
Sanctuary, Sovereignty, Sacrifice



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Randy K. Lippert

Sanctuary, Sovereignty, Sacrifice:
Canadian Sanctuary Incidents,
Power, and Law



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For Francine

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Sanctuary, Sovereignty, Sacrifice

1

Introduction

All human behavior is scheduled and programmed through rationality. There is a logic of institutions and in behavior and in political relations.

– Michel Foucault, “Truth Is in the Future,” *Foucault Live*

Placing on display a masked and hooded Guatemalan migrant facing certain deportation by immigration officials at a televised press conference on 20 January 1984,¹ an ecumenical group of church officials and community supporters pronounced St. Andrew’s United Church on the outskirts of Montreal a sanctuary. Referred to only as “Raphael,” the twenty-two-year-old migrant living concealed in a converted minister’s study in a church building for five weeks beginning in December 1983 remained silent during the entire spectacle.² That sanctuary was granted to Raphael was exceptional. It was, in fact, the first incident of its kind in Canada.³ Twenty years later, although similar acts are now more prevalent, they remain rare. Yet this incident was exceptional in another sense. Granting sanctuary to Raphael was about making an exception to a rule. Instead of becoming one of the thousands of mostly invisible migrants removed annually from communities and the nation to face bleak fates and possible death, here there was sudden, visible intervention, and Raphael’s life was spared. Strategically situated next to church officials and community supporters in the church amidst the gaze of television cameras and photographers, Raphael had become the object of a sovereign power. Such a power, with its capacity to make exceptions and its affinity for spectacle, is typically thought in current scholarship, when reflected upon at all, to flow from the modern nation-state. But this was an instance, as Raphael’s protectors put it, of “God’s law coming before the government’s.”⁴ Authorized by this and other “higher” laws, here a sovereign power began to flow from a much older wellspring of local church and community and then to surge through channels of mass media

to become a torrent of spectacle sufficient to attract onlookers, including political authorities in high places.

Less mediated and more mundane, the provision of sanctuary, which entailed the daily care for Raphael's needs while he remained hidden and confined to church property for those five weeks, was shaped by a different power, but one of no less importance. These caring practices were an instance of pastoral power, a less celebrated logic that Michel Foucault likened to that of a shepherd overseeing a flock.⁵ Pastoral power entails care for "the lives of individuals."⁶ During the weeks preceding the press conference, and afterward, Raphael became the object of this power and transformed into a needful, silenced "sheep" cared for and watched over by sacrificing "shepherds."

Within hours of the spectacle generated at the church, Canada's federal immigration minister publicly announced a temporary halt to all deportations to Guatemala and declared that these sanctuary providers, despite violating immigration law, were to be spared legal prosecution. Another exception was made. Since 1983, in churches and communities across Canada, sanctuary has been similarly provided to migrants exhausted of legal appeals and threatened with deportation. This book is about these incidents and the diverse powers and legal narratives that have shaped and made them possible. It is based on a comprehensive and detailed empirical study of all thirty-six sanctuary incidents that occurred in Canada during a twenty-year period commencing with the "Raphael" incident in 1983. This four-year research endeavour entailed forty-six personal interviews with sanctuary providers along with the collection and analysis of some 1,600 documents pertaining to these incidents.

This book has two main purposes, through which it seeks a broader relevance than a study of contemporary sanctuary incidents might otherwise possess. The first purpose is to serve as a corrective to the voluminous research intimating that contemporary sanctuary is an exclusively US-based religious social movement that commenced in the early 1980s and that had expired by the early 1990s. By documenting sanctuary incidents in a different national context – that of Canada – over the same period and in the ensuing decade, this book attempts to free sanctuary from this idiosyncratic scholarly treatment thereby revealing it as more widespread and prevalent than the almost exclusively US-based research has implied and therefore as more significant. Although sanctuary's form may vary across national contexts, this book seeks to show that in the matter of contemporary sanctuary, there is little justification for US exceptionalism. Consistent with this purpose, common features of Canadian sanctuary incidents have been researched and where possible compared with sanctuary activities in the US.

The second (but not secondary) purpose of this book is to cast light on theoretical issues in relation to the innovative and expanding body of scholarship known as "governmentality studies." This varied literature, which

was developed by British, Canadian, and Australian scholars primarily through the 1990s and early 2000s, is inspired by the later writings and lectures of Michel Foucault. With their postmodern affinity for historical contingency, specificity, and discourse, governmentality studies have had a profound influence on the trajectories of several disciplines, including law, sociology, criminology, geography, political science, and anthropology. It is not an exaggeration to suggest that a new generation of scholars has embraced governmentality studies and their accompanying assumptions in order to explore a wide range of historical and contemporary domains. Yet, despite their remarkable growth and demonstrated capacity to both unsettle and shed new light on what are often thought to be self-evident realms and practices, governmentality studies have not developed free of contentious issues and lingering questions, including those centred on neglected forms of power and their relations with law. Consistent with this second purpose, special attention has been paid to sanctuary discourses and practices and to the diverse powers and legal narratives that constitute sanctuary. In the chapters that follow, it is assumed that sanctuary – while relatively rare, ostensibly anachronistic, and based primarily on tradition – can ironically reveal much about governance, law, and resistance in the present.

Sanctuary

Sanctuary has an extensive history.⁷ The Old Testament refers to cities of refuge.⁸ There are detailed historical accounts of sanctuary in ancient Greece, Rome, and Byzantium as well as throughout Medieval Europe.⁹ Among ancient Hebrews, sanctuary was a way to manage revenge for a slaying by providing time and space for negotiations between the murderer and the offended party. In the fourth and fifth centuries, secular authorities recognized ecclesiastical sanctuary as distinct territory under church control.¹⁰ The state first recognized church sanctuary in the Theodosian Code in AD 392 and sought to limit those to whom it could be applied based on the nature of their crimes.¹¹ Although at the outset sanctuary was limited to the church altar, its territory gradually expanded to include bishops' residences and even cemeteries. By the Middle Ages in Europe, sanctuary as a space and as a set of discourses and practices gradually receded in the face of the growing power of states.¹² In Britain, where sanctuary had been intensively regulated for centuries, it was formally abolished under James I by statute in 1624.¹³

Despite the existence of assorted historical accounts, a long-term genealogy of sanctuary has still to be researched and written. Whether sanctuary retained its link with the church, moved to other sites in civil society, or ever completely vanished from Western societies thus remain empirical questions (see Chapter 7). What is clear is that contemporary sanctuary has taken the form of groups of churches and communities harbouring

individual migrants or migrant families threatened by imminent arrest and deportation by federal immigration authorities. Beginning in the 1970s, sanctuary returned to Britain,¹⁴ and through the 1980s, 1990s, and 2000s, it also appeared in Germany, France, Belgium, the Netherlands, Norway, Switzerland, Australia, and Canada, among other nations.¹⁵ In the US, sanctuary underwent something of a revival beginning in 1982.¹⁶ This resurgence occurred amid US-backed war and oppression in Central America and a resultant increase in the number of migrants desperately fleeing this region by illegally entering the US.¹⁷ But sanctuary plainly has not been limited to these US sanctuary activities, which had ceased by the early 1990s. Nor has sanctuary elsewhere and since that time necessarily shared features revealed by studies of US sanctuary. To date, no research has yielded a portrait of sanctuary incidents arising in other national contexts. By investigating sanctuary in Canada, this book responds to this omission.

Governmentality Studies and Theoretical Issues

This book adopts a conceptual approach inspired by the later works of Michel Foucault. Since his death more than twenty years ago, the governmentality perspective developed from his concepts has been elaborated upon and refined. Nevertheless, this approach continues to deploy three major concepts – programs, rationalities, and technologies of government – each of which requires brief description before the enduring issues evident in this literature can be discussed. First, programs are imagined projects, designs, or schemes for organizing and administering social conduct. Programs claim knowledge of particular domains.¹⁸ Thus there is a corresponding focus in the chapters that follow on forms of knowledge and regimes of truth within programs. Second, rationalities comprise changing discursive fields within which the exercise of power is conceptualized: the moral reasons for the particular ways that diverse authorities exercise power; notions of the appropriate forms, objects, and limits of politics; and the right distribution of governing duties within secular, religious, military, and familial sectors, among others.¹⁹ Rationalities are not simply theories, philosophies, or ideologies; they are broad, historically developed discourses of rule.²⁰ Both liberalism and pastoral power are examples of rationalities. Finally, technologies of government are the material and intellectual means, devices, and mechanisms that make different forms of rule possible.²¹ Examples include everything from maps to accounting methods to architectural forms. In this context, a case in point is the Refugee Documentation Centre, which has made information about refugee conditions abroad accessible in Canada since 1989 in a way that fits liberal rationalities (see Chapter 3). Technologies come to be assembled within particular programs by rationalities, and specific technologies emerge to serve different functions depending on the specific rationalities with which they are linked.²² These three overarching

concepts – especially the first two – are used throughout the present study.

At least four theoretical issues have emerged within and in relation to this rapidly expanding body of scholarship. These concern how rationalities relate to one another as well as to sovereign power, law, and method. Each is addressed in the course of seeking to explore sanctuary in Canada in the chapters that follow, and each requires elaboration.

The first of these issues pertains to how liberal and nonliberal rationalities relate to one another.²³ A theme of Foucault's later writings is that governance in the modern West is not a singular process of instrumental rationalization²⁴ but a process shaped by the simultaneous presence of rationalities.²⁵ A central and explicit aim of governmentality studies from their inception has been to move away from totalizing and, in particular, neo-Marxist and state-centred accounts of governmental domains.²⁶ The shift to a new terrain – evinced by the dramatic growth of governmental studies across the disciplines – has been a remarkable success. Yet, in the process, and to the extent that nonliberal rationalities have been ignored, governmentality accounts risk becoming similarly totalizing and/or systematizing.²⁷ Liberalism as a rationality of rule has been elaborated upon in an array of contexts in the governmentality literature. Even a tacit admiration of liberalism in these studies has been noted.²⁸ Such a rationality has several distinguishing features. Liberal government establishes limits on political intervention and presumes a realm of freedom and action outside the acceptable reach of politics.²⁹ It identifies subjects in civil society and private realms assumed to possess rights that are not to be violated by formal political authorities.³⁰ Liberal government therefore entails a perpetual suspicion of formal political authorities who might impose their decisions throughout a nation or demarcated jurisdiction.³¹ Although all liberal rationalities share these features, several forms of this logic are found in the literature: classical liberalism,³² liberal welfarism,³³ and advanced liberalism. Of particular relevance to the Canadian sanctuary context are liberal welfarism and advanced liberalism.

Taking their lead from Foucault,³⁴ theorists writing about governmentality have argued that since at least the 1970s, a new governmental rationality has been taking shape in the modern West, evident in a wide range of domains from health care to higher education to policing. Although in each case the application of this rationality follows its own trajectory and is subject to specific conditions of possibility, these domains are said to be changing in a manner consistent with the onset of the logic of advanced liberalism. On occasion this logic is also called neoliberalism.³⁵ Although their meanings overlap, the two terms are not synonymous. Nikolas Rose, who coined the term “advanced liberalism,” suggests that this logic “shares many of the premises of neo-liberalism.”³⁶ Advanced liberalism is the preferable term since neoliberalism tends to connote specific writings, such as those of

Friedrich von Hayek and Robert Nozick, as well as the notion of a totalizing ideology consistent with the political-economy tradition rather than a rationality that encompasses critiques from the Left and the Right.³⁷ Nor is advanced liberalism limited to economic life. In what follows, therefore, “advanced liberalism” will be used most often (see Chapter 3), and “neoliberalism” will be reserved for governance that more specifically relates to the economic sphere – that is, the market, taxation, and the like. Advanced liberalism differs from liberal welfarism, discussed shortly, in imagining responsibility for governance shifting toward agents operating beyond the state, such as professionals, private corporations, and individuals, and a corresponding move toward these agents governing through their freedom.³⁸ The former has been explored in some detail within a variety of contemporary governmental domains and has much purchase where changes in refugee and immigration policies over the last two decades are concerned (see Chapter 3).³⁹ That said, it is a central point of this book that advanced liberalism or any other form of liberalism is problematic to the extent that it is understood and invoked as a totalizing or systematizing concept used to refer not to a particular rationality in a specific context but to something approaching a new epoch or societal condition. It is one thing to deploy advanced liberalism in reference to a configuration broader than neoliberalism; it is another thing to use it to signify a totalizing, seamless condition that blankets all other governmental logics and powers in a way that is at odds with the spirit of the later writings and lectures of Michel Foucault.

In contrast, liberal welfarism (which Nikolas Rose refers to as “social liberalism”)⁴⁰ has rarely been investigated in context. Broadly characterized by what is commonly understood as welfare-state arrangements, this rationality has instead been deployed in the literature as something of a self-evident foil for and immediate predecessor of advanced liberalism, a use consistent with what Nikolas Rose, following Jean Baudrillard, calls the “death of the social.”⁴¹ Foucault never elaborated liberal welfarism but instead wrote in precious few passages of a pastoral power that had become institutionalized as welfare-state provision for individuals’ needs. In particular, in the Tanner Lectures on Human Values given in 1979, Foucault traced the key themes of pastoral power within several of its historical incarnations and suggested that the modern “Welfare State problem” was but a recent recurrence of the “tricky” tension between the “city-citizen” game, associated with Greek political thought, and the “shepherd-flock” game of pastoral power.⁴² Since Foucault’s lectures, the latter game has been neglected by scholars.⁴³ It undoubtedly continues to be less celebrated in part because it has been subsumed within the term “liberal welfarism.” It is my contention that liberal welfarism should be understood as a temporary coupling of liberal and pastoral rationalities – that is, as a coupling of governing through freedom and governing through need. The gradual unhinging of this cou-

pling, which is consistent with the decline of the welfare state, raises an integral question: If there has occurred a degovernmentalization of the state as a result of the rise of advanced liberalism, has pastoral power and its corresponding discourse of needs⁴⁴ become obsolete, or can it also be found outside the state?⁴⁵ Just where can one find pastoral power today?⁴⁶ Certainly, there are remnants of this power in the welfare-state arrangements that remain.⁴⁷ Across nations of the modern West, however, much residual welfare provision by the state has been transformed into workfare and has otherwise adopted a neoliberal, marketized form.⁴⁸ Perhaps, then, better examples of pastoral power might be found elsewhere. It is thus germane to note that sanctuary is partially about identifying and providing for migrants' needs (see Chapter 5) and foremost about fulfilling a primary need for protection from an insecure life or even death as a result of deportation to a dangerous place. However, sanctuary seeks to accomplish this neither with the bureaucratic structures and expertise of the welfare state nor through newer hybrid or marketized agencies arising in conjunction with its gradual decline.⁴⁹ Consistent with the prospect of alternative genealogies of sanctuary that may yet reveal that sanctuary-like spaces, discourses, and practices have not in fact vanished but have proliferated in civil society since the eighteenth-century decline of church sanctuary, and in conjunction with the rise of a variety of social movements, pastoral power can perhaps be regarded as thriving today in unexpected and heterogeneous sites (see Chapter 7).

Empirical investigations of nonliberal rationalities such as pastoral power remain few.⁵⁰ This is perhaps because these logics are thought to be either largely nonexistent, little more than peculiar anachronisms, or all but irrelevant to rule in Western societies. If liberalism as a governmental rationality is not to be understood as having surpassed or systematically incorporated all other logics, then nonliberal rationalities or powers may still be present and, through careful research, discernable in particular contemporary governmental practices.⁵¹ Questions about their current character and relevance, and about how they complement, resist, or otherwise relate to liberal rationalities, warrant empirical attention. Sanctuary serves as a special context in which to seek answers to these queries.

A second but related issue concerns sovereign power, particularly how it is to be understood and its relationship to governmental rationalities. It has been increasingly recognized in the literature that sovereign power cannot be easily dismissed as archaic or as altogether superseded by governmentality.⁵² Yet, with few exceptions,⁵³ when it is invoked, sovereign power tends to be narrowly conceived. Specifically, it is assumed to be essentially coercive and to adopt the form of symbolic punishment, violence, or exclusion.⁵⁴ With some notable exceptions,⁵⁵ however, this coercive power also tends to be imagined to flow from a single source and space: the modern

nation-state.⁵⁶ This issue, too, demands more attention. And sanctuary, as a form of symbolic salvation from coercion whose power emanates from other sources and territories, provides an opportunity to meet this need.

Recent scholarship has begun to suggest the relevance of a governmentality approach to understanding the governance of international migration.⁵⁷ All manner of governmental practices, including those pertaining to economic wealth, natural disasters, unemployment, health, crime, and national and international security, may be increasingly governed *through* migration. That is, migration may be less the central focus of governance projects, if it ever was, and more a useful tactic through which to govern other domains, subjects, and forms of conduct. Yet several writers have recently noted that the governance of migrants by nation-states may also be a key site through which the relationship between governmentality and sovereignty can be made intelligible.⁵⁸ To this end, this study of sanctuary in Canada seeks to shed light on the refugee and immigration domains to which it relates, as well as on how the diverse powers – liberal, pastoral, and sovereign – can be distinguished and potential relations among them better understood.

How the first two issues are dealt with in this book raises an intimately related but largely unacknowledged third issue: the role of law in governance. It is this issue that brings the current study more securely into the realm of socio-legal studies. The governmentality literature has sought to replace the idea of law as command, which is tightly tethered to a concept of sovereignty found in Foucault's writings, with the idea of law as governance.⁵⁹ According to this understanding, law is typically regarded as an integral mechanism of liberal governance.⁶⁰ Although deployed with other expert knowledges and techniques,⁶¹ this kind of law ultimately promises to achieve the "conduct of conduct" in a liberal way. Through deployment of various technologies, it seeks to constitute legal subjects whose freedom will not be simply crushed by the state. But if the presence of other powers is evident in particular domains, such as the sovereign and pastoral powers that bear upon migrants in sanctuary incidents, then what is the role of law in relation to such powers? If one seeks to avoid totalizing conceptions, it would seem that law could be expected to adopt diverse roles. At the level of the subject, it could be deployed as a body of heterogeneous legal narratives that exist in complex relation to these powers rather than manifesting only as a component of an apparently limitless liberal repertoire. Indeed, in merely glancing at contemporary discourse on sanctuary incidents, one is almost immediately struck by the invocation of law in intricate and varied ways, which suggests the promise of sanctuary to shed light on this issue.

Governmentality studies have also come up against several critiques that warrant consideration, thus suggesting a fourth issue. Bruce Curtis has pointed out that Nikolas Rose and Peter Miller's influential 1992 article in the *British Journal of Sociology* uses two conceptions of the state that "do not

have the same ontological status; used interchangeably, they confuse empirical situations and political concepts ... [and refer] to both 'conditions of forces' and a 'linguistic device.'" Here the governmentality program is claimed to ignore "situated social relations and relations of causation."⁶² Subsequent critiques have tended to share this concern about an avoidance of "the real."⁶³ In response, Nikolas Rose has demarcated a "new sociology of governance," separating it from an "analytics of governmentality"⁶⁴ by arguing that "analyses of governmentality are empirical but not realist. But studies of governmentality are not sociologies of rule."⁶⁵ This implies that the new sociology of governance is realist. Given this distinction, in periodically referring to the real, the present (empirical) study is closer to this sociology of governance. However, it remains somewhat dubious that drawing such a firm distinction would be either possible or beneficial. Others writing in the governmentality vein appear to think likewise.⁶⁶ Alan Hunt, for example, refers to his recent work as the sociology of governance while paying close attention to discourse and avoiding the above division throughout.⁶⁷ As well, in what is likely the most sympathetic critique of the governmentality literature to date, Pat O'Malley, Lorna Weir, and Clifford Shearing similarly avoid Rose's distinction and acknowledge appearances of the real in governmentality analyses.⁶⁸ As they see it, the problem is not so much inclusion of the real as the fact that "what actually happens" tends to be treated as "merely obstructionist," when it ought to be thought of as "constitutive."⁶⁹ Like Curtis, these critics lament that "the messy actualities" of "social relations" are ignored,⁷⁰ suggesting that "many programmes exist only in the process of messy implementation."⁷¹ This understanding of programs resonates with the approach of the present study, which assumes that many programs in the refugee realm are little more than tentative pilot projects (see Chapter 3) or, in the case of sanctuary, made up on the spot (see Chapter 4) and created and adjusted within short bursts of time as they encounter and gain discerning knowledge of the real.

A more important point is that there are two strains within these critiques, one focused on how to conceptualize resistance and the other centred on the ontological status of the object of empirical research. The first strain concerns whether resistance is either merely obstructionist, a seemingly irrational (or messy) source of program failure, or constitutive in the sense of resistance becoming incorporated into liberal government.⁷² It is my contention that to properly move away from totalizing tendencies, systematization, and the like in governmentality studies, the issue ought to be less about whether resistance is obstructionist or constitutive and more about whether and how resistance is constituted by relatively distinct powers, such as those investigated in this book. Approached in this way, resistance might be understood instead as relative to the specific form of power or rationality at work. Yet this issue is even more complex since the present study of sanctuary will

reveal in the chapters that follow that nonliberal forms of power, such as sovereign and pastoral power, also encounter resistance – and not only from liberalism.

The second strain of these critiques focuses on the ontological status of the object of inquiry, which is an altogether different matter and one necessarily linked with questions of methodology. The preferred method in governmentality studies has been a form of discourse analysis of programmatic texts, often those produced by the state. In fact, most research in the governmentality area has concentrated on such state texts rather than on everyday discourse, or talk. The techniques of governmentality studies inspired by Foucault have tended to be directed at forms of discourse that show the structured regularities of statements, regularities that are perhaps less obvious in everyday discourse. While anthropology is a discipline that is influenced by governmentality studies and that focuses on talk, even here studies can be found that focus exclusively on texts. The common preference for texts over talk in this and other disciplines is also linked to the fact that some governmentality studies have investigated nineteenth-century or earlier contexts consistent with Foucault's own histories, thereby obviously making investigations of talk derived from interviews impossible. Yet the preference for programmatic texts over talk is, as well, undoubtedly linked to the comparatively greater time and expense required to arrange, conduct, and analyze interviews with social agents. At the same time, state texts are increasingly available via the Internet and are thus more accessible than talk. However, that everyday discourse is made up of a multiplicity of types of discourse and that it is difficult to analyze (given its lack of regularity and accessibility) are hardly adequate justifications for its avoidance. As Kevin Stenson notes, "mentalities of rule are embodied in texts and also in orally transmitted discourses."⁷³ The latter is true for a fundamental reason: in certain contexts, subordinate powers – indeed *because* they are subordinate at a particular juncture – may present themselves primarily in oral discourses. The first three theoretical issues above are thus related to this fourth issue, for it may be that some neglected powers beyond liberalism are apparent mostly in talk. In particular, if pastoral power is increasingly found outside the modern nation-state, its intimacy and immediacy are such that, as a rationality, it may not instantiate itself in texts to the same degree as liberal rationalities. More to the point, adopting traditional sociological methods (i.e., interviews) does not imply that the object of inquiry automatically becomes "the real" and that, by definition, it is therefore placed outside the purview of governmentality studies. Admittedly, this study relies on programmatic texts to make sense of changes in refugee resettlement and determination during the period that sanctuary incidents occurred (see Chapter 3). However, in treating the specific issue of sanctuary, this study pools tex-

tual and interview data to better identify, access, and make intelligible the diverse powers that constitute it. In the course of doing so, this research reveals several instances of talk finding its way into more systematic, programmatic texts – where such texts exist at all – and elements of these texts spilling into talk. For example, the United Church’s sanctuary guidelines (see Chapter 2) have been informed partially by what previous providers said to its authors about sanctuary. Conversely, several interviewees in the present study noted they had reviewed their files (some of which were collected and analyzed) prior to their scheduled interview about a sanctuary incident. This suggests that there may not be a firm distinction between texts and talk. As well, sanctuary incidents were generally not associated with a specific programmatic text. Undoubtedly, providers in incidents occurring after 1997 benefited from sanctuary guidelines made available by then. However, although these guidelines are relevant, it is evident that they were often obtained by providers after their sanctuary incident had commenced. This general dearth of programmatic sanctuary texts is likely related to the uncertainty of sanctuary’s legal status. But this does not mean that sanctuary has not been programmatic. It is my contention that sanctuary programs, informed by particular powers, can be glimpsed in talk. Due to talk’s apparent relevance, as well as to the centrality of discourse in a governmentality approach more generally, excerpts of talk appear in abundance in the chapters that follow.

The present study of sanctuary in Canada, then, seeks to counter US sanctuary research implying that contemporary sanctuary was an exclusively US-based phenomenon that has now expired.⁷⁴ It does so by exploring the prevalence, trajectory, and features of sanctuary incidents in another national context. The Canadian sanctuary context also serves as a forum in which to address at least four theoretical issues pertaining to governmentality studies. This evolving research program, drawing on Foucault’s later work, promises to yield illuminating accounts of governmental regimes that allow for historical contingency, specificity, and the performative role of discourse. Yet, given the outstanding issues above, this program seems to require further refinements, especially concerning the role of nonliberal powers and law. A key challenge facing this study of sanctuary in Canada is to contribute to such development. In so doing, this book draws upon insights of influential writers such as Giorgio Agamben (see Chapter 4), Susan Silbey, and Patricia Ewick (see Chapter 6), who have written since Foucault, but ultimately in a manner largely in keeping with the spirit of his legacy. If this challenge is successfully met, such refinement and an alternative account of contemporary sanctuary in a neglected context will be this study’s primary contributions. Before the organization of this book can be discussed, previous accounts of sanctuary, definitions, and research procedures require elaboration.

Previous Sanctuary Research

Published accounts of sanctuary in Canada are few; comprehensive research is nonexistent. There are only two extended popular accounts of sanctuary in a Canadian context, both authored by religious authorities who played a central role in the single incident described.⁷⁵ One recounts the extensive efforts of a pastor to secure legal status for a migrant family facing deportation in an incident in Vancouver in 1992. The other is an account of the Southern Ontario Sanctuary Coalition incident that commenced in 1993. Although these accounts are detailed, both incorrectly imply that the incident depicted was the first of its kind in Canada and appear to be written primarily to appeal to a faith-based or popular readership rather than to address theoretical issues or to provide a comprehensive scholarly account of sanctuary.

Two prominent Canadian refugee advocates – Gunther Plaut and David Matas – have also written separately about sanctuary as a potential Canadian social movement.⁷⁶ Although these texts are thoughtful, they are exceedingly brief, mentioning but a few incidents and leaving out meaningful details. The only other published scholarship on sanctuary in Canada appears to be a little-known piece by Charles Stastny and Gabrielle Tyrnauer that refers to two incidents.⁷⁷ These various truncated and now largely outdated reflections on sanctuary share two major features: they imply that sanctuary in Canada has been limited to no more than three incidents,⁷⁸ and they are devoid of systematic reference to social theory. Collectively, these accounts also suggest that sanctuary's capacity to realize positive legal outcomes for migrants is limited by its apparent illegal nature (see Chapter 6) and the corresponding risk that it generates for churches and providers who choose to engage in it.⁷⁹ As discussed in Chapter 2, sanctuary's supposed limited effectiveness is incongruous with its outcomes. Although not without important qualifiers, the majority of resolved incidents yielded legal status for most migrants involved. Besides the few Canadian contributions above, and the US research below, there is virtually no other published English-language research about contemporary sanctuary.⁸⁰

In contrast to the Canadian context, sanctuary in the US has received exhaustive study.⁸¹ But this US literature, too, has a fault: it implies that contemporary sanctuary has been limited primarily to an *expired US religious movement*. These accounts – including those published since the mid-1990s – make virtually no mention of similar occurrences elsewhere. The US sanctuary literature fails to mention, for example, that in Britain contemporary sanctuary activities were manifest as early as the 1970s⁸² and that through the 1980s, 1990s, and indeed into the 2000s, media accounts reported sanctuary incidents in Germany, France, Belgium, the Netherlands, Norway, Switzerland, and Australia. Sanctuary in Western and undoubtedly other contexts outside the US has been neglected. As noted, documenting

the Canadian context since 1983 reveals that sanctuary incidents have occurred and continue to do so outside the US and that, far from having expired, they are increasing prevalent.

This is not to suggest, however, that the US sanctuary literature is unworthy of consideration. For comparison purposes, some findings are discussed in Chapter 2. Yet my purpose is not to conduct a review of extant sanctuary theorizing in this book. Rather, it is to contribute to the refinement of governmentality studies. Therefore, reference to theorizing in the US literature is irregular and limited to the varied works of Susan Coutin, Hilary Cunningham, Kirstin Park, Gregory Wiltfang, and Doug McAdam, which share with almost all previous US research a more or less explicit view of contemporary sanctuary as a US religious movement or form of activism positioned against the state.⁸³ Typical are Wiltfang and McAdam's insistence on the "centrality of religious groups and the salience of religious ideology to the movement" and their claim that "the origins of the movement are firmly rooted in religious groups."⁸⁴ Cunningham similarly investigates sanctuary in the US as an instance of conflict between church and state, an approach best reflected in the title of her major work, *God and Caesar at the Rio Grande*. Understanding sanctuary as conflict between political and religious authority is not new. A historical account of sanctuary in England published in the early twentieth century, for example, notes that "in considering the question of sanctuary in England right through these pages, it must always be borne in mind that the whole matter involved a perpetual conflict between the State and the Church."⁸⁵ Although this approach sheds considerable light on sanctuary in the US context as an instance of a religious movement, or on the church, positioned against the state, this dynamic applies only loosely to sanctuary in Canada. For one thing, compared to church-state relations in the US, those in Canada have traditionally held a different place.⁸⁶ In the US, church-state separation is mandated in the constitution, and although there is a guarantee of religious freedom in Canada's Charter of Rights and Freedoms, there has never been the same legal or cultural emphasis on this division. This is evident, for example, in the organization of education that continues today, particularly in the existence of state-funded Catholic schools. But more important, early in the process of conducting this study, sanctuary in Canada was discovered to be less a sustained national or regional religious movement – that is, less a particular organizational form entailing some level of continuous communication among those involved – than a collection of local incidents that were disconnected socially and geographically from one another, temporally limited, and surprisingly, often not primarily religious in orientation.⁸⁷ For this reason, seeking to understand sanctuary in Canada as a religious or social movement and correspondingly drawing concepts primarily from social movement theories (including theories in resource mobilization and

new social movements),⁸⁸ as valid as such an endeavour is in other contexts,⁸⁹ was intentionally avoided. In place of a broad *movement*, the present study approaches sanctuary discourses and practices as *incidents*. The term “incident” better connotes an event that is limited in both time and space and is about confrontation. Sanctuary incidents defy the regular goings on in refugee and immigration domains, momentarily laying bare the otherwise routine practices of communities, churches, and immigration authorities, including resettlement, determination, and deportation practices, and therefore permit closer examination of the diverse powers at work. But this study steers clear of approaching sanctuary as a social movement for another, perhaps more controversial, reason. Although the term “movement” is usually understood to denote a specific organizational form, calling a phenomenon a movement also commonly implies the presence of agency. However, doing so in this context would raise questions: Are those providing sanctuary to migrants more or less agents than the immigration officials seeking to deport them (or, indeed, agents more so than the migrants themselves)? Why would sanctuary providers’ language and efforts constitute a movement while those of immigration authorities do not? Are not the discourses and practices involving each kind of agent made possible by rationalities? In addition to focusing on those powers and legal narratives that constitute sanctuary, this book elaborates the changing rationalities within the discourses and practices of immigration and related authorities (see Chapter 3). Is not the agency of *both* providers and these officials, as Foucault suggests, “scheduled and programmed through rationality”?⁹⁰ This question points to a key theme of this book, which is that sanctuary is not alien to rationality, sovereign power, and notions of law typically associated only with the nation-state but is instead constituted by them. It therefore makes sense to approach providers and officials in a similar way, something that invoking the term “movement” for only one of them would not accomplish. Although drawing on theories in new social movements could potentially highlight the role of language in forming sanctuary providers’ identities,⁹¹ and although theories in resource mobilization might provide insight into how mass media are mobilized to serve movement goals – facets of sanctuary that are discussed in a different register in the chapters that follow – it is my contention that approaching sanctuary primarily as a movement is misleading and would not add significantly to our understanding of the phenomenon.

The present study, then, takes a different theoretical tack, one that seeks to identify the powers and legal narratives – among other aspects comprising contemporary sanctuary – that render possible the agency of sanctuary providers. Consistent with this approach, it is my contention that sanctuary is not so much a majestic and eternal conflict between two monolithic entities – church (or a national religious movement) and state – as a short-

lived tension between two historical rationalities of government: the liberal and the pastoral. Conflict is thus conceived here in a less essentialist and more historical and local manner than is the case in much previous sanctuary research. To be sure, liberal and pastoral logics have come to complement one another in particular domains. Yet disagreement between these rationalities can also occur within local contexts, and this disagreement can overlap with conflict between sovereign powers that concurrently manifest themselves in such situations and that thus entail varied roles for law. Previous research has perhaps focused too much on sanctuary as a religious movement situated against the state or as an instance of church-state conflict to the neglect of elements that may shed light on theoretical issues in governmentality and socio-legal studies. Sanctuary promises to be a window on these issues, but it first needs to be better framed.

Defining and Researching Sanctuary

Contemporary sanctuary is less than a uniform space and set of discourses and practices. Writing briefly about sanctuary in Britain in the 1980s, Paul Weller distinguished between “exposure” and “concealment” within the provision of sanctuary,⁹² a dichotomy that resembles the distinction between “overground” and “underground” railroads present in some US accounts of sanctuary.⁹³ Exposure entails purposively gaining the attention of mass media, communities, and political authorities; the latter involves avoiding such attention. Closer scrutiny of the Canadian context, however, reveals this dichotomy to be less than watertight. In the first documented Canadian instance of sanctuary in Montreal in 1983, for example, five weeks of concealment preceded exposure. The trajectories of incidents in Toronto, St. John, and Edmonton similarly reveal both aspects. As well, in several instances, specific churches publicly *threatened* to grant sanctuary, in which case migrants did not enter sanctuary to achieve a reprieve of some kind.⁹⁴ In addition, since 1983, at least one instance of concealed sanctuary was exposed after the fact, but this was not enacted as a strategy to aid the specific migrant threatened at the time.⁹⁵ Examples of churches helping migrants to fight deportation orders by providing resources for legal fees are also evident.⁹⁶ As well, community groups, such as Vigil in Toronto, formed (and disbanded) in Canada during this period expressly to aid migrants subject to deportation. A sanctuary provider from Toronto interviewed for this study recounted in passing that the group Vigil

would go to the [immigration] minister ... and most of the times it worked [to stop the deportation or to secure the migrant's legal status]. So ... they had a lot to do, and they did it well. And the minister ... solved the like twenty to thirty cases that were really critical.⁹⁷

More recently, groups of migrants in Montreal, such as the Action Committee of Non-Status Algerians, formed to fight their own deportation through efforts that at one point in 2002 overlapped with one sanctuary incident discussed later in this book. These latter three situations – threatened sanctuary, concealed sanctuary lacking strategic exposure, and antideportation campaigns of churches or other groups not involving physical protection – are comparatively rare. For this reason, while not entirely excluded from the discussion that follows, they are neither referred to nor studied as sanctuary incidents. This book, then, defines sanctuary as those incidents in which migrants actually entered and remained in physical protection to avoid deportation and that entailed strategic efforts to expose this fact to mass media, communities, and political authorities.

Although discovering sanctuary incidents involving exposure is by definition easier than researching concealed sanctuary, the former nevertheless proved methodologically challenging for three reasons. First, with the possible exception of national-security and intelligence agencies, no Canadian governmental or nongovernmental body systematically collects (or publishes) information about exposure incidents. Second, as noted, sanctuary incidents are at times purposively concealed immediately prior to or after periods of exposure. In these cases, researching sanctuary runs up against barriers similar to those encountered by researchers studying undocumented or illegal migrants more broadly.⁹⁸ Third, early in this research effort, as noted earlier, the local and disconnected nature of sanctuary incidents in Canada – that is, the fact that such incidents were primarily tied to particular local churches and communities rather than linked to a much broader network or movement – became apparent. Overcoming these challenges required the following research procedures.

Internet search engines and indexes covering major newspapers and national popular and church periodicals from the mid-1970s to 2003 were first systematically and exhaustively searched. A difficulty with this procedure was that “sanctuary” means protection or shelter in everyday parlance, *de facto* protection based on the accepted or at least perceived inviolability of a place where a fugitive has sought such protection from authorities, and a location within a church building. The first two meanings are often used interchangeably with “safe haven,” “safe harbour,” “refuge,” and on occasion, “asylum.” This necessitated sifting through a large volume of material to discern only those texts pertaining to sanctuary incidents so defined and to provide a comprehensive picture by ensuring that all such incidents were identified.

For some incidents occurring after 1998, websites were erected on behalf of migrants to expose their plight and to instruct visitors on how to lend support to the sanctuary effort. Also located on the Internet were brief television and radio news broadcasts or excerpts thereof regarding two 2003

incidents in the Montreal area that featured interviews with sanctuary providers. These were subsequently transcribed and analyzed. The presence of sanctuary texts on the Internet, however, is minimal. Two national or regional refugee-specific newsletters or periodicals that originated in the 1980s, *Refugee Update* and the *Inter-Church Committee for Refugees Bulletin*, which are not indexed, were also examined in their entirety. Following this, several indexes covering local newspapers from smaller cities – those in the 100,000-200,000 population range – were searched using a commercial service called Infomart. As well, two detailed and popular accounts of single incidents, noted earlier, were analyzed.⁹⁹ Other sources included one-hour videotapes of two local phone-in television broadcasts concerning two sanctuary incidents that featured interviews with sanctuary providers. These, too, were transcribed and analyzed. Finally, the few available Canadian church-sanctuary guidelines, which can be considered programmatic texts in the sanctuary context, were located and examined.

To more adequately explore the thirty-six incidents and to access sanctuary discourse, forty-six open-focused, confidential, personal interviews were conducted over four years with those persons discovered to be intimately involved (see Appendix).¹⁰⁰ These persons are referred to as “sanctuary providers” throughout this book, and their names and identifying information, to ensure confidentiality, have been removed from the interview excerpts displayed in the chapters that follow. These audiotaped interviews are crucial to this study for two reasons. First, they provide considerable detail about sanctuary incidents omitted from popular and secondary media accounts and from the few programmatic texts in existence. This information was not only purposely concealed from mass media and authorities, but it was also not documented anywhere. Second, the interviews facilitated access to collections of articles from smaller and somewhat obscure local newspapers of a kind typically excluded from major indexes as well as access to unpublished documents assembled and maintained by sanctuary providers in a third (or twelve) of the incidents, including the four incidents of the longest duration.¹⁰¹ Some providers kept meticulous records of their efforts; others did not. As a result, these unpublished documents vary considerably but include at least some of the following: correspondence, leaflets, press releases, chronologies, petitions, texts of relevant legal decisions, and minutes of sanctuary groups’ meetings. Taken together, these research procedures generated more than sixty-five hours of interviews and some 1,600 documents directly pertaining to thirty-six Canadian sanctuary incidents.

Chapter Organization

Chapter 1 has discussed major objectives, theoretical issues, previous sanctuary research, and research procedures. The remainder of the book is

organized with the two previously mentioned purposes in mind – revealing features of sanctuary in the Canadian context and providing insight into issues in governmentality studies. First, however, a comment about the title – *Sanctuary, Sovereignty, Sacrifice* – is necessary: “sanctuary” refers to the thirty-six incidents; “sovereignty” to Michel Foucault’s notion of sovereign power; and “sacrifice” to pastoral power, specifically to the practices of providers who interrupt their lives and risk prosecution in order to draw attention to and care for migrants in need. Sacrifice is perhaps more pronounced here than in other pastoral practices because of the risk of legal prosecution and because the requirements of daily care for migrants’ wellbeing that sanctuary situations create are often initially met by strangers. Yet “sacrifice” also highlights precisely what is absent in the exercise of sovereign power, thus contrasting the two forms of power that are of interest in this book. Consistent with the recent work of Giorgio Agamben, I argue that, as objects of sovereign power, migrants facing danger or death through deportation *cannot be sacrificed*.¹⁰² Upon their desperate arrival at the doorstep of a local church or of the offices of immigration authorities, their lives are assumed to have already been stripped bare of any sacrificial potential (see Chapter 4).

Chapter 2 is largely descriptive and attends to the purpose of documenting the features of sanctuary in Canada. It first briefly discusses US sanctuary activities in relation to the Canadian context as well as four developments related to the idea of a distinctive Canadian sanctuary movement. Those interested more in the book’s broader argument, especially as it pertains to theoretical issues, and less in these developments and the characteristics of sanctuary in Canada should proceed to Chapter 3. That said, in Chapter 2 sanctuary in Canada is found to differ from the much-researched US sanctuary activities in several respects. As suggested earlier, sanctuary in Canada constitutes less a sustained national or regional social movement or network and more a collection of contingent and temporary local incidents that, while sharing some features, have been mainly disconnected socially and geographically from one another. Equally important, many incidents have involved the efforts of persons from the larger secular communities in which they have occurred at least as much as the efforts of clergy and members of local churches. This suggests that sovereign and pastoral powers (discussed in Chapters 4 and 5), the powers that make sanctuary possible, are not necessarily of a faith-based or religious character. The major features of the thirty-six identified sanctuary incidents – their prevalence, durations, origins, providers and supporters, recipients, denominational affiliations, locations, and legal outcomes – are then discussed. A further noteworthy feature is that the vast majority of the approximately 261 persons who actually received sanctuary in these incidents were refugee claimants, and

often their immediate family members, who had failed to gain legal status through official means.¹⁰³

It is less than self-evident why contemporary sanctuary would be granted mostly to these failed refugee claimants rather than to fugitives fleeing, for example, criminal justice and threats of imprisonment or other state or nonstate authorities and sanctions. Certainly, those accused of criminal offences were granted sanctuary in the distant past. Why contemporary sanctuary has centred on migrants needs to be explained in relation to changes in refugee and immigration domains during the period of its emergence. Although only a partial explanation, the return of sanctuary in this form nevertheless corresponds with these changes, which, in Canada at least, have adopted an advanced-liberal character. Chapter 3 describes these programmatic changes by discussing the context of Canadian refugee determination and resettlement – and to a lesser extent immigration policy, with which this context overlaps – during the period in which sanctuary incidents began to appear. This discussion is necessary in order to begin to reveal, among its other aspects, sanctuary's conditions of possibility. Integral developments here include a complex movement of responsibility for determination and resettlement away from the state. Correspondingly, there has been an incursion of administrative law into refugee determination and a formal introduction of private sponsors and community volunteers into resettlement.

Chapter 4 discusses sanctuary as an instance of church and community sovereign power, a power understood in part as the monopoly to make the exception, rather than only as exclusive authority to punish or exclude. In so doing, this chapter raises questions about the typical understanding of sovereign power in governmentality studies, particularly its conception as essentially coercive, exclusionary, and violent. Sovereignty, however, also refers to territorial control; therefore, how sanctuary is constituted as a territory with fluctuating borders is elaborated upon. The spectacle of sovereign power, a key feature of its operation, is then discussed. Finally, what sanctuary reveals about the issue of how sovereign power can be distinguished from and how it relates to governmental power is taken up.

Sanctuary is also an instance of pastoral power. Chapter 5 thus pays close attention to pastoral power's knowledges, techniques, agents, objects, and spaces. It begins by considering community within sanctuary discourse. Sanctuary imagines enlisting members of a broader and often secular community, which implies that pastoral power is neither equivalent to Christian church governance nor obsolete¹⁰⁴ and that this rationality has purchase in specific contexts within other contemporary domains where the care and wellbeing of marginalized populations is sought.¹⁰⁵ This is contrary to some recent accounts of pastoral governance that draw upon Foucault's

writings. The discussion then turns to needs, intimate knowledge, watching and visiting, and education in the sanctuary context as integral elements through which pastoral government is exercised. Next, consistent with this form of power, imaginings of sanctuary providers as “shepherds” and of migrants as “sheep” are discussed. Subsequently, and in more detail, the forms that sacrifice adopts are considered, these being a key aspect of pastoral power. The spaces of sanctuary constituted by pastoral power that facilitate the generation of intimate knowledge and the fulfillment of migrants’ needs are then taken up. This is followed by a discussion of the resistance to pastoral power that is encountered in relation to sanctuary. Finally, in light of the foregoing, this chapter considers the issue of how pastoral power is distinguished from and relates to liberal rationalities.

Chapter 6 explores the crucial relation between sanctuary and law in light of the presence of sovereign and pastoral powers documented in Chapters 4 and 5. Both as a space and as a set of discourses and practices, sanctuary is usually thought to be beyond the reach of law. Yet, upon closer inspection, sanctuary is shown to be saturated with legal discourse. There are at least three legal narratives that partially constitute sanctuary. Two of these narratives reveal how law makes pastoral sacrifice by sanctuary providers possible, while a third authorizes sanctuary as consistent with the exercise of church and community sovereign power. Time is demonstrated to be a key dimension of these narratives in the sanctuary context. These narratives are shown to be not so much contradictory forms of ideology, consistent with the tradition of critical legal studies from which they are drawn, as instantiations of sovereign and pastoral powers at the level of the subject that complement one another in a manner that makes migrants’ ultimate escape from deportation possible. The implications of this analysis for both governmentality studies and critical legal studies are considered.

Chapter 7 discusses the implications of the current study for previous sanctuary research and governmentality studies. Sanctuary, contrary to the claims of previous research, has occurred in nations outside the US, has not expired, and has been as much about local community as about religious efforts. Although previous research has pointed to sacrifice in sanctuary provision, sacrifice is better theorized as an element of a particular historical rationality. Rather than being regarded as religious or transnational political activism, sanctuary is better seen as the convergence of two neglected yet significant nonliberal powers: the pastoral and the sovereign. This account suggests that pastoral power outside the state continues to be relevant and argues that sovereign power is neither limited to the nation-state nor necessarily coercive. Consistent with a specific rationality, sovereignty may well make exceptions for situations that are outside the imagination of a given program. However, sovereign power may well be *constitutive of*, rather than simply a technique *within*, programs shaped by specific rationalities.

Implications for the concepts of resistance, hybridity, responsabilization, moral regulation, and program in relation to governmentality studies are also discussed. Sanctuary is also partially constituted by legal narratives in a configuration that is consistent with the two powers that make it possible, suggesting the potential for a more complex account of law as governance. Issues pertaining to pastoral power as an alternative form of need provision, as a longstanding challenge of governance, and as constitutive of welfare-state arrangements are then discussed. Finally, the notion that a more complex long-term genealogy of sanctuary is possible is raised. Ultimately, this study of sanctuary suggests that governmentality studies have to move beyond an almost exclusive emphasis on liberalism to allow for a plurality of powers and for corresponding roles for law in specific contexts. If this is done, the grand and mundane forms of governance, resistance, and exception that make up our lives may be made intelligible.