smugglers or samaritans in Tucson, Arizona: producing and contesting legal truth

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In 1991, the U.S. Supreme Court refused to hear the appeals of a nun, a minister, two priests, and four lay people convicted of conspiring to harbor, transport, and conceal the unlawful entry of undocumented Salvadoran and Guatemalan immigrants. The court's decision removed this conflict between the U.S. government and members of the U.S. sanctuary movement (a grassroots network of congregations that had declared themselves sanctuaries for undocumented Central American refugees)[1] from the last forum of truth in the formal legal system. The designation of convicted sanctuary workers as alien-smugglers had officially been made permanent. Despite the seeming decisiveness of this outcome, however, the very acts that constituted these sanctuary workers as criminals enabled defendants to promote competing assessments of their actions. Before they were indicted, the threat of criminal charges led sanctuary workers to develop complex legal, moral, and religious justifications for their work with Central Americans. The 1985–86 trial gave defendants the opportunity to bring these justifications before a wide audience. Following the trial, convicted sanctuary workers and their colleagues used their increased knowledge of surveillance and law to leave a record that they felt would define their actions as law-abiding rather than criminal. Paradoxically, prosecution and surveillance simultaneously criminalized and exonerated sanctuary workers.

The legal conflict between the sanctuary movement and the U.S. government sheds light on how particular technologies of power, such as surveillance and prosecution, facilitate resistance even as they repress. Surveillance and prosecution are powerful ways of knowing and therefore produce authoritative accounts of reality. In that individuals (in this case, U.S. officials) never fully control the discourses they deploy, however, being the objects of surveillance and prosecution enables the scrutinized to shape the images that scrutiny produces. As a result, covert observation and criminal trials produce not one but multiple accounts of reality, each of which is granted some authority by the power of the tactics that produced it. Thus, the procedures that produce "official truth" simultaneously call this truth into question.

To understand the contradictory nature of prosecution and surveillance, it is important to view legal truth as something that is *constructed* rather than *uncovered*. Although in the Anglo-American legal tradition prosecution is deemed a means of applying legal rules to facts

In 1985–86, 11 religious activists whose congregations had declared themselves sanctuaries for undocumented Salvadoran and Guatemalan refugees were tried in Tucson, Arizona, on alien-smuggling charges. Although 8 of the 11 were convicted and although the verdicts were upheld by the U.S. Supreme Court, the social and legal significance of the trial, and of the sanctuary movement itself, has continued to be negotiated by sanctuary activists. Examining the events that led to this trial, the trial itself, and the trial's aftermath sheds light on how legal truth is produced and contested both within and outside of courtrooms. [power, resistance, truth, sanctuary, prosecution, law]

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in order to sort truth from falsehood (Weissbourd and Mertz 1985), the "facts" that police collect and that judges and juries consider are socially constructed, and the "rules" are defined, at least in part, in their application (Comaroff and Roberts 1981; Geertz 1983; Mather and Yngvesson 1980–81; Merry 1990; White 1985, 1986; Yngvesson 1988). The authority of legal rulings derives less from their approximation of some independent reality than from the proceedings that validate them (Bennett and Feldman 1982; Bourdieu 1987; Brenneis 1988).[2] Viewing legal truth as "constructed" suggests that the practices that produce legal truth are of interest to dissidents as well as to authorities. Targets of surveillance, witnesses, attorneys, and others seek to use the authority of legal discourse to legitimize their own narrations of events.[3] I do not view such narration as reductive, as a "skeletonization of fact" (Geertz 1983:172), but rather as productive, since legal facts do not exist as such until they are created by the legal process (see Just 1986). Once rendered authoritative, legal truth shapes material reality, by, for example, leading those defined as "felons" to be fined, imprisoned, or even killed. Even after being rendered authoritative, however, legal truth is still contestable, as there are multiple ways in which people can respond to particular legal outcomes.

The observation that the practices that produce legal truth simultaneously facilitate its subversion suggests that the counterhegemonic potential of legal proceedings lies not, as some have claimed, in the relative autonomy of law, but rather in law's connections to sources of power. Both those who argue that law is primarily a tool of the ruling class (Althusser 1971) and those who see law as a check on state power (Thompson 1975) have assumed that, to be oppositional, law must be somewhat independent of dominant groups, institutions, ideologies, and structures (McBarnet 1984).[4] This notion has fueled the alternative dispute resolution movement, leading legal reformers in the United States and elsewhere to establish community mediation centers and other alternatives to state law (see Merry and Milner 1993). My reading of the sanctuary trial suggests that law's oppositionality stems from the same practices that render law authoritative. Legal proceedings such as surveillance and prosecution produce truth by eliciting knowledge about individuals, subjecting this knowledge to scrutiny, and materially constituting individuals as subjects within legal discourse (Foucault 1979[1975]). The U.S. government used these methods to constitute sanctuary workers as alien smugglers. The government produced knowledge about movement members through covert surveillance, defined some movement members as felons through prosecution, and compelled movement members to monitor their own actions through the threat of further surveillance and indictments. Sanctuary 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.

My own account of the legal conflict between sanctuary activists and the U.S. government is part of a larger project examining the culture of the sanctuary movement (see Coutin 1993). Beginning in January 1987, six months after the trial's conclusion, I conducted 15 months of fieldwork in the San Francisco East Bay and in Tucson, Arizona, where the trial took place. Fieldwork consisted of immersing myself full-time in the movement through volunteering, participating in the activities of three sanctuary congregations (a synagogue and a Protestant church in the East Bay, and a Protestant church in Tucson), and attending sanctuary-related meetings, events, gatherings, and worship services in each region. I also interviewed 100 sanctuary workers, ranging from those who were peripherally involved to central movement figures. Interviews focused on participants' backgrounds, experiences in the movement, and opinions on relevant religious, political, cultural, and strategic issues. Though I did not set out

to study the Tucson sanctuary trial, I discovered that I could not fully understand movement culture without understanding the trial. During interviews, participants traced their involvement in the movement to the trial, described working on the defense effort, and often referred to the threat of future indictments. More than a year after the verdicts, the trial was almost a physical presence and ongoing process within Tucson sanctuary groups. In the course of my fieldwork, I met seven of the eleven defendants, and I interviewed four defendants, three defense attorneys, four unindicted coconspirators, and numerous others who had been affected by the trial.[5] I also analyzed the official trial transcripts, media coverage of the trial in the Tucson press, and weekly trial updates published by the Arizona Sanctuary Defense Fund, an organization that supported the defense effort. I did not interview the prosecutor, the judge, Immigration and Naturalization Service (INS) agents, or other government officials. Since I was working with undocumented Salvadorans and Guatemalans, as well as with U.S. citizens who were involved in activities for which they could be arrested, I did not want to bring myself (and my field notes) to the attention of the government, lead authorities to movement participants, or be mistaken by sanctuary workers for an infiltrator.[6] As a result, my accounts of the government's and the prosecutor's positions derive from published statements rather than from fieldwork and confidential interviews. In contrast, for the sanctuary movement, I had greater access to private as well as public remarks and actions by individuals (particularly for movement members, less so for defense attorneys).

In what follows I will analyze the dynamics of each phase of the conflict between sanctuary activists and the U.S. government. I will begin with the events that preceded the trial, namely, sanctuary activists' proactive use of legal discourse and the government's surveillance of the movement. I will then turn to the trial itself, focusing on the pretrial hearings, the courtroom ritual, and the publicity that accompanied the trial. Last, I will consider the ways that prosecution and surveillance shaped posttrial movement actions. Throughout this analysis, I will show how the practices that defined sanctuary workers as criminals also enabled them to dispute that characterization.

public debates

The legal conflict between the sanctuary movement and the U.S. government addressed three issues that were publicly debated during the 1980s: the morality of U.S. policy in Central America, the appropriate response to illegal immigration, and the bounds of citizen and state authority. During the early 1980s, a thriving Central American peace and advocacy movement was questioning the Reagan administration's support for the governments of El Salvador and Guatemala. The Reagan administration and its supporters argued that such aid was needed to prevent communist insurgents from taking over El Salvador and Guatemala (Vaky 1984). Opponents, including members of the sanctuary movement, contended that the human rights situation in El Salvador and Guatemala was deplorable, that the security threat posed by guerrilla movements, even if they were successful, was negligible, and that assisting the Salvadoran and Guatemalan governments was immoral (see Pastor 1984). This foreign policy controversy was linked to a domestic debate: were Salvadoran and Guatemalan immigrants "refugees" who merited asylum or "illegal aliens" who deserved to be deported? Those who supported the Salvadoran and Guatemalan governments tended to minimize human rights violations in El Salvador and Guatemala, asserting that most undocumented Salvadorans and Guatemalans were economic immigrants (Dominguez 1990). In contrast, Central American advocates claimed not only that most Salvadoran and Guatemalan immigrants were refugees, but also that, in consequence of its aid to the Salvadoran and Guatemalan governments, the United States had a unique responsibility to these immigrants.

These foreign policy and refugee issues were further complicated by cultural and legal dilemmas regarding immigration (see Chock 1991). On the one hand, Americans pride themselves on being a nation of immigrants. The Thanksgiving story is celebrated annually, tourists regularly deluge Ellis Island and the Statue of Liberty, and scholars have deemed "the immigrant experience" part of American character (see, for example, Gorer 1948). On the other hand, U.S. history is rife with nativist movements, and immigrants have been accused of destroying the country, taxing public services, committing crimes, causing disorder, and refusing to assimilate (Bach 1990; Fuchs 1985; Lamm and Imhoff 1985). These conflicting attitudes toward immigration have informed responses by authorities to *illegal* immigration—the act that the sanctuary defendants were accused of furthering. Though technically in violation of the law, illegal immigration has long been somewhat tolerated (Bach 1990; Harwood 1985; Hull 1985; Miller 1985; Morris 1985).[7] U.S. industries and agriculture demand the cheap labor that illegal immigrants provide (Bach 1990; Harwood 1985), while a number of factors—such as the length of the U.S.-Mexico border, the number of would-be immigrants, the ease of reentry, and funding limitations—make it difficult to prevent unauthorized entry (Fuchs 1985; Harwood 1985; Miller 1985). Accordingly, INS officials rarely prosecute small-time alien smugglers (such as individuals bringing their relatives into the country) or immigrants whose only crime is entry without inspection. Both public and official tolerance of illegal immigration decreased during the 1970s and 1980s, and this trend culminated in the passage of the Immigration Reform and Control Act in 1986. Among other things, this legislation strengthened the border patrol and imposed sanctions on employers who failed to verify employees' work authorization.

Finally, by debating citizens' and the government's authority to enforce immigration statutes, the conflict between the sanctuary movement and the U.S. government confronted contradictions in Americans' attitudes toward law. In the United States, respect for the law is coupled with the notion that law sometimes impedes justice (Gorer 1948; Greenhouse 1989; Macaulay 1987; Rosen 1989). To critics of U.S. Central American and refugee policy, the denial by the INS of 98 percent of Salvadoran and Guatemalan asylum applications (United States Committee on Refugees 1986) suggested that the government was not following the law. Critics wondered, when a government violated the law (as citizens understood it), were citizens morally and legally compelled to *enforce* the law as they saw it, even if that meant taking actions that authorities were likely to consider illegal? Immigration authorities faced the other side of this dilemma: when citizens violated the law (as government officials defined it) on moral grounds, were authorities obligated to prosecute them, even if a public trial would have meant exposing authorities to further criticism? Because sanctuary workers chose to act and government officials chose to prosecute, a legal battle ensued.

surveillance and civil initiative

The legal conflict between sanctuary activists and the U.S government began on March 24, 1982, three years before movement members were indicted. This was when both religious volunteers and the government began to act on their respective interpretations of U.S. immigration law. On that date, a dozen congregations around the United States declared themselves sanctuaries for Central American refugees, while a border patrol agent in Tucson, Arizona, surreptitiously observed the declaration ceremony and press conference being held at Southside Presbyterian church.[8] The agent's observations were the first depositions in the evidentiary archive that would eventually situate sanctuary workers' words and actions within categories of illegality. Activists' decision to declare their congregations "sanctuaries" was informed by the understanding of U.S. refugee law that they had developed through their prior work with Central Americans (see also Merry 1990). In the early 1980s, religious volunteers began meeting Salvadorans and Guatemalans who had been detained because they had entered the United

States without authorization. These immigrants' accounts of persecution convinced volunteers that the immigrants might have legal grounds for remaining in the United States. Religious workers began helping detained Central American immigrants to raise bail bond and to file for political asylum. When asylum petitions by Salvadorans and Guatemalans were denied, religious workers concluded that, in violation of the 1980 Refugee Act, foreign policy was influencing the asylum process and that the U.S. was failing to fulfill its legal obligations to the politically persecuted. Frustrated with efforts to secure asylum for Central Americans, religious workers resorted to helping undocumented Salvadorans evade apprehension. Volunteers began bringing Central Americans into the United States and sheltering them at various locations around the country. Although the news media portrayed these acts as civil disobedience, movement members reasoned that their actions obeyed U.S. refugee laws and were therefore legal.

To distinguish sanctuary work from civil disobedience, Tucson activists coined the term "civil initiative." According to participants, civil initiative, in which individuals carry out just laws that their government is ignoring and misinterpreting, differs from civil disobedience, in which citizens disobey unjust laws on moral grounds. Citing the Nuremberg principles,[9] religious volunteers argued that citizens were both morally and legally obliged to enforce the law when their government failed to do so. Participants believed that in the short run, sanctuary would ensure that the rule of law continued. In a January 1988 letter to the INS a Tucson border worker explained, "Everyone's interest would be served . . . if the federal government would itself establish procedures for the admission of first asylum refugees, procedures that make civil initiative unnecessary. In the interim, sanctuary-providing communities on the border must make-do with the checks and balances that civil initiative introduces" (Corbett 1988). Participants also hoped that in the long run, publicly risking imprisonment for acts that they deemed both legal and moral would force the government to comply with the movement's interpretation of the law.[10] If authorities ignored them, sanctuary workers reasoned, the movement's claims would tacitly be legitimized, whereas arrests would allow participants to state their case before a jury of peers. Participants' optimism about the outcome of such a trial was predicated on their view that the persecuted and their advocates could force the powerful to recognize their rights through law.

While movement members were emphasizing the legality of their work, the U.S. government was placing sanctuary activists under surveillance, thus implying that they were criminals. The sanctuary trial prosecutor later explained why this had been necessary: "[T]his Government cannot tolerate essentially what is anarchy by individuals taking the law into their own hands in determining under their guidelines what persons may come or may not come into the United States and . . . flaunt and taunt these criminal acts to the Government" (Official Trial Transcripts 1986 [hereafter abbreviated as OTT]:1052–1053). Surveillance implied criminality by suggesting that the activities and individuals being observed were objectionable (Marx 1988) and by reconstituting individuals' words and actions as *evidence* to be judged by police and courts. From 1982–84, surveillance was limited to collecting movement literature and attending public sanctuary events. Then, in 1984, the government launched an undercover investigation called "Operation Sojourner"; this title was presumably an ironic twist on sanctuary workers' invocation of Leviticus 19:33,[11] a biblical exhortation to aid sojourners from other lands. In March 1984, Jesus Cruz, a government informant, approached Father Quiñones—a future defendant—at his church in Nogales, Mexico, bringing a truckload of fruit for the needy.[12] Professing to be sympathizers, Cruz and several colleagues began attending sanctuary meetings, worshipping with participants, and volunteering to work with the movement. Government informants wore hidden microphones, noted participants' license plate numbers, had their pictures taken with movement members, and gave regular reports to their superiors. Surveillance not only sought (and constructed) evidence of criminality, but also was a means of intelligence-gathering and

deterrence. Beginning in 1981, the FBI conducted a six-year probe of 150 groups—including sanctuary congregations and offices—that were opposed to the government's Central America policy (Gelbspan 1991; Select Committee on Intelligence, United States Senate 1989; Tucson Citizen 1988).

Largely unaware of the government's investigation, sanctuary workers believed that they had constructed a movement that would be difficult to infiltrate. Some argued that the movement's religious composition protected it from infiltration. One former defendant told me, "We did have discussions about it, . . . but I felt that people [in the movement] were getting paranoid. I saw that there was something strange about those two characters [Jesus Cruz and a colleague], but they came into church and worshipped with us, and I thought, 'The government would never send agents into the churches.' " Others hoped that if the government *did* use undercover agents, then once these individuals heard refugees' testimonies they would be converted to the movement's cause. Still others felt that since the movement publicized its activities, an undercover investigation posed no additional risk. The few with strong suspicions of Jesus Cruz either avoided him or concluded that falsely accusing a legitimate participant would be worse than being infiltrated.

On January 5, 1985, three years after the original sanctuary declarations, the government indicted 14 sanctuary workers on charges of conspiracy and alien smuggling. (The government later dropped charges against two of the indicted, while a third individual pleaded guilty to a lesser charge.) In addition to those charged with crimes, over 100 unindicted citizen and alien coconspirators were named in the indictment. These were not the first indictments of sanctuary workers (several movement members had been arrested in Texas and Arizona), but because of the depth of the undercover investigation, the number of defendants and unindicted coconspirators, and the detention of some 58 Central Americans around the country, many sanctuary workers perceived the indictments as an all-out attack on the movement. Sanctuary congregations across the nation prepared for the trial that members felt would decide their contest with the government.

pretrial hearings

Before the trial began, each side sought to define the dispute between the movement and the government in accordance with its interpretation of the law. Federal prosecutor Don Reno sought to predefine sanctuary work as criminal by narrowing the legal issue to whether or not the defendants had committed the acts listed in the indictment. Accordingly, he moved to prohibit evidence about U.S. Central American policy, danger to civilians in El Salvador and Guatemala, the defendants' motives, the defendants' religious beliefs, international law, and the asylum process (Turner 1985a)—in short, sanctuary workers' justifications for their actions. In contrast, defense attorneys moved to dismiss all charges on the grounds that the defendants' actions were legal under U.S. and international law, that sanctuary was a religious act protected by the First Amendment, that infiltrating Bible study meetings and worship services violated the separation of church and state, and that the evidence against defendants was obtained illegally (Arizona Sanctuary Defense Fund [hereafter abbreviated as ASDF] 1985a). Defense attorneys also argued that, if charges were not dismissed, the jurors rather than the judge ought to decide whether or not sanctuary was illegal.[13] These motions were considered during a series of pretrial hearings.

Proceedings that define disputes enable individuals to negotiate the meaning of legal concepts and are therefore political processes (Mather and Yngvesson 1980–81; Merry 1990; Yngvesson 1988, 1990). According to Mather and Yngvesson (1980–81), when established legal categories are used to *narrow* disputes, discourses that benefit the powerful are reinforced. In contrast, they argue, when disputes are used to *expand* established concepts, power-laden

discourses are altered. This framework is useful in that it locates both power and resistance in the competition to define disputes, although I suspect that expansion and narrowing are often simultaneous (rather than alternative) processes, and that each has both hegemonic and oppositional implications. For example, the prosecutor's pretrial motion narrowed the dispute by decontextualizing it (see also Merry 1979), but also expanded it by applying the term "alien-smuggling" to activities for which religious workers had not previously been prosecuted. In addition to noting the political implications of defining a dispute, analyses of dispute transformation suggest that equating formal legal language with hegemony and popular or extralegal language with resistance is too simplistic. For example, in the Massachusetts lower courts analyzed by Merry (1990), working-class individuals resisted the power of the court by striving to have their complaints defined as "legal" (and therefore worthy of the courts' attention) rather than as "garbage cases" to be dismissed or dealt with through mediation. Moreover, official and popular legal language are often interwoven. As Yngvesson notes, "[L]egal reality is . . . a plural reality. Local understandings interpenetrate with official ones, affecting the ways that social events are understood and legal cases defined, the roles that courts come to play in everyday life, and the different ways that state power is legitimated and maintained in local settings" (1990:468).

During the pretrial hearings, both sides invoked and reinterpreted legal and cultural notions in ways that were both power-laden and oppositional. The most fundamental question that hearings addressed was whether the trial was strictly an alien-smuggling case, as the government's pretrial motion implied. Defense attorneys argued that it was not. First of all, defense attorneys contended, sanctuary workers were not smuggling "aliens," since the immigrants aided by defendants had legitimate asylum claims. Second, the defense claimed, sanctuary work was not "smuggling" because, given the severity of human rights abuses in El Salvador and Guatemala and the failure by the INS to administer the asylum process properly, the only way for defendants to obey U.S. and international refugee law had been to help undocumented Central Americans avoid the INS (OTT 1986:778–853). The prosecutor countered these arguments by declaring that determining immigrants' legal status "is a proceeding that the statute clearly provides is first to be made . . . by the Attorney General and his designates. It is not to be made by the defendants" (OTT 1986:765–766). Because the Central Americans in question had never officially been designated as "refugees," the prosecutor reasoned, they were illegal aliens, and transporting and harboring them was a crime, regardless of the human rights situation in Central America, flaws in the asylum process, and international law. To permit defendants to commit this crime, the prosecutor suggested, would be dangerous, even anarchistic. The prosecutor told the judge:

> The basic issue here . . . is are we going to have two Immigration Services? Are we going to have one that has been duly constituted, controlled and funded by the federal government or are we going to have a secondary and perhaps a third and a fourth immigration service funded and controlled and created by the defendants here and their colleagues across the country? [OTT 1986:383]

In addition to debating the government's pretrial motion, hearings considered the defense's claim that sanctuary was a religious practice protected by the First Amendment. To substantiate this claim, defense attorneys attempted to prove that sheltering and transporting undocumented Salvadorans and Guatemalans was *essential* to the defendants' faith.[14] The defense called religious experts to testify that sanctuary was grounded in the Judeo-Christian tradition, mandated by scripture, and relevant to defendants' fate in the afterlife (OTT 1986:212–291). To refute this testimony, the prosecutor (who, according to the press, was himself a fundamentalist Christian [Browning 1986d]) asked whether the Pope had ever commented on sanctuary, whether the asylum process offended defendants' faiths, and why, if sanctuary was required by defendants' religious traditions, there were "millions and millions of people attending church that certainly do not want to be party to any of these activities which the defendants have

engaged in?" (OTT 1986:1063). The judge, who also seemed to want evidence of an institutionally affirmed doctrine, asked witnesses if sanctuary was not a matter of personal conscience rather than a corporate stance of the church. Though witnesses insisted that the consciences of individuals were informed by the church body (OTT 1986:212–240), the question remained, if individual believers have some authority to define the content of their faith (as is the case for liberal Christians), then how can courts affirm that a particular act was religiously mandatory?

The dispute over whether sanctuary was a religious act informed pretrial debate over the legality of the government's investigation of the movement. The defendants, who claimed that Operation Sojourner had violated the constitutional prohibition on the state interfering with religious activities, introduced testimony on the "chilling" effects of government surveillance. For instance, the pastor of an infiltrated church testified that congregants who feared that the lines were tapped would no longer speak to him on the phone (OTT 1986:495). For the U.S. government to infiltrate churches, defense attorneys asserted, had been comparable to tactics employed by such repressive governments as Nazi Germany, Czechoslovakia, and the U.S.S.R. (OTT 1986:558). The prosecutor defended the undercover investigation by arguing that their religious standing did not give defendants the right to break the law. The prosecutor stated, "If this Government is going to represent all the people of this nation, it cannot favor those which commit criminal acts and contend that they are immune from prosecution, because they are motivated by a higher authority" (OTT 1986:1049). The prosecutor also countered defendants' claims by suggesting that sanctuary might not be particularly religious. For instance, the prosecutor argued that what was extraordinary about the sanctuary case was not the government investigation, but rather that for the first time churches had been used to hatch criminal conspiracies (OTT 1986:1050).

The respective positions of the government and the defense on the above issues were politically complex. By defining sanctuary as a legal activity, defendants were claiming that citizens had the authority to enforce immigration law. This claim challenged the notion that the state was the sole arbitor of immigration matters, but also authorized citizens to assess immigrants' asylum claims, thus subordinating the Central Americans to sanctuary workers (as "judges" of the Central Americans) (Coutin 1993, 1994). Similarly, defendants' appeals to their constitutional right to practice their faith without state interference both strengthened and limited their case. This argument relied on the already established separation of church and state, claiming that individual believers could decide which activities were religious (and therefore were church) and could not be obstructed by government. At the same time, emphasizing the separation of church and state made it difficult for movement members to define their efforts to change government policy as religious. The government's rebuttal of the defense arguments was equally complex. The government's definition of sanctuary as alien smuggling delegitimized citizens' efforts to reinterpret the law and reinforced the power of the state. At the same time, the government's claim that only the state could enforce the law could, in other contexts, be used against private citizens who abused individuals they characterized as illegal immigrants. The prosecutor's contention that the state had not only the right but the responsibility to prosecute all criminals, regardless of their faiths, was also politically contradictory. This argument reinforced state power but appealed to an ideal that has inspired activists of various backgrounds and political persuasions: the impartiality of the law.[15]

The judge announced his decisions shortly before the trial was to begin. On all significant motions, the judge ruled in favor of the prosecutor and against the defense, thus prompting defendants to charge that he was biased. The prosecutor's definition of the dispute had been accepted, and the trial's parameters had been set. The battle between the defendants and the prosecution was far from over, however, as the trial created further opportunities for the defendants to define themselves as humanitarians rather than criminals.

The ritual that would formally constitute sanctuary workers as either alien smugglers or as noncriminals began in November 1985. I characterize the trial as a "ritual" in order to draw attention to the authoritative but nonetheless nonempirical nature of legal truth. Ritual has been defined as a performance (Lewis 1980:7), and the sanctuary trial exhibited the theatricality characteristic of legal proceedings (Clifford 1988)—a subject to which I will return in the next section. "Ritual" also connotes "sacred" and "mystical" (Gluckman 1965), which are appropriate terms for legal judgments which, to quote Bourdieu, are "magical acts which succeed because they have the power to make themselves universally recognized" (1987:838). The sacred connotations of the term "ritual" remove some of the rational aura that surrounds prosecution and places the trial on a par with the other rituals—such as prayer services, marches, and caravans—that accompanied the legal rite taking place in the courtroom. Finally, the term "ritual" has been used for practices that are repeated and that follow a particular form (Lewis 1980). Criminal prosecutions follow the form of an examination, a procedure that authorizes truth through scrutiny, interrogation, and judgment (Foucault 1979[1975]).

The 1985–86 sanctuary trial both typified and deviated from standard legal rituals. As most legal disputes are settled through plea bargaining and behind the scenes negotiation (Galanter 1986; Jacob 1983; Mather and Yngvesson 1980–81; Skolnick 1974), it is noteworthy for a case even to go to trial. When disputes do go to trial, defense attorneys usually cooperate with prosecutors (with whom they frequently have working relationships) and seek some degree of control over clients (Eisenstein and Jacob 1977; Skolnick 1974). In contrast, in the sanctuary trial, the prosecutor and defense attorneys were true adversaries, and the defendants ruled out legal strategies that violated movement ethics. In addition, the sanctuary trial was unusually long (it lasted six months), large (there were 11 defendants), expensive (it cost $6 million), and acrimonious (defense attorneys repeatedly accused the judge of bias, and the judge threatened defense attorneys with charges of contempt of court). Finally, the trial treated onlookers to the rare spectacle of priests, a minister, and a nun being prosecuted for aiding the persecuted.

At the same time, the sanctuary trial was typical of other criminal trials in that it produced truth by constructing and selecting between competing versions of reality (Bennett and Feldman 1981). Opening and closing statements by attorneys explicated each side's interpretation of events. Consistent with his stance during pretrial hearings, the prosecutor opened his remarks to the jury by stating, "Ladies and gentlemen, we can best describe this case as an alien-smuggling case" (OTT 1986:2607). The prosecutor reinforced this characterization of the case by consistently deploying language connoting criminality. For instance, the prosecutor termed the defendants and their colleagues "conspirators," "unindicted coconspirators," and "illegal aliens." He characterized the sanctuary movement as a three-tiered alien-smuggling conspiracy, with the third tier being "the Nogales Connection"—presumably an evocation of *The French Connection,* a film about drug smugglers (OTT 1986:2612–2615). In constructing this image of criminality, however, the prosecutor faced a problem. Because sanctuary work had produced no victims, jurors might have wondered what was wrong with what the defendants had allegedly done. To overcome this difficulty, the prosecutor pursued two strategies. At times, he dissociated law and morality from each other, telling jurors, "We don't have to prove in this case that they [the defendants] are bad people. All the United States Government has to do is to prove beyond a reasonable doubt that they are violating the law" (OTT 1986:14201–14202).[16] At other times, the prosecutor emphasized the immorality of conspiracy and alien smuggling, calling conspiracy "an evil unto itself" (OTT 1986:12696) and declaring, "Every nation has the absolute power to control their borders" (OTT 1986:14191). In addition to portraying sanctuary work as criminal, the prosecutor attempted to discredit defenses that the pretrial hearing had already invalidated but that defense attorneys had then tried to reassert. For example, to counter the

notion that sanctuary was a religious practice, the prosecutor told jurors that there was nothing in the Bible that told believers to break the law (OTT 1986:14198).

Not surprisingly, defense attorneys' opening and closing statements questioned the idea that the trial was a straightforward alien-smuggling case. To do so, defense attorneys linked law unequivocably to morality, contending that their clients' actions were good and therefore legal.[17] To highlight the absurdity of convicting people for moral actions, one defense attorney told jurors that her client had been "caught in the act of helping someone" (OTT 1986:13387). Though forbidden to discuss conditions in Central America, the defendants' religious beliefs, and so forth, defense attorneys attempted to introduce these defenses by implication. For example, defense attorneys tried to call Central Americans "refugees" and termed sanctuary work a "ministry" instead of a "conspiracy." To counter the prosecutors' invocation of the nation's right to protect its borders, defense attorneys suggested that this right could be taken too far. For instance, one attorney warned jurors, "If a priest at a public church who gave somebody a place to stay at the church overnight could be convicted if the person were an illegal alien, it would turn our churches into places of inquisition" (OTT 1986:13979). In addition to portraying sanctuary as legal, defense attorneys accused government informers of being the true criminals. Arguing that undercover agents had done most of the transporting for which the defendants had been indicted, a defense attorney told jurors that the INS seemed to share the Greyhound Bus Company's motto: "leave the driving to us" (OTT 1986:13391).

Witnesses' testimony also produced competing characterizations of the defendants' actions. From November 1985 to March 1986, the prosecutor called two government agents, three movement members, and eighteen Central Americans (most of whom were sympathetic to the defendants) to the witness stand. (One Central American and all three movement members refused to testify.) Defense attorneys called no witnesses, contending that their cross-examination of government witnesses had sufficiently discredited the government's case. Whether elicited by the prosecution or the defense, testimony redefined individuals' words and actions by removing them from the context in which they had first been uttered or performed, and reintroducing them in the trial. For example, at an infiltrated Bible study that took place long before the trial, a Central American woman told a future defendant of her journey to the United States. During the trial, the prosecutor elicited an undercover agent's account of this discussion and thus transformed the women's conversation into evidence that the defendant knew of the Central American's illegal entry—such knowledge being one of the elements of the legal definition of harboring an illegal alien (OTT 1986:13442). The woman's words became part of a narrative that had not been constructed at the time she had spoken, even though government surveillance had been in the process of creating it. Although trial attorneys created the frameworks in which witnesses' words were situated, witnesses sought to control the meaning of their statements. For example, when asked to identify a defendant accused of illegally harboring him, a Salvadoran witness replied, "She [the defendant] was the only person who offered me a roof over my head when I was most in need. . . . I remember her with much love" (Varn 1986). The judge's rulings also shaped witnesses' accounts by deeming such terms as "killed," "tortured," "death," "cut off ears," and "electroshock" to be inflammatory and impermissible (Browning 1986c). Testimony, however, was mostly productive rather than restrictive, since the threat of being held in contempt of court hung over those who considered remaining silent. The four witnesses who refused to testify were sentenced to house arrest for the duration of the trial.

The prosecutor's examination of witnesses adhered, for the most part, to the framework established during the pretrial hearings. His questions focused on who brought whom across the border, how border crossings were executed, who housed Central Americans once they had entered the United States, and who transported Central Americans to other parts of the country. The prosecutor did not ask witnesses about the matters that defendants considered

most relevant, such as why Central Americans had entered the country, unless he anticipated answers that would undermine the defenses that had been prohibited during pretrial hearings. For example, in response to prosecutor Reno's questions, one Salvadoran witness who had been assisted by defendants testified that he had immigrated in search of work, thus contradicting defendants' claims that they only aided political refugees (ASDF 1986b; Durazo 1986).

Defense attorneys' cross-examinations of government witnesses generally sought to question the government's characterization of defendants' actions, rather than whether or not defendants had actually committed these acts. (Although defendants—none of whom testified—did not publicly admit to having performed these acts, they did acknowledge their involvement in the movement and in most cases could not disprove the government's allegations.) Whenever possible defense attorneys elicited testimony that cast doubt on specific claims alleged in the indictment. Defense attorneys also sought to challenge the credibility of undercover informant Jesus Cruz, upon whose testimony much of the government's case depended (ASDF 1985c, 1985d). Apart from such efforts, cross-examination became what one defendant later termed "an interesting game to see how much we could get in in spite of his [the judge's] restrictions." To suggest that defendants were aiding legitimate refugees, defense attorneys attempted to ask Central American witnesses why they had immigrated and what life had been like in their homelands. Such questions were rarely permitted. Defense attorneys also tried to draw attention to the religious character of the movement. For example, one defense attorney asked a government informant if prayers and religious ceremonies had occurred at the allegedly conspiratorial meetings (Browning 1986a). Defense attorneys further attempted to question the unlawfulness of defendants' actions by seeking testimony about defendants' understanding of refugee law.

The prosecution and the defense also used material exhibits, such as transcripts of the government's secret tape recordings, to define the significance of the defendants' actions. Since the meaning of material exhibits was influenced by attorneys and by the trial context, material exhibits were as much a construction of reality as the words spoken during testimony (Bennett and Feldman 1982). Moreover, to the jury, material evidence only existed if it had been presented within the courtroom. For example, despite the fact that photographs of a defendant committing one of the acts with which he was charged had been published in a Tucson newspaper, jurors never saw them (Turner 1985c). The significance of the recordings made by undercover agents also had to be negotiated, since many of them covered subjects declared inadmissible during pretrial hearings. The prosecutor initially opted not to use the tapes but later sought to submit segments of the recordings. Defense attorneys opposed this request, seeking instead to introduce the tapes in their entirety. The judge ruled against the defense and, after lengthy arguments over the words to be admitted, jurors heard carefully selected portions of the recordings (ASDF 1986c).

The trial concluded with a final ritual act: the verdicts. After a suspenseful two-week deliberation, jurors convicted 8 of the 11 defendants, thus authenticating the prosecutor's version of reality and invalidating that of defense attorneys. Convicted defendants *actually became* criminals, in the sense that they were subsequently treated as such (see Bourdieu 1987). This transformation was not complete, however, for even though legal examination had delegitimized the movement's understanding of reality, defendants and their supporters had used demonstrations, prayer vigils, political theater, press conferences, and worship services to promote their interpretation of events (see also Mather and Yngvesson 1980–81). This spectacle challenged the authority of the verdicts.

public spectacle

Though not all trials are as spectacular as the 1985–86 sanctuary trial, spectators who attend trials or follow them in the press are integral to the three major facets of criminal trials:

prosecution, defense, and judgment. Prosecution derives its legitimacy from the public's right to identify and punish those who violate the law. Public scrutiny of criminal procedures also enables the populace to guarantee the rights of fellow citizens against the power of the state. The public even plays a judicial role through its representative, the jury. Since it pervades these three facets of prosecution, publicity can benefit either prosecution or defense (see, for example, Kalant and Williams 1993). Spectacle is neither intrinsically hegemonic nor oppositional; in fact, it is usually both. For instance, although media accounts of the sanctuary trial were generally sympathetic to defendants, one former defendant complained that these accounts were sexist in that journalists quoted the men who had been indicted more often than they quoted the women.

The publicity that surrounded the 1985–86 Tucson sanctuary trial was made possible by a convergence of interests. For journalists, the trial provided an opportunity to write compelling stories. The trial was stuff of high drama—torture, deception, faith, intrigue, sacrifice, and betrayal. Both national and local print and television media covered the trial. For observers, the trial presented issues of public concern in a theatrical format, complete with an ending in the form of the verdicts (see also Hariman 1990a, Williamson 1990). For the government, publicity was a chance to demonstrate its authority, enhance its image, impose its interpretation on events, and deter unindicted sanctuary workers. Members of the sanctuary movement saw publicity as an opportunity to mobilize support, affect government policy, present the arguments that had been prohibited by pretrial hearings, and, perhaps, influence jurors. For these reasons, the trial itself became a drama alongside the narratives being constructed by the prosecution and defense. Of course, the plot of this drama varied with the telling, a task that both sanctuary workers and government officials were eager to perform. According to the government, the trial brought alien-smugglers to justice and demonstrated that no one was above the law. From the sanctuary workers' perspective, the trial punished religious folk for pursuing justice as mandated by both their faith and the law.

Though both versions of the drama appeared in both settings, the government's version dominated the legal ritual and the defendants' version dominated the spectacle. Defendants were able to define the content of the spectacle because they had greater access to the forums in which the spectacle occurred: courtroom theater, press coverage, and religious services. Both the prosecution and the defense had the chance to affect public opinion through their courtroom performances (see also Eisenstein and Jacob 1977 and Santos 1977), but only the defendants were able to fill the courtroom with supporters who reacted to proceedings. Trial spectators cheered a defense attorney's closing arguments (Browning 1986e), protested when the prosecutor said that nothing religious had occurred at sanctuary meetings (OTT 1986:12960), and laughed when Jesus Cruz, who had spent ten months working undercover in the movement, said he did not know the word "refugee" (ASDF 1986a:4). Journalists sometimes magnified the impact of such displays by describing them in trial-related stories. Occasionally, spectator participation assumed theatrical forms. On the fifth anniversary of the assassination of three American nuns and one lay worker by Salvadoran death squads, defendants and their supporters came to court dressed in black (ASDF 1985b). When three sanctuary workers were sentenced to house arrest for refusing to testify, defendants, supporters, and defense attorneys stood to honor all of them as, one after another, they left the courtroom—thus implicitly contrasting sanctuary workers' ethics with undercover informants' immorality.

Defendants also had greater access to the news media than did the prosecutor. Trial attorneys were not permitted to speak to the press during the trial, so the prosecutor could not use this forum. If other government officials had held press conferences about the trial, they might have lent credence to defendants' claims that they had been indicted because of their politics, rather than their crimes. Defense attorneys, however, could relate their views through defendants. Consequently, defendants were able to use the media to publicize their defenses of their

actions.[18] At press conferences, defendants provided a running commentary on the trial, the movement, courtroom statements, the prosecutor's tactics, and related events, such as the U.S. government's allowance of the family of the Salvadoran president to reside in the United States. Defendants' press conferences were sometimes situated in a church or in front of a cross, which drew attention to the movement's religious character. (During his posttrial press conference, prosecutor Reno stood before the seal of the Department of Justice.) Local sanctuary workers also disseminated their views through a trial hot line whose phone number was 1-800-LEV-1933, after Leviticus 19:33, the Bible verse that inspired sanctuary work. In addition, the ASDF distributed weekly "Trial Updates" to interested parties around the nation. Finally, sanctuary workers sometimes invited journalists to attend movement events. The prosecutor's frustration with the defendants' media success was demonstrated when, after one of the defense's affidavits failed to stand up in court, Mr. Reno "stormed over to the press section of the courtroom and said, 'Did you get all that? For one time I hope you guys get it right' " (Browning 1986b).

Finally, as members of a religious movement, sanctuary workers could celebrate the justice of their work through religious services, a forum seldom utilized by immigration officials. Tucson defendants and their supporters held weekly ecumenical prayer services throughout the trial, and sanctuary communities in other parts of the country held services to mark significant moments, such as opening arguments, verdicts, and sentencing. Trial-related services reiterated movement members' understanding of reality through bilingual prayers, Central Americans' stories of persecution and flight, biblical texts, songs from Central American Base Christian communities, quotations from such figures as Archbishop Oscar Romero and Anne Frank, and traditional hymns whose words took on new meaning in light of the trial. Services thus compared Central Americans and sanctuary workers to other martyrs, portrayed Central Americans as legitimate refugees, defined sanctuary as a religious practice (in contrast to the judge's pretrial ruling), and redefined the trial itself in biblical terms. A modified version of John 8:32 soon became the defendants' motto: "The truth will set you free . . . eventually" (Montini 1986).

The spectacle occurring in the courtroom, the press, and the pulpit peaked during verdicts and sentencing. Upon receiving word that the verdict was in, defendants reported to the courtroom, along with a multitude of supporters who gathered outside. According to newspaper accounts (Kreutz 1986), "a pall fell over the crowd" as the guilty verdicts were announced. However, the convicted sanctuary workers redefined the charges, celebrating a "conspiracy of love," and saying they were "guilty of living out the gospel." Defendants and "a hymn-singing congregation of supporters" marched from the Federal building to a posttrial prayer service along with reporters, photographers, and camera operators (Kreutz 1986:1A, 7A). In the eight weeks between verdicts and sentencing, sanctuary supporters held a caravan to the border, an all-night vigil at the Border Patrol Headquarters in Tucson, a march for freedom, and a conference attended by five- to six-hundred people where the call and response, "If they are guilty . . . SO AM I!!" rang out repeatedly (ASDF 1986d:1–2). By the time defendants were sentenced, the spectacle had become carnival-like:

> The courtroom was jammed with supporters and press, with several hundred people waiting outside in the hot Arizona sun, hoping for a seat at the hearing. The walls outside the courthouse were draped with banners, including one with the Emma Lazarus poem from the base of the Statue of Liberty ("Give me your tired, your poor, your huddled masses yearning to breathe free"). Across the street from the court, a local sculptor hung a life-size figure of Jesus Christ on a wooden cross from a traffic light. One of the defendants, Socorro Aguilar, placed a rose in the Christ figure's crown of thorns before entering the courthouse. [ASDF 1986e:1]

The spectacle surrounding the sanctuary trial publicized the defendants' version of legality to such an extent that it undermined the authority of the verdicts. As one defense attorney noted, the trial was an anomaly in a system based on punishment, retribution, and deterrence. Rather than punishing the defendants, public spectacle portrayed the defendants as heroes and the government as criminal. Derisive political cartoons appeared, such as a *Los Angeles Times*

drawing that depicted a villainous INS agent arresting Christ and the apostles while warning, "Don't none of you sanctuary people move!" (Conrad 1985). Defendants received widespread support, with 47 members of Congress requesting leniency in their sentencing (Fimbres 1986), and with Amnesty International vowing to declare them prisoners of conscience if they were imprisoned. Rather than having to repay society for their crimes, convicted sanctuary workers persuaded the judge to modify probation conditions that would have prevented them from associating with anyone engaged in smuggling or transporting illegal aliens (Browning and Turner 1986). Rather than deterring sanctuary workers, the number of sanctuary congregations doubled during the trial (Basta 1986). In the words of one sanctuary worker, the trial challenged people to "fish or cut bait," and many fished, resisting the criminalization of sanctuary through increased sanctuary work. Yet, when the spectacle concluded with probationary sentences for those convicted, the public eye turned elsewhere,[19] although sanctuary workers suspected that the government's eye had not.

conscious visibility

Even as it undermined the authority of the verdicts, trial-related publicity imposed the government's interpretation of reality on sanctuary workers' own understanding of their activities. The trial dramatically displayed the state's ability to scrutinize its citizenry. Through the trial, the public—including hundreds of unindicted sanctuary workers—learned of the wiretaps, undercover agents, subpoenas, witnesses, confiscated memos, photographs, tape recordings, fingerprints, and videos that can be amassed to define individuals as criminals. In essence, members of the sanctuary movement discovered that they were caught in a panoptic network of power relations. Panopticism enables authorities to see without being seen. Those within authorities' range of vision know that they can be observed at any moment but are never able to ascertain precisely when surveillance is occurring. This uncertainty gives panopticism its disciplinary force, since, even in the absence of actual surveillance, those subject to the gaze of power act as though they are being observed. In effect, panopticism makes discipline unnecessary by compelling individuals to internalize surveillance and become the agents of their own subjection. As Foucault explains, "the major effect of the Panopticon [was] to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power" (1979[1975]:201).

Sanctuary workers' stories about being under surveillance detail the experience of being the subjects of knowledge produced through covert observation. During an interview, one sanctuary worker—named in the indictment as an unindicted coconspirator—told of her shock at realizing how she had been trapped in a web of surveillance. The sanctuary worker related that, while helping the defense review the government's evidence in preparation for the trial, a colleague ran across an unidentifiable notebook that she recognized. She said, "I don't know why I thought I could identify it, but I just walked over and looked over her shoulder and said, 'That's Jesus Cruz's. Look under the Gs.' Because I had written my own name and address and phone number in his book. I could have cried right then. But I remember exactly where I was and when I did it." More ominous to sanctuary workers was the surveillance whose occurrence was not confirmed during the trial, and which therefore remained a matter for mere suspicion. One sanctuary worker told me, "I'm pretty sure that my mail was also being checked. . . . Refugees would get mail here, and it would be addressed to 'Maria, 198 Calle, Tucson, Arizona,' which isn't my address at all. And yet, it would arrive!" Most Tucson sanctuary workers I interviewed believed that their phones had been tapped, and a California activist told me that years after she had driven in a sanctuary caravan, she still worried that her license plate number was in an INS file.

Like a panopticon, the Tucson trial made sanctuary workers cognizant of their vulnerability to authorities' gaze. The minutes of a sanctuary meeting immediately following the indictments exemplify this new awareness:

> The INS is using paid informants and are [*sic*] escalating their attack on the movement. Be aware, but don't be paranoid. We should assume that undercover operations are taking place. We should be watchful for agent provocateurs, who usually advocate the most extreme tactics, including violence. Be conscious of what you say on the telephone, and be aware that what you say could be taped. [East Bay Sanctuary Covenant (hereafter referred to as EBSC) 1985:5]

Like inmates subjected to a panopticon, sanctuary workers could not determine precisely when they were under observation, so they began to assume that an ongoing record of their words and actions was being made by authorities. For example, at one potluck dinner, when a group of border workers met in a participant's bedroom, those present laughed, believing that the government would know of this meeting, and asked, "How's that going to look in a trial? 'The Bedroom Session'?"

Once aware of their visibility, sanctuary workers began to examine their actions, asking themselves, "*Are* we breaking the law?" Sanctuary workers came to internalize the roles of observer and observed, continually attempting to defend themselves against unseen accusers and unspoken accusations. For instance, a colleague of one of the defendants, hoping to substantiate his lack of criminal intent, formed the habit of frequently stating that sanctuary was legal, like a talisman to protect him on any undercover recordings being made. Another border worker urged his colleagues to prepare for the necessity defense (the argument that the necessity of a particular action outweighed other considerations) by knowing "who they are helping, why they believe they are refugees under the Refugee Act of 1980, and whether the means of assistance are the only and necessary option available." At a 1987 sanctuary meeting I attended in Tucson, a participant noted approvingly that the group's lobbying efforts would be useful in the event of another trial, since these would provide evidence that sanctuary workers do pursue change through legal channels.

Such self-monitoring was imbued with power in that it replicated the legal production of knowledge by objectifying people's words and actions as evidence to be measured against legal definitions. In effect, the objects of surveillance, rather than government authorities, were doing the objectifying. Self-monitoring occasionally deterred potential sanctuary workers, thus entirely relieving the government of the need for surveillance. For example, one Tucson sanctuary worker gave me the following account of an incident that had occurred in New York:

> When I was in New York, there was a caravan that came through with a Guatemalan man, and so I was responsible for organizing a dinner for him with the [Society of] Friends. I called a bunch of people on the phone lists they gave me, and pretty soon I began getting questions from people who were afraid that if they brought a casserole dish to the potluck dinner, that they could be put in jail for aiding and abetting an illegal alien! Just because this one man was there, out of all of the people who were going to be at this dinner. I can see it now, "Mrs. So-and-So, did you or did you not bring a casserole to the pot-luck dinner, and did that man over there take a bite of it?" . . . There were people who actually didn't bring food to the dinner, and that was their reason.

Yet, despite being imbued with power, sanctuary workers' responses to government surveillance demonstrate how particular forms of power create corresponding methods of resistance. In a panoptic society, pervasive yet unverifiable observation disciplines subjects by leading them to internalize authority and become obedient. In reality, this process is limited by subjects' knowledge that complete surveillance is impossible, and that the odds of being caught in an act of wrongdoing are sometimes slim. If surveillance were indeed complete, however, then how would one resist a panopticon? Attempting to hide, the most obvious reaction, could actually reinforce the panopticon by inviting observers to extend their powers of surveillance. Therefore, rather than hiding, a panopticon's subjects must limit or subvert surveillance itself. There are at least three ways of accomplishing this: by creating a social space impermeable to

authorities' gaze, by manipulating the knowledge produced through observation, or by continuing to act openly and so robbing the panopticon of its power to deter.

Sanctuary workers pursued all three of these methods. First, shortly after the 1985 indictments, a group of sanctuary congregations sued the U.S. Attorney General, claiming that infiltrating and tape recording Bible study meetings and worship services had infringed upon congregations' constitutional right to practice religion without government interference. In a 1990 ruling that the sanctuary movement hailed as a victory, the court limited (but did not eliminate) the federal government's ability to conduct covert investigations within religious institutions (*The Presbyterian Church [U.S.A.] v. United States* 1990). Second, once aware of government surveillance, sanctuary workers did not wait for authorities to make a record of their actions; rather they openly and deliberately created a record that they felt defined sanctuary work within their own system of truth. For example, during pretrial hearings, the government prosecutor conceded that it was legal to bring illegal aliens into the United States if one then took them to apply for political asylum (OTT 1986:885). Shortly after hearing this, one of the defendants invited the NBC television network to film him bringing two refugees across the border to apply for political asylum. The defendant increased his own visibility by notifying the INS while this action was underway, yet he encountered no reprisals. Thereafter, before each crossing, border workers sent the INS a letter stating that they were helping refugees reach legal counsel.[20] Third, although the government investigation caused sanctuary workers to internalize surveillance, it failed to deter most participants. During an interview, a colleague of one of the defendants rejected the very system that creates surveillance, saying, "It's unfair, and it's wrong, but it doesn't bother me. I refuse to start acting . . . sneakily. I'm not going to sneak around. I'll do what I do in the open." By continuing to act openly, sanctuary workers asserted the truth of their construction of reality and resisted being defined as criminals.

conclusion

Sanctuary workers and the federal government debated the legal significance of the sanctuary movement throughout every phase of their conflict, both within and outside of the courtroom. One of the reasons that activists resorted to giving "sanctuary" to undocumented Central Americans in the first place was to expose what participants viewed as the government's failure to abide by international and U.S. refugee law. The government countered this interpretation of law by placing movement members under surveillance, thus questioning the validity of the movement's claims. When the conflict moved into the formal legal arena, the prosecutor succeeded in invalidating the movement's legal justifications for sanctuary work. Through the trial, the prosecutor established that private citizens could not determine the legal status of immigrants, that sanctuary was not a constitutionally protected religious activity, and that religious individuals could be investigated by the same methods used against other people. Though the government's interpretation of the law prevailed in court, the trial enabled defendants to publicize their views in ways that challenged this interpretation. The authority of the verdicts was further undermined by the fact that, after the trial, movement members continued to act according to their own rather than by the government's interpretation of the law. The negotiation of legal truth continued.

Because legal reality is continually renegotiated, the truths constructed and validated by legal proceedings are ambiguous. Given the all-or-nothing decision-making style of U.S. courts (Merry 1979), the 1985–86 Tucson sanctuary trial promised to resolve public dilemmas about U.S. foreign policy, illegal immigration, church-state relations, and citizens' and the government's relationship to the law. And, by creating "winners" and "losers," the verdicts did create the impression that the government's policies on these issues had been vindicated. Yet because the pretrial hearings had deemed certain information such as events in Central America and

flaws in the asylum process to be irrelevant to the charges against the defendants, the trial did not actually invalidate the movement's criticisms of the U.S. government, but only the movement's claim that sanctuary work was legal. Moreover, even the matters that had been officially resolved, such as the criminality of harboring illegal aliens, were left open by defendants' insistence on appealing the verdicts, and by the spectacle that surrounded the trial. Finally, it is important to note that the outcome of the sanctuary trial would have been ambiguous even if defendants had been acquitted. Acquittals label individuals "not guilty," rather than "innocent," and allow public officials to declare (as did the sanctuary trial prosecutor in relation to acquitted defendants) that convictions could have been obtained if additional evidence had been permitted in court. By demonstrating that authorities abide by the rules, moreover, acquittals can actually legitimize state power (Thompson 1975). In short, regardless of its content, the legal process subverts the very truth that it creates.

Though it is ambiguous and negotiable, legal truth nonetheless shapes social reality. The defendants who were convicted in the 1985–86 Tucson sanctuary trial became felons, subject to fines, imprisonment, and continued state supervision. By defining these individuals as criminals, the government established that humanitarian assistance to undocumented individuals, which had previously been somewhat tolerated (Harwood 1984, 1986), violated immigration statutes. This accomplishment made the sanctuary trial part of a wider movement to make private citizens responsible for detecting illegal immigrants. Some seven years before the Tucson indictments, INS authorities allowed officials to confiscate vehicles used to transport illegal aliens across the border, and within months of the verdicts Congress passed legislation requiring employers to verify the legal status of new employees. Efforts by sanctuary workers to challenge the truth affirmed in the courtroom also had their effect. Since the Tucson trial, only one movement member has been indicted—the Reverend Glen Remer-Thamert, who was prosecuted in Albuquerque in 1988 along with the journalist Demetria Martinez.[21] Factors in the government's decision to forego additional prosecutions may have included the risk of additional negative publicity, the movement's efforts to document its interpretation of immigration law, and public acceptance of the movement's claims. In December 1990, facing a lawsuit initiated by members of the sanctuary movement, the INS acknowledged the discriminatory nature of its asylum procedures and reopened the cases of some 150,000 Central American asylum applicants (Wilkinson 1990).

Finally, the foregoing analysis of the 1985–86 Tucson sanctuary trial demonstrates that authoritative practices can facilitate resistance. Prosecution and surveillance produce truth by subjecting individuals to the scrutiny of undercover agents, police officers, attorneys, judges, and other authorities, but these tactics also enable the observed to shape the images that scrutiny produces. The sanctuary trial defined eight sanctuary workers as criminals but also enabled defendants to define themselves as law-abiding—a view that was never officially validated but that nevertheless remained convincing to some spectators. Rather than being deterred by the spectacle of arrests and convictions, some observers were mobilized by what they perceived as defendants' "martyrdom." Neither official nor popular language was exclusively hegemonic or oppositional, since both the prosecution and the defense alike used these sources to formulate their arguments. In sum, by manipulating power-laden categories and practices, oppressed groups can construct formidable challenges to the powerful. Thus, even repressive uses of law, such as investigating, indicting, and convicting dissidents, can be used to resist authorities.

notes

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1. The sanctuary movement is made up of Protestant, Catholic, Unitarian, and Jewish congregations. Most U.S. sanctuary workers are white, although numerous Central American and Mexican colleagues aid Salvadorans and Guatemalans on their journeys to the U.S.-Mexico border. A Mexican priest and lay worker were among those indicted in Tucson in January, 1985. The U.S. segment of the movement is predominantly middle-class and middle-aged. Some 60 percent of movement participants are women. The proportion of female participants approximates the composition of congregations in the United States (Douglas 1977).

2. I do not wish to imply that legal truth is infinitely malleable. It would have been difficult, for example, for the federal government to have defined the sanctuary defendants' actions as kidnapping, narcotics trafficking, or civil rights violations.

3. Bohannan (1968) argues that when presenting their cases Tiv litigants of northern Nigeria recount narratives that interpret reality according to the social position of each speaker. Clifford (1988) describes a similar process during the 1976 Mashpee trial in Massachusetts, in which plaintiffs and defendants constructed competing representations of Mashpee history, culture, and tribal identity.

4. For additional accounts of the debate over the political implications of the law, see Henry 1985, Hunt 1985, Nader and Todd 1978. The assumption that oppositionality derives from being outside power-laden discourses and practices is of course not limited to legal studies. This assumption lies behind the model of activism in which consciousness raising (as evidenced by explicit political language) is deemed a prerequisite for true social protest (see, for example, Hobsbawm 1959; Jenkins 1983). This assumption is also linked to the more recent argument that alternative discourses create ways of contesting hegemonic systems, regardless of whether or not individuals perceive these discourses as political. See Comaroff 1985, Comaroff and Comaroff 1991, and Williams 1977 for discussions of this issue.

5. No one refused to be interviewed. I concentrated on interviewing individuals who were available locally.

6. In his study of undocumented immigrants in San Diego, Wayne Cornelius took similar precautions. He writes, "I know of no precedent for subpoenaing of academic research records on undocumented immigrants by federal immigration authorities, but this remains a theoretical possibility. The only way to completely eliminate this kind of risk to the undocumented interviewee is to destroy all personal identifying information as soon as possible after the interview is completed. This is the procedure being followed in the San Diego County project. . . . In addition, the field interviewers who have direct contact with indocumentados have been instructed to avoid any contact with INS employees, local police, or other persons who may be involved in immigration law enforcement, during the entire period of the study" (1982:386). Feldman (1991) also discusses the constraints that researchers face when studying groups that are under surveillance. I should note that I do not believe that publishing accounts of the sanctuary movement poses the same degree of risk to movement members as does fieldwork within the movement. It is now seven years since I completed fieldwork and there have been no additional indictments against the sanctuary activists with whom I worked, so it is unlikely that my notes or I would be subpoenaed. Additionally, I have sought to protect participants' confidentiality in both field notes and in published accounts.

7. The United States' acceptance of foreign-born workers has varied over time. For example, during the 1930s depression, half a million people of Mexican descent were deported, and, after World War II, Operation Wetback expelled some 1 million Mexicans (Hull 1985:83–85).

8. The U.S. Immigration and Naturalization Service's investigation of the sanctuary movement began in March 1982 (Turner 1985b). An FBI probe of groups opposed to U.S. policy in Central America began in 1981.

9. The Nuremberg principles were expounded during the war crimes trials that followed World War II. See Glueck 1946 for a discussion of the notion that individuals, as well as states, are liable for their actions under international law.

10. The distinction drawn by participants between the community's and the government's respective interpretations of the law is a variation of American notions of official and natural law (see Greenhouse 1989).

11. Leviticus 19:33 reads, "When a stranger sojourns with you in your land, you shall not do him wrong."

12. The irony of an informant named "Jesus" infiltrating a religious movement was not lost on volunteers. One participant later commented, "What a name! It should have been Judas!"

13. While awaiting trial, one defendant wrote, "In our Anglo-American approach to self-government, the state can challenge the validity of a community's sanctuary activities by bringing the community's members to trial, and it is then up to a jury to determine whether, in fact, there is a violation of human rights by government officials that justifies the provision of sanctuary" (Corbett 1986:160).

14. Susan Harding (1993) has argued that the 1925 Scopes trial, in which Clarence Darrow debated evolutionism with William Jennings Bryan, established the hegemony of liberal Protestantism over funda-

mentalism. Ironically, this and subsequent trials have made fundamentalism the prototypical religious "other" within modernist (including legal) discourse. To claim the protection of the law, the liberal Christians who had been indicted as alien smugglers had to portray their faith as "other"; that is, as incompatible with the norms adhered to within the "secular" world.

15. For example, Los Angeles residents rioted in 1992 after the acquittal of police officers who had been videotaped beating an African-American motorist, and sanctuary workers criticized INS officials for granting asylum at higher rates to applicants from communist than from noncommunist countries.

16. See Rosen 1989 for a discussion of the dilemmas within American culture regarding the relationship between law and morality, and reason and compassion.

17. The equation of law and morality by defense attorneys is reminiscent of Durkheim's argument that crime is that which offends the collective conscience.

18. Journalists were not unreflecting conduits for defendants' views; rather, they were situated actors whose portrayals of the movement and trial, while influenced by sanctuary workers' public relations efforts, were shaped by their social position, the political stances of their newspapers, and other factors. For analyses of media representations of criminal trials, see Harding 1993 and Hariman 1990b.

19. After the trial, the number of news articles on the sanctuary movement dropped sharply. For example, in 1986, from January (two months into the trial) until July (when convicted sanctuary workers were sentenced), 32 articles about the sanctuary movement appeared in the *Los Angeles Times*. From August 1986 to December 1986, the *Los Angeles Times* published only two articles about the movement, while in all of 1987 the *Los Angeles Times* published only five articles about the sanctuary movement.

20. These letters identified Central Americans only by nationality, sex, and age. Tucson sanctuary workers did not turn undocumented Central Americans over to immigration officials, but rather put them in contact with attorneys who advised them regarding political asylum.

21. 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. Remer-Thamert and Martinez were both acquitted on all charges.

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