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Amy Eileen Hoyt

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THE NATURAL-LAW CLAIM TO SANCTUARY FOR CENTRAL AMERICAN REFUGEES

I. INTRODUCTION

In the pre-dawn hours of November 16, 1989 in El Salvador, gunmen in military uniform murdered six Jesuit priests, the priests' cook and the cook's daughter.¹ An army colonel, three lieutenants and four soldiers have been arrested in connection with the murders.² This atrocity and the resurgence of fighting in El Salvador have refocused attention on the bloodshed in Central America. Specifically, attention has focused on the tragic impact this bloodshed has on the people of those nations; an impact that all too often amounts to persecution by both the rebels and the government. This persecution has motivated thousands of Central Americans to flee their homes and seek refuge in the United States.

Tragically, under current immigration laws,³ the United States de-

1. L.A. Times, Nov. 17, 1989, at A1, col. 5.

2. L.A. Times, Jan. 14, 1990, at A1, col. 4.

3. In an effort to clarify the United States' refugee policy and to conform its refugee law to the United Nations' 1967 Protocol, 19 U.S.T. 6224, T.I.A.S. No. 6577, 606 U.N.T.S. 267, Congress passed sweeping immigration laws, including the 1980 Refugee Act, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.) In fact, "the Refugee Act of 1980 . . . amended the Immigration and Nationality Act so as to bring United States statutory provisions into conformity" with international law. *Bolanos-Hernandez v. Immigration and Naturalization Serv.*, 767 F.2d 1277, 1280 (9th Cir. 1984). Through this legislation, an otherwise deportable alien who claims he or she will face persecution if deported has two statutory methods on which to rely. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 U.S.C.).

First, under the Immigration and Nationality Act, the "Attorney General shall not deport or return any alien . . . to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group or political opinion." 8 U.S.C. § 1253(h) (1988).

Alternatively, under the 1980 Refugee Act, the Attorney General has discretion to grant asylum to an alien who "is a refugee within the meaning of section 1101 (a)(42)(A) of [title 8]." 8 U.S.C. § 1158(a) (1988). Finally, the term refugee means a person who is "unable or unwilling to return to that home country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A) (1988).

Therefore, in 1980, Congress created two forms of relief: (1) mandatory withholding of deportation for those who can show they will be persecuted; and (2) a discretionary grant of asylum for those with a well-founded fear of persecution. By creating a "broad class of refugees who are eligible for a discretionary grant of asylum, and a narrower class of aliens who are given a statutory right not to be deported to the country where they are in danger," Congress clearly intended to conform to the 1967 Protocol, and incorporated the principle of non-refoulement through the mandatory withholding of deportation provision. *Immigration and Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421, 424 (1987). The principle of non-refoulement

nies most Central Americans asylum.⁴ Asylum is usually denied because of the substantial deference with which the appeals courts review the decisions of immigration judges (an administrative law judge) and the Board of Immigration Appeals (BIA), and also because most refugees lack the concrete, objective proof of persecution required by many courts.⁵

mandates that a person not be returned to any country where that person will suffer persecution. G. FOURLANOS, *SOVEREIGNTY AND THE INGRESS OF ALIENS* 147 (1986). For a discussion of the 1967 Protocol and non-refoulement, see *infra* notes 181-86 and accompanying text. Unfortunately, practical difficulties in interpreting and applying these provisions have resulted in arbitrary denials of relief for refugees fleeing "friendly nations." See *infra* notes 156-60 and accompanying text. These denials in turn prodded the sanctuary movement into action.

4. See *infra* notes 156-60 and accompanying text.

5. See *Rebollo-Jovel v. Immigration and Naturalization Serv.*, 794 F.2d 441 (9th Cir. 1986); *Diaz-Escobar v. Immigration and Naturalization Serv.*, 782 F.2d 1488 (9th Cir. 1986). The Ninth Circuit first enunciated the deferential substantial evidence standard for reviewing asylum and withholding of deportation appeals in *Diaz-Escobar*. *Id.* at 1493. Under this standard, the burden of proof rests solely on the applicant; the Immigration and Naturalization Service (INS) is not required to produce any evidence to counter the applicant's claims. *Id.* Further, the standard requires only that the BIA's conclusion be substantially reasonable based on the evidence presented. *Id.* The court stated the BIA could not be reversed "simply because [the court] disagree[d] with [the BIA's] evaluation of the facts, but only if [the court] conclude[d] that the BIA's decision is not supported by substantial evidence." *Id.* While this standard may not appear overly deferential on its face, in its application the standard effectively acts as a rubber-stamp review of asylum and deportation hearing decisions.

For example, in *Diaz-Escobar*, the refugee feared persecution in Guatemala by the guerrillas because he chose to remain neutral in the conflict between the government and the guerrillas. *Id.* at 1490. *Diaz-Escobar* testified that a note left on his car (presumably by the guerrillas) which warned him "to leave the country or 'be subject to the consequences,'" motivated his flight from Guatemala. *Id.* The court affirmed the decision of the immigration judge and the BIA denying both forms of relief since *Diaz-Escobar* could not produce the letter, and therefore lacked any concrete proof of persecution. *Id.* However, it does not seem reasonable to require a refugee who fled his country fearing for his life, to keep a letter which could effectively be his death warrant if he were stopped on his journey. Further, it is highly unlikely that a refugee would contemplate the need for concrete evidence to prove his persecution during the trauma of flight.

The court also focused on the lack of concrete proof of persecution in *Rebollo-Jovel*. There, the refugee testified that his uncle, a political official with the same surname as him had been assassinated, that two cousins were also murdered, and that he himself had received three threatening messages and been interrogated by individuals "posing as policemen who told him 'not to get involved' in matters that were none of his business." *Rebollo-Jovel*, 794 F.2d at 447. The court stated that he had established neither a clear probability of persecution to qualify for withholding of deportation, nor a well-founded fear of persecution to qualify for a discretionary grant of asylum. *Id.* at 448. The court reasoned that his testimony merely reflected the general unrest in El Salvador, and even though the threats were specifically directed at him, he had not concretely proven any political motivation behind the threats. *Id.* at 447-48.

Finally, courts have upheld the BIA's denial of relief *even when* the refugee presented concrete evidence. In *Cruz-Lopez v. Immigration and Naturalization Serv.*, the refugee had saved a note during his traumatic flight from El Salvador. 802 F.2d 1518, 1519 (4th Cir. 1986). The note, from Salvadoran guerrillas, demanded that he "[j]oin the [guerrillas] or . . . regret it." *Id.* The court stated that the note did not constitute concrete evidence since "such

The "sanctuary movement" in the United States responds to this tragic situation by helping Central Americans cross the United States' border, and by sheltering them once they arrive. The roots of the contemporary sanctuary movement reach far back in history, based on religious and philosophical grounds. Both the religious and the philosophical sources nurture the natural-law claim to the right of sanctuary.⁶ In analyzing this claim, this Comment first presents the tradition of sanctuary in its Greco-Roman and medieval forms, then introduces the modern United States movement, and discusses the contemporary tragedy of Central American refugees whom the sanctuary movement attempts to shelter. After sketching this background picture, the Comment focuses on the religious and philosophical arguments, as well as relevant human-rights and international documents, which together form the basis of the natural-law claim to the right of sanctuary.

A. Natural Law

A primary foundation to understanding the natural-law claim for sanctuary is a general understanding of natural law. Natural law stems back to "the earliest stages of Greek speculation about the human condition," and continued with Roman philosophers as well.⁷ In the thirteenth century, Saint Thomas Aquinas made "natural law a cornerstone of his philosophy."⁸ Thomas Hobbes and John Locke "each referred to the premises of [their] systems as dictates of nature."⁹ The theory of

notes are distributed widely throughout El Salvador and they are frequently nothing more than idle threats." *Id.* at 1522. *Diaz-Escobar, Rebollo-Jovel* and *Cruz-Lopez* are typical of many decisions that employ a deferential standard of review and hold the refugee to a very strict evidentiary burden, a burden that is almost impossible for many to meet.

6. The religious sources stem from the Bible. *See infra* notes 90-102 and accompanying text. The philosophical sources stem from natural law. *See infra* notes 103-60 and accompanying text. Ignatius Bau, an attorney working primarily in immigration law, described the sanctuary movement as follows:

The sanctuary movement can never be divorced from its religious context. It is not politics in the conventional sense. . . . It is a brand of political activity . . . similar to the civil rights movement because it is non-violent and church-based [and] . . . similar to the anti-war movement during the Vietnam War because it is fundamentally a call for non-intervention and peace. However, it is perhaps closest to the Underground Railroad for fugitive slaves during the United States Civil War because it is a mass rejection of the presumptions and values of the status quo. The . . . movement is like the Underground Railroad because while it is inevitably a political act to break the law—an act of civil disobedience—law-breaking is not the primary motivation for sanctuary.

I. BAU, THIS GROUND IS HOLY 20 (1985).

7. L. WEINREB, NATURAL LAW AND JUSTICE 1 (1987). Aristotle and Cicero were two famous early natural law philosophers. *Id.*

8. *Id.* at 2.

9. *Id.*

natural law appears through many different viewpoints. However, linking all these varied voices is the underlying belief of all naturalists that certain self-evident and fundamental truths about human nature exist and are discoverable through reason.¹⁰ In turn these truths create rules of behavior to which conduct ought to conform.¹¹ This naturalist model gives structure to the arguments for the right to sanctuary.

B. *Introductory History of Sanctuary*

The tradition of granting sanctuary is seen in the Old Testament, and also existed in the worlds of Greece and Rome. The Catholic Church continued the practice of extending sanctuary as early as 313 A.D.¹² Traditionally, a fugitive who reached a place of worship, such as an altar or temple, was granted sanctuary and protection from any pursuers; after this temporary grant of asylum, the fugitive's choices were exile from, or surrender to, the country in pursuit.¹³ Already widespread in the churches of medieval Europe, by the fifteenth century, sanctuary was even offered by whole towns that declared themselves places of refuge.¹⁴ In the sixteenth century, King Henry VIII curtailed this expansion of sanctuary because many fugitives had thereby escaped prosecution.¹⁵

C. *The Modern Sanctuary Movement in the United States*

The sanctuary movement in the United States began in 1981 with a chance meeting between a Salvadoran hitchhiker and a Quaker rancher in Arizona and spread quickly among religious communities to become a grassroots phenomenon.¹⁶ Presently, a diverse mix of over 300 religious communities have publicly declared themselves sanctuaries for Central American refugees, as have a number of cities.¹⁷ Such declarations are in direct response to the federal government's application and enforcement of the 1980 Refugee Act.¹⁸ Sanctuary workers claim that the government applies the Act in violation of congressional intent, and in a manner

10. S. STUMPF, *PHILOSOPHY HISTORY AND PROBLEMS* 173 (1983).

11. L. WEINREB, *supra* note 7, at 2-3.

12. Note, *The Sanctuary Movement: An Analysis of the Legal and Moral Questions Involved*, 30 ST. LOUIS U.L.J. 1221, 1225 (1986).

13. *Id.* at 1224-25.

14. *Id.*

15. *Id.*

16. Helton, *Ecumenical, Municipal and Legal Challenges to United States Refugee Policy*, 21 HARV. C.R.-C.L. L. REV. 493, 493, 501 (1986) [hereinafter Helton I].

17. *Id.* at 493.

18. "The current invocation of sanctuary by North American churches is a dramatic response to the refusal of the United States government to grant legal sanctuary, or asylum,

that discriminates against and—effectively excludes—Central Americans, especially Guatemalans and Salvadorans.¹⁹ Viewing the refugees as fellow humans in need of divine protection, sanctuary workers feel morally and religiously obligated to obey a higher law than those passed and applied by government officials.²⁰ Sanctuary workers thus engage in civil disobedience by helping the refugees gain entry to the United States, and by offering them shelter, protection, and sometimes employment.²¹

D. *The Tragic Situation Faced By Modern Refugees*

An analysis of the situation of modern refugees is crucial to understand the sanctuary movement, and necessary to fully grasp the applicability of the natural-law claim to sanctuary for these refugees. The many wars of the twentieth century have greatly exacerbated the refugee problem.²² By their nature, wars cause violence and unrest that dislocate people. The creation of new countries that resulted from decolonization after the two World Wars also played a significant role in the creation of refugees.²³ In a world system which resembles an anarchy of sovereignties, huge numbers of individuals seeking haven from persecution have emerged.²⁴ The causes of the Central American refugee problem stem from the historic economic struggle over scarce resources and the tradition of non-democratic military government.²⁵ Moreover, a long tradition of United States involvement in the region clearly impacts the refugee flow from the area, through the United States' support of anti-communist groups or governments.²⁶ An analysis and understanding of the impact of these factors on the indigenous populations in the region makes a compelling argument for the right to sanctuary for those refugees.

Politics in Central America have been characterized by the "dominance of a wealthy landed elite governing, occasionally with democratic facades and almost always with the active collaboration of the mili-

under United States immigration laws, to refugees from El Salvador and Guatemala." I. BAU, *supra* note 6, at 38.

19. Note, *The Sanctuary Movement*, 21 HARV. C.R.-C.L. L. REV. 598 (1986).

20. Note, *supra* note 12, at 1225.

21. Helton I, *supra* note 16, at 493.

22. E. FERRIS, *THE CENTRAL AMERICAN REFUGEES* 3 (1987).

23. G. FOURLANOS, *supra* note 3, at 119.

24. *Id.* Sovereignty is a complex term with many possible meanings, but most scholars agree that the "term . . . indicates supremacy and superiority" in the country's legal capacity to act. *Id.* at 40. Sovereignty is not absolute, but rather is the principle that expresses the country's need for a "legal capacity in order to be able to perform its functions." *Id.* at 43.

25. E. FERRIS, *supra* note 22, at 14.

26. *Id.*

tary."²⁷ Not surprisingly, the present crises in El Salvador and Guatemala, which have fueled the flow of refugees, share similar roots: accumulations of wealth and land in the hands of a tiny percentage of the population, growing masses of landless peasants, "historic pattern[s] of dominance by a landed elite and by close ties with the United States."²⁸ During the 1970s, changes occurred which resulted in bloody political turbulence in the region: Central America became more receptive to revolutionary movements with the "radicalization . . . of the clergy," the formation of mass popular organizations, and the "growing disillusionment with the [government's] rhetoric of reform."²⁹

These factors combined in the 1980s to transform the nature of political violence in El Salvador and Guatemala. The successful 1979 Sandinista revolution in Nicaragua taught neighboring governments and revolutionary movements that support by and control of the population in the "countryside is the key to the revolution."³⁰ Since then, the governments of Guatemala and El Salvador, as well as the guerrilla forces in each nation, have focused on the peasantry.³¹ Civilians can no longer remain free from political struggles, as guerrilla attacks and harsh counterinsurgency tactics are now aimed at the civilian population.³² Neutrality is no longer an option, as both sides perceive indifference as support for their opponents.³³ "[G]overnmental definitions of the enemy have broadened; the enemy is presently considered to be those individuals who are not actively supporting the government."³⁴ This violence and civil war drove approximately 1 to 1.5 million Central Americans from their homes between 1980 and 1983.³⁵

Even more significant, the governments of El Salvador and Guatemala quickly learned that the key to United States aid and support was staunch anti-communism.³⁶ In fact, the United States has provided

27. *Id.*

28. *Id.* at 25.

29. *Id.* at 14.

30. *Id.*

31. *Id.* at 14-15.

32. *Id.*

33. For example, the refugee in *Diaz-Escobar v. Immigration and Naturalization Serv.* feared persecution by Guatemalan guerrillas because he chose to remain neutral in the conflict between the government and the guerrillas. 782 F.2d 1488, 1490 (9th Cir. 1986). In contrast, another refugee refused to join the Salvadoran army because he wanted to remain neutral in El Salvador's civil war. *Aviles-Torres v. Immigration and Naturalization Serv.*, 790 F.2d 1433, 1435 (9th Cir. 1986). As a result of his refusal, the Salvadoran government harassed him. *Id.*

34. E. FERRIS, *supra* note 22, at 15.

35. A. CRITTENDEN, *SANCTUARY: A STORY OF AMERICAN CONSCIENCE AND THE LAW IN COLLISION* xvi (1988).

36. Journalist Robert Tomsho notes that:

military and economic support to these governments in their campaigns against revolutionary movements.³⁷ Sanctuary workers argue that United States military aid has thereby contributed to the persecution of civilians who are not active supporters of their government.³⁸ According to sanctuary workers, this support of governments that persecute or that tolerate persecution imposes a moral duty on Americans to help the victims of that persecution.³⁹

Examination of the political situation and the political violence in El Salvador and Guatemala, reveals the tragic persecution of the civilian population. The United States' involvement through military aid to these governments provides compelling support to the arguments for a right to sanctuary for victims fleeing this persecution because this aid amounts to United States governmental support of foreign governments with records of human-rights abuses.

II. RELIGIOUS ARGUMENTS FOR THE RIGHT TO SANCTUARY

Sanctuary workers argue that both the ancient tradition of asylum and the precepts of the Bible support their efforts to help Central American refugees.⁴⁰ Thus, tradition and the Bible are interwoven strands supporting the right to sanctuary.⁴¹

the military governments of [El Salvador and Guatemala] . . . were pictured as the beleaguered torchbearers of democracy. The Reagan administration argued that, although the anti-Communist leaders in Central America might not rate among the world's humanitarians, failure to support them would pave the way for a string of Soviet puppets that stretched from Panama to the Rio Grande.

R. TOMSHO, THE AMERICAN SANCTUARY MOVEMENT 96 (1987).

37. E. FERRIS, *supra* note 22, at 18. United States military/economic aid (in millions of dollars per fiscal year) has been:

| <u>To Guatemala:</u> | <u>To El Salvador:</u> |
|-----------------------|------------------------|
| 1981-0.0/19.0 | 1981-35.5/114.0 |
| 1982-0.0/15.5 | 1982-82.0/182.2 |
| 1983-0.0/29.6 | 1983-81.3/245.6 |
| 1984-50.4/26.6 | 1984-331.5/75.4 |
| 1986-10/77 (proposed) | 1986-351/133(proposed) |

Id.

38. *Id.* at 22.

39. A. CRITTENDEN, *supra* note 35, at 65, 210.

40. I. BAU, *supra* note 6, at 124.

41. Sanctuary has a rich tradition. "By examining the historical tradition of sanctuary it becomes evident that the contemporary invocation of sanctuary is not simply a legal or a political phenomenon but rather the revival and continuation of an ancient [religious and historical] tradition." *Id.*

A. *The Tradition of Asylum*

While the tradition of sanctuary exists in the Old Testament, Greece and Rome also recognized the right of asylum. Humanitarian concerns fueled the grant of asylum in ancient Greece.⁴² Originally, the Greek concept of sanctuary aimed at providing shelter, from revenge-seeking relatives, to those who had committed involuntary homicide.⁴³ However, the grant of asylum quickly extended to provide shelter to common criminals, and eventually replaced legal punishment with banishment or imprisonment in the actual sanctuary.⁴⁴ The temple of Diana at Ephesus was the most famous Greek place of asylum,⁴⁵ and the practice of granting sanctuary is well documented in the literature of that day.⁴⁶ The Romans continued the tradition of asylum, as they recognized certain places as sacred, including the altars of their temples and the statues of their emperors.⁴⁷

The early Catholic Church continued the Greco-Roman tradition of granting sanctuary. In 303 A.D., Constantine's Edict of Toleration recognized the practice of granting sanctuary within church grounds to fugitives and criminals in physical danger.⁴⁸ In an effort to regulate and codify what was already an established privilege, the Theodosian Code of 392 A.D. enacted laws regarding the Church's grant of sanctuary.⁴⁹ Originally, only the altar was a sacred place of refuge; however, around 450 A.D. Theodosius the Younger extended the place of refuge to within the walls of the churchyard.⁵⁰ The early Church continued the tradition of sanctuary mainly because it opposed violence.⁵¹ The Church acted as an intermediary between fugitives in physical danger and their pursuers

42. In Greece, "the original purpose of sanctuary . . . [was to] shelter . . . those who committed involuntary crimes." *Id.* at 130.

43. J. COX, *THE SANCTUARIES AND SANCTUARY SEEKERS OF MEDIEVAL ENGLAND* 2 (1911).

44. *Id.*

45. *Id.*

46. For example in Aeschylus' *Eumenides*, Orestes successfully sought refuge at the temple of Athena from the Furies. *GREEK DRAMA* 55-79 (M. Hadas ed. 1982).

47. J. COX, *supra* note 43, at 2. "Although abused in practice, the Roman Empire generally sought to limit the protection of the sanctuary privilege for the unfortunate and needy who would be unable to endure the often harsh and merciless application of the criminal law." I. BAU, *supra* note 6, at 130.

48. J. COX, *supra* note 43, at 2.

49. *Id.* at 3. Under the Code, "public debtors . . . Jews, heretics, and apostates were excluded from the sanctuaries. Thus, according to the earliest sanctuary legislation in the Christian era, eligibility for asylum depended on both the nature of the crime and the character of the accused." I. BAU, *supra* note 6, at 131.

50. J. COX, *supra* note 43, at 3.

51. *Id.*

in an effort not only to temper the "administration of public and private law," but also to "increase the reverence for human life in the popular mind" and to associate mercy and sanctity with Christianity.⁵²

Finally, the early Church established few rules governing sanctuary procedure. Under Gratian's Canon Law, fugitives seeking sanctuary were not to be surrendered, or if they were denied sanctuary, they could only be surrendered if the pursuers took an oath promising not to kill or maim the fugitive.⁵³ Also, the fugitive could not enter church grounds carrying weapons.⁵⁴

The tradition of granting sanctuary continued under Anglo-Saxon law. In 597 A.D., Ethelbert, King of Kent, enacted one of the earliest Anglo-Saxon codes of law.⁵⁵ The code strongly recognized and enforced the sanctity of churches.⁵⁶ During this same period, a special kind of sanctuary, "chartered sanctuary," arose.⁵⁷ Chartered sanctuary extended and elaborated sanctuary beyond the ordinary sanctity of every church.⁵⁸ Towns established *themselves* as chartered sanctuaries, and the sanctuaries of Beverley and Durham exemplified this elaboration on common sanctuary.⁵⁹

In 680 A.D., Ine, King of Wessex, expressly provided for sanctuary in his code of laws as follows:

if any one be guilty of death, and he flee to a church, let him have his life, and make "bot" [satisfaction or fine] as the law may direct him. If any one put his hide in peril [by committing a crime punishable by the lash] and flee to a church, be the scourging forgiven him.⁶⁰

52. *Id.* at 3-4. Fugitive slaves were the primary sanctuary seekers in the early Christian churches. I. BAU, *supra* note 6, at 133. The bishops acted as the fugitive slaves' protectors and advocates. *Id.*

[T]he Council of Orange allowed bishops to intervene between the fugitive slave and the master. If the slave's complaint was valid then the master was forced to sell the slave to the church or to another owner. The early church paid much money to redeem slaves in this way. If the slave was returned to the master, the master first had to take an oath that the pardon [for running away] would be given.

Id. at 132.

53. J. Cox, *supra* note 43, at 4-5.

54. *Id.* at 5.

55. Earlier that year, Augustine, after landing at Kent with forty monks, had converted and baptized Ethelbert. I. BAU, *supra* note 6, at 134.

56. J. COX, *supra* note 43, at 6.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 7 (English translation). The privilege of sanctuary existed as part of a general system of avenging wrongs. As Bau explains:

Under the ancient Saxon law of bloodfeud, any offender was subject to the revenge of

Two centuries later, in 887 A.D., Alfred the Great codified sanctuary laws even further.⁶¹ Under Alfred, the privilege of sanctuary normally extended seven days, but up to thirty days in some cases; moreover, if a pursuer harmed a person in refuge during the privileged time, the pursuer had to pay a fine.⁶² Finally, Alfred extended the sanctity of the church and church grounds to include the priest's or bishop's house.⁶³

Near the end of the Anglo-Saxon period in 1014 A.D., King Ethelred declared that a fugitive who had committed a capital offense and sought sanctuary either had to pay restitution to the victim's family or otherwise be imprisoned for life.⁶⁴ Ethelred also established a schedule of penalties for those who violated sanctuary in pursuit of a fugitive.⁶⁵

The Normans, after defeating the Saxons in 1066, continued the Anglo-Saxon tradition of granting sanctuary. Twelfth-century Norman law recognized the "peace and immunity" of the church, and established fines to punish those who violated the church's sanctity by pursuing fugitives onto church grounds.⁶⁶ Norman law also provided that only a priest or clergy member could remove a person from sanctuary.⁶⁷ Finally, Norman law declared that a fugitive could not bring stolen property into a sanctuary, and that the stolen property had to be returned to

the group or individual injured. Such a broad bloodfeud law can be contrasted with the more limited rights of the Hebrew avenger of blood. Under the ancient Teutonic tribal laws, most offenses involved a breach of the general peace, thereby making the offender an outlaw, at feud with the entire community. That peace could only be restored by coming to terms with the injured party. However, the victim had certain rights of vengeance. The system of *bot*, or amends, provided a limit to this law of feud and vengeance by fixing the amount of compensation required from the offender.

I. BAU, *supra* note 6, at 135. Ine's 680 code restricted and regulated this bloodfeud. *Id.*

61. J. COX, *supra* note 43, at 7.

62. *Id.* at 7. Under Alfred's law, a major purpose of the express statutory grant of asylum was to "facilitate composition settlements between feuding parties." I. BAU, *supra* note 6, at 137. Under the law, the church had the privilege of sanctuary and church officials had to provide lodging, but could not provide food to the fugitive. *Id.* at 138. Thus, the fugitive was physically protected (even though surrounded by the pursuers) yet hungry. *Id.* This system cooled the emotions of the pursuers by forcing them to maintain a vigil, while hunger encouraged the fugitive to reach rational settlement. *Id.*

63. J. COX, *supra* note 43, at 7.

64. *Id.* at 8.

65. *Id.* The 1014 decree established fines for violation of church sanctuary according to the status of the church. I. BAU, *supra* note 6, at 141. For example, the fine for violating the sanctity of a principal church was more than the fine for violating the protection of a chapel. *Id.*

66. J. COX, *supra* note 43, at 9.

67. *Id.* at 10. After the Norman conquest, William failed to "specifically codify" the privilege of sanctuary, yet in "general practice" he confirmed and preserved the extant Anglo-Saxon law. I. BAU, *supra* note 6, at 142.

its rightful owner.⁶⁸

During the Plantagenet period, the privilege of sanctuary was highly developed and widespread.⁶⁹ A 1315 session of the Statutes of the Realm permitted church officials to feed the fugitives, in addition to merely sheltering them.⁷⁰ Also, by the fourteenth century, the sanctuary privilege was closely tied with the "practice of abjuration of the realm. . . . [A practice which was] tantamount to permanent exile for the sanctuary seeker."⁷¹

In the sixteenth century the English monarchy broke with the Catholic Church, and thus the period marks a decline in the previously generous grant of sanctuary. During the sixteenth century, the tradition of sanctuary virtually disappeared as the English monarchs showed little respect for church immunity,⁷² especially when political enemies sought sanctuary in the churches.⁷³ Henry VII obtained papal bulls⁷⁴ from Innocent VIII in 1482, Alexander VI in 1493, and Julius in 1503 that severely crippled the grant of sanctuary; the bulls increased the number of offenses that were exempt from the privilege of sanctuary, including high treason and suspicion of treason.⁷⁵

Henry VIII continued his father's tradition. For example, a 1529 statute mandated that felons and murderers be branded or lose the privilege of sanctuary, and exempted traitors from the right to asylum.⁷⁶ A 1540 act further limited sanctuary by exempting those who committed "murder, rape, burglary, robbery, arson, sacrilege and their accessories"

68. J. COX, *supra* note 43, at 10.

69. I. BAU, *supra* note 6, at 143.

70. *Id.* at 144.

71. *Id.* Under the practice of abjuration of the realm,

[t]he sanctuary seeker would be protected in the sanctuary for a limited time and then would be required to leave England permanently. Rather than being forced to pay compensation to satisfy the Anglo-Saxon law of bloodfeud, the sanctuary seeker now had to submit to the operation of the criminal law.

Id. Through abjuration of the realm, the primary purpose of sanctuary was no longer to limit private revenge and facilitate settlements. *Id.* "Instead, sanctuaries had become part of the criminal law, facilitating the imposition of the sentence of banishment without trial. Sanctuary seekers who abjured the realm chose this punishment instead of punishment after trial." *Id.*

72. J. COX, *supra* note 43, at 319.

73. *Id.* The abuse of the privilege by debtors fleeing their creditors also led to the demise of sanctuary in England's increasingly commercial society. I. BAU, *supra* note 6, at 150.

74. A bull is a document issued by the Pope. AMERICAN HERITAGE DICTIONARY (1st ed. 1969).

75. J. COX, *supra* note 43, at 319-20.

76. *Id.* at 321. Under the statute, the abjurer was to be branded on the thumb just before their oath of abjuration and exile. I. BAU, *supra* note 6, at 153. Since the abjurer was about to go into exile, the purpose of the statute was mainly punitive, but it also discouraged fugitives from seeking abjuration. *Id.* at 153-54. "A sanctuary seeker would be subject not only to exile but a painful, permanent maiming." *Id.* at 154.

from the privilege of sanctuary, and by abolishing chartered sanctuary.⁷⁷ The Act replaced chartered sanctuary by establishing limited sanctuary in eight towns, with the rule that each town could have no more than twenty persons in sanctuary at any one time.⁷⁸

Edward VI, Henry's successor, restored the privilege for felons who had committed crimes other than "treason, willful murder or aggravated theft."⁷⁹ Mary, who was a devout Catholic, partially re-established chartered sanctuary, but her Protestant successor Elizabeth, repealed the re-establishment.⁸⁰ The death knell for sanctuary came under James, who first terminated the eight towns as sanctuaries, and at the end of his reign, abolished sanctuary in the church or on church grounds.⁸¹

Up to the sixteenth century, a strong tradition of sanctuary existed in both the practice of the Catholic Church and in English law.⁸² In fact, scholars have estimated that for many centuries in England as many as 1,000 people were in sanctuary in any given year.⁸³ Modern sanctuary workers regard this tradition as a justification for the contemporary movement.⁸⁴ There are obvious differences between the historic and modern movements. For example, the modern movement extends shelter beyond a limited time duration, and past the confines of church grounds, with some workers even helping refugees cross the United States' border.⁸⁵ Also, while the early recipients of sanctuary were often criminals who violated laws of the realm, the current sanctuary seekers are refugees who violated only immigration laws by entering the country

77. J. COX, *supra* note 43, at 326. Prior to the 1540 Act, in 1536, the King had established strict regulations on the fugitive while in the church sanctuary. I. BAU, *supra* note 6, at 154. For example the sanctuary seekers had to wear badges or else lose the protection of sanctuary. *Id.*

78. J. COX, *supra* note 43, at 326.

79. I. BAU, *supra* note 6, at 156.

80. J. COX, *supra* note 43, at 328.

81. *Id.* at 329. In the 1603-1604 session, Parliament abolished sanctuary by statute as follows:

That so much of all Statutes as concerneth abjured Persons and Sanctuaries, or ordering or governing of Persons abjured or in sanctuaries, made before the five and thirtieth yeere of the late Queene Elizabeth's Reigne, shall also stand repealed and be void.

I. BAU, *supra* note 6, at 156.

82. *Id.* at 148-50.

83. J. COX, *supra* note 43, at 33.

84. See A. CRITTENDEN, *supra* note 35, at 93-94. In fact, Reverend Lundy, a Presbyterian minister, told his congregation that John Calvin, a major figure in the Reformation, sought and received sanctuary in Geneva. *Id.* at 94.

85. Crittenden documents numerous border crossings. See, e.g., *id.* at 66, 76.

illegally.⁸⁶

However, there are striking similarities as well. Just as medieval sanctuary was a response to barbaric law enforcement,⁸⁷ so the modern movement is a response to the persecution suffered by these refugees, the callous treatment of them by the United States government, and the unjust enforcement of United States immigration laws.⁸⁸

Drawing on these similarities, the modern sanctuary movement views itself as keeper of a tradition of mercy and sanctity established through the ages.⁸⁹ Historically, the church served as an asylum, and the sanctuary movement carries on this legacy.

B. *Biblical Support for the Right to Sanctuary*

Necessarily interwoven with this tradition of granting sanctuary is the Biblical support for the grant of asylum. The Biblical roots of sanctuary stem from the Old Testament.⁹⁰ In an effort to prevent relatives of victims from avenging homicides, the "Mosaic Code" established the "six Levitical cities of refuge, appointed for the refuge of involuntary homicide until released from banishment by the death of the high priest."⁹¹

86. This however works in favor of the Central Americans, because if criminals traditionally received sanctuary, surely innocent refugees should be granted sanctuary.

87. See J. COX, *supra* note 43, at 2.

88. Crittenden illustrates this callous treatment by contrasting the Central American immigrants with the Asian immigrants. She writes:

The Southeast Asians came in legally, with the blessing of the American government as well as its people, while the Central Americans had to enter illegally and remain by stealth. They were officially labeled "economic migrants," although their stories, their scars, and common sense said otherwise. They were greeted as if they were criminals, arrested and thrown into detention camps when they showed up at the border, and offered the choice of returning, voluntarily or involuntarily, to the maelstrom of the death squads, the guerrillas, and the military sweeps. The welcome they received was not that of a good neighbor.

A. CRITTENDEN, *supra* note 35, at xvi-xvii. The callous treatment is also shown by the so-called voluntary departure statements forced upon many immigrants by INS agents in detention centers. The immigrants in detention often

had no access to lawyers and were being told to sign papers, printed in English, stating that they agreed to return voluntarily to El Salvador. If they balked at signing, they were reminded that they faced months in detention and would probably be deported back to El Salvador in the end anyway.

Id. at 43.

89. *Id.* at 94, 185.

90. I. BAU, *supra* note 6, at 124.

91. J. COX, *supra* note 43, at 1. See also Numbers 35:6-34. Moses was commanded to create six cities of refuge for those who committed involuntary manslaughter, a "manslayer." I. BAU, *supra* note 6, at 125. The manslayer could either be "one of the Israelites or a stranger or sojourner among the people of Israel. The avenger of blood, who was the next of kin of the person slain, was allowed to kill the accused 'manslayer' only if the accused was caught before

Regarding the treatment of strangers, Leviticus commands: "if a stranger lives with you in your land, do not molest him. You must count him as one of your own countrymen and love him as yourself—for you were once strangers yourselves in Egypt."⁹² In essence, this command is the "golden rule" of the Old Testament, and supports the grant of sanctuary to the persecuted who are fleeing Central America. Thus, the Old Testament stresses the positive duty to welcome and shelter the persecuted and the ill-treated.

The mandate of a positive duty continues in the New Testament. Sanctuary workers offer sanctuary "as an expression of the hospitality which is asked of us by the Gospel."⁹³ Sanctuary worker Phil Conger remarked that Christianity demands that one make the world a better place, and "[t]hat means working against institutions or people or traditions that tend to devalue human life or human dignity."⁹⁴ In addition to the Old Testament sources discussed above, this mandate also has roots in the New Testament and the teachings of Jesus.

In Hebrews, the Bible says "remember always to welcome strangers, for by doing this, some people have entertained angels without knowing it. Keep in mind . . . those who are being badly treated, since you too are in the one body."⁹⁵

Many theologians have described Jesus' commands to "love one another as I have loved you,"⁹⁶ and to "love your neighbor as yourself,"⁹⁷ as the "centerpiece of [Jesus'] moral teaching."⁹⁸ As such, these commands carry a positive duty such as Conger describes, and such as the sanctuary movement strives to fulfill.

Jesus' association with the outcasts of society expands on this "golden rule."

For I was hungry and you never gave me food; I was thirsty and you never gave me anything to drink; I was a stranger and

reaching a city of refuge." *Id.* When the fugitive reached the city of refuge, the elders of the city held a trial to determine if the killing was accidental, and if so, the fugitive was protected from the blood avenger within the city or its suburbs. *Id.* "[T]his protection was tantamount to the commutation of capital punishment to life imprisonment." *Id.* Finally, if the high priest of the city died, the fugitive could return home, and the avenger lost the right to avenge the killing. *Id.*

92. *Leviticus* 19:33-34.

93. A. CRITTENDEN, *supra* note 35, at 94.

94. R. TOMSHO, *supra* note 36, at 154 (citing Tomsho's interview with Conger).

95. *Hebrews* 13:1-2.

96. *John* 15:12.

97. *Matthew* 22:39-40.

98. D. LOWERY, *FOLLOWING CHRIST: A HANDBOOK OF CATHOLIC MORAL TEACHING* 19 (1982).

you never made me welcome, naked and you never clothed me, sick and in prison and you never visited me. . . . I tell you solemnly, in so far as you neglected to do this to one of the least of these, you neglected to do it to me.⁹⁹

The sanctuary movement argues that such passages command a positive duty to aid and shelter victims of persecution, and therefore justifies, and even demands, their civil disobedience.¹⁰⁰

Aside from these Biblical passages, many sanctuary workers express a belief in a responsibility to follow a higher law that requires giving sanctuary. One worker has said that, "as a Christian he believed he had a higher responsibility: to see that his government followed the law. And no worldly authority could take away" the right and duty to help fellow humans.¹⁰¹ Further, a priest said that the United States' involvement in Central America creates a moral duty to provide shelter. "[I]f a country was financing the planes that were bombing Salvadoran children, the citizens of that country had an absolute moral obligation to help the victims escape. . . . It is necessary reparation."¹⁰²

The words of both the worker and priest demonstrate that the natural-law claim to the right of sanctuary encompasses many levels: moral, philosophical, religious, and international. Individually, no single level justifies the actions of the sanctuary workers. But taken together, they create a strong justification for aiding the persecuted in their escape from Central America. However, the sanctuary movement relies heavily on the religious arguments to support its actions. This reliance is natural considering that churches and church leaders are the major founders of the sanctuary movement in the United States.

III. PHILOSOPHICAL ARGUMENTS FOR THE RIGHT TO SANCTUARY

A. *Hugo Grotius*

Often considered the founder of international law,¹⁰³ Grotius also contributed much to natural-law theory. True to the naturalist tradition,¹⁰⁴ he believed that natural law is discoverable and dictated by human reason, and that natural law is the basis for national law.¹⁰⁵ Gro-

99. *Matthew* 25:42-46.

100. A. CRITTENDEN, *supra* note 35, at 210.

101. *Id.* (referring to Crittenden's interview with attorney Bates Butler).

102. *Id.* at 65 (referring to Crittenden's interview with Father Ricardo).

103. G. FOURLANOS, *supra* note 3, at 17.

104. For a discussion of the naturalist tradition, see *supra* notes 7-11 and accompanying text.

105. G. FOURLANOS, *supra* note 3, at 17.

tius argued that the right to self-preservation and the right to basic necessities are components of natural law discoverable through reason.¹⁰⁶ Grotius also argued that the free movement of people is a part of the natural law; he therefore concluded that countries should not deny permanent residence to aliens seeking refuge, as long as the refugees did not disrupt the public order and promised to obey the law of the host country.¹⁰⁷ Grotius' specific argument for the right to sanctuary is a significant indication that the right to sanctuary is derived from natural law.

B. Henry Shue

In his 1980 work *Basic Rights: Subsistence, Affluence and United States Foreign Policy*,¹⁰⁸ Henry Shue presents the concept of individual duties. The theory that individuals have a positive duty to aid other humans in need supports both the right to sanctuary and the actions of the sanctuary workers. At first blush, the concepts of duty and right might not seem connected. However, the duty to aid and the right to receive aid are closely connected. They are reciprocal concepts, and the full realization of human rights is dependent on the mutual existence and exercise of both the duty to act and the right to receive aid.¹⁰⁹ For example, the right to receive sanctuary is effectively meaningless unless there is a duty to provide shelter. Once this connection between duty and right is understood, the importance of Shue's theory of individual duties becomes clear.¹¹⁰

Shue argues that individuals have a duty to protect and promote three basic rights possessed by all humans of every nationality.¹¹¹ These three basic rights are the right to security, the right to liberty, and the right to subsistence.¹¹² Corresponding to these basic human rights are three human duties. First, one has a duty to not deprive others of their basic rights.¹¹³ Second, one has the duty to protect the basic rights of others.¹¹⁴ Finally, one has a positive duty to aid those whose basic rights

106. G. CHRISTIE, JURISPRUDENCE TEXT AND READINGS ON THE PHILOSOPHY OF LAW 152 (1973).

107. G. FOURLANOS, *supra* note 3, at 17-18.

108. H. SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE AND U.S. FOREIGN POLICY (1980).

109. *Id.* at 160.

110. For an excellent discussion of Shue's theory, see Gibney, *The Refugee Act of 1980: A Humanitarian Standard*, 21 GONZ. L. REV. 585, 592-93 (1985/86).

111. H. SHUE, *supra* note 108, at 18.

112. *Id.*

113. *Id.* at 60.

114. *Id.*

are not being met.¹¹⁵ Applying Shue's concept to sanctuary, when a refugee flees persecution by a government, the basic rights to life, liberty and security are clearly not being met. Therefore, the refugee has a right to sanctuary in order to meet these basic rights, and other humans have a duty to provide sanctuary and enable enjoyment of the refugee's basic rights.

C. John Finnis

Finnis is a contemporary natural-law philosopher also. In his 1980 work *Natural Law and Natural Rights*,¹¹⁶ Finnis presents a modern natural-law theory based on human reason, not on religious dictates. Finnis bases his theory on the claims that law should conform to the existence of objectively valid normative principles, and that these principles can be discovered through human reason.¹¹⁷ Human reason, Finnis asserts, can discover these normative principles through a thought process comprised of three levels: (1) recognition of the "basic values," (2) realization of these values through the requirements of practical reasonableness, and (3) ultimate discovery of the morality to which law ought to conform.¹¹⁸ Each level must be analyzed to understand Finnis' theory, and the natural-law support it provides for the right to sanctuary.

1. Level one: the "basic values"

As a foundation to establishing the existence of basic human goods, or values,¹¹⁹ Finnis points to anthropological data that illustrate various concerns are common to all human communities.¹²⁰ For Finnis, the

115. *Id.*

116. J. FINNIS, *NATURAL LAW AND NATURAL RIGHTS* (1980).

117. L. WEINREB, *supra* note 7, at 109.

118. J. FINNIS, *supra* note 116, at 23.

119. In connection with the discussion of Finnis, the words goods and values are used interchangeably.

120. J. FINNIS, *supra* note 116, at 81. Finnis writes that the anthropological surveys entitle us, indeed to make some rather confident assertions. All human societies show a concern for the value of human life; in all, self-preservation is generally accepted as a proper motive for action, and in none is the killing of other human beings permitted without some fairly definite justification. All human societies regard the procreation of a new human life as in itself a good thing unless there are special circumstances. . . . All human societies display a concern for truth, through education of the young in matters not only practical . . . but also speculative or theoretical. . . . and all societies display a favour for the values of co-operation, of common over individual good, of obligation between individuals, and of justice within groups. All know friendship. All have some conception of . . . title or property, and of reciprocity. All value play. . . . All treat the bodies of dead members of the group in some traditional and ritual fashion. . . . All display a concern for powers or principles which are to be respected as suprahuman.

Id. at 83-84.

existence of common concerns proves the existence of basic human values.¹²¹

To determine what these basic human goods are, Finnis says one has only to ponder what the basic aspects of human well-being and flourishing entail; he concludes that such reasoning reveals seven basic human values.¹²² Clearly, life is such a good; and it includes "every aspect of the vitality (*vita*, life) which puts a human being in good shape for self-determination."¹²³ Knowledge, pursued for its intrinsic worth, is also a basic good.¹²⁴ Another basic good is play, which Finnis defines as activities pursued solely for the purpose of intrinsic enjoyment.¹²⁵ Appreciating beauty, or aesthetic experience is the fourth basic good.¹²⁶ The fifth basic good, friendship or sociability, involves at a minimum the creation of some degree of harmony among humans, and at a maximum an attempt to act for the well-being of one's friend.¹²⁷ Finnis argues that religion is also a basic good, but he defines religion broadly, as a search for harmony with "that transcendent other and its lasting order."¹²⁸ However, Finnis says a search which concludes that no "transcendent other" exists is nonetheless part of the good of religion.¹²⁹ Finally, the seventh basic good is practical reasonableness.¹³⁰ This good involves the process of freely making choices and decisions that impact one's lifestyle and character.¹³¹

According to Finnis, this list of the basic goods is exclusive, and comprises all the basic purposes for action; any other good that might be presented is only a facet of one, or a combination of, the enumerated

121. *Id.* at 84-85.

122. *Id.* at 85.

123. *Id.* at 86. For Finnis, life includes mental and physical health and freedom from pain. *Id.* It also includes activities such as "the teamwork of surgeons and the whole network of supporting staff . . . ; road safety laws and programmes; famine relief expeditions; farming and rearing and fishing; food marketing; the resuscitation of suicides . . ." *Id.*

124. *Id.* at 87. Finnis also argues in great detail that it is self-evident that knowledge is a basic good or value. *Id.* at 60-75.

125. *Id.* at 87. Finnis writes that "each one of us can see the point of engaging in performances which have no point beyond the performance itself, enjoyed for its own sake." *Id.*

126. *Id.* at 87-88. "[O]ften enough the valued experience is found in the creation and/or active appreciation of some *work* of significant and satisfying form." *Id.* at 88 (emphasis in original).

127. *Id.* at 88. "[F]riendship involves acting for the sake of one's friend's purposes, one's friend's well-being." *Id.*

128. *Id.* at 89-90.

129. *Id.*

130. *Id.* at 88.

131. *Id.* Practical reasonableness "is the basic good of being able to bring one's own intelligence to bear effectively on the problems of choosing one's actions and lifestyle and shaping one's own character." *Id.*

seven.¹³² Further, he argues, these values are equally self-evident premises that can only be the foundation of a theory or argument—never the conclusion of a set of premises.¹³³ The validity of self-evident goods can be seen only by virtue of human reason, and not by a formal proof.¹³⁴ To Finnis, just as each good is equally self-evident, each good is also equally fundamental and therefore no objective hierarchy exists among them.¹³⁵ However, Finnis acknowledges that individuals can and do choose to treat one good as the most important and thereby create a subjective hierarchy.¹³⁶ For example, in fleeing persecution, the refugee is placing life first among the basic values and thus creates a subjective hierarchy. This choice is rational though, given the often life-threatening danger faced by the refugee.

In order to effectuate human flourishing through these basic values, Finnis posits that a method of decision making is necessary.

2. Level two: the requirements of practical reasonableness

Finnis writes that these requirements “express the ‘natural[ist]’ method of working out the (moral) ‘natural law’ from the first (pre-moral) ‘principles of natural law,’ ” which are the basic human goods.¹³⁷ Practical reasonableness is the decision-making process that molds a person’s participation in the other values by guiding the broad choice of commitment, the narrower choices of particular tasks, and the method of performing each task to ensure fulfillment of the chosen commitment.¹³⁸ The requirements of this decision-making process are intended to incor-

132. *Id.* at 92.

133. *Id.*

134. *Id.* at 93.

135. *Id.* at 92. Finnis writes that “[e]ach is fundamental. None is more fundamental than any of the others, for each can reasonably be focused upon, and each when focused upon, claims a priority of value. Hence there is no objective priority of value amongst them.” *Id.* at 93.

136. *Id.* at 92-93. This is an important point, because in fleeing persecution, the refugee is choosing to treat life as the most important value. This is a reasonable choice which represents a “change in . . . [that person’s] chosen life-plan; . . . [t]he change is not in the relation between the basic values as that relation might reasonably have seemed to [the person] before . . . choos[ing] . . . [the] life-plan.” *Id.* at 93.

137. *Id.* at 103.

138. *Id.* at 100. Finnis argues that:

To have this choice between commitment to concentration upon one value . . . and commitment to others, and between one intelligent and reasonable project . . . and other eligible projects for giving definite shape to one’s participation in one’s selected value, and between one way of carrying out that project and other appropriate ways, is the primary respect in which we can call ourselves both free and responsible.

Id.

porate the basic human goods into the choices humans make.¹³⁹

Some of the requirements of practical reasonableness are critical to providing a natural-law claim for sanctuary. For Finnis, practical reasonableness requires that no arbitrary preferences among basic goods or among humans be made.¹⁴⁰ When participating in the basic goods, one's treatment of other humans must be impartial, and one's choice among goods must not be arbitrary.¹⁴¹ Essentially, this requirement is a secularization of the religious golden rule,¹⁴² and is a "requirement that one's moral judgments and preferences be universalizable."¹⁴³

The golden rule plays a major role in the religious support for sanctuary.¹⁴⁴ A secular golden rule is thus important to philosophical support since such a rule requires that our rules of behavior be all-embracing. Hence, providing sanctuary to those fleeing persecution is a product of a secular golden rule since it is a product of the "universalizing question"—how would I like to be treated if I was fleeing persecution?

Also important to Finnis are the requirements to follow your conscience and to respect every basic value in every act.¹⁴⁵ The latter requirement forbids performance of an act that "of itself does nothing" besides damaging or hindering the attainment of another basic value.¹⁴⁶ Significantly, the requirement of respect for every value in every act mandates the "strict inviolability of basic human rights."¹⁴⁷ Finnis thus concludes there are absolute human rights corresponding to the basic human goods.¹⁴⁸ The existence of absolute human rights is a foundation of the

139. *Id.* at 100-01.

140. *Id.* at 105.

141. *Id.* at 106-07.

142. *Id.* at 107.

143. *Id.*

144. See *supra* notes 92-100 and accompanying text.

145. J. FINNIS, *supra* note 116, at 118-19, 125.

146. *Id.* at 118 (emphasis omitted). See also *id.* at 119. Finnis writes that:

To choose an act which in itself simply (or primarily) damages a basic good is thereby to engage oneself willy-nilly (but directly) in an act of opposition to an incommensurable value (an aspect of human personality) which one treats as if it were an object of measurable worth that could be outweighed by commensurable objects of greater . . . worth [This] can never be justified in reason.

Id. at 120.

147. *Id.* at 121.

148. *Id.* at 225. The existence of absolute human rights stem from the requirement of practical reasonableness "that it is always unreasonable to choose directly against any basic value, whether in oneself or in one's fellow human beings." *Id.* Finnis notes that:

[T]he basic values are not mere abstractions; they are aspects of the real well-being of flesh-and-blood individuals. Correlative to the exceptionless duties entailed by this requirement are, therefore, exceptionless or absolute human claim-rights—most ob-

right to sanctuary, since a basic human right is the right to life and freedom from persecution.¹⁴⁹

Applying Finnis' belief in absolute human rights to the sanctuary movement reveals support for the grant of sanctuary. The existence of an absolute human right to be free from persecution suggests the right to be granted sanctuary from such persecution, especially in light of Shue's theory of duty.¹⁵⁰

The requirements of practical reasonableness provide the method for making choices according to the principles of natural law, and the basic values.¹⁵¹ According to Finnis, morality is the product of these methodological requirements, and "each of the requirements can be thought of as a mode of moral obligation or responsibility."¹⁵²

Thus, in fleeing persecution, refugees make moral choices to seek life and human flourishing. Further, sanctuary workers, in choosing to help those fleeing persecution, make moral choices to enable and nurture the basic human value of life, and act according to the requirements of practical reasonableness.

3. Level three: laws ought to conform to the moral standard

For a law to be morally obligatory, it must conform to the moral standard as established by the requirements of practical reasonableness.¹⁵³ A law that violates practical reasonableness, then, is not morally obligatory. Working from this moral standard, Finnis' theory provides an additional natural-law claim to sanctuary. The federal government's application of the 1980 Refugee Act violates two natural laws established by Finnis: the requirement of no arbitrary preferences among either ba-

viously, the right not to have one's life taken directly as a means for any further end; . . . and the . . . right not to be condemned on knowingly false charges.

Id.

149. See *supra* notes 108-15 and accompanying text.

150. See *supra* notes 108-15 and accompanying text for a discussion of Shue's theory of duty.

151. J. FINNIS, *supra* note 116, at 100.

152. *Id.* at 126.

153. *Id.* at 359-60. Finnis' concept of authority and obligation can be summarized as follows:

[T]he ruler has, very strictly speaking, no right to be obeyed . . . ; but . . . has the authority to give directions and make laws that are morally obligatory and that he [or she] has the responsibility of enforcing. [The ruler] has this authority for the sake of the common good Therefore, if he [or she] uses [this] authority to make stipulations against the common good, or against any of the basic principles of practical reasonableness, those stipulations altogether lack the authority they would otherwise have by virtue of being [the ruler's].

Id. (emphasis in original).

sic values or among persons,¹⁵⁴ and the requirement of respect for every basic value in every act,¹⁵⁵—which mandates absolute human rights.

In passing the 1980 Refugee Act, Congress explicitly intended to bring United States law within international refugee law.¹⁵⁶ For example, the House Report stated that “the Committee intends to emphasize that the plight of the refugees themselves, as opposed to national origins or political considerations, should be paramount in determining which refugees are to be admitted to the United States.”¹⁵⁷ However, foreign policy plays the determinative role in considering asylum applications; as one State Department official said in an interview with author Elizabeth Ferris: “[O]f course refugee policy is political. We accept as refugees those individuals coming from our ‘enemy of the day.’ Those coming from friendly countries are simply not accepted as refugees.”¹⁵⁸

This discriminatory application of the Refugee Act violates the natural-law requirements in applying an arbitrary and biased standard that violates the refugee’s absolute human rights to life and the basic necessities.¹⁵⁹ In denying the grant of asylum, the major consideration is foreign policy, not the rights of the individual refugees, many of whom are indeed victims of persecution and probably would meet the requirements of the law if a politically neutral standard were applied. Finally, the United States has a duty to grant sanctuary because it helped deprive the refugees of their basic rights by supporting governments that tolerate or engage in persecution.¹⁶⁰

Under natural law, absolute human rights mandate the right to sanctuary for those fleeing persecution. Thus, the consideration for granting asylum should not be the United States’ political alliances, but rather whether the refugee is fleeing persecution. The basic human value of life demands that the question of persecution be the determinative factor in granting asylum. To insure the basic human values and rights to

154. *Id.* at 105-06.

155. *Id.* at 118.

156. In *Immigration and Naturalization Serv. v. Cardoza-Fonseca*, the Supreme Court wrote that:

If one thing is clear from the legislative history of . . . the entire 1980 Act, it is that one of Congress’ primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees, [citation omitted] to which the United States acceded in 1968. Indeed the definition of “refugee” that Congress adopted, . . . is virtually identical to the one prescribed by Article 1(2) of the Convention.

480 U.S. 421, 436-37 (1987).

157. H.R. REP. NO. 608, 96th Cong., 1st Sess. 13 (1979).

158. E. FERRIS, *supra* note 22, at 7.

159. See *supra* notes 103-58 and accompanying text.

160. Church, *No Place to Run*, TIME, Jan. 8, 1990, at 42.

life and freedom from persecution, sanctuary must be extended to refugees in such danger. Thus, the existence of the basic values and rights justifies the actions of the sanctuary movement.

IV. THE RIGHT TO SANCTUARY AS ESTABLISHED IN INTERNATIONAL HUMAN-RIGHTS DOCUMENTS

Natural law is a foundation for the contemporary theories of human rights that are expressed in international documents.¹⁶¹ The issue addressed by international human-rights law, whether humans possess certain rights simply by virtue of being human, is also a theme of natural law.¹⁶² The fact that international law has, through various documents, recognized certain basic human rights¹⁶³ is significant to sanctuary workers in their attempt to justify giving shelter to aliens. Sanctuary workers argue that the right to asylum for those threatened with unjust imprisonment, physical harm, or death, is a human right recognized in "emerging norms of customary international law, [and that giving sanctuary is] within and even required by [international] law."¹⁶⁴

A. *The Charter of the United Nations*

The Charter of the United Nations¹⁶⁵ provides a foundation for the twentieth-century developments in human-rights laws. Various articles in the Charter deal with issues relevant to the right to sanctuary. Specifically, chapter IX¹⁶⁶ deals with international economic and social cooperation and contains many of these relevant provisions.¹⁶⁷ The Charter proclaims rights to personal security and sovereignty.¹⁶⁸ Inherent in these concepts are the rights to protection from crime, to freedom of movement, and to privacy in terms of both physical privacy and mental privacy of thought and religion.¹⁶⁹ Finally, the Charter also proclaims economic and social rights, the so-called welfare rights.¹⁷⁰ Thus, the sanctuary movement argues that the fundamental international docu-

161. G. FOURLANOS, *supra* note 3, at 63.

162. *Id.* at 63-64.

163. For example, international law has recognized such basic human rights as the rights to life and to basic necessities. *See, e.g.*, U.N. CHARTER art. 55, para. C; *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948).

164. Helton I, *supra* note 16, at 493.

165. U.N. CHARTER art. 55, para. C (enforced in the United States on Oct. 24, 1945).

166. *Id.*

167. *Id.* art. 55, paras. A-C. *See also id.* art. 1, para. 3; *id.* art. 13, para. 1B.

168. *Id.* art. 1, para. 2. *See also id.* art. 2, para. 1.

169. *Id.* art. 55, para. C.

170. *Id.* art. 55, para. A.

ment, the United Nations Charter, recognizes and proclaims the basic human rights that refugees are seeking, and that the movement is trying to provide.¹⁷¹

B. *The Universal Declaration of Human Rights*

The 1948 Universal Declaration of Human Rights¹⁷² also proclaims fundamental rights. The Universal Declaration proclaims the right to personal freedom and security, the right to freedom from torture, and the right to freedom of movement.¹⁷³ Significantly, Article 14 states that "everyone has the right to seek and enjoy in other countries asylum from persecution."¹⁷⁴ However, while the Declaration asserts the refugees' right to seek asylum, it fails to create a positive duty on any country to grant asylum to any individual refugee. Despite this flaw, the Declaration's recognition of at least the right to seek asylum is significant to the sanctuary movement.

C. *The 1951 Convention Relating to the Status of Refugees*

The 1951 Convention Relating to the Status of Refugees¹⁷⁵ deals specifically with the plight of refugees.¹⁷⁶ Article 33 of the 1951 Conven-

171. Crittenden quotes from a letter sent by sanctuary-movement leader John Fife to Attorney General William French Smith:

We are writing to inform you that Southside United Presbyterian Church will publicly violate the Immigration and Nationality Act, Section 274 (A)

We take this action because we believe the current policy and practice of the United States Government with regard to Central American refugees is illegal and immoral. We believe our government is in violation of the 1980 Refugee Act and *international law* by continuing to arrest, detain, and forcibly return refugees to the terror, persecution, and murder in El Salvador and Guatemala.

A. CRITTENDEN, *supra* note 35, at 73-74 (emphasis added).

172. G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948).

173. *Id.* at art. 14.

174. *Id.*

175. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 (signed at Geneva) [hereinafter 1951 Convention]. The United States was not a party to the 1951 Convention, but the United States in November 1968 became a party to the 1967 Protocol, which incorporated the provisions of the 1951 Convention. Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (in force for the United States November 1, 1968).

176. Article 1 of the 1951 Convention provides the following definition of refugee:

A. For the purposes of the present Convention, the term 'refugee' shall apply to any person who:

(2) As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the

tion established the principle of non-refoulement.¹⁷⁷ Under international human-rights law, as embodied in Article 33 of the Convention, "a person has the right to non-return based on an objective finding that the country of origin, or the country of return . . . [has] a consistent pattern of human-rights violations."¹⁷⁸ Critical to the right to sanctuary, this principle established the right under international law not to be sent back to any country where the refugee faces persecution. Sanctuary workers argue that the United States therefore violates international law when it returns refugees to El Salvador and Guatemala,¹⁷⁹ countries whose human-rights violations have been clearly documented by groups such as Amnesty International and by the scars borne by the refugees themselves.¹⁸⁰

D. *The 1967 Protocol Relating to the Status of Refugees*

Finally, the 1967 Protocol¹⁸¹ also dealt with the status of refugees. The United States became a party to the 1967 Protocol in 1968, and is thus bound by its provisions. Under the provisions of the Protocol, signatories agree to abide by provisions 2 through 34 of the 1951 Convention.¹⁸² The United States, then, is legally bound by the non-refoulement

country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

1951 Convention, 189 U.N.T.S. at 152.

177. Article 33 provides in relevant part:

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Id. at 176.

178. Parker, *Human Rights and Humanitarian Law*, 7 WHITTIER L. REV. 675, 679 (1985).

179. *See supra* note 171.

180. Interviews with the refugees reveal stories of torture and persecution, stories that are often evidenced by physical scars. For example, Robert Tomsho interviewed Juan, a medical student who was arrested by the Salvadoran military for donating his medical services to the refugees in camps in San Salvador. R. TOMSHO, *supra* note 36, at 2. Juan told of twenty-four days of interrogation, which was punctuated by various forms of torture including electric-shock torture. *Id.* at 3. Juan also showed the scars of his twenty-four day ordeal. *Id.* at 1. Such stories abound. *See e.g.*, I. BAU, *supra* note 6, at 76-78; A. CRITTENDEN *supra* note 35, at 64, 66, 170; R. TOMSHO, *supra* note 36, at 49-58, 59-78.

181. Protocol Relating to the Status of Refugees, Nov. 1, 1968, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (signed at New York, January 31, 1967) (in force for United States November 1, 1968) [hereinafter 1967 Protocol].

182. In relevant part, the Protocol provides:

provision of the 1951 Convention discussed above.¹⁸³ Therefore, sanctuary workers argue that the United States is violating international *and* domestic law by returning Salvadorans and Guatemalans when those refugees face persecution and death in their home countries.¹⁸⁴

Thus, the focus of natural law on rights possessed by virtue of being human,¹⁸⁵ and its belief in a morally binding law that is discoverable by reason,¹⁸⁶ serve as foundations for the twentieth-century focus on international human-rights laws. As positive law, these conventions themselves are not natural law. However, as international law they reflect universal human beliefs; as such, the Charter, the Declaration, the 1951 Convention and the 1967 Protocol are evidence of natural-law tenets that express basic human values. These international documents support a right to sanctuary by proclaiming certain fundamental rights, and by exemplifying a standard of human rights that governments and laws should support and foster.

E. The Meaning of Persecution in International Law

International law is also significant to the sanctuary movement because it gives international legal meaning to the natural-law claim to be free from persecution.¹⁸⁷ While the term persecution appears in numerous international documents, none precisely define it.¹⁸⁸

Articles 31 and 33 of the 1951 Convention refer to those whose "life or freedom may be threatened," but state nothing beyond this general threat of bodily injury.¹⁸⁹ Thus, the meaning of persecution must be analyzed within the broad context of human rights, beyond solely physical threats, and balanced by issues of degree and proportion. The concept of persecution is therefore open to a wide range of interpretations.¹⁹⁰

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and . . ." and the words ". . . as a result of such events," in article 1A(2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, . . .

Id. at 268, 270.

183. *See supra* notes 175-80 and accompanying text.

184. A. CRITTENDEN, *supra* note 35, at 74.

185. J. FINNIS, *supra* note 116, at 223-25.

186. G. FOURLANOS, *supra* note 3, at 17.

187. *Id.* *See also supra* notes 144-52 and accompanying text.

188. G. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 38 (1983).

189. 1951 Convention, *supra* note 175, at 174, 176.

190. G. GOODWIN-GILL, *supra* note 188, at 38. *See also* Helton, *Persecution on Account of*

Clearly, physical torture qualifies as persecution.¹⁹¹ However, extreme economic inequity, deliberate denial of employment or education, and other serious restrictions of human freedom can also constitute persecution.¹⁹² To determine whether these restrictions constitute persecution requires a balancing of various factors including the "nature of the freedom threatened, the nature of the restriction, and the likelihood of the restriction [actually occurring] in the individual case."¹⁹³ If a fundamental freedom is threatened with a high likelihood of severe restriction, then the restriction probably constitutes persecution.

Persecution is also closely related to the concept of protection. A country's lack of protection for its inhabitants can lead to a presumption that any fear of persecution held by those residents is well-founded.¹⁹⁴ This presumption is based on the concept that nations have a duty to protect their citizens, and the idea that such protection is a governmental function.¹⁹⁵ Further, in cases of persecution where the government cannot be directly implicated, such as the violence resulting from death squads in Central American countries, the lack of governmental protection can amount to persecution. When the government will not protect its population against such violence, that violence can equal persecution because of the government's tacit acceptance and approval of the violence. In this way, the definition of persecution is not limited to the explicit actions of the government or its agents.¹⁹⁶

Therefore, the proper definition of persecution includes acts committed by the government, and behavior "tolerated by the government in such a way as to leave the victim virtually unprotected by the agencies of the state."¹⁹⁷

Membership in a Social Group As a Basis for Refugee Status, 15 COLUM. HUM. RTS. L. REV. 39, 54-56 (1983) [hereinafter Helton II]. The Convention and Protocol themselves only list the term persecution, and the five relevant grounds of persecution, and do not include any interpretations or definitions. Thus, the interpretations and definitions used in this Comment belong to Arthur C. Helton, A. Grahl-Madsen, and G. Goodwin-Gill. All three are preeminent in the area of international law and in the work of the United Nations. Further, since the 1980 Refugee Act was intended to bring United States law into conformity with the 1967 Protocol, and lists the same five grounds of persecution as does the Protocol, this interpretation is applicable when construing the 1980 Refugee Act. For a discussion of the Act and congressional intent see *supra* note 3 and accompanying text.

191. Torture is defined as the "infliction of severe pain as a means of punishment or coercion." AMERICAN HERITAGE DICTIONARY (1st ed. 1969).

192. G. GOODWIN-GILL, *supra* note 188, at 38-39.

193. *Id.* at 39.

194. *Id.* at 38.

195. *Id.*

196. *Id.* at 42.

197. 1 A. GRAHL-MADSEN, THE STATUS OF REFUGEES IN INTERNATIONAL LAW § 81, at

1. The five relevant grounds of persecution

The 1951 Convention lists five relevant areas of persecution that enable the victim to claim refugee status: race, religion, nationality, membership of a particular social group, and political opinion.¹⁹⁸ Each factor should be individually analyzed in order to grasp the meaning and purpose of the Convention and subsequent Protocol.

The ground of persecution based on race rests on a broad definition of race, and refers more to social prejudice than to scientific racial classifications.¹⁹⁹ Involving a social "more than an ethnographic concept," it applies "whenever a person is persecuted because of . . . ethnic origin."²⁰⁰

In an effort to counter religious intolerance, the Convention also includes religious persecution. Religious persecution can result from a person's membership in a religious organization and participation in public worship, a person's personal and private worship, or an individual's "religiously motivated acts or omissions (e.g. refusal to [enlist in the military])."²⁰¹

Persecution based on nationality could arise in many circumstances,

189 (1966). In addition, persecution can affect not only the individual targeted, but also the individual's family. Thus, international law provides for reunion of the family of persecution victims who have fled their country. *Id.* § 151, at 414.

Because of the importance of family unity, refugee status under the 1951 Convention and 1967 Protocol applies also to the victim's family. *Id.* § 151, at 413. If the victim-applicant has been persecuted on the grounds of race, religion, nationality, or membership of a particular group, it is highly probable that all members of that family will be subject to persecution on such grounds. *Id.* § 153, at 421-43. Further, since the term political opinion can be interpreted broadly, if one member of a family is persecuted because of a perceived political opinion, all members of the family face a likelihood of persecution. *Id.* § 153, at 422. This is especially true where the government is prone to take hostages in an effort to crush political opposition. *Id.*

The discussion above presents examples of direct persecution, whether actual or potential. Indirect persecution is also possible, thereby necessitating refugee status for the entire family. For example, even if only the adult males of a particular social group are directly persecuted, the families of those men will be indirectly persecuted as a result of the victim's suffering. *Id.* § 154, at 423. Thus, refugee status for the victim and the victim's family is necessary to insure the natural right to be free from persecution.

198. 1951 Convention, *supra* note 175. It is important to note that the 1980 Refugee Act lists the same five grounds. See 8 U.S.C. §§ 1158(a), 1253(h) (1988).

199. G. GOODWIN-GILL, *supra* note 188, at 27; A. GRAHL-MADSEN, *supra* note 197, § 89, at 218. An ethnic group is a "descent group, differentiated by language, culture, style, national origin, kinship ties and religious belief." Helton II, *supra* note 190, at 43.

200. A. GRAHL-MADSEN, *supra* note 197, § 89, at 218. Persecution of indigenous populations in Central America exemplifies this category. As Central American governments "come to realize that the primary loyalty of their indigenous populations is not to the institutions of the state but to community institutions," these governments begin persecuting the indigenous populations. E. FERRIS, *supra* note 22, at 140.

201. A. GRAHL-MADSEN, *supra* note 197, § 89, at 218.

such as persecution because of ethnicity, religious membership and cultural or linguistic associations.²⁰² Further, the persecuted group does not have to be a minority in the country to fall under this category.²⁰³

Like persecution based on nationality, persecution based on membership in a particular social group is a "catch-all" category, with a meaning broader than all the combined definitions of race, religion, and ethnic groups.²⁰⁴ With this ground, the Convention recognizes that governments often make irrelevant distinctions on the basis of social groups, that lead to arbitrary repression.²⁰⁵ A broad and open-ended category, persecution on account of membership in a social group includes elements such as shared values, backgrounds, and interests.²⁰⁶ It covers various "uniting factors" like culture, language, education, and personal hopes.²⁰⁷ Specific examples of social groups include members of professions, members of the nobility or middle class, members of the business community, and even members of clubs and associations.²⁰⁸

Finally, persecution because of political opinion is a significant factor in considering the persecution suffered by Central American refugees, and that definition encompasses "any opinion on any matter in which the machinery of state government and policy may be engaged."²⁰⁹ This category includes both the individual persecuted because of connections with a previous regime and those oppressed for refusing to join or cooperate with the current government.²¹⁰ In addition to refusal to cooperate, a privately expressed belief can also qualify as a political opinion.²¹¹ Finally, journalistic activities also fall under the political opinion spectrum.²¹²

202. *Id.* § 89, at 219.

203. G. GOODWIN-GILL, *supra* note 188, at 29.

204. A. GRAHL-MADSEN, *supra* note 197, § 89, at 219.

205. G. GOODWIN-GILL, *supra* note 188, at 29-30. According to Arthur Helton, the "'social group category' was meant to be a catch-all which could include all the bases for and types of persecution which an imaginative despot might conjure up." Helton II, *supra* note 190, at 45.

206. Helton II, *supra* note 190, at 51.

207. G. GOODWIN-GILL, *supra* note 188, at 30. As Helton notes, the United Nations Handbook refers to social groups as "'persons of similar background, habits, or social status,' and explicitly denies that even this amorphous description is exclusive." Helton II, *supra* note 190, at 47 (citing HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES at 19, para. 77 (UNHCE Geneva 1979)).

208. A. GRAHL-MADSEN, *supra* note 197, § 89, at 219. In general, social groups can be classified as "statistical, societal, social or associational." Helton II, *supra* note 190, at 51.

209. G. GOODWIN-GILL, *supra* note 188, at 31.

210. A. GRAHL-MADSEN, *supra* note 197, § 91, at 224.

211. *Id.* at 225.

212. *Id.* at 226.

Thus, international law provides a broad interpretation of the five grounds for persecution listed in the 1951 Convention and the 1967 Protocol. This broad interpretation is important to the sanctuary movement for two reasons. First, the Refugee Act of 1980 lists the same five areas of persecution as grounds for receiving asylum or withholding of deportation.²¹³ Second, in creating the Act, Congress intended to bring United States law into conformity with the 1967 Protocol.²¹⁴ Given the similarity of the relevant grounds and congressional intent, the interpretation of the grounds under international law is relevant to the interpretation of domestic law. Further, the broad interpretation of the grounds under international law justifies the sanctuary movement's sheltering refugees whose suffering amounts to persecution under international law.

The nature of political violence in Central America has transformed neutrality into an excuse for persecution. As governments and guerrillas move the warfare to the countryside and seek the support of the peasants, the combatants perceive the peasants' neutrality or indifference as support for their opponents.²¹⁵ Essentially, the persecutor sees the typical political refugee as a threat to the regime and its institutions because of the victim's perceived political opinions.²¹⁶

In sum, it is the persecutor's belief that the refugee presents a threat to its existence because of the victim's race, religion, nationality, membership in a group, or political opinion, which underlies the victim's claim for refugee status and thereby necessitates the right to sanctuary.

V. CONCLUSION

Clearly, the roots of the right to sanctuary run deep in human history. The tradition of granting asylum existed both in the Old Testament²¹⁷ and in ancient Greece and Rome.²¹⁸ The early Catholic Church and medieval monarchs codified the grant of sanctuary, and the practice flourished in Europe and England until the sixteenth century.²¹⁹

Religious and philosophical support for the right also are deeply rooted. The Old Testament and the New Testament both contain precepts that mandate the right to sanctuary.²²⁰ Furthermore, natural-

213. For a discussion of the 1980 Refugee Act, and its terms, see *supra* note 3 and accompanying text.

214. For a discussion of congressional intent, see *supra* note 3 and accompanying text.

215. E. FERRIS, *supra* note 22, at 14-15. See also *supra* notes 27-39 and accompanying text.

216. G. GOODWIN-GILL, *supra* note 188, at 31.

217. See *supra* notes 90-94 and accompanying text.

218. See *supra* notes 42-47 and accompanying text.

219. See *supra* notes 48-89 and accompanying text.

220. See *supra* notes 90-102 and accompanying text.

law tenets recognize the existence of basic human rights to life and freedom from persecution, as well as corresponding duties to ensure these basic rights.²²¹ Finally, international human-rights conventions that reflect universal human beliefs also support the existence of basic human rights, especially the right of non-refoulment.²²²

Sanctuary workers argue that taken together—tradition, history, religious precepts, philosophical tenets and human rights—all support the right to sanctuary and the moral duty to provide such sanctuary.

*Amy Eileen Hoyt**

221. *See supra* notes 103-60 and accompanying text.

222. *See supra* notes 161-212 and accompanying text.

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