city, and emphasized that the wellbeing of all residents depended upon the ability of undocumented migrants and their family members to access city services without fear:

New York City is home, we estimate, to somewhere between 400,000 and 750,000 undocumented aliens. For the most part, these aliens are self-supporting, law-abiding residents. **The greatest problem they pose to the city is their tendency to under-use services to which they are entitled and on which their well-being and the city’s well-being depend.**

For example, victims of crime, consumer fraud, or workplace safety violation may decide not to report their victimization for fear that their presence in the city will come to the attention of the immigration authorities. Persons who need medical care may decide not to seek it, some families may keep their children out of school, and adults may fail to avail themselves of ESL (English as a Second Language) classes for the very same reason. **It is to the**

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disadvantage of all who live in the City if some of its residents are uneducated, inadequately protected from crime, or untreated for illness.

This is true regardless of one’s views on the propriety of unauthorized immigration. Undocumented aliens should not be discouraged from making use of those city services to which they are entitled; on the contrary, for the public weal, they should be encouraged to do so. **Undocumented aliens will not avail themselves of city services as long as they fear that they will be reported to immigration authorities**... (Koch 1985)

The memo was distributed to the heads of all city agencies. It explicitly stated it was not intended to change the practices of enforcement agencies such as the police department and Department of Corrections, who had established mechanisms for cooperating with immigration authorities when it came to apprehending aliens who are committing crimes (Koch 1985).

While the memo did not have a lot of explicit language addressing the everyday practices of service provision, it did attempt to set a tone for staff interactions with clients and residents that stood in direct contrast to rhetoric against undocumented migrants taking place in the federal policy realm.

Importantly, Koch’s approach to non cooperation did not challenge the discourses that support differential rights for residents with different immigration ‘statuses’, focusing instead on the rights of those who already possess rights – legally present residents who might be affected should the undocumented be restricted from accessing city services. Supportive press coverage and public statements about the policy echoed the memo’s sentiments that the fate of all residents in New York City was tied to the ability of undocumented aliens to access city services, although the INS was quite critical of the order (Kerr 1985; Schmalz 1985).

Representatives from the immigration service called Koch’s initiative “unwise and unpatriotic,” and asserted that the city was legally obligated to help the Federal Government find “illegal” aliens (although, aside from vague references to upholding the law, it was never entirely clear from whence this legal obligation came) (Kerr 1985; Barbanel 1985).

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To the extent that Koch and other representatives at the city responded by asserting a more sympathetic or humanitarian approach to undocumented migrants, this did not translate into a larger challenge to federal authority over migration controls or awareness of the transnational processes through which people end up living in the city without status. If anything, Koch’s arguments in favour of his policy reinforced the discourse of migrant illegality and the federal government’s plenary authority over migration. Honing in on the distinction between illegal and legal migration, Koch used public controversy over his memo to criticize the federal government’s failure to defend the borders while at the same time leaving the city to cover the costs of providing health and education to the estimated 750,000 people living in New York City at the time without status (Barnbanel 1985):

I am calling on the Federal Government to do its job. It’s a federal responsibility and they’re not carrying it out....Why don’t they like it? Because it shows how bad they are in carrying out their responsibilities not to allow the illegal immigration to get across the borders. And when it gets across the border, they don’t want to pay for those services that we must pay for on humanitarian grounds. (Schmalz 1985)

These accusations about the failure of the federal government to enforce immigration law was also present in later debates about Executive Order 124 and Giuliani’s constitutional challenge to the 1996 federal anti-sanctuary provisions.

As mentioned in the previous chapter, despite the above-mentioned debates between the city and the INS in the media, it was not common practice in 1985 for local police or service providers to regularly share information with the INS about the immigration status of residents. In fact, there is some indication federal immigration agents had requested New York City agencies not routinely turn in undocumented immigrants to the INS, because the organization simply did not have the capacity to process and prosecute them (Barbanel 1985). As was the case in San Francisco, attempts to increase the involvement of local proxy actors in the everyday practices of immigration law enforcement after the passage of IRCA in 1986 and subsequent reforms at the federal level gradually made New York’s noncooperation policy more contentious.
In 1989, the New York City Commission on Human Rights issued a report that documented the impact of IRCA’s employer sanctions on the city. The report was a 43 page document summarizing the findings of extensive public hearings, a survey and a hiring audit. The study found significant discrimination against immigrants in employment, housing and public accommodations, findings which were echoed in a 1990 report from the GAO which proved that widespread discrimination after IRCA was not isolated to New York City. The New York report found that “[m]any immigrants [were] reluctant to speak out about their problems” because they “feared deportation for having cooperated with a government agency” and that “fear of reprisals is very real to an immigrant community that is often mistrustful by virtue of previous experience with discrimination” (New York City Commission on Human Rights 1989).

The report from the New York City Commission on Human Rights confirmed what local advocates had long been telling the city – that the everyday practices of civil servants and government institutions might play a role in either reinforcing or mediating widespread discrimination against racialized groups, immigrants, and people associated with immigrant communities. While the report did not gain a lot of widespread press coverage, it was a major factor in the passage of Koch’s Executive Order 124 in 1989, which formalized Koch’s earlier memo and laid out more detailed policy provisions regarding information sharing with the INS. The Executive Order stated that:

a) No city officer or employee shall transmit information respecting any alien to federal immigration authorities unless:

1) such officer’s or employee’s agency is required to by law to disclose information respecting such alien, or

2) such agency has been authorized, in writing signed by such alien, to verify such alien’s immigration status, or

3) such alien is suspected by such agency of engaging in criminal activity, including an attempt to obtain public assistance benefits through the use of fraudulent documents....

The Order went on to declare that line workers should not be making determinations about immigration status, or transmitting information to federal immigration authorities, and that only a designated officer or employee should be allowed to handle issues dealing with
immigration and citizenship status. It was a recognition, to a certain degree, of the complexity of immigration law and the lack of expertise local officials had to determine the immigration status of the people they came into contact with in the course of their daily duties. With confirmation that IRCA had led to widespread discrimination, the city framed Executive Order 134 as a response to the increased fears that line workers, like employers, would be making determinations about legal and illegal status based on national origins and racial categories (Koch 1989).

There were specific provisions in Executive Order 124 with regard to policing that limited information sharing with the INS to cases where “criminal activity was involved,” offering some protection to victims:

c) enforcement agencies, including the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. However, such agencies shall not transmit to federal authorities information respecting any alien who is the victim of a crime.

To the extent that it was followed, Executive Order 124 removed the ambiguity that led to discretionary reporting by stating information sharing with the INS should only occur when there is an affirmative duty to do so in law. It also went beyond making services available to all residents in the city, where permitted by law, and declared that city agencies should be actively encouraging people to make use of services, for the public weal:

Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

I cite Executive Order 124 in some detail here not only because it became a defining feature of New York’s official relationship to the INS for so many years to come (although, as I will discuss, the extent to which it is held up by city staff and local police is an important question), but also because the provisions and justifications for the order have been echoed in the ongoing legal and political debates between the city and the federal immigration authorities since that time. In the realm of law and official policy, the Executive Order has been an important anchor for decisions about the involvement of municipal staff and service providers in the everyday
practices of immigration enforcement in the city. For example, the 1989 report from the New York City Commission on Human Rights was submitted by the city in support of the 1996 constitutional challenge it initiated against the anti-sanctuary provisions of the IIRIRA and PWORA, and the history and text of Executive Order 124 was debated in a recent federal hearing before the Subcommittee on Immigration, Border Security and Claims of the Committee on the Judiciary (Hearing 2002), which I will discuss below.

City of New York v. United States of America

As mentioned in the previous chapters, the mid 1990s were a period of heated debate about immigration policy in the United States that led to the passage of legislation that radically altered the rights of non citizens in the country. Part of this transformation involved the further criminalization of immigration law and the gradual institutionalization of new enforcement practices in the interior of the country. New York Mayor Rudolph Giuliani was a vocal, of perhaps unlikely, critic of the 1996 reforms, particularly the anti-sanctuary components of the IIRIRA and PWORA (Firestone 1996, 1995; Giuliani 1996). In the press, Giuliani accused the federal government of directly targeting New York City and Executive Order 134 with the provisions which made it illegal for local governments to restrict cooperation with the INS (Filipino Reporter 1996, Firestone 1996). While it is not entirely clear from the legislative and public records how much conflict over EO 134 shaped the 1996 legislation, it is true that when elected representatives were debating the various bills that evolved into the 1996 reforms, New York City came up regularly as an example of a ‘sanctuary city’ in arguments for federal restrictions on local non cooperation policies (cite).

The IIRIRA stated that “a Federal, State or local entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the INS information regarding the citizenship or immigration status, lawful or unlawful, of any individual” (IIRIRA, Section 1373, 1996). Section 434 of the Welfare Reform Act had a similar provision, “designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS” (HR Conference
The Conference Report outlined the reasons for the provisions, saying that “[T]he conferees intend to give State and local officials the authority to communicate with the INS regarding the presence, whereabouts, or activities of illegal aliens….The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that illegal aliens do not have the right to remain in the United states undetected and unapprehended” (Ibid).

The legislation made it illegal for a local government to prevent its staff from communicating with the INS, but interestingly, it did not prevent local governments from limiting the collection of information about immigration status in the first place. In a recent analysis of the National Immigration Law Center (2004: 4):

Section 1373 [of the 1996 legislation] addresses communication between government agencies. It does not require state or local government personnel to collect information about the immigration status of the people with whom they come into contact. If an agent of a city’s government does not know the immigration status of the people with whom an agent deals (because the city has a policy against inquiring into immigration status or in any other way helping to enforce immigration law), then the agent has no information to share. Localities, therefore, do not violate this section when they restrict the collection of immigration-related information.

In this interpretation, then, the anti-sanctuary provisions of the 1996 legislation did not void the provisions of San Francisco’s City of Refuge Ordinance that limited the collection of immigration information, and it in no way compelled local police to inquire into the immigration status of people with whom they come into contact when there is no crime involved. It left participation in immigration law enforcement in the realm of discretion.

On October 11, 1996, less than two weeks after the President signed the anti-sanctuary provisions into legislation, Giuliani and the City of New York filed suit seeking declaratory and injunctive relief against the United States of America, claiming the anti sanctuary provisions were unconstitutional. In an interview discussing the lawsuit, Giuliani explained:

We filed a lawsuit a few suit days ago, and the purpose is to overturn section 434 of the Welfare Act which, in essence, tells New York City that we can no longer provide protection to people who are illegal immigrants or undocumented immigrants, people who are seeking health services, seeking to report crimes when they are the victims of crimes or putting their children
in public schools. Mayor Koch gave that protection eight years ago in an Executive Order 124 so that people who were illegal or undocumented could avail themselves of these services as a way to protect their health and safety, but also as a way to protect the health and safety of the entire city. Because if people who are sick don’t seek treatment they could very well have contagious diseases which could affect everyone; if people who are the victims of crime don’t report it, the person who was the perpetrator could easily victimize or eighty or ninety thousand children aren’t allowed ultimately to go to school, that’s horrible for them but its also horrible for the rest of the city. That will have repercussions for crime, safety and other things in the city. (Mullins 1996)

Again, in their submissions to the courts and the publicity surrounding the case, the City of New York emphasized how EO 134 benefited the public health and safety of the entire city, arguing that it was only after the passage of the Order that the city was able to convince undocumented migrants to report crimes.

In the legal battles that ensued between the city and the federal government, the contested terrain of immigration policy in the United States was transformed into an issue of municipal governance. The city made the claim that the new federal prohibitions violate the Tenth Amendment and the Guarantee Clause of the U.S. Constitution because, among other things, it usurped states’ and local governments’ administration of the core functions of government, interfered with the ability of local government entities to regulate their own workforces, and compelled them to enact and enforce a federal regulatory program (dealing with immigration, over which the federal government has plenary power) (The City of New York v. The United States of America). The city rooted its legal challenge in a form of urban citizenship, arguing that the anti-sanctuary provisions “interfered with the ability of states and local governmental and their duly elected officials to represent the electorate by engaging in the sovereign process of passing legislation or otherwise enacting a policy” (Appellant’s Brief). In plain terms, the city’s legal argument was that anti-sanctuary provisions were undemocratic, insofar as they represented a lack of respect for local political processes. As Giuliani said:

…The 10th amendment says that the powers not given to the federal government are reserved to the state and to the people, and one of the power that is reserved to local government is the power to provide for the health and safety of all its citizens. So in this particular case we believe the federal government constitutionally should defer to the cities and the states
to allow us to decide how we want to treat people who live in the city. (Mullins 1996)

Drawing on the principles of local democracy, the city claimed it was exercising its sovereign power to enact Executive Order 134 through a political process, which included participation by the residents of the city (Appellant’s Brief). The federal government’s attempt to localize immigration law enforcement and surveillance responsibilities thus ran into local governance issues because if every site of interaction would become a border site, it would mean the feds by default, would have an extension of their power into local affairs.

The language of these provisions makes evident that the federal government seeks a direct exchange of information between State and local employees and INS regarding the ‘immigration status, lawful or unlawful, of any individual... This exchange of information is to occur without any interference from the ‘middle man’ – i.e. the state or municipal employers..... The constitutional problem, however, is that State and local employees cannot be enlisted as the agents, spies, or foot soldiers of the federal government. (Ibid.)

The City of New York lost its case against the federal government, appealed the judges’ decision, and finally lost its appeal in 1999 (City of New York v. U.S. 179 F.3d 29 (2nd Cir. 1999). In the final ruling, however, the judge left open the possibility that a general policy on confidentiality which did not specifically address immigration status might not contradict provisions in federal legislation. As the judge said:

The City’s concerns are not insubstantial. The obtaining of pertinent information, which is essential to the performance of a wide variety of state and local government functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved. Preserving confidentiality may in turn require that state and local governments regulate the use of such information by their employees. Finally, it is undeniable that sections 434 and 642 do interfere with the city’s control over confidential information obtained in the course of municipal business and over its employees’ use of such information.

The problem, then, was that EO 134 was specific to immigration status, over which the federal government has plenary power.

After the decision came down over City of New York v. United States of America, Executive Order 124 fell into a period of legal and public policy limbo for a number of years, until a backlash against sanctuary cities became a part of national anti-immigrant politics in the United
States following 9-11. The legacy of New York’s Constitutional challenge in the nineties has since shaped the city’s response to efforts by advocates and activists to re-establish guidelines on non cooperation.

**Executive Order 41 and Access Without Fear**

The next time tensions over New York City’s approach to cooperation and information sharing with the immigration authorities came to a head was after 2001, when the convergence between the logics of security and the politics of immigration control in the country once again intensified. Specifically, the federal governments’ attempts to implement local enforcement measures intersected with a rise in anti-immigrant organizing in the country which directly targeted “sanctuary cities.” New York City became embroiled in these debates when a Congressional Research Service report commissioned in the context of debates about the CLEAR Act listed New York City as a “sanctuary city” (CRS 2002). Federal efforts to implicate local police and service providers in the everyday practices of immigration law enforcement also gained public support through the strategies of the anti-immigration lobby in the United States, as high profile media personalities like Lou Dobbs and Bill O’Reilly began attacking sanctuary cities.

In December 2002, a woman was abducted and assaulted in Queens, New York, and it was later made public that a number of the assailants were not only undocumented, but had criminal histories and had been in contact and custody of the NYPD on several different occasions (Hearing 2003). The anti-immigration lobby seized on the event as a means to challenge New York’s approach to information sharing with the INS, suggesting that the assault was directly related to Executive Order 124, which they suggested barred line officers from communicating with the immigration authorities who would have then deported the men before they had committed their crimes. If the order hadn’t been in place, critics argued, the woman would not have been abducted (Hearing 2003).

The scandal that surrounded the assault eventually led to a Hearing on New York City’s alleged “Sanctuary Policy” before the federal government’s Subcommittee on Immigration, Border
Security and Claims of the Committee on the Judiciary (Hearing 2003). The goal of the hearing was to assess whether New York had maintained its policy after it lost its court case in the nineties, the effect such policies have on law enforcement, immigration enforcement, public safety and consistency with federal law. New York City thus entered center stage in the conflicts between the different levels of government over local participation in border security. But again, the struggles over New York City’s non cooperation policy never translated into a broader based movement, and debates were largely contained within the different levels and institutions of government. E.O. 124 did not have the legacy of organizing and mobilization that San Francisco’s City of Refuge Ordinance has had which has made local activists, service providers, and city staff in the Bay Area directly invested in protecting it. As a response to the concerns that surrounded the high profile abduction, Bloomberg eventually issued a new order that officially repealed Executive Order 124.

While the discourse that surrounded Bloomberg’s new order (Executive Order 34) echoed earlier sentiments that all residents should have access to services in order to promote public health, education, welfare, and safety, critics at the ACLU and immigration advocacy groups pointed out that it watered down the initial intentions of Koch’s order by allowing police to ask about immigration status and report that information to ICE. This sparked a period of advocacy work and negotiations between civil liberties organizations and the city to try to get a new policy in place that would keep New York’s policy in line with the constraints of the 1999 2nd Circuit decision, but provide some restrictions on police involvement in immigration law enforcement. The result of these negotiations was a policy that drew directly on the judge’s suggestion that a generalized confidentiality policy might be upheld, and the problems with the earlier order stemmed from its focus on immigration status (New York City, Executive Order 41). The new order thus protects the confidentiality of not only immigration status, but also

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41 Statement of Basis and Purpose of Executive Order No. 34 New York City Policy Concerning Immigrant Access to City Services May 13, 2003
“sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, immigration status, and shall include all information contained in any individual’s income tax records.” But is also allows for communication and cooperation between local police and the immigration authorities. In fact, at a City Council Hearing in 2005, representatives from the NYPD testified that it is their policy to automatically call the Department of Homeland Security if they arrest someone who is a non citizen, although in practice this appears to be a discretionary choice on behalf of the officers involved (Interview with Jadwat, Interview with Vimo, Interview with Moussavedieh).

Conclusion

In New York City, the ideals of sanctuary and non cooperation have stayed within the realm of law and policy, never translating into a significant shift in everyday practices. Indeed, to the extent that debates about local cooperation with immigration law enforcement entered into the public sphere, they reinforced federal authority over immigration controls, and advanced a vision of urban citizenship that did not focus directly on the rights of undocumented migrants. Over the course of its legal struggles with the federal government and the pressures of the anti-immigration lobby, policies that restricted the involvement of local staff and police in the everyday practices of immigration law enforcement in New York City were gradually dissipated into a generalized policy on confidential information. And, because there was little widespread “buy in” to restrictions on participation, particularly among local police, the anti-sanctuary provisions of the 1996 immigration and welfare reforms were able to shape local approaches to non cooperation in New York.

These provisions forbid local governments from restricting information sharing with the federal authorities, although they do not directly compel local staff and service providers to cooperate. In this sense, the arena of discretion is still quite large. While cities cannot technically have formal policies in place that prevent local cooperation, there are no mechanisms at the federal level which make it illegal for local staff or officers from asking about immigration status in the first place (as is in the case in San Francisco), or collectively making the choice that they will not participate in joint operations, database sharing or other activities related to border security.
This makes broad based organizing around the politics of refuge and refusal all the more important as a means to shift the discretionary practices adopted by police.
CONCLUSION

Movements to establish Cities of Refuge in the United States represent a subtle but persistent challenge to the boundary making processes of the federal state. Activists and advocates have mobilized logics of Sanctuary to disrupt the production of exception and bring subjects who exist on the borders of citizenship back within the realm of the political. In Berkeley during the Vietnam War, Sanctuary was an active intervention into the everyday practices which kept soldiers on board the USS Coral Sea in isolation, subject to the exceptional norms of military discipline. During the 1980s, Sanctuary logics were recovered to prevent the deportation of Central American refugees and to organize against U.S. involvement in Central America. Church congregations, activists, and local governments during this time mobilized alternative discourses of citizenship and legality to recast refugees the federal government defined as “illegal” as legitimate and welcome members of their political communities. More recently, sanctuary policies and practices that were incorporated into the legal and institutional spaces of local governments during the 1970s and 80s have been revived to challenge new surveillance and security initiatives at the federal level that have made the border and the production of illegality a more intimate part of everyday life in the city. The genealogy of Sanctuary in the United States demonstrates the incomplete and contested nature of the sovereign exception, highlighting a consistent trajectory of refusal and refuge that have fuelled alternative forms of citizenship in U.S. cities.

An important part of the genealogy of Sanctuary has been the establishment of spaces “outside the realm of ordinary existence,” where emergent norms and ideals of legality and political belonging can be asserted. Sanctuary is thus a strategic form of territoriality, in the sense that it draws upon and establishes moral authority, meaning, and control over spaces where alternative forms of political belonging can be nurtured. These are also spaces through which activists have attempted to hold state encroachment at bay. During the Vietnam era, this involved creating material spaces for convergence, where different movements and
organizations could come together to build alliances and support for soldiers facing the repression of military discipline. In the 1980s, recognizing the unique place occupied by the church in the moral geography of the city, churches opened their doors to Central American refugees in the hope that the immigration authorities would be less likely to trespass into those spaces to arrest and deport people. These geographies of Sanctuary do not necessarily map neatly into legal or jurisdictional space, but are rather produced through alternative assertions of sovereignty, suggesting the city is pocketed with spaces where people are refusing what Agamben believes to be the underlying logic of the camp that characterizes the modern.

As the genealogy of city sanctuary policies suggests, at times these pockets have been a source of contagion. Certainly the logics of Sanctuary advanced by activists and advocates were absorbed into the institutional and legal spaces of local government, and the acts of territoriality associated with Sanctuary were periodically recovered and re-articulated during moments when the state was encroaching more deeply into the everyday life of migrants and racialized communities: the “state of siege” experienced by the Latino community in San Francisco after the passage of the 1986 IRCA, for example, or during attempts by the federal government to involve local police and service providers in the everyday practices of immigration law enforcement that has accompanied the post 911 security agenda.

A close examination of the genealogy of city sanctuary policies has revealed the alternative forms of political community and legality that have been woven into American citizenship over time, raising important questions about the ostensibly hardened relationship between sovereignty, membership, and the nation state. Struggles to establish Cities of Refuge reveal the complex interplay between two different political trajectories in the United States: one deeply implicated with the production of the sovereign exception and the state’s authority over migration controls, and the other with city sanctuary, as a form of urban citizenship. Exploring the concrete mechanisms through which these two political trajectories are made manifest in U.S. cities demonstrates their mutual constitution.

For example, the denial of asylum to Central American refugees and their “extralegal” treatment by immigration authorities in the Southwest led to the rise of a movement that not
only challenged the practices of the INS, but also US foreign policy in Central America, which then, in turn, served as a critique to federal authority over immigration controls. The arrest and criminalization of Sanctuary workers by federal authorities sparked new wave of activism, and the involvement of local governments in the politics and practice of Sanctuary. Attempts at the federal level to crackdown on city sanctuary policies in the context of the 1996 immigration and welfare reforms led to legislative changes which made it more difficult for cities to prevent their staff from sharing information and cooperating with the federal immigration authorities. This, in turn, led cities to adopt new strategies to ensure their sanctuary policies and practices were not subject to legal sanctions. A detailed exploration of the tensions and convergences between these two trajectories reveal the “succession of forces” which have taken hold of citizenship in U.S. cities over the past 35 years, demonstrating that contemporary constellations of the citizen/alien which subject non citizens to forms of governance which “float, by design, separately from the rule of law” (Coleman 2007) are far from inevitable.

The alternative discourses of political belonging and legality that have been mobilized through the normative ideal of the City of Refuge are rooted in a vision of urban citizenship, whereby all people territorially present in the city have access to the same rights and services, regardless of their formal citizenship status. City sanctuary, as a constellation of political practices and logics, has thus served as a counterpoint to the production of citizenship framed solely in relationship to the sovereign nation state and its authority to control the movement of people across its borders. At their most effective, these policies can serve to withdraw information and resources from the technologies of governance that produce migrant illegality and maintain the citizen/alien divide. By removing questions about immigration status from intake forms, preventing local police and service providers from communicating with the immigration authorities, and guaranteeing equal access to services, sanctuary policies have the potential to make distinctions in immigration status and citizenship less relevant to urban life. This stands in stark contrast to federal attempts to enlist local “proxy actors” (Coleman 2007) in border control, and the legislative and policy changes which have brought the everyday practices of immigration law enforcement, and the logics of the camp, into the space of the city.
And yet, the forms of urban citizenship that advocates and activists have attempted to embed in city sanctuary policies are not just local. Movements for Sanctuary have articulated a transnational geography of responsibility in their efforts to both “make Central America a Sanctuary for its own people” and hold the U.S. immigration authorities accountable to the federal government’s role in the displacement of people from their homes. Indeed, there is a thread running through the genealogy of Sanctuary from the Vietnam Era to present that represents a critique of American Empire. It is a critical thread for contemporary organizing around immigration rights, because it implicates those with full citizenship status in the struggles of undocumented migrants and those without full citizenship status, offering a model of urban citizenship that is at the same global in its sensitivities. In this, it represents a potential response to the strategic territorial practices of the federal state that connect immigration policy, the maintenance of a marginalized migrant labour force, and Empire.

The question for those interested in building the City of Refuge, of course, is how to make these emergent threads and trajectories more material. How do we translate the forms of urban citizenship associated with the City of Refuge into practices that can disrupt the production of migrant illegality, racialized citizenship, and deportability? This necessitates sensitivity not simply to the forms of law and authority that shape immigration policy in the United States, but the everyday practices of immigration law enforcement that operate as technologies of citizenship in the interior of the country. These practices, as subtle as they may be (for example, asking people their immigration status at routine traffic stops, or sites where they access services and entitlements, or sharing databases with ICE) are critical to sovereignty’s hold over life – and as such they represent important sites for intercession and refusal. If an alternative is to be found that can loosen the hold the legitimacy of migration controls have on our political and geographical imaginations, it may well have to come from the subtle interventions of those who are refusing their everyday enforcement. Out of the struggles to create a City of Refuge and the resistance to use local police in immigration law enforcement, a vision of citizenship emerges that provides a possible line of flight from the constellations of security and nationalism which dominate contemporary discussions of immigration policy—an
insurgent citizenship that echoes the assertions of immigrant rights groups around the world that “No One is Illegal.”
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While genealogical investigation involves a somewhat different sensibility than other forms of inquiry, this project also relied on qualitative methods and sources of data common to the practice of research in human geography, including archival research, supplemented by key informant interviews, policy research, and participant observation.

### Data Collection

#### Preliminary and Background Research

The first stage of research had two objectives: 1) to develop a broad overview of Sanctuary and sanctuary policies in the United States and refine the study by identifying key moments and cities for further research; and 2) to develop a broad overview of the changing institutional and legal environments within which sanctuary policies have been enacted, including federal and state law and policy. This stage of research was carried out between May and December 2005. It relied on an analysis of federal and state legal, legislative and policy documents (including the records of the public hearings that have taken place under the jurisdiction of state and federal authorities), media coverage, and secondary sources.

#### Federal and State Legal, Legislative and Policy Documents

These sources were used to provide insight into the changing relationships between sanctuary and the different scales of legislation and practice that determine how asylum seekers and those without formal citizenship status access rights in the United States, particularly the practices which lay at the juncture between local and federal arenas of responsibility and
governance. I identified legislative sources and documents related to changes in law through the law indexes LegalTrac, Justis, and the Index to Legal Periodicals. I used the PolicyFile database, and indexes of U.S. policy documents such as the GPO Database of U.S. Government Publications, and the Catalog of the Congressional Record to identify and collect policy documents, records of legislative debate, and public hearings. Professor Miriam Wells at the University of California, Davis, was extremely generous in sharing several unpublished documents she had pulled together on the legislative history of immigration in the United States which allowed me to identify key changes and events for further investigation. A list of relevant legislation and sources is included in the References section of this dissertation. Taken together, these sources cover a significant portion of the texts that document the shifting institutional and legal frameworks in which sanctuary policies have been introduced and contested. In reviewing these sources, certain cities were continually coming up in the policy discussions at the federal scale, and this, combined with the media searches described below, played a role in helping me identify specific cities upon which I would focus further research.

This period was an interesting time to be exploring the relationship between local and federal immigration policy issues, because debates about the role of local police and service providers in immigration law enforcement were pervasive in federal policy agendas and public discourse. Together with the insights provided by some of the excellent secondary sources I have cited in this dissertation, preliminary policy research conducted during this time allowed me to historicize contemporary debates about the localization of immigration law enforcement, contextualize current trends and policy initiatives, and identify key legislative and policy changes through which the city has become an important space where the bordering practices of the federal state are enacted.

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42 As I will discuss, the research component dealing with Berkeley’s sanctuary policy for soldiers from the USS Coral Sea resisting the Vietnam War was added at a later date, so the majority of the background research at this stage focused on the relationship between Sanctuary and immigration law enforcement.

43 For example, the CLEAR Act, changes to the NCIC, HR 4437, and legal opinions of the Department of Justice which are discussed in Chapter 4.
Media Coverage

During this stage, I also began to collect media coverage on city sanctuary policies. I focused most of my data collection for the period from the 1970s to 1990s on print media, due to ease of access, with the exception of some old local television footage the East Bay Sanctuary Covenant has in their possession from the time the first sanctuary policies for Central American refugees were passed in the mid 1980s. I also reviewed recent television coverage of sanctuary cities and policies, particularly mainstream media coverage on national networks such as CNN from 2001 on, as sanctuary policies, once again, entered into national public debate in the post-911 security contexts.

I focused my searches on the major national newspapers (Los Angeles Times, New York Times, Washington Post, Wall Street Journal) and on more regional California and New York papers such as the San Francisco Examiner, Oakland Tribune, San Francisco Chronicle, San Jose Mercury News, Sacramento Bee, and The San Francisco Bay Guardian. I identified relevant articles through the electronic indexes UMI Proquest Direct and InfoTrac OneFile and Access World News, as well as the indexes that are available for specific newspapers such as the New York Times Index (1965-), The Wall Street Journal Index (1981-), and the Index for the Washington Post (1971-).

This data served several purposes. Initially, this collection of media coverage was not used as a source of data for analysis in itself, but as a source of information in order to identify key cities for future study, as well as important actors, organizations, and policy changes that occurred during the study period. This helped me refine my searches in the databases of municipal archives in Berkeley, San Francisco and New York City in that media coverage often highlighted key events when sanctuary policies and politics became particularly contentious or relevant for local political processes.

Later on in the research process, media coverage was used to understand the public discourse that surrounded sanctuary practices, and identify key moments when the discourses of citizenship and legality that surrounded sanctuary policies shifted.
Secondary Sources

As mentioned, the majority of research on Sanctuary in the United States to date has focused on the faith based Sanctuary Movement of the 1980s directed at the protection of Central American refugees who were being denied asylum in the United States (Bau 1985; Golden and McConnell 1986; Crittenden 1988; Davidson 1988; Lorentzen 1991; Coutin 1993; Cunningham 1995). Foley (2006) work on Sanctuary during the Vietnam War is unique, and there is still a great deal of research to be done on this period of Sanctuary in the United States. A review of existing literature provided insight into the history of the church based Sanctuary movement, its motivations, and the interactions between church congregations and the federal immigration authorities. These sources, combined with later archival research, informed much of the discussion in Chapter 2 on the Logics of Sanctuary. The insight detailed and ethnographic accounts of the Sanctuary Movement during the 1980s provided into the logics of religious Sanctuary helped me identify the relationship between religious sanctuary and its later manifestations in the legal and institutional spaces of local governments as I moved into more localized accounts in New York and California.

Fieldwork in California and New York

After completing preliminary and background research and refining a list of potential cities to focus on in more detail, several research trips were made to California and New York to collect data on local histories of Sanctuary. An initial trip to San Francisco Bay Area was made in June 2005 to identify archives, assess whether there were appropriate and feasible materials available for the study, and make connections with archivists and librarians. Over the course of next three years, I made several follow-up trips to California to access archives and conduct interviews, the longest being from January to May 2006. Being in California during the mass mobilizations for immigrant’s rights that took place in 2006 and 2007 added a critical perspective to contemporary invocations of the City of Refuge, as I participated in movement activities, marches and meetings where ideas of Sanctuary and refuge were invoked to contest contemporary legislative change associated with securitization. The bulk of my archive on New York City was collected while in residence at the Center for Place Culture and Politics, at the
Graduate Center, CUNY, in New York City from September 2007 to May 2008. Field work in California and New York involved archival research, a small number of key informant interviews, and the informal forms of participant observation that come from participating in local meetings, protests and gatherings that are related to the themes of one’s research.

Archival Research

Two different types of archival research made up the bulk of data collection for this project. The first were municipal archives and records in Berkeley, San Francisco and New York City.\footnote{I also conducted some exploratory research in the archives of other cities, including Oakland, Chicago and Los Angeles, but these cities were eventually put aside for the purpose of this project, in part because of time constraints and somewhat less substantive records, but also because of a decision to prioritize research in 3 key cities where the substance and meaning of Sanctuary was constituted.} These provided insight into policy making processes, internal politics, and debates with other levels of government. Out of this archive, I was able to gain insight into local debates and motivations and continue to identify key informants for interviews. Testimony from public hearings, minutes from meetings, and internal reports offered a rich source of insight into the discourses and logics being mobilized by advocates, activists, local politicians, and bureaucrats in the three cities. These archives also included correspondence between different levels of government, and, in the case of San Francisco’s records before the early 1990s, letters from residents, newspaper clippings, and even photos that had some relevance to the legislation and policies being discussed by the Board of Supervisors.

All three cities have catalogues of their records available in their offices (The City of Berkeley has theirs available online), which provided one mechanism through which to identify relevant files and documents. I was also able to seek out relevant files by identifying key events and dates through the preliminary and background research. In the end, motivated by Foucault’s assertion about genealogies reliance on “a vast accumulation of source materials,” I erred on the side of over-collection, often pouring through boxes of Legislative Files and hearing records that at first glance seemed only tangentially related to Sanctuary, only to discover a few
important documents or records that offered new insights. The people working in the Clerks’
offices in San Francisco and Berkeley were particularly generous with their time and patience,
and the staff in San Francisco gave me space in their office through which to pour over the
materials I kept sheepishly asking them to retrieve.

The second type of archival research involved the archives of organizations and individuals who
played a role in Sanctuary movements in the San Francisco Bay Area. The primary sources of
archival data were found in the following collections:

Gustav Shultz Sanctuary Collection, 1971-72, 1981-90. GTU 90-5-01. The Graduate
Theological Union Archives, Berkeley, CA.

of California, Berkeley, CA.

Theological Union Archives, Berkeley, CA.

New Religious Movements Organizations: Vertical Files Collection, GTU 99-8-1, The
Graduate Theological Union Archives, Berkeley, CA.

Pacific Counseling Service and Military Law Office Records, BANC MSS 86/89 c, The
Bancroft Library, University of California, Berkeley, CA.

Sister Maureen Duignan, the Executive Director of the East Bay Sanctuary Covenant, was
generous enough to let me peruse the materials they have collected, including some old media
footage on the Sanctuary Movement from the 1980s.

These archival collections provided a rich source of data that included minutes from meetings
of organizations involved in Sanctuary, correspondence, religious writings and teachings, church
publications, notes for sermons and publications, press releases, movement materials such as
flyers, press releases, handbooks on organizing around Sanctuary, and historical accounts
where the meaning and history of Sanctuary is discussed, debated and contested. These
archives also provided insight into the campaigns that emerged out of religious and faith based
Sanctuary movements to have local governments pass local sanctuary policies. They provided
insight into the way Sanctuary has been mobilized at different moments, and the relationships
between different movements and organizations involved. Analyzing this data often led to
significant shifts in the dissertation. The story of the USS Coral Sea, for example, was hinted at so frequently in the archives from the 1980s, that I finally went and did more detailed research into this event. I had no idea when I started my research that the SOS movement and Sanctuary during the Vietnam War would represent such an important moment in the genealogy of municipal Sanctuary, but as my research continued, the story eventually evolved from a few paragraphs of background information in the dissertation to a chapter of its own. Such is the nature of genealogical research.

Drawing on this collection of sources, my analysis was primarily based on a discursive analysis of how movements have invoked and understood Sanctuary, and the sources of legitimacy and inspiration from which they were mobilizing and organizing. This does not fully reflect how federal state institutions or legal professionals might have viewed Sanctuary or the idea of the City of Refuge (for example, its legality under federal law), although I have included some discussion of this to the extent that it is relevant to the way advocates for Sanctuary understood their actions. Nor does it fully explore in any comprehensive way how most of the subjects who were the focus of Sanctuary practices over the past several decades understood Sanctuary. Their experiences are not fully reflected in the documentary history (or, as I will discuss, the interviews I conducted) although some of their accounts and personal stories are certainly included in it.  

This raises an important point about what can and cannot be done with the data I collected. For example, in my analysis of the logics of religious sanctuary, I have avoided any attempt to analyze the legitimacy of legal, theological or historical claims by movements for Sanctuary, but have rather taken the discourses of citizenship, legality and Sanctuary in this archive on their...

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45 There were certainly many people who were positioned in multiple relationships to the movements, being both recipients, so to speak, of the movement’s offer of sanctuary, and also organizers themselves. For the most part, however, we can understand the Sanctuary Movement in the 1970s as intersecting with GI anti-war movement, but largely involving non military personnel. Similarly, while there were some refugees from Central America who played significant roles in the Sanctuary Movement in the 1980s, it was largely a movement of native born Americans with full citizenship status. In more recent years, however, the relationship between movement organizing and the subjects to which religious Sanctuary has been extended seems to have merged more closely together, although more research into current mobilizations of Sanctuary is certainly warranted.
own terms. For the purpose of this project, it is more important to understand whether proponents of Sanctuary articulated their actions as compatible with Canon Law, or biblical obligations of asylum, and less important whether or not such claims would be substantiated by legal scholars, theologians, or historians. More broadly, I am interested in how people’s interpretations of religious and legal traditions informed their sanctuary work, and how they mobilized these interpretations strategically in particular moments and places, and for this reason my analysis does not venture into whether their interpretations were historically or legally “correct.”

**Interviews**

My archive of documentary sources was supplemented by a small number of semi-structured interviews with key informants in New York City, San Francisco, and Berkeley from organizations that have been actively involved in the implementation of sanctuary policies. When I first designed my research project, I had assumed interview research would be a much more significant source of data than it later turned out to be. This was for a number of reasons. Many of the key figures involved with Sanctuary during the 1970s and 80s in the Bay Area had either passed away, or were too unwell to participate in interviews. Luckily, the Graduate Theological Union at the University of California, Berkeley, maintains the personal archives of Charles Gustav Shultz, a key figure in the movement, which contained a wealth of useful materials related to Sanctuary at the University Lutheran Chapel and in the Bay Area more broadly. I was also attempting to interview activists during a period of intense organizing and political debate about contemporary immigration policy which sparked the mass mobilizations and marches of 2006 and 2007. In such an intense period of organizing, it was difficult to focus discussions on events from the 1970s and 1980s, or even to schedule interviews with people whose attentions were much more directed at addressing more contemporary crises.

In the end, I chose a number of strategic key informants who could address gaps I found in the archives, confirm questions I had about what I found there, and provide some triangulation to the archival and policy analysis I had been doing. I identified key informants through media coverage and archival research, but also a snowball sampling approach, where I ask my initial
contacts to refer me to other potential interview participants. These interviews are by no means intended to be representative or complete, but rather a supplement to other, much richer, sources of data found in the archives.

Interviews were semi-structured, and usually lasted from 1 – 1.5 hours. With the exception of the interview I conducted with the representative from the San Francisco Police Department, all interviews were taped and notes were taken during the interviews.

List of Interviewees:

Ann Fagan Ginger, Founder and Director of Meiklejohn Civil Liberties Institute. First Chair of Berkeley City Commission on Peace and Justice. Berkeley, CA.

Avideh Moussavian, Sr. Staff Attorney, Director of Immigration Policy and Advocacy at New York Immigration Commission (NYIC), New York, NY.

Chris Daly, Member, San Francisco Board of Supervisors, San Francisco, CA.

Ignatius Bau, Director, Health Systems, The California Endowment, San Francisco, California, Previous Director of the Asylum Program, Lawyer’s Committee for Civil Rights (LCCR), San Francisco, CA.

Jackie Vimo, New York Coalition for Immigrant’s Rights to Driver’s Licenses, New York City, NY.

Omar Jadwat, Staff Counsel, American Civil Liberties Union (ACLU), Immigrants’ Rights Project. New York, NY.

Michael Ellick, Assistant Minister, Judson Memorial Church, New York, NY.

Philip Hwang, Staff Attorney at the Lawyers Committee for Civil Rights (LCCR), Director of LCCR’s Asylum Program. San Francisco, CA.

Renee Saucedo, Director of San Francisco Day Laborer Program, La Raza Centro Legal. San Francisco, CA.

Member, San Francisco Police Department, San Francisco, CA.

Sr Maureen Duignan, Executive Director, East Bay Sanctuary Covenant, Berkeley, CA.
Some Notes on Analysis

My analysis of the vast amount of archival materials, interview notes, and policy documents I collected drew on discourse analysis in order to understand the logic of sanctuary movements and policies. Close attention was paid to the discourses that were mobilized to challenge, or reinforce, the rights of antiwar soldiers, undocumented migrants and refugees, and how these discourses may operate to disrupt or reinforce truth claims about national citizenship, political membership, and the sovereign exception (Agamben 1998). In my analysis, I focused on how sanctuary practices were legitimized, or de-legitimized, in the texts I analyzed. I also looked at the specific technologies and practices that have been entrenched in local sanctuary laws and policies, and how local sanctuary policies relate to other sites and scales of regulation (for example federal and state law, international human rights regimes, and local civil society organizing). Using a genealogical approach, in each moment or case I researched, I focused on outlining the play of forces at work in the constitution of citizenship and legality, and what forms of citizenship, practices, or politics emerged from key events and spaces of organizing.
Appendix B: City of Berkeley: Sanctuary for the Soldiers on the USS Coral Sea

Whereas, a number of sailors from the USS Coral Sea have asked that sanctuaries be established; and, whereas, the University Lutheran Chapel of Berkeley, with the support of ten Bay Area Churches, has announced its availability as a place of sanctuary for “any person who is unwilling to participate in military action”, and has issued a statement indicating the nature of the sanctuary offered...

NOW, THEREFORE, Be it Resolved as follows:

1. That the City of Berkeley supports those men who decide to take sanctuary.

2. That the City of Berkeley supports the sanctuary already established at the University Lutheran Chapel and will support any congregation in Berkeley which engages in sanctuary.

3. That the City of Berkeley is also willing to provide a facility for sanctuary. The nature of that sanctuary will be as defined by the statement of the University Lutheran Chapel and its supporting churches. A committee designated by the University Lutheran Chapel and supporting churches will work with the City to find an appropriate facility and to operate that facility in line with the sanctuary statement.

4. That the City of Berkeley encourages the People of Berkeley to work with the existing sanctuary to provide the bedding, food, medical aid, legal help and friendship that the men may need.

5. That no Berkeley City Employee will violate the established sanctuaries by assisting in investigation, public or clandestine, of, or engaging in or assisting arrests for violation of federal laws relating to military service on the premises offering sanctuary, or by refusing established public services.

6. That the statements set forth in this resolution are intended as support for the actions of the men on the USS Coral Sea and are not intended to influence them into specific actions such as sanctuary.
Appendix C: Executive Order 41, New York City

THE CITY OF NEW YORK

OFFICE OF THE MAYOR

NEW YORK, N.Y. 10007

EXECUTIVE ORDER No. 41

September 17, 2003

CITY-WIDE PRIVACY POLICY AND AMENDMENT OF EXECUTIVE ORDER NO. 34 RELATING TO CITY POLICY CONCERNING IMMIGRANT ACCESS TO CITY SERVICES

WHEREAS, it is the policy of the City of New York to promote the utilization of its services by all of its residents who are entitled to and in need of them; and

WHEREAS, individuals should know that they may seek and obtain the assistance of City agencies regardless of personal or private attributes, without negative consequences to their personal lives; and

WHEREAS, the obtaining of pertinent information, which is essential to the performance of a wide variety of governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved, and preserving confidentiality in turn requires that governments regulate the use of such information by their employees; and

WHEREAS, in furtherance of this policy, confidential information in the possession of City agencies relating to immigration status or other personal or private attributes should be disclosed only as provided herein;

NOW, THEREFORE, by virtue of the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. As used herein, “confidential information” means any information obtained and maintained by a City agency relating to an individual’s sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual’s income tax records.

Section 2. No City officer or employee shall disclose confidential information, unless such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual’s parent or legal guardian; or
such disclosure is required by law; or
such disclosure is to another City officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or

in the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any City agency; or

in the case of information relating to immigration status, (i) the individual to whom such information pertains is suspected by such officer or employee or such officer’s or employee’s agency of engaging in illegal activity, other than mere status as an undocumented alien or (ii) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, other than mere status as an undocumented alien or (iii) such disclosure is necessary in furtherance of an investigation of potential terrorist activity.

Agencies shall promulgate such rules as may be appropriate to detail circumstances in which confidential information may or may not be disclosed pursuant to this executive order. Any City officer or employee with a question relating to the disclosure of confidential information under this section shall consult with the general counsel of such officer’s or employee’s agency.

Section 3. Section 2 of Executive Order No. 34, dated May 13, 2003, is amended by adding a new subdivision d to read as follow:

d. “Illegal activity” means unlawful activity but shall not include mere status as an undocumented alien.

Section 4. Sections 3 and 4 of such Executive Order are amended to read as follows:

Section 3. Information respecting aliens.

a. A City officer or employee, other than law enforcement officers, shall not inquire about a person’s immigration status unless:

(1) Such person’s immigration status is necessary for the determination of program, service or benefit eligibility or the provision of City services; or

(2) Such officer or employee is required by law to inquire about such person’s immigration status.

Section 4. Law Enforcement Officers.

a. Law enforcement officers shall not inquire about a person’s immigration status unless investigating illegal activity other than mere status as an undocumented alien.

b. Police officers and peace officers, including members of the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity.
c. It shall be the policy of the Police Department not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.

Section 5. This Order shall take effect immediately.