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RIVERSIDE

Today's Runaway Slaves: Unauthorized Immigrants in a Federalist Framework

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Political Science

by

Allan Joshua Colbern

June 2017

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2017

The Dissertation of Allan Joshua Colbern is approved:

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Shima, my beautiful wife, has supported me from the very outset of my dissertation project, patiently keeping us afloat financially and emotionally, and always there as a source of intellectual support for my dissertation, ensuring that my ideas are not lost in technical or incomprehensible writing. This dissertation truly is a collaborative effort, and I will always be thankful to my wife. Professor Karthick Ramakrishnan has gone above and beyond as a mentor throughout graduate school and as my dissertation chair. Karthick, I sincerely thank you for helping me navigate the professional world, develop questions that matter, and keep the bigger picture of my dissertation project in mind. I've learned a lot from our many discussions about my work and our collaborations together, and I am deeply grateful to have you as a mentor, colleague, and friend. I am fortunate to have had constant support from Professor Daniel Tichenor, whose scholarship first peaked my interest in APD, as well as Professors Jennifer Merolla and Loren Collingwood, all of whom served on my committee and were sources of much appreciated encouragement. Professors John Skrentny and David FitzGerald were equally vital as outside mentors, who not only encouraged my ideas, but welcomed me to UC San Diego's Center for Comparative Immigration Studies as a visiting scholar, where I developed much of my dissertation work and made many friends.

DEDICATION

I dedicate this dissertation to my lovely wife and daughter,
Shima and Maya Colbern

ABSTRACT OF THE DISSERTATION

Today's Runaway Slaves: Unauthorized Immigrants in a Federalist Framework

by

Allan Joshua Colbern

Doctor of Philosophy, Graduate Program in Political Science
University of California, Riverside, June 2017
Dr. Karthick Ramakrishnan, Chairperson

Today's Runaway Slaves engages in long-standing debates about American federalism, slavery and immigration law, civil and immigrant rights, and racial politics. The central puzzle it addresses is how American federalism and social movements shape the development of state and local sanctuary laws that protect classes of people, who federal law considers unlawfully present inside the United States. I employ an innovative research design of documenting and comparing laws protecting runaway slaves from 1780-1860 with contemporary laws on Central American asylum seekers from 1980-1997 and undocumented immigrants from 2000-2017. From this original research, I offer analysis of what I term a *federalism conflict* between federal and state/local laws on free movement and presence, and develop the term *free presence* to make sense of how sanctuary laws accumulate to decouple states from enforcing federal law in ways that benefit the life chances of runaway slaves and undocumented immigrants.

The dissertation makes two contributions: a long-run institutional account of sanctuary policies rooted in the U.S. Constitution and federalism; a general theory accounting for the proliferation of sanctuary policies and variation in each historical

period. On the long-run question, I argue that the courts institutionalize states' semi-sovereignty and what I term a *federalism conflict* that has always allowed for sanctuary laws to emerge and proliferate, which I reveal through court decisions on slavery, alienage, and immigration. On the empirical question, I advance a theory of coalition building in a federalism framework to explain variation in sanctuary policies in antebellum and contemporary periods. Sanctuary policies emerge out similar fights for federal abolition and federal immigration reform. I posit that federalism's structure shapes the timing of where and when sanctuary policies emerge: national activists commit to a federal reform strategy, and sanctuary policies gain clout only after numerous failures at the national level occur. National activists respond to repeated national failure by revising their reform strategy to include subfederal sanctuary policies; after this shift, my theory posits that state and local coalition building contexts explain the differences in the timing and scope of sanctuary policies across jurisdictions.

Sanctuary policies animate long-standing debates in American politics. Without comprehensive reform at the national level, states and localities play a critical protective role over runaway slaves and undocumented immigrants, who live in fear of re-enslavement and deportation. My dissertation explains how federalism empowers advocacy coalitions within states and localities to contest national policy, connects America's abolitionist heritage to salient questions shaping today's immigration debates, develops a timely framework and concepts to understand why classes of people lacking federal legal status are welcomed by states and localities, and why sanctuary policies contribute to the ongoing project of American democracy and civil rights.

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Chapter 1

Introduction

Immigration policy in the United States since the 1930s has largely been the purview of the federal government, which establishes rules on who is eligible to enter the country, how long they can stay, and the conditions under which they may draw benefits and become citizens. With immigration reform deadlocked at the federal level, scores of states and localities have passed legislation regulating undocumented immigrants, which in turn has led scholars to revisit the political question of who controls immigration policy. Immigration federalism scholars have now made clear that the balance of power between the national and subnational governments remains unresolved, despite there being important developments in 20th Century federal plenary power.

In response to new state and local immigration policies emerging today, scholars have begun to unpack the historical role of states and localities in regulating immigration. Gerald Neuman has led this scholarship, refuting the long-held belief that the U.S. had open borders prior the federal government's first immigration law, the Page Act of 1875, by documenting early colonial and antebellum state laws restricting unwanted migration.¹ In antebellum America, states broadly restricted the movement of slaves, immigrants, convicted criminals, and paupers from entry into state borders, placed sanctions on persons for unlawfully transporting these groups across state borders, and had power to remove unauthorized persons.²

Anna Law shows that during the antebellum period, the national government did not engage in immigration control because it wanted to avoid sparking sensitive regional differences over slavery.³ The lack of federal policy in turn paved the way for the 19th Century to be an era of subnational governments' "exclusive control" over regulating movement.⁴ Law's research also shows that the issue of slavery permanently shaped the Constitutional structure of immigration federalism. Accordingly, the original U.S. Constitution (passed in 1787) "purposely 'did not resolve' the question of how to balance national and state power," which set in motion limits on the federal government's broad Constitutional claims of plenary powers.⁵ These dynamics continue to shape immigration policy today.

Despite a shared interest in federalism and subfederal immigration regulations, scholarship on early immigration and contemporary immigration has developed in isolation from each other. As a result, their respective empirical and theoretical contributions remain cut-off from one another, and both are silent on broader patterns in American federalism that transcends antebellum and contemporary eras.

From 1875 to 2000, federal regulations were largely exclusive when it came to immigration law. This changed in 2005, when state and local regulations began to accumulate for the first time since the 19th Century, with a range of restrictionist and integrationist laws emerging on immigration enforcement and on immigrants' free movement, presence, rights, and access to public benefits. Federalism has always created space for these types of divergent policies to emerge across jurisdictions. While immigration federalism scholars have begun to unpack patterns in contemporary law,

challenging long-standing views about federal preemption over immigration law in the process, no study to-date examines a similar arrangement in early America of competing federal, state, and local regulations, or links the two seemingly disparate historical periods to explore fundamental questions in federalism and the regulation of movement and presence in the U.S.⁶

This dissertation contributes to multiple disciplines, from political science to law, sociology and history, by placing a *federalism conflict*¹ and connections between slavery law and contemporary immigration law front-and-center. Sanctuary policies spotlight how federalism empowers states to contest national policy, and they are at the heart of contemporary debates over immigration regulation, but widely misunderstood, poorly defined, and under-theorized.

Like today, the federal government in early America held plenary power over fugitive slave law, but Northern sanctuary policies protecting runaway slaves still proliferated. I develop the term *federalism conflict* to make sense of the unique relationship raised out of sanctuary policies, passed by state and local governments, that conflict with federal law. Federalism conflict is rooted in the U.S. Constitution, specifically the 10th Amendment's anti-commandeering clause, but no analysis of sanctuary policies and their conflict with federal policy in slavery law or in immigration law exists. This dissertation's primary intervention is it addresses how such a conflict emerges over runaway slaves and contemporary undocumented immigrants, and advances a general theory to explain the proliferation of sanctuary policies in each period.

¹ Please see Chapter 3 for a full definition of my term *federalism conflict*.

It's comparative historical analysis design contributes a clearer understanding of federalism, states' semi-sovereignty and policy-making power, and the politics of sanctuary policies. To preview, the dissertation reveals deep similarities in how abolitionists and immigrant advocates navigate American federalism to reform slavery law and immigration law, and spotlights the role sanctuary policies play within these reform movements.

1.1 The Slavery Gap in Immigration Scholarship

Scholars have only recently looked to early American history to identify and explain developments in immigration law. Gerald Neuman, who calls the 19th Century the "Lost Century," documents a range of laws passed by states that restricted unwanted migration from abroad and from across states during the antebellum period, refuting the long-held belief that the U.S. had open borders prior to the Page Act of 1875.⁷ According to Neuman, a de facto immigration system was set up under statutes that "prevent[ed] or discourage[d] the movement of aliens across an international border, even if the statute also regulate[d] the movement of citizens, or movement across interstate borders, and even if the alien's movement [was] involuntary."⁸ Neuman opens an entire century of lost legislation that effectively operated as a regulatory system to control movement, including criminal, poor, public health, and *slavery laws*.

Early in the antebellum period, most states passed laws broadly restricting both convicted criminals and paupers from entry into state borders, placed sanctions on persons responsible for unlawfully transporting convicts and paupers into state borders,

and granted state and local authorities the power to remove unauthorized persons to their “place of lawful settlement.”⁹ Beginning in the 1820s, states expanded their control by passing laws that required masters of vessels to post bonds, pay a head tax, or pay commutation fees before admitting immigrants into state borders, required the reporting of passengers to track all new arrivals, and established almshouses and workhouses as an alternative solution to removing immigrants who became public charges.¹⁰

Following Neuman’s lead, scholars have begun to explore this early history in a variety of ways. Kunal Parker recently examined entry and settlement laws on immigrant paupers from the early colonial era to the end of the antebellum era in Massachusetts, looking specifically at how, over time, paupers’ rights of access to and presence within the state were restricted at both the state and local levels.¹¹ These immigration regulations first appeared during the colonial period as restrictions targeting the poor, and then in 1794, a state law expanded its restrictions to encompass anyone that was not a national citizen from gaining lawful settlement in local jurisdictions. According to Parker, Massachusetts was able to use national citizenship as a vehicle for expanding the scope of its restrictionist laws.

Scholars have also begun to explore the moment of transition from state control to federal preemption in immigration law. Kerry Abrams shows that California passed a range of laws beginning in 1850 to restrict Chinese migration, which he argues were important precursors to the first federal immigration law that banned entry into the U.S. of involuntary migrants, prostitutes, and criminals from Asia.¹² Similarly, Hidetaka

Hirota shows that northern eastern seaboard states' "approach to undesirable aliens" influenced national policy during the late 1800s.¹³

This emerging scholarship makes it clear that an early immigration system existed in diverse areas of antebellum law, and that these early laws left enduring legacies on federal immigration law. What is less known, however, is how slavery relates to immigration law; this gap exists even though scholars have long established the need for thinking about their relation to one another.

To this end, Rhonda Magee points out that our limited understanding is "all the more surprising given the recognition increasingly given to the concept of forced migration immigration in contemporary law."¹⁴ Similarly, Lolita K. Buckner Inniss argues that black slaves actually fulfill "the ultimate immigrant paradigm: the image of the downtrodden foreigner who through hard work and determination can rise."¹⁵ Each scholar points to slavery's relation with immigration in different ways, either as a form of involuntary migration similar to human trafficking, or as a life condition as a foreigner experienced by both black slaves and immigrants. Roger Daniels calls black and immigration histories an artificial distinction, highlighting that the slave trade was also an important form of migration.¹⁶ Scholars outside of immigration have also become interested in revealing slavery's legacies, including its effect on political attitudes in southern states today and on the development of American taxation.¹⁷

Scholars have nevertheless been reluctant to pursue a full discovery of how slavery relates to immigration law, with a few exceptions. Neuman argues that it is important to avoid simply bracketing slavery law as "an obsolete law of bondage."¹⁸ He

highlights the function of slavery laws for closing national and state borders to both enslaved and free blacks. Equally notable, Anna Law addresses more fully how slavery was important to early immigration law.¹⁹ She argues that, during the antebellum period, limited national development and robust subnational immigration controls emerged to avoid sensitive regional differences around the issue of slavery.²⁰ More recently, Law refutes the notion that broad Constitutional claims can be made in support of federal plenary powers, arguing that the U.S. Constitution “purposely ‘did not resolve’ the question of how to balance national and state power.”²¹ Slavery’s centrality to immigration law is rooted in the U.S. Constitution: the issue of slavery and freedom prevented the original framer’s from allocating broad immigration powers to the federal government, fearing that this would lead to conflicts, especially between the South and North. Thus, despite federal preemption in immigration law today, slavery’s legacy continues to shape how power is allocated in matters of immigration law.

In a more limited way, scholars have begun to look at how slavery speaks to contemporary immigration debates. Drawing on the legal contexts of federal plenary power, James A. Kraehenbuehl compares *Prigg v. Pennsylvania* (1842) and *United States v. Arizona* (2010) to argue that the courts today have historical precedence in *Prigg* to rule that Arizona’s recent restrictionist immigration law, SB 1070, is preempted by federal immigration law.²² Karla McKanders and Jeffrey Schmidt both compare state laws that regulated fugitive slaves to contemporary state laws regulating undocumented immigrants, arguing that federal laws in each period inadequately addressed state level concerns, thereby resulting in similar enforcement gaps and failures in national policy.²³

McKanders explains, “The 1850 Fugitive Slave Act is analogous to current immigration enforcement laws and policies in terms of federal supremacy and congressional deference—both demonstrate the failure of federalism.”²⁴ They both employ failures in enforcing fugitive slave laws as reference points for arguing in favor of a uniform national immigration policy today. Important to note is that an emphasis on uniform national policy overly simplifies federalism to a pro-enforcement perspective: returning *all* runaways to slavery, and deporting *all* undocumented immigrants.

By contrast, Craig B. Mousin highlights the city of Chicago’s refusal to enforce federal fugitive law in the 1850s and Chicago’s similar refusal today of enforcing federal immigration law. Mousin argues that there are limits to federal power because state and local jurisdictions have control over entering into enforcement partnerships with the federal government. Moreover, he warns that while the federal government may enlist state and local law enforcement, subfederal jurisdictions must balance enforcement with the risk of possibly “fracturing” local communities.²⁵ Christopher N. Lasch adds further support to Mousin’s view that the federal government is restricted from compelling state and local officials to comply with its rendition demands.²⁶ Mousin and Lasch together spotlight fundamental weaknesses to McKanders and Schmidt’s focus on a uniform national policy, albeit indirectly, by showing how federalism sets up separate roles for states and localities in enforcing federal law and programs. This dissertation builds on Mousin and Lasch’s insightful comparison.

1.2 Slavery Law as Early Immigration Law

To consider slavery in the study of immigration, scholars must move beyond the binary treatment of blacks as “slave” or “free” and consider how regulations over blacks might be compared to regulations over immigrants.² Studying blacks’ antebellum status not only from the vantage of slavery, but also as a class of people whose movement was regulated in comparable ways to immigrants sets a foundation for addressing gaps in the immigration scholarship. Ignoring slavery’s connection has led to what Magee call’s the “no-Black paradigm” in immigration scholarship, where “enslaved African people disappear from cognition as an immigrant experience.”²⁷ Only a few scholars begin to examine this connection, but no study explores slavery laws’ relation to *contemporary* immigration law.

This chapter lays a foundation for thinking about the historical bridge between slavery and immigration: it shows how slavery law played a unique historical role in early immigration control, and then sets up Chapters 2-5, which unpack how sanctuary policies are a unique connection between slavery law and contemporary immigration law.

How did slavery operate as an early form of de facto immigration law? To be clear on terminology, I refer to any law that regulates the movement of blacks (enslaved or free) as a “slavery law,” even though these laws can also be further disaggregated into distinct categories.²⁸ In the early antebellum period, slavery law functioned to control entry at national and state borders. Beginning in 1808, Article 1 of the U.S. Constitution

² Please note that I do not make the claim that contemporary immigrants are modern slaves, nor do I claim that slaves and immigrants’ life chances are comparable. My purpose is to compare federal, state, and local laws regulating these two disparate groups to address fundamental questions in American federalism, activism, and rights development.

prohibited the migration or importation of slaves across the national border, ending the international slave trade.²⁹ Between 1776 and 1808, most states passed laws banning the importation of slaves from abroad, allowing only the inter-state slave trade to continue.³⁰ While both federal and most state laws banned international slave migration, states went much further than the federal government to regulate black migration, and these laws were backed by a federal law passed in 1803 that explicitly devolved immigration powers to states for the purpose of restricting black's movement.³¹

Only a few conflicts emerged between federal law and southern state laws on black movement and presence. When states passed anti-black migration laws called Seaman Acts, restricting both foreign and out-of-state free blacks from entering state borders, a conflict emerged with federal foreign policy. Specifically, the freedom of black English seaman at national ports, protected under federal treaties, was denied under these state laws. The federal government made many attempts to change state policy through diplomatic and judicial processes, but southern states remained unwilling to concede on the issue of black entry throughout the antebellum period.³² States had tremendous power to enact and enforce restrictive immigration controls on both slaves and free blacks at national and state borders.

Neuman and Law highlight these border restrictions as a new origin of immigration law, revealing that the politics of slavery were central to shaping how and why immigration powers were allocated to subnational jurisdictions. Neuman explains, for example, that federal control over immigration law only emerges because there was an “uncoupling of migration from slavery [brought on] by the Civil War.”³³

Scholars studying early immigration law remain isolated from contemporary puzzles because they stress that the post-Civil War shift to federal preemption ended state and local roles in regulating immigrants. In other words, federal preemption is viewed as federal policy superseding all forms of subnational policies over immigration matters.³⁴ Thus, while the scholarship adds much to our understanding of how slavery and immigration law are connected in early America, it is silent on slavery law's connection to contemporary immigration law. My dissertation develops this connection.

Slavery law is found in federal, state, and local laws over the movement and presence of blacks in the North and South and is comparable to today's laws. Regulations were not exclusive to entry and removal, but included robust restrictions on *unlawful presence* that directly resonates to current challenges in interior enforcement of immigration law.³⁵ Andrew Fede documents Southern legal and judicial barriers placed against manumission and freedom suits, highlighting how states' powers superseded the power of slave owners for determining the lawful freeing of slaves.³⁶ Slavery scholars have similarly documented how southern states acquired control over slave auctions, slave patrols, and criminal justice, all of which were internal controls over black movement and presence.³⁷

Immigration scholars have not yet considered the significance of these internal migration controls, focusing instead on border policies (black entry/exit and removal). Missing interior regulations over black's unlawful presence has led scholars to consider antebellum era policies to be incomparable to contemporary policies. I argue that a broader framework connecting border and internal migration policies over black's

unlawful entry and presence opens a critical window for comparisons to be made. Whereas federal preemption over entry/exit and removal has severed state and local regulatory power in the late 1800s, American federalism (past and present) has always allowed for states and localities to play an important role in restricting or facilitating free movement and presence of groups *inside* the country. This section briefly documents Southern interior restrictions on unlawful presence to set up a clearer empirical understanding of slavery laws' full scope and role in regulating blacks' movement and presence.

Slavery laws restricting movement and presence were a core feature of the bondage system, but also served as *de facto* immigration regulations. Building on Neuman's concept of early immigration law, which he defines as any statute preventing or discouraging movement *across* borders, I add statutes regulating *internal* movement. Southern states passed a range of these laws, including laws restricting black's involvement in the trade and bartering of goods, laws designating specific black travel routes and curfews, and laws restricting black's access to public resources. Moreover, robust systems of enforcement were created, including slave and freedmen passes (and metal tags in some jurisdictions) that functioned both as an identification document and work visa, and local militias and slave patrols that enforced laws on the movement and activities of enslaved and free blacks. Anti-harboring laws were also passed that made it a punishable crime to harbor blacks considered to be unlawfully present. Restrictions on black entry/exit and removal were paired with these internal migration controls over black's *unlawful presence*.

South Carolina illustrates how slavery laws were comprehensive. In 1686, the state (a colony at the time) created the first legal requirement inside the U.S. for slaves to carry passes, or “tickets,” while publicly trading goods outside of their owner’s plantation or residence. A pass included a hand-written description to identify a travelling slave and travel route and time limitations to control the slave’s movement and activity. This law also established a nighttime curfew for all slaves in the state.³⁸ In 1691, South Carolina passed a law that set up slave control duties for the colonial militia and a town watch in the city of Charleston, a major seaport that housed numerous slaves and free blacks, in order to enforce its pass system.³⁹ It also required that all whites enforce laws on slave passes, slave bartering, and runaway slaves. In 1696, the state passed a law explicitly protecting all whites in the event that they assaulted or killed slaves who resisted being arrested or detained.⁴⁰ To increase enforcement capacity, in 1704, the state established a separate slave patrol militia from the colonial militia.⁴¹ Meanwhile, a state law in 1740 established court control over manumission, which broadened the immigration system to include court decisions identifying which slaves were permitted to be freed by their owners and remain in the state as freedmen.

Border regulations currently documented by immigration scholars as de facto immigration controls emerged after most interior regulations were already in place. South Carolina banned all out of state blacks, and all international black seaman, from entering its borders in 1800 and 1822, respectively. Until the Civil War, South Carolina continued to pass laws expanding its control over the movement and activities of blacks, including freedmen passes/tags functioning as work visas for free blacks that had to be

renewed in the city or county of residence each year, and the creation of local patrol committees to oversee slave patrols’ enforcement of its slavery laws. Early immigration law, as South Carolina demonstrates, was established under an expansive set of slavery laws on entry, removal, and unlawful presence—operating as a cohesive immigration regime—that has not been recognized by scholars. All slaves or free black persons caught infringing on South Carolina’s state laws were subject to penalties, including possible removal, forced labor, imprisonment, or (re)enslavement.

Table 1.1 South Carolina Laws Restricting Movement

Year	State & Local Slavery Laws Passed
1686	Slave pass required to barter goods Night curfew
1691	Militia given slave patrol duty Charleston town watch established
1696	Whites given the right to beat, maim, assault and kill slaves
1704	Manumission requires court approval
1783	Metal slave/free tags replace passes for major cities Registration w/County or City required for blacks to work
1800	Metal slave/free tags replace passes for major cities Registration w/County or City required for blacks to work Entry ban on all free blacks (international and inter-state)
1822	Negro Seaman Act (entry ban on all blacks)
1830	Local Slave Patrol Committee established

Immigration scholars’ focus on *border* related slavery policies has limited the connections they draw to immigration law. This dissertation builds on the foundations set by these scholars, but challenges their view of early and contemporary periods as

being entirely cut-off from one another and incomparable. Slavery's extensive set of regulations in the *interior* parallel state and local laws over immigrants today. This connection is sharpest between the free North, where states and localities passed sanctuary policies protecting runaway slaves despite federal preemption over fugitive slave law, and contemporary immigration law and immigrant sanctuary.

1.3 Northern Laws on Runaway Slaves

Immigration scholars collectively emphasize a break between early and contemporary immigration law, and relegate slavery and political dynamics of early regulations to be incomparable and unconnected to contemporary law and politics. By contrast, this dissertation develops an innovative comparison between laws regulating runaway slaves and today's undocumented immigrants that reveals strong connections in federalism dynamics, social movements, and policy-making.

The flight of slaves was commonplace.⁴² Franklin and Shweininger estimate that in the year 1860, potentially 50,000 slaves fled their slave owners in the South, including local and temporary flight as well as distant and permanent flight.⁴³ According to the U.S. Census, 1,011 runaway slaves who fled in 1849 were still at large in 1850.⁴⁴ Moreover, Stanley Campbell estimates that between 8,000 and 15,000 runaway slaves escaped to the North from 1850 to 1860.⁴⁵

Despite scholarly intrigue in understanding runaway slaves' peculiar position in a country divided over slavery and freedom, little has been done to systematically explore Northern regulations over free movement and presence. In 1845, celebrated abolitionist

Frederick Douglass' *Narrative of the Life of Frederick Douglass, an American Slave*, described his escape from slavery and the peculiar legal challenges runaway slaves faced in fleeing to the North.⁴⁶ As an act of abolitionist resistance, Douglass added details about his unlawful status in the North and identified his slaveowners by name, Thomas and Hugh Auld Douglass. He risked being captured under the federal Fugitive Slave Act of 1793 to empower the growing abolitionist movement with his story of freedom. After his narrative's release, Douglass immediately fled the U.S., and in 1846, one year later, English abolitionists purchased Douglass's freedom ensuring his safe return to the North, where he continued his leadership in the abolitionist movement.⁴⁷

Much of our understanding of runaway slaves depends on slave narratives. William Still's 1872 publication of over 800 interviews with runaway slaves, which he compiled while working as a clerk for the Pennsylvania Anti-Slavery Society, have been widely used by historians.⁴⁸ However, in both slave narratives and the historical scholarship on the Underground Railroad (UR), Northern sanctuary laws are largely absent. Wilbur Siebert led the first systematic study of the UR in 1898 using Still's 1872 compilation along with local newspaper sources, county histories, and thousands of circular letters that he sent to Northerners after the Civil War, which inquired about names, routes, and incidences.⁴⁹ Siebert's primary finding was that the Underground Railroad was a vast network existing throughout the North. More recently, Larry Gara analyzed abolitionist memoirs, personal letters, and newspapers to verify Siebert's account, but found that he exaggerated the scope and organization of the network, which was only highly organized in cities like Boston, Philadelphia, and Cincinnati.⁵⁰

John Hope Franklin and Loren Schweninger employ a range of primary sources from the South, including abolitionist accounts, runaway advertisements, petitions to state legislatures and county courts, and personal records and correspondence of slave owners to explain why and how slaves fled, as well as where and how often slaves fled. They show that the majority of runaways remained near the vicinity of their owners and fled to nearby southern cities like Baltimore, the District of Columbia, Richmond, Charleston, and St. Louis, where dense populations made it easy to remain anonymous.⁵¹ Slaves in the Deep South like Mississippi and Alabama were also more likely to flee further South or West than North.⁵²

Despite this vast UR scholarship, no systematic study of Northern sanctuary laws over runaway slaves exists. W.E.B. Du Bois' sociological study of Philadelphia frames Northern legislation related to federal fugitive slave law as only applied to free blacks to protect them from unlawful kidnapping by slave catchers.⁵³ The few slavery scholars that document "personal liberty laws" (the equivalent to today's "sanctuary policies") and court cases involving runaway slaves offer concepts and theoretical accounts that are severely limited.⁵⁴ They miss fundamental long-run questions of how federalism shapes the development of sanctuary laws, and provide a limited national slavery account of "personal liberty laws" that is silent on Northern variation.

1.4 Bridging Slavery Law and Contemporary Immigration Law

This dissertation develops an original bridge linking slavery laws and contemporary immigration laws by documenting federal, state, and local laws in each

period that regulate the movement and presence of runaway slaves and undocumented immigrants. Sanctuary laws spotlight states' capacity to contest national policy throughout American history, but they are widely misunderstood, poorly defined, and under-theorized. Conventional wisdoms in the slavery scholarship and immigration scholarship share a limited view of federalism—fugitive slave law (before) and immigration law (today) is federally regulated, and therefore supersedes state and local laws—a view of federalism this dissertation challenges.

Beginning in 2005, states and localities dramatically increased their role in passing immigration laws, and have reshaped the legal landscape faced by undocumented immigrants in the process. Arizona prevents undocumented immigrants from freely moving, working, and residing in the state, and police officers are required under an “anti-sanctuary” state law to ask any person they suspect being in the country unlawfully for proof of legal status. By contrast, California grants undocumented immigrants equal access to education, health, employment, and driver licenses, and has expressly limited its participation in enforcing federal immigration law. Scholars have begun to address the causes and consequences of this modern puzzle; however, a historical perspective remains absent. Meanwhile, scholars of early American immigration policy have reinforced a long-held view that early and contemporary immigration law are distinct and incomparable bodies of law; the former is conventionally characterized by state and local control, and the latter characterized by exclusive federal control.

The robust scope of subnational policies being passed today highlights a need for revisiting fundamental questions and systematic historical analysis of change and

continuity in states' power to facilitate or restrict the lives of migrants. Despite federal preemption in each period, deep parallels exist in the conflicts that emerge over runaway slaves and over undocumented immigrants. I develop the term *federalism conflict* to make sense of the relationship raised out of sanctuary policies that conflict with existing federal law, but do not violate federal law, which I argue is a durable feature in American federalism rooted in the U.S. Constitution. Building from its long run perspective linking slavery policy to current immigration policy, my dissertation advances a general theory to explain the significance and proliferation of sanctuary policies in American political development.

1.5 Road Map to the Dissertation

The central puzzle *Today's Runaway Slaves* takes on is how America's federalist system historically preserves state and local authority to integrate and protect groups considered to be inside the country unlawfully under federal law. It systematically reviews and compares antebellum and contemporary laws that shield runaway slaves and undocumented immigrants from recapture and deportation, revealing deep similarities between the two. From this comparison, the dissertation offers two theoretical contributions: 1) it explains long run patterns of federal and state/local conflicts over regulating movement and presence – which I term a *federalism conflict* – that span American history and are rooted in the U.S. Constitution; 2) it provides a general theory to account for sanctuary policy proliferation in disparate historical periods, connecting abolitionism to contemporary immigrant advocacy.

Chapter 2 defines sanctuary policies and their significance in American federalism as a gradation of subfederal legal protections granted to groups considered unlawfully present with two primary functions: create state and local barriers on federal enforcement through non-cooperation or legal protections; expand state and local access to resources by limiting the use of federal legal status requirements. Sanctuary laws range widely from banning state or local officials from enforcing federal law to expressly granting runaway slaves and undocumented immigrants the ability to move freely, due process protections, and access to public resources within state and/or local territorial borders. Chapter 2 develops the concept of *free presence* to make sense of sanctuary policies' cumulative decoupling effect of removing states from enforcing federal law and positive impact on the lives of runaway slaves and undocumented immigrants.

Chapter 3-5 provide a systematic review and analysis of sanctuary laws, covering six northern states from 1780-1860 and all known cases of contemporary states and localities from 1980-2017. Chapter 3 sets up the long run, historical argument: it shows that court rulings historically narrow the power of states to restrict the lives of unlawfully present persons, while preserving and institutionalizing state and local power to pass sanctuary and integrationist laws protecting these groups. Courts define a baseline for what states can and cannot do with regard to regulating free movement and presence, and Chapter 3 examines court precedent to argue that a *federalism conflict* is a durable feature in American federalism, one that connects Northern sanctuary laws over runaway slaves to contemporary dynamics in immigrant sanctuary.

Chapter 4 and 5 employ process tracing of the antebellum and contemporary

periods to reveal how America's federalism framework sets up similar factors that drive the timing and passage of sanctuary laws. I argue that federalism causes similar strategies to emerge in each period: abolitionists and Central American refugee advocates first led a flight for comprehensive reform at the national level; after realizing federal reform to be intractable, national activists in each period shifted away from federal reform and toward a new strategy of pursuing state and local sanctuary policy, where the level of their success (measured by variation in sanctuary policies) depended on state and local coalition building dynamics.

Chapter 6 connects *Today's Runaway Slaves* to the scholarship on American Political Development (APD), where I argue that the historical approach in APD contributes empirically, conceptually, and theoretically to unaddressed questions in federalism, slavery, and immigration scholarships. Chapter 6 concludes the dissertation by drawing out the continued significance of sanctuary state and local policies in today's context of their conflict with President Trump's anti-sanctuary and anti-immigrant administration.

Chapter 2

“Free Presence” and Sanctuary Policies in American History

2.1 Introduction

Sanctuary policies have received increased popular and scholarly attention over the recent few years as debates over immigration enforcement heighten, but they remain widely misunderstood, poorly defined, and under-theorized. Developing a historically grounded concept of sanctuary policy is critical today because sanctuary’s positive meaning has been replaced by negative connotations, similar to the word “amnesty.” Anti-immigrant group, The Federation for American Immigration Reform (FAIR), argues that sanctuary policies “[a]ccommodat[e] those who violate our immigration law [and] encourage others to follow the same path.”⁵⁵ Rose Cuison Villazor highlights that today, “the dominant use of the word sanctuary is generally associated with the unlawful facilitation of the continued presence of unauthorized immigrants and their families in this country.”⁵⁶ Negative constructions rely on framing sanctuary policies as illegal acts.

The Supreme Court firmly establishes federal preemption over the regulation of immigration law, but it also firmly establishes the separation between federal and subfederal responsibilities in carrying out immigration enforcement. Under the 10th Amendment’s anti-commandeering principle, the federal government cannot mandate or require states and localities to become immigration enforcers, and most subfederal jurisdictions enacting sanctuary policies in American history employ U.S. Constitutional

powers to sever state and local roles in enforcing federal programs. This chapter provides a historical understanding of the term sanctuary to reveal its enduring, positive connection to freedom struggles.

To preview, this chapter begins by reviewing the scholarship and historical enactment of sanctuary policies, and then develops what I term *free presence* to make sense of sanctuary policies' cumulative decoupling effect and positive impact on the lives of runaway slaves, Central American asylum seekers and undocumented immigrants today. I argue that a subfederal jurisdiction's "sanctuary" policies form gradations of protections for these groups and varying levels of freedom based upon: policies of non-cooperation in federal enforcement programs, policies expanding legal protections, and policies ending subfederal uses of federal legal status for determining who has access to resources.

2.2 Defining Today's Sanctuary Policies

Scholars have examined different local sanctuary policies with the goal of understanding their impact on societal issues like crime. Benjamin Gonzalez, Loren Collingwood, and Stephen El-Khatib recently examine sanctuary cities defined as a "city or police department that has passed a resolution or ordinance expressly forbidding city or law enforcement officials from inquiring into immigration status and/or cooperation with ICE," finding no statistical difference across sanctuary and non-sanctuary cities in terms of violent crime rate, rape, or property crime.⁵⁷ Tom Wong examines sanctuary policies' effects by comparing "[sanctuary] counties that do not assist federal

immigration enforcement officials by holding people beyond their release date on the basis of immigration detainers” to non-sanctuary counties that “comply with immigration detainer requests.”⁵⁸ Whereas Gonzalez et al. find that cities with sanctuary policies do not experience increased crime, Wong reveals evidence that counties with sanctuary policies, in fact, have lower crime rates than similar non-sanctuary counties. These two studies provide important empirical contributions that not only help clarify what a sanctuary is, both focusing on non-cooperation as a central feature, but they also help establish an important counter to the negative associations attached to sanctuary.

Non-cooperation emerges in a variety of contexts and policies regulating county sheriffs and jails’ role in immigration enforcement. Lena Graber and Nikki Marquez, for example, identify seven different county level policies considered sanctuary policies that limit local assistance with immigration enforcement. County sanctuary policies are particularly important today because they focus on sheriffs and jails’ roles in immigration enforcement, which are jurisdictions that regularly engage directly with ICE. The seven county level policies Graber and Marquez document prohibit:

- Using local resources to assist in immigration enforcement
- Local officials from inquiring into immigration status
- 48-hour ICE detainer holds of a person after they should be released
- Local officials from alerting ICE when a person will be released from local custody
- 287(g) agreements that deputize local law enforcement agents to enforce immigration laws
- Detention contracts that allow ICE to pay for local jail space to hold immigrants in detention
- ICE access to local jails without a warrant

Contemporary studies on immigrant sanctuary policies provide analysis of individual policies, and contribute systematic analysis of their causal effects on issues like crime.⁵⁹ On the other hand, the scholarship does little to shed light on the cumulative, historical impact sanctuary policies have had on American political development, across groups and varying context. The remainder of this chapter provides closer analysis of earlier sanctuary policies in American history to reveal the normative role of state and local governmental sanctuary policies for advancing freedom and rights.

2.3 Historical and American Origins of Sanctuary

The concept of providing sanctuary has many origins, including biblical, English common law, Greek, Roman, and Anglo-Saxon origins, but generally was established early on (prior to the formation of the U.S.) by churches providing a place of refuge to persons convicted of crimes, who lacked legal protections for their defense. Once states began to provide protections to all citizens, early acts of church sanctuary diminished. It is critical to note, however, that sanctuary has special significance within American federalism that spans U.S. history. Private and governmental sanctuary was given to runaway slaves, Jews escaping the Holocaust, civil rights workers fleeing mob violence in the South in the 1950s and 1960s, draft resisters in the Vietnam War, Central Americans asylum seekers, and contemporary undocumented immigrants.⁶⁰ This dissertation focuses on the robust American periods where sanctuary policies played critical roles in shaping the semi-freedom of runaway slaves (1780-1860) and undocumented immigrants (1980-2017).

Sanctuary policies have never been more important than Northern “personal liberty laws” (the equivalent to today’s “sanctuary policies”) as part of abolitionists fight to protect runaway slaves. To prevent fugitive slaves from finding freedom in the North, the U.S. Constitution and federal Fugitive Slave Laws passed in 1793 and 1850 granted slave owners the right of capturing and reclaiming their “property,” made it a crime to harbor runaway slaves, and by 1850, created a federal body to administer search and arrest warrants, certificates of removal, and fines for interference. The biggest resource of the federal government was its ability to partner with states, localities, and private citizens to enforce federal law (much like today), and northern states like Illinois and Indiana not only cooperated, but passed harsher state fugitive slave acts of their own. Despite federal enforcement partnerships, abolitionists built coalitions with states and localities as part of their freedom movement, and were successful in passing a range of personal liberty laws.

In 1851, one year following the passage of the Fugitive Slave Act, Shadrack Minkins, a runaway slave who worked at a café in the city of Boston, was arrested and detained by a slave catcher, a federal commissioner, and an assistant deputy marshal. Massachusetts had recently enacted a range of personal liberty laws protecting runaway slaves, including due process, anti-kidnapping, and non-cooperation laws preventing federal officers from using state resources during their arrest of Minkins. These state laws, paired with direct action by abolitionists on the ground, constructed important barriers to federal enforcement. Immediately following Minkin’s arrest, the Boston Vigilance Committee alerted city officials, activists, and abolitionist lawyers, and an

abolitionist petition was drafted and given to the State Supreme Court to delay federal action on his removal. Soon after, abolitionists entered the federal courthouse located in Boston, physically remanded Minkins from federal marshals, and aided Minkins to freedom in Canada.

A few years after this incident, in 1855, Massachusetts passed the North's most comprehensive personal liberty law. "An Act to protect the Rights and Liberties of the People of the Commonwealth of Massachusetts" forbid and punished state or local officials from enforcing the federal fugitive slave law, made the removal of *any* black person from the state without court approval a crime, and granted all blacks equal due process protections under state law (including: appointing special state commissioners to defend fugitive slaves in court, placing the burden of proof on slave owners, and providing all blacks with the right of habeas corpus, trial by jury, and testimony against whites).⁶¹ The state sanctuary policy aimed to not only sever the state's complete connection to the enforcement of fugitive slave law, but also sought to empower runaway slaves facing recaption by granting them access to legal protections and state resources. 6 sections of the policy are particularly revealing of how antebellum sanctuary decoupled states from federal enforcement and made free movement and presence possible for runaway slaves:

SECT. 10. Any person who shall grant any [recaption] certificate . . . shall be deemed to have resigned any commission from the Commonwealth which he may possess, his office shall be deemed vacant, and he shall be forever thereafter ineligible to any office of trust, honor or emolument, under the laws of this Commonwealth.

SECT. 11. Any person who shall act as counsel or attorney for any claimant of an alleged fugitive . . . shall be deemed to have resigned any

commission from the Commonwealth that he may possess, and he shall be thereafter incapacitated from appearing as counsel or attorney in the courts of this Commonwealth.

SECT. 15. Any sheriff, deputy sheriff, jailer, coroner, constable or other officer of this Commonwealth, or the police of any city or town, or any district, county, city or town officer, or any officer or other member of the volunteer militia of this Commonwealth, who shall hereafter arrest, imprison, detain or return, or aid in arresting, imprisoning, detaining or returning, any person for the reason that he is claimed or adjudged to be a fugitive from service or labor, shall be punished by fine not less than one thousand, and not exceeding two thousand dollars, and by imprisonment in the State Prison for not less than one, nor more than two, years.

SECT. 17. The governor, by and with the advice and consent of the council, shall appoint, in every county, one or more commissioners learned in the law, whose duty it shall be, in their respective counties, when any person in this State is arrested or seized, or in danger of being arrested or seized as a fugitive from service or labor, on being informed thereof, diligently and faithfully to use all lawful means to protect, defend and secure to such alleged fugitive a fair and impartial trial by jury and the benefits of the provisions of this act; and any attorney whose services are desired by the alleged fugitive may also act as counsel in the case.

SECT. 18. The commissioners shall defray all expenses of witnesses, clerks' fees, and officers' fees, and other expenses which may be incurred in the protection and defence of any person seized or arrested as a fugitive from service or labor; and the same, together with the reasonable charges of the commissioners for their services as attorneys and counsel in the case, shall be paid by the State treasurer, on a warrant to be issued by the governor.

SECT. 19. No jail, prison, or other place of confinement belonging to, or used by, either the Commonwealth of Massachusetts or any county therein, shall be used for the detention or imprisonment of any person accused or convicted of any offence created by either of the said acts of congress mentioned in the ninth section of this act, or accused or convicted of obstructing or resisting any process, warrant, or order, issued under either of said acts, or of rescuing, or attempting to rescue, any person arrested or detained under any of the provisions of either of said acts, nor for the imprisonment of any person arrested on mesne process, or on execution in any suit for damages or penalties accruing, or being claimed to accrue, in consequence of any aid rendered to any escaping fugitive from service or labor.

Northern personal liberty laws and vigilant activism by abolitionists effectively constrained fugitive slave law's enforcement. The federal government alone lacked capacity to enforce federal law. Eric Foner aptly highlights tensions in enforcing fugitive slave law: "Ironically, by making the return of fugitives a national responsibility, Congress... 'had made the doctrine of state rights, so long slavery's friend,... its foe.'"⁶² The Supreme Court in *Prigg v. Pennsylvania* (1842) ruled that fugitive slave law was the exclusive power and responsibility of the federal government (states could not directly interfere), but also ruled under the 10th Amendment's anti-commandeering clause that the federal government could not mandate states and localities to enforce federal law (it could only request their cooperation). A similar line exists today over sanctuary policies.

Moving to contemporary America, in the 1980s, sanctuary referred to private efforts and public declarations by churches to provide "safe haven" and resources to Central American asylum seekers, and expanded into public sanctuary policies passed by state and local governments. Leaders of the movement, John Fife and Jim Corbett, explain that faith leaders discussed at great length America's history, particularly the "slavery abolition movement and U.S. churches' decision to help form an underground railroad to help slaves cross to safety" as well as the "complete failure of churches to help and protect Jewish refugees during the Holocaust." They declared, "We can't allow that to happen on our border in our time," and added, "I'm going to start a small group of folks who can help Central Americans cross the border safely without being captured by Border Patrol, and I believe that's the only ethical position that people of faith can take under these circumstances."⁶³

Michael Scott Freeley, a scholar studying the 1980s, defines sanctuary according to its religious origins as “the power of guardians of a defined religious site to grant protection to one who seeks safety out of fear of life or limb,” and explains how the 1980s movement in the U.S. built on historical sanctuary practiced in ancient Israel, Greece, and Rome, and in early Christianity.⁶⁴ The church movement used themes of the Underground Railroad and Jews escaping Nazi persecution, and focused on encouraging non-violent resistance through opening church doors to Central Americans to prevent federal immigration officers from deporting them.

State and local sanctuary policies in the 1980s shared many features: they highlighted the United States’ obligation to help *all* refugees under the Refugee Act of 1980, made solidarity with churches and private citizens’ sanctuary movement explicit, and connected sanctuary to America’s national heritage. The following passages from city sanctuary policies in the 1980s illustrate these qualities.

“[M]embers of these religious communities offering sanctuary [do so] in the belief that they are acting in accordance with international and federal law”

– Oakland, Cal., Res. 63950 (July 8, 1986)

“[C]hurches and synagogues and other groups across the nation have elected to provide sanctuary openly and publicly to Central American refugees, believing this humanitarian work to be in accord with the spirit and letter of international and United States law.”

– Davis, Cal., Res. 5407 (Mar. 5, 1986)

“Seattle citizens who have provided sanctuary. . . have done so in an open and public fashion, believing as a matter of conscience that this is a necessary and humanitarian action.”

– Seattle, Wash., Res. 27402 (Jan. 13, 1986)

“[O]ther community organizations have publicly declared themselves sanctuaries . . . as public witness against the morally and legally unjustifiable deportation of these people.”

– Takoma Park, Md., Ordinance 1985-63 (Oct. 28, 1985)

“[G]roups and individuals have acted in a way they consider morally and legally correct and in the best tradition of our country.”

– Burlington, Vt., Res. (Apr. 4, 1985)

Most of these city sanctuary policies included provisions prohibiting city employees and departments from requesting or sharing information on immigration status, and from using legal immigration status as a condition for receiving municipal benefits. A few cities, including Ithaca, Minneapolis, and Duluth, included requests that the INS notify advocacy organizations of any arrests of Central Americans made within their city. Chapter 5 of the dissertation provides a fuller discussion of the 1980s sanctuary policies.

2.4 The Concept of *Free Presence*

This section advances a new concept – *free presence* – to make sense of the cumulative outcome sanctuary policies create. America’s federalist system provides space for different national, state, and local approaches to emerge when it comes to regulating movement, presence, and who has access to resources. Northern states passed a range of laws that, cumulative over time, broadened runaway slaves’ freedom of movement, presence, and access to subnational resources, much like sanctuary policies did in the 1980s for Central Americans and policies are doing today for undocumented immigrants.

While scholarship on the international passport begins to unpack physical presence, it remains severely limited by its national focus. Jonathan Torpey's work explores the important role that the passport played for distinguishing between insiders and outsiders, a power controlled by the nation-state to limit who can freely enter and exit the national border.⁶⁵ Torpey explores free movement as a simple binary confined to the national border, and scholars studying identification documents have similarly focused on binary distinctions between insiders and outsiders that emerge from national policy.⁶⁶ They are silent on deeper variation in the regulation of free movement and presence.

Citizenship scholars have done much to develop concepts that challenge nationally centered notions of citizenship, including the use of terms like global, transnational, and postnational.⁶⁷ These concepts highlight new sources for rights and membership that form outside the nation-state, usually connected to processes of globalization, cross-border relationships, and allegiances outside of the nation-state. Yasemin Soysal, for example, argues that international human rights norms have led states to increasingly grant non-citizens important rights traditionally granted to citizens.⁶⁸

Another body of immigration and citizenship scholarship similarly challenge the uniform, national concept of citizenship, by looking to variations in national rights across different groups in the U.S., and by looking to expansions in rights at the local level. Elizabeth Cohen proposes a theory of semi-citizenship to highlight nuances in national rights, like different levels of rights being granted to children, felons, and immigrants.⁶⁹ Els de Graauw advances a concept of "local bureaucratic membership" to make sense of

New Haven and San Francisco's municipal ID cards, which are granted to all city residents regardless of their federal legal status. While cities cannot formally recognize undocumented immigrants as members of American society, they can apply discretionary administrative powers to integrate them in key areas of city life, which de Graauw argues creates a substantively distinct form of local membership.

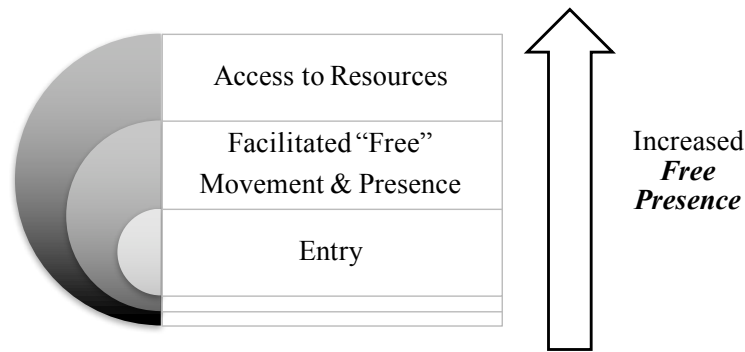
Rose Cruison Villazor has led the way in considering sanctuary policies part of a deeper challenge to notions of American citizenship, through her concept of local citizenship.⁷⁰ Villazor argues that sanctuary policies that limit local participation in the enforcement of federal immigration law make cities a special site of local citizenship. Such laws “expressly proscribes city government employees from asking or reporting the immigration status of individuals they encounter to federal immigration authorities,” and Villazor highlights the normative position held by San Francisco city officials to “encourage undocumented immigrants to feel protected, despite living in the ‘shadows,’ and to participate in local matters as members of their communities.”⁷¹

Like postnational citizenship, semi-citizenship and local citizenship concepts challenge notions of national citizenship, my concept of *free presence* challenges fundamental assumptions about free movement and presence. Federal preemption over regulating fugitive slave law and immigration law does not supersede alternative subfederal regulations from emerging over free movement and presence. Free presence conceptually distinguishes an area of law regulating entry, free movement, and presence distinctive to the state or local levels, as opposed to the conventional focus on the national level. Building on Cohen's semi-citizenship concept, I posit that free presence

captures gradations in free movement and presence emerging across states and localities, set up by sanctuary policies that cumulate into broad packages of protections.

In other words, free presence is a gradient category that measures shifting thresholds in the levels of protection granted by states and localities to runaway slaves and undocumented immigrants.⁷² The concept fills important gaps in the citizenship, immigration, and state building literatures, which all confine free movement to the simple dichotomy of national entry and exit, or bracket free movement altogether as an uncontested national power. In a federalist system, sanctuary laws cumulate to create a complex gradient category of free presence.

Figure 2.1 Gradient Category of *Free Presence*

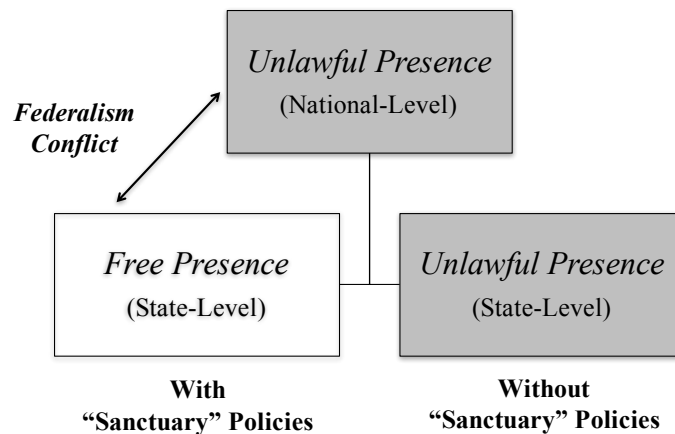


In the free North, for example, the most robust sanctuary jurisdictions passed laws that banned all forms of slavery in the state, provided all blacks freedom of movement across and within state borders, and banned state participation in the enforcement of, and protected all blacks from being reclaimed under, the federal fugitive slave law. Critical to runaway slaves' freedom in the North were non-cooperation laws banning state

officials and resources from enforcing federal fugitive slave law. At the opposite extreme, states passed restrictive laws that banned black immigration or entry into the state, created strict black registration requirements, prevented harboring of runaway slaves, and directly enforced the federal fugitive slave law.

Free presence conceptually centers the focus on federalism: specifically, it establishes a clear state level alternative to *legal presence*, the contemporary term used by the federal government to classify legal immigration status. As parallel conceptual poles, *free presence* and *legal presence* illustrate of how presence is highly contested in federalist systems. Chapter 3 of the dissertation develops the term *federalism conflict* to describe the U.S. Constitutional and institutional roots allowing conflicts between federal law (and *unlawful presence*) and state laws (and *free presence*) to emerge and proliferate throughout American history.

Figure 2.2 Physical Presence Under a Federalist Framework



There is no singular definition or type of sanctuary policy, and it is important to consider how a jurisdiction's set of sanctuary policies offer a gradation of legal protections to groups considered unlawfully present. Two primary functions of sanctuary, however, are revealed by looking at multiple historical periods: 1) they create state and local barriers on federal enforcement through non-cooperation and through offering legal protections, and 2) they expand state and local access to resources by limiting uses of federal legal status requirements. Sanctuary laws range widely from banning state or local officials from enforcing federal law to expressly granting groups the ability to move freely, due process protections, and access to public resources within state or local borders.

Despite federal preemption over fugitive slave law and immigration law, sanctuary policies at the state, local, and private levels have historically emerged and cumulated into robust protections that facilitate free movement, presence, and access to resources. *Free presence* makes sense of how these policies package together to decouple states from enforcing federal law and construct gradations in freedoms and rights.

2.5 Concluding Remarks

Scholars studying slavery and immigration have worked in isolation from one another, despite important crossover. This has led to theoretical and conceptual limitations in each. The dominant concepts slavery scholars employ in their study of Northern personal liberty laws are comity, sectionalism and nullification, all of which are

specific to the antebellum context. The concept of *free presence* advanced in this chapter places Northern personal liberty laws for the first time into broader historical perspective and transcends the antebellum period. Similarly, contemporary accounts of Central American sanctuary policies and today's policies protecting undocumented immigrants are often cut-off from one another, and remain conceptually unconnected to America's past policies on runaway slaves. This has remained a gap despite faith leaders and city sanctuary policies in the 1980s explicitly linking their moral campaigns to America's earlier Underground Railroad.

The Immigration and Naturalization Act of 1952 coined the term *unlawful presence* in federal law, and ever since, federal laws have been passed that require proof of lawful status for immigrants to access federal resources such as employment, public welfare, and identification cards.⁷³ At the state level, Arizona's SB 1070 passed in 2010 functions as an anti-sanctuary policy and provides a counter to free presence. It established one of the harshest state laws in recent decades to target unauthorized immigrants by making it a state crime for immigrants to be inside the state without proof of legal status and by requiring police to detain anyone suspected of being unlawfully present inside the U.S.⁷⁴

The more recent trend, however, has been legislation in the opposite direction of protecting, welcoming, and integrating undocumented immigrants. Many states today have laws that expressly grant immigrants' driver licenses regardless of legal status. Passed in 2013, California's driver license bill included an anti-discrimination provision making it illegal for police to target and investigate drivers with new licenses for possible

immigration violations. Upon signing this law Governor Jerry Brown stated, “No longer are undocumented people in the shadows. They are alive and well and respected in the State of California.”⁷⁵

States are also enacting professional licensing laws. California recently passed two laws on licensing, including a law expressly authorizing unauthorized immigrants to practice law in the state and a law requiring forty licensing boards under the California Department of Consumer Affairs to consider applicants regardless of legal status.⁷⁶ Other state laws have extended immigrant access to employment, higher education, and health care. Counties and cities are also taking important steps in the same direction. Between 2007 and 2012, San Francisco, Oakland, Richmond, and Los Angeles passed municipal ID ordinances that created identification cards accessible to all residents including undocumented immigrants.⁷⁷ These city ID cards facilitate access to vital resources, including banking, health care services, and libraries, and they make it easier for unauthorized immigrants to interact with public officials and law enforcement without fear of removal.

State and local governments are now passing sanctuary laws that limit their role in enforcing immigration law. In 2013, California and Connecticut were the first two states to enact non-cooperation laws called Transparency and Responsibility Using State Tools (TRUST) Acts, which stipulate that officers can only enforce immigration detainers issued by the U.S. Immigration and Customs Enforcement (ICE) for persons convicted of serious crimes.⁷⁸ Much like removal certificates issued to detain runaway slaves, a detainer request is a formal notice by ICE to federal, state, or local law enforcement

agencies of their intention to take custody of potential unauthorized immigrants. The District of Columbia currently restricts detainers by requiring ICE to provide court ordered warrants, and in a joint statement, every jail in the state of Colorado stated their intention of not honoring any ICE detainer requests. In 2014, the city of San Francisco and counties of Contra Costa, Alameda, and San Mateo in California announced that they would no longer cooperate with ICE detention requests, and many localities have done the same throughout the country.⁷⁹

As scholars grapple with the meaning of sanctuary laws, the concept of *free presence* helps bring into view how sanctuary policies cumulate into robust sets of protections and rights. It captures a historical pattern that foregrounds complex questions on how federalism allocates power at the national and subnational level, and how states can protect groups like runaway slaves and undocumented immigrants, who are nevertheless considered unlawfully present under federal law.

Chapter 3

Regulating Movement in a Federalist System: Slavery's Connection to Immigration Law in the United States

Donald Trump's promise to "build a wall" and to ramp up deportations has energized states and localities to contest national policy. An important roadblock against Trump is the capacity of subnational governments to pass sanctuary policies. This chapter advances a new conceptual understanding of sanctuary policies today by comparing them to Northern laws that protected runaway slaves. Scholars have too often focused their attention on federal authority in examining immigration law, but a central feature of American federalism is the separation of governmental authority. By focusing on both federal and state level authority in two distinct periods of American history (1780-1860 and 1970-2017), this chapter challenges long-standing views: that immigration law is federally regulated, and therefore supersedes sanctuary laws; that contemporary laws have no link to slavery.

I develop an original concept of *federalism conflict* to make sense of the unique relationship created by state sanctuary policies that conflict with existing federal law, and argue that such *conflicts* are rooted in the U.S. Constitution. I then systematically compare policies and court decisions over runaway slaves and undocumented immigrants to show that two *federalism conflicts* emerged in American history that are functionally equivalent and connected by their roots in Constitutional law. Much like abolitionists strategies to end Northern enforcement of federal fugitive slave law, state autonomy

remains a powerful defense for today's immigrant advocates in the fight against Trump's immigration policies. This chapter shows that states' authority to pass sanctuary laws is an unchanging feature in American federalism.

3.1 Introduction

In the battle over U.S. immigration policy, the Republican controlled House passed a bill in July 2015, the Enforce the Law for Sanctuary Cities Act (HR 3009), which would have amended the Immigration and Nationality Act and made state and local sanctuary jurisdictions ineligible for federal funding if they refuse to comply with reporting detained immigrants. This bill was proposed after a conservative outcry over the tragic death of Kathryn Steinle, a San Francisco native, who was fatally shot by Juan Francisco Lopez-Sanchez, a convicted felon and undocumented immigrant. Prior to the incident, federal immigration officers had asked San Francisco police to hold Lopez-Sanchez, but under the city's anti-detainer Due Process for All ordinance, local police ignored the federal detainer request and released Lopez-Sanchez from custody. The anti-sanctuary bill failed to gain passage in the U.S. Senate, but it remains a live political issue as Republican candidates from the presidency to state legislative offices vow to eliminate laws that limit local cooperation on immigration enforcement.

This federalism conflict is one example of an incident involving a growing movement at the state and local levels to shield undocumented immigrants from federal law. In 2013, California and Connecticut both passed laws called Transparency and Responsibility Using State Tools (TRUST) Acts, which stipulate that officers can only

enforce immigration detainers issued by the U.S. Immigration and Customs Enforcement (ICE) for persons convicted of serious crimes. And over the past decade, well over 100 counties and cities throughout the U.S. have passed similar anti-detainer ordinances. While sanctuary laws are relatively new to contemporary debates on immigration, this chapter reveals how America's federalist system historically created similar conflicts over runaway slaves, who were also considered by federal law to be unlawfully present.

Immigration scholars have only recently begun to explore how slavery law relates to immigration law, and have done so in a very limited manner. This chapter provides the first systematic review and comparison of antebellum laws on runaway slaves and today's laws on undocumented immigrants, and by so doing, reveals new patterns in the regulation of movement. Specifically, I demonstrate a strong parallel between antebellum laws on runaway slaves and contemporary laws on the free movement and presence of undocumented immigrants, and spotlight the conflict raised by restrictive federal laws and sanctuary laws that I argue to be rooted in particular institutional patterns set by the court's rulings on immigration law. Conventional accounts posit contemporary immigration law to be an entirely distinct set of laws to early pre-Civil War regulations. By contrast, I argue that states' powers to enact sanctuary laws and to be inclusive towards classes of people – who nevertheless lack federal legal status – are historically and institutionally connected.

Systematic comparison of federal and state level laws on runaway slaves and undocumented immigrants, and historical review of court cases, show the conventional account to be true on the question of who can pass restrictive laws, but limited on the

question of sanctuary and integrationist laws. To make sense of these latter policies, which are gaining national attention today, I develop the term *federalism conflict* to depict how the courts play an important role in making sanctuary laws a durable American institution. Despite the appeal of a uniform national policy, I argue the courts historically steer policy in the direction of a seeming conflict by limiting state and local restrictions while upholding sanctuary laws. I unpack these crucial patterns to show for the first time how sanctuary laws transcend conventional antebellum-contemporary distinctions made by scholars and establish a deep connection between runaway slaves and undocumented immigrants. This chapter ends by foregrounding why this institutionalized federalism conflict opens new space for scholars to consider how past abolitionist strategies resonate with contemporary activism on sanctuary and integration.

3.2 Immigration Federalism and the Power to Regulate Immigrants

In her important study of slavery and immigration, Anna Law makes a categorical distinction between early and modern legal periods, stating: “the nineteenth-century time period cautions us against using contemporary concepts and constructs such as ‘immigration’ and ‘immigrant policy,’ when the distinction between those terms is highly time bound and absolutely meaningless in the antebellum period.”⁸⁰ Scholars’ conventional account more broadly posits that contemporary law’s *immigration* and *immigrant* areas of policies are entirely distinct from and incomparable to early pre-Civil War laws. This chapter highlights a critical limitation of this conventional account: I argue that the court’s interpretation of plenary power historically focuses on limiting state

and local power with regard to restrictions, but does not narrow or preempt sanctuary or integrationist policies.

This section's review of the immigration federalism scholarship sets a foundation for how America's federalist system provides space for different national, state, and local approaches to emerge when it comes to regulating movement and presence. I build on these insights to argue that federalism's framework historically links sanctuary laws on runaway slaves and undocumented immigrants.

Immigration scholars have well established that states and localities controlled early American immigration policy in the absence of federal regulation.⁸¹ Gerald Neuman documented colonial and antebellum state laws restricting unwanted migration to refute the long-held belief that the U.S. had open borders prior the federal government's first immigration law, the Page Act of 1875.⁸² Anna Law explains that the federal government chose not to take control of immigration law in order to avoid sparking confrontations over the regional differences brought on by slavery, and this paved the way for the 19th Century to be an era of subnational governments' "exclusive control" over regulating movement.⁸³

Despite the emergence of federal plenary power over U.S. immigration policy in the late 1800s, immigration federalism scholars continue to reveal how states and localities play important roles. However, no study to date examines connections between early and contemporary law. Anna Law explains why there is a continued role of states and localities today by arguing that the shift to federal control under the plenary powers doctrine remains incomplete. The 1787 U.S. Constitution "purposely 'did not resolve'

the question of how to balance national and state power,” which Law explains set limits on the federal government’s broad Constitutional claims of plenary power.⁸⁴ The exclusive focus on federal preemption misses how the court’s rulings and interpretation of plenary power defines what states can and cannot do.

The court’s power to draw a baseline has led America’s federalist structure to preserve national, state, and local autonomy to pass policies and have discretion to enforce those policies. This is why Christina Rodriguez calls America’s immigration law a “de facto multi-sovereign” system.⁸⁵ Politically, federalism’s open structure generates opportunities for negotiations to emerge between levels of government.⁸⁶ Daniel Tichenor and Alexandra Filindra argue that states have historically led in “open combat,” or negotiation, with the federal government.⁸⁷ Even after plenary powers established federal exclusivity, states and localities have historically enacted restrictive laws as a strategy to pressure U.S. Congress to enact similar restrictionist immigration reforms. In the 1860s, states enacted anti-Chinese immigration laws, in the 1970s, they enacted employer sanction laws prohibiting the hiring of undocumented immigrants, and in the 1990s, California passed the most restrictive and comprehensive state law – Proposition 187.⁸⁸ Tichenor and Filindra explain, “from [a] federalism perspective, Proposition 187 was a last resort effort by a state to force the immigration issue on the federal agenda.”⁸⁹

Instead of having a diminished role today, states and localities have significantly upped their role in regulating undocumented immigrants – the total number of enacted state laws and resolutions increased from 27 in 2005 to 437 in 2013.⁹⁰ Jessica Bulman-Pozen explains that America’s federalist system provides scaffolding for partisan debate

to emerge and shape policy, and immigration federalism scholars are now examining how federalism's openings and contemporary partisan dynamics have led to a state and local level resurgence in passing immigration and immigrant policies.⁹¹

Pratheepan Gulasekaram and Karthick Ramakrishnan directly link the recent proliferation of subfederal policies by underscoring partisanship and federalism's strategic environment.⁹² By differentiating restrictivist processes from integrationist processes, they explain the timing and scope of subnational policy proliferation. They argue that restrictionists engineered federal stalemate to create a narrative of federal inaction, which empowered them with political leverage to push for state and local restrictive policies between 2001 and 2012. Polarization in Congress made this strategy successful. By contrast, pro-immigrant advocates focused on national reform until 2011 and on "playing defense" against the passage of anti-immigrant legislation. After 2011, with the failure of the DREAM Act in 2010 and failure of multiple efforts at comprehensive immigration reform, pro-immigration groups finally "began to play offense" at the state and local levels.⁹³ American federalism's openings and partisan politics have thus led to a patchwork of state and local policies being passed, with Republican states on average passing more restrictive policies, and Democratic states passing more integrationist policies.

As this section shows, despite plenary powers, scholars collectively reveal how America's federalist system sets up strategic sites for immigration policymaking at all levels of government. No study to date, however, employs these insights to challenge the conventional distinction made between early and contemporary immigration law, or to

provide sharper focus towards differentiating restrictive and inclusive state and local laws as distinct historical developments.

By connecting historical periods and differentiating restrictive and integrationist policies, this chapter contributes by challenging a fundamental assumption made in the immigration scholarship: that under federal preemption all state and local immigrant related policies are superseded by federal laws. The current understanding of contemporary state and local policy creates conceptual limits, which results in analytical focus being placed on an incomplete plenary power doctrine, or broken immigration system, and assumes that a uniform national immigration scheme is a historical norm. Systematic comparison of sanctuary laws on runaway slaves and today's undocumented immigrants reveals this cohesiveness assumption to be severely limited. By contrast, I develop a concept that I term a *federalism conflict*, which I argue not only makes better sense of sanctuary and integrationist policies as deeply embedded American institutions, but also provides a new framework to make sense of historical connections that conventional concepts and accounts have resisted.

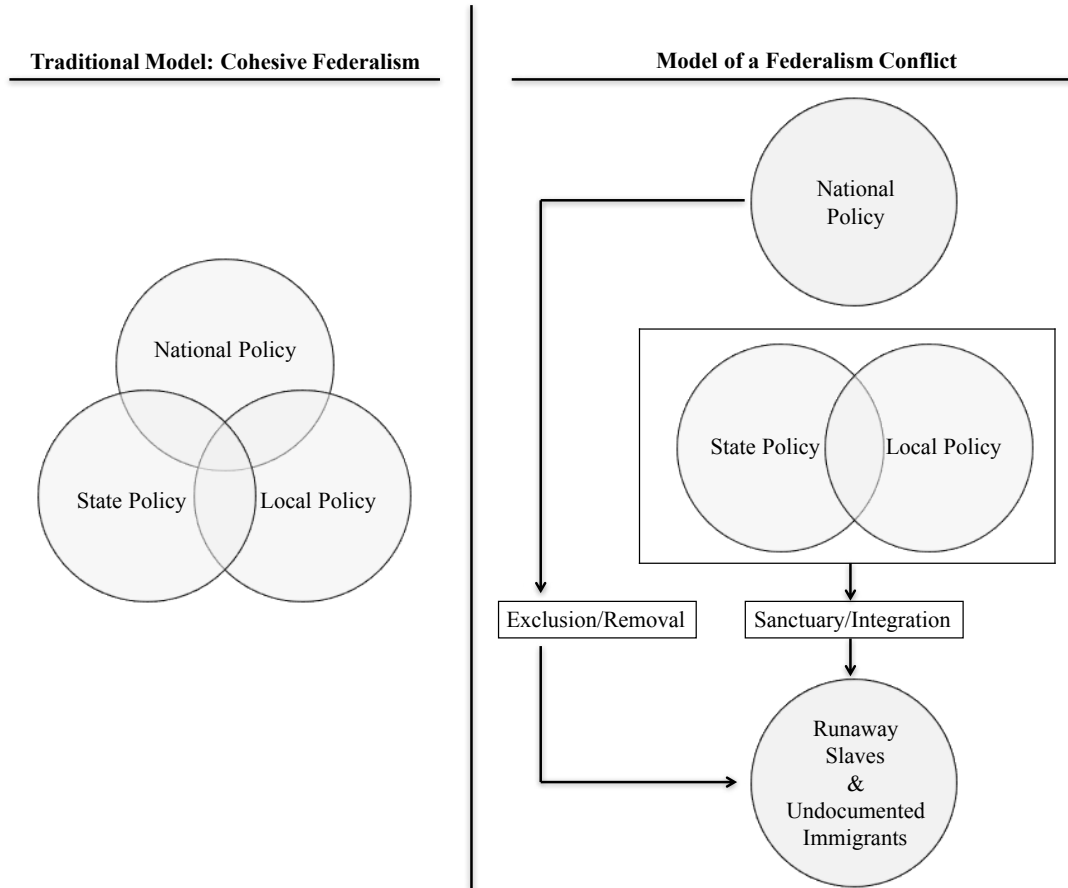
3.3 Competing Notions of Federalism

Slavery and immigration scholars alike have employed concepts that depict conflicts in American federalism as temporary aberrations rather than long-term structural features. Slavery scholars highlight Northern sanctuary laws as temporally specific conflicts with federal law, which emerged out of divisions between North and South.⁹⁴ Paul Finkelman, for example, argues that increased sectionalism led Northern

and Southern courts to end their practice of comity – the recognition of out-of-state laws.⁹⁵ While the concepts of comity, sectionalism and nullification are meaningful for understanding American slavery, they are severely limited with regard to capturing durable features in American federalism and connections between antebellum and contemporary periods.

Figure 3.1 below illustrates two models of federalism. First is the conventional cohesive model of federalism, which assumes uniformity to be the norm and conflict to be a momentary disruption in federalism's longer trajectory towards cohesion. Second, I provide a new model that I term *federalism conflict* to highlight state and local laws that are in conflict with and decoupled from national level policy. When states and localities pass laws that sever their enforcement of federal law and shield entire classes of people considered unlawfully present, the concept of a federalism conflict considers these policies to be the historical norm, not aberration. Both the cohesive federalism model and federalism conflict model are entirely distinctive historical institutional paths – each established through court precedent and national, state, and local policy – that capture different aspects of immigration laws' historical development. I argue that the latter federalism conflict is more meaningful for our understanding of sanctuary laws.

Figure 3.1 Models of Federalism



Inter-governmental conflict is not new. Take, for example, the issue of the Affordable Care Act's (ACA) (2010) Medicaid expansion provision. In *National Federation of Independent Business (NFIB) v. Sebelius* (2012), the Supreme Court generally upheld ACA, but also struck down one of its provisions that mandated states to expand eligibility requirements or face federal withholding of funding, since this provision was coercive in nature, and therefore, was in conflict with the 10th Amendment. It was ruled that states have the power to decide whether or not to participate in expanding Medicaid through ACA, and this leverage has allowed states to use federal

waivers to resolve their differences with ACA by leading in experimentation in health-care, “as long as they promote the objectives of the Medicaid program.”⁹⁶ Thus, from the vantage point of federalism, a conflict emerged in states’ opposition to ACA and federal waivers provided enough flexibility for states to both enforce certain aspects of ACA they agree with, while also experimenting in other areas.

The legalization of marijuana by Colorado and Washington sets up a very similar federalism conflict, since the Controlled Substances Act (1970) makes it a federal crime to produce, distribute and possess marijuana. In this situation, federal law covers all territories of the U.S. and applies to all individuals within its borders. Equally notable, however, there are important limits to federal power to mandate states to enforce federal law under the 10th Amendment. Sam Kamin explains that on marijuana there is a current standoff between the federal and state governments, one where a national repeal of marijuana prohibition is the most likely scenario.⁹⁷ In fact, the federal government announced in 2013 that it would allow both states to proceed with their experiment, since they did not directly threaten federal priorities and were consistent with traditional allocation of federal-state-local enforcement on marijuana-related activity.⁹⁸ Contrary to federal preemption, this understanding of federalism reveals how states continue to hold great political power and leverage through policymaking, which can be used resist the enforcement of federal law and inform changes in federal law.

Despite such conflicts, federalism scholars tend to emphasize cohesiveness by explaining how political actors seek to reconcile these conflicts in law, and assume fragmented policy landscapes to be temporary aberrations.⁹⁹ Rose Pickerill and Cythnia

Bowling explain that today’s polarized Congress creates a unique challenge of unified state governments enacting an “unusual” large number of policies on immigration, health, education, marijuana, and same-sex marriage.¹⁰⁰ By contrast, I argue that conflicts are a normal feature of federalism.

Figure 3.2 Concepts of Federalism

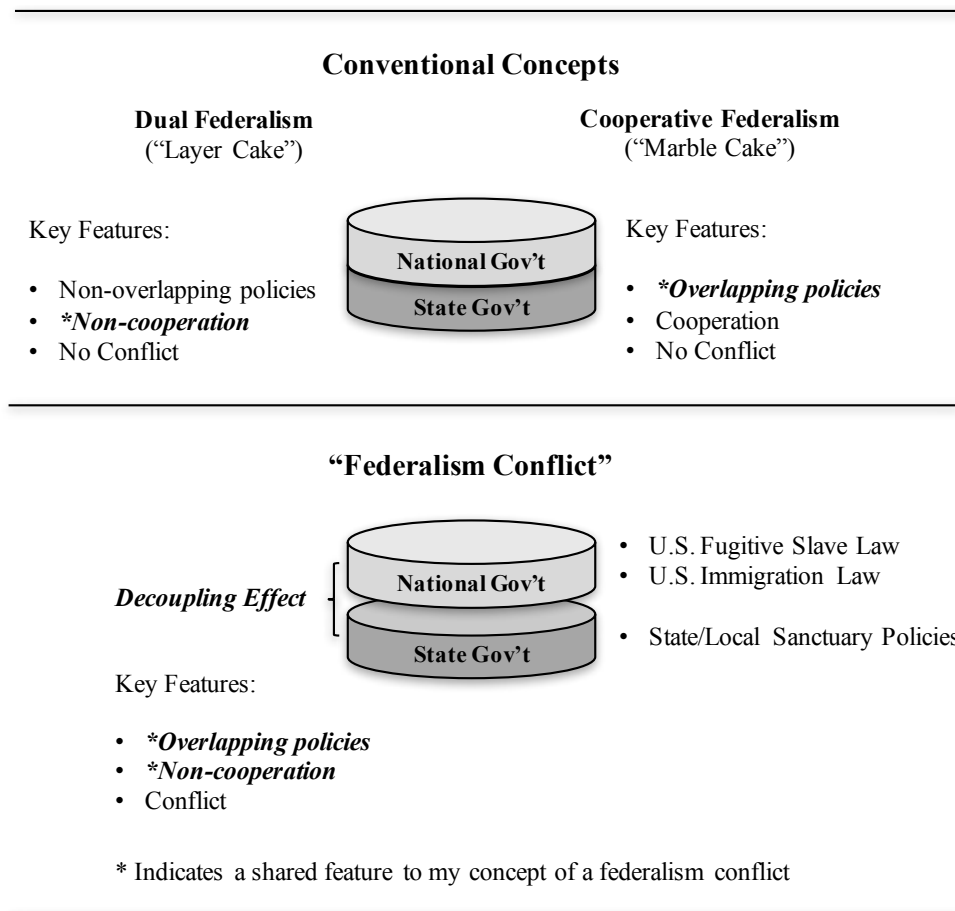


Figure 3.2 above illustrates two widely used concepts – dual federalism and cooperative federalism – and what I term a *federalism conflict*. The features of all three

are not new; however, the concept of a federalism conflict encompasses both the *overlapping policies* and *non-cooperation* features for the first time, and I argue casts a significantly different image of American federalism than what is depicted in the scholarship. Scholars employ dual federalism to characterize America's pre-New Deal era, when states held exclusive control over certain policies. Anna Law's work on slavery laws functioning as immigration laws by restricting movement employs dual federalism: state and local control over policy and an absence of federal policy. Importantly, this separation is politically driven. Law and the slavery scholarship generally explain that states controlled policies regulating slaves because the country was divided by a free North and slave South, which meant that federal regulations over slaves (both restrictive or otherwise) would raise contentious debates over slavery and freedom. By making these policies exclusively state or locally controlled, the federal government avoided taking on the large responsibility, administrative costs, and political conflict over slavery. Dual federalism is a political outcome and only one (out of many) structural feature of federalism.

Moving forward to the post-New Deal era, scholars have employed different versions of the cooperative federalism concept, including "regulated federalism" and "new federalism," which place America's rising national regulatory regime and its overlap with state and local policy front-and-center. The focus remains, however, on how federal grants, unfunded mandates, and plenary powers minimize conflict in the overlap between national and state regulations and establish cohesiveness in both policies and implementation across levels of government. Keyword searches in Jstor of "dual

federalism” returns a total of 650 journal articles, and “cooperative federalism” returns 883, as of September 9, 2016. Dual federalism and cooperative federalism reinforce the conventional story that antebellum and contemporary periods are unconnected, and they leave unaddressed the role of state and local policymaking in a federal preemption context.

What I term a federalism conflict flips conventional wisdom about uniformity and cohesiveness on its head. It emphasizes instead how federalism separates national and state governments into distinct legal systems with potential for opposing policies to emerge and co-exist. On regulating movement and presence, in particular, a federalism conflict provides new meaning for states’ regulatory power and reveals deep historical connections. Despite the appeal of a uniform national policy and enforcement of U.S. immigration law, in the next section, I show that the courts historically steer policy in the direction of a seeming conflict by limiting state and local restrictions, while upholding sanctuary laws. The concept of a federalism conflict best captures these long term developments in American immigration control and institutionally connects Northern sanctuary polices that shielded runaway slaves to today’s policies on undocumented immigrants.

3.4 U.S. Immigration Law and a “Federalism Conflict”

This section argues two points about state sovereignty to show how antebellum and contemporary federalism dynamics and state sanctuary laws are linked. First, state level integrationist and sanctuary policies do not infringe upon the federal government’s

exclusive power to regulate immigration; I highlight this through court precedent on state citizenship for federal non-citizens and immigrant integration laws. Second, I argue that the courts have historically denied the federal government authority to mandate that states enforce federal law, and have upheld state and local sanctuary policies. Differentiating court cases on inclusive and restrictive laws reveals that state and local power to protect and integrate groups considered unlawfully present under federal law has remained unfettered throughout American history, while states' restrictionist powers have been severely narrowed.

Alienage scholars have long addressed the divergent court rulings on the rights and legal treatment of noncitizens, and provide two specific insights that help reveal how a federalism conflict is a norm rather than aberration. Scholars show that restrictive state and local laws are placed under heightened Constitutional scrutiny, and show by contrast that courts have sought to protect immigrants under a universal rights framework. The courts' application of plenary power drive the development of a federalism conflict, and simultaneously narrow the window for cohesive federalism to emerge by preventing states and localities from establishing their own cooperative schemes to enforce federal immigration law.

U.S citizens enjoy special protections by the courts compared to immigrants, but legal scholars emphasize two paradigms shaping doctrinal law: national membership and personhood. Alex Aleinikoff explains that the two "are not part of a coherent whole, but rather reflect conflicting strands in our constitutionalism: one concerned with affirming the importance of membership in the national community, the other pursuing a notion of

fundamental human rights that protects individuals regardless of their [federal legal] status.”¹⁰¹ Notably, courts direct the exclusionary features of the national membership paradigm towards upholding federal level restrictions, and strong consensus exists among alienage scholars that plenary powers limits states’ power to restrict immigrant’s lives. Michael Scaperlanda explains, “*noncitizens are ‘a discrete and insular minority’ in need of heightened judicial protection,*” and while plenary powers has been applied to distance court intervention from restrictive federal policies, it does the opposite of placing heightened Constitutional scrutiny on restrictive state and local polices.¹⁰²

With regard to federal restrictions, Scaperlanda argues that notions of national sovereignty and identity have led “the judiciary’s reluctance to interfere with the membership choices made by the political community.”¹⁰³ He further posits, “the Court seems to hold that if the political branches of the federal government adopt a discriminatory posture adversely affecting aliens or a group of aliens outside the immigration context, the Court will apply at most a rational basis review,” because it defers immigration law a plenary power of Congress and the President.¹⁰⁴ By contrast, the “defining question” for Linda Bosniak is “whether government treatment of aliens beyond the border broadly construed – beyond questions of admission, exclusion, deportation, and naturalization – is itself to be viewed as an incident or extension of the immigration power.”¹⁰⁵

While they disagree on how far federal restrictions can go, Scaperlanda and Bosniak’s analysis of alienage jurisprudence both illustrate how a federalism conflict is a durable feature. Bosniak argues that the Court has historically ruled against alienage

discrimination, making it clear that at the state and local levels of government, no distinction should be made between the treatment of citizens and noncitizens.¹⁰⁶ Scaperlanda explicitly contrasts federal and subfederal powers when it comes to alienage law. He explains that, in contrast to the court's low standard of a rational basis test applied to restrictive federal laws, it has historically applied the higher standard strict scrutiny test to restrictive state and local laws (and federal agencies) on immigrants. Furthermore, Scaperlanda states, "from *Yick Wo* [1886] through *Graham* [1971], the personhood paradigm finds its strongest roots in the state alienage cases."¹⁰⁷ The common take away is that plenary powers has historically been applied by the courts to preserve federal exclusions and restrictions (and Bosniak problematizes this point), and to narrow state and local power to pass restrictions.

Table 3.1 below documents all alienage cases establishing this doctrinal distinction through a systematic review of secondary sources and original research.¹⁰⁸ Whereas most federal restrictions have been upheld, Table 3.1 shows that many state and local restrictions have been ruled preempt. A narrowing of state and local power has occurred by making restrictive laws the exclusive domain of the federal government, but state and local powers to integrate has remained unabridged.

Table 3.1 Court Cases on Restrictive State and Local Alienage Laws

Year	Case	Law Contested	State Level Outcome	
			Restriction Struck Down	Restriction Upheld
1875	<i>Chy Lung v. Freeman</i>	California law requiring bond for certain arriving immigrants	✓	
1875	<i>Henderson v. Mayor of New York City</i>	New York law requiring bond for arriving immigrants	✓	
1886	<i>Yick Wo v. Hopkins</i>	San Francisco law restricting laundries	✓	
1914	<i>Patsone v. Pennsylvania</i>	Pennsylvania law banning noncitizen hunting		✓
1915	<i>Truax v. Raich</i>	Arizona law requiring businesses to hire mostly citizens	✓	
1927	<i>Ohio ex rel. Clarke v. Deckenbach</i>	Cincinnati law barring noncitizens from operating billiard halls		✓
1941	<i>Hines v. Davidowitz</i>	Pennsylvania alien registration law	✓	
1948	<i>Takahashi v. Fish & Game Commission</i>	California law denying commercial fishing licenses to noncitizens	✓	
1948	<i>Oyama v. California</i>	California Alien Land Law barring noncitizens from owning land	✓	
1971	<i>Graham v. Richardson</i>	Arizona and Pennsylvania laws denying public benefits to certain noncitizens	✓	
1973	<i>Sugerman v. Dougall</i>	New York law barring noncitizens from civil service positions	✓	
1976	<i>De Canas v. Bica</i>	California employer sanction law for hiring unauthorized workers		✓
1978	<i>Foley v. Connelie</i>	New York law barring noncitizens from becoming state troopers		✓
1979	<i>Ambach v. Norwick</i>	New York law barring noncitizens from becoming teachers		✓
1982	<i>Plyler v. Doe</i>	Texas law allowing state to not fund public education for undocumented children	✓	
1982	<i>Toll v. Moreno</i>	Univ. of Maryland policy denying in-state status to nonimmigrants	✓	
1982	<i>Cabell v. Chavez-Salido</i>	California law prohibiting non-citizens from becoming parole officers		✓
1995	<i>LULAC v. Wilson</i>	California Proposition 187 denying to, and increasing immigration enforcement against, undocumented immigrants	✓*	
2011	<i>Chamber of Congress v. Whiting</i>	Arizona employer sanction law (licensing)		✓
2012	<i>Arizona v. United States</i>	Arizona immigration enforcement law	✓	
2012	<i>Hispanic Interest Coal. of Ala. v. Governor of Ala.</i>	Alabama law requiring public schools to collect information about immigration status	✓*	
2013	<i>Valle del Sol Inc. v. Whiting</i>	Arizona law criminalizing harboring and transporting of unauthorized aliens within the state	✓*	
2013	<i>Villas at Parkside Partners v. City of Farmers Branch</i>	Local ordinance barring landlords from renting housing to undocumented immigrants	✓*	
2013	<i>Lozano v. City of Hazleton</i>	Local law penalizing employers of undocumented immigrants and requiring proof of immigration status to obtain housing	✓*	
2014	<i>Arizona DREAM Act Coalition v. Brewer</i>	Arizona law denying DACA recipients drivers licenses	✓*	

✓ Outcome of the case
 * A ruling by a lower court (not U.S. Supreme Court)

In addition to plenary power being narrowly applied towards limiting state and local restrictions, Liliana Garces reveals that in alienage law, state and local integration is a norm. Specifically, courts increasingly give reference to a noncitizen's developed communal ties in order to rule against restrictive policies.¹⁰⁹ Extensive legal and normative scholarship supports Garces' interpretation of the court's welcoming and inclusive stance towards noncitizens.¹¹⁰

Hiroshi Motomura reveals this to be true with the Court granting 5th, 6th and 14th Amendment due process protections to immigrants.¹¹¹ These "procedural surrogates," according to Motomura, "are a natural outgrowth of the tension between the plenary power doctrine in immigration law and the *Yick Wo* tradition's more humane treatment of aliens in other contexts."¹¹² While plenary power secures the federal government's power to be exclusive, Motomura argues that all territorially present immigrants ought to be given similar rights as citizens under what he calls "immigration-as-transition."¹¹³ This includes undocumented immigrants. Examining the equal protection rationale applied in *Plyler v. Doe* (1982), which invalidated the Texas's statute allowing K-12 public schools to deny unauthorized immigrant schoolchildren access or charge them tuition, Motomura makes the point that the Court protects undocumented children as future Americans.¹¹⁴

On immigrant rights, Cristina Rodriguez argues that territoriality anchors immigrants' belonging.¹¹⁵ Linda Bosniak similarly argues that because immigration law and the rights of citizens and noncitizens are *not* distinct bodies of law – they contain porous and overlapping boundaries – exclusionary immigration policies have

problematically been used to internally justify discriminatory national, state and local policies.¹¹⁶ What is at issue is not the power of the federal government to set restrictive admissions policies, but rather a democratic problem emerging from when classes of people inside the country are discriminated against, either as an extension of immigration law or otherwise.¹¹⁷

This section reveals that alienage scholars indirectly point to a federalism conflict. Table 3.2 below documents all alienage cases on state level citizenship, integration, and sanctuary policies through a systematic review of secondary sources and original research.¹¹⁸ Together, these three types of cases establish a clear pattern of the court preserving state and local power to protect and integrate classes of people considered under federal law to be unlawfully present. I argue later in the chapter that this connects runaway slaves and undocumented immigrants. Specifically, the court has consistently ruled that state and local integrationist or sanctuary policies do not infringe upon the federal government's exclusive power, and the courts have further denied federal authority to mandate that states enforce federal law.

Table 3.2 Subfederal Citizenship, Integration and Sanctuary Cases

Year	Case	State Citizenship	Outcome	
			Struck Down	Upheld
1857	<i>Scott v. Sandford</i>	Recognized state citizenship to federal non-citizens		✓
1863	<i>In re Wehlitz</i>	Recognized state citizenship to federal non-citizens		✓*
1872	<i>The Slaughter-House Cases</i>	Recognized state citizenship to federal non-citizens		✓
1875	<i>United States v. Cruikshank</i>	References state citizenship precedent		R
1892	<i>Boyd v. State of Nebraska</i>	References <i>Dred Scott</i> on state citizenship		R
1935	<i>Colgate v. Harvey</i>	References state citizenship precedent		R
1970	<i>Oregon v. Mitchell</i>	References state citizenship precedent		R
1973	<i>Sugarman v. Dougall</i>	References state citizenship precedent		R
1995	<i>United States Term Limits, Inc. v. Thornton</i>	References state citizenship precedent		R
1996	<i>Seminole Tribe of Fla. v. Florida</i>	References <i>Dred Scott</i> on state sovereignty		R
Year	Case	Integration Policy	Outcome	
			Struck Down	Upheld
2004	<i>Equal Access to Ed. v. Merten</i>	Immigrant access to higher education		✓*
2004	<i>Madeira v. Affordable Housing Foundation, Inc.</i>	Undocumented immigrant access to workers' compensation under New York law		✓*
2005	<i>Majlinger v. Cassino Contracting Corp.</i>	Undocumented immigrant access to workers' compensation under New York law		✓*
2005	<i>Day v. Sebelius</i>	Immigrant access to higher education		✓*
2010	<i>Martinez v. Regents of the University of California</i>	Undocumented immigrant access to in-state tuition		✓*
2014	<i>In re Sergio C. Garcia on Admission</i>	Undocumented immigrant access to drivers licenses and professional licenses		✓*
Year	Case	Sanctuary Policy	Outcome	
			Struck Down	Upheld
1842	<i>Prigg v. Pennsylvania</i>	Pennsylvania law superseding control over federal fugitive slave law	^	✓
1858	<i>Ableman v. Booth</i>	Wisconsin law nullifying federal fugitive slave law	✓	
1992	<i>New York v. United States</i>	Anti-commandeering of federal programs		R
1997	<i>Printz v. United States</i>	Anti-commandeering of federal programs		R
1999	<i>City of New York v. United States</i>	New York City's Executive Order 123 (1989) ("don't tell")	^	✓*
2008	<i>Fonseca v. Fong</i>	SFPD sanctuary policy		✓*
2009	<i>Sturgeon v. Bratton</i>	LAPD sanctuary policy (1979) ("don't ask")		✓*
2012	<i>Johnson v. Hurtt</i>	Houston PD sanctuary policy restricting communication with federal immigration authorities		✓*
2014	<i>Galarza v. Szalczyk</i>	Ruled that detainer holds were voluntary under 10 th Amendment; ruled that states/localities liable for unlawful detention under 4 th Amendment.		✓*
2014	<i>Miranda-Olivares v. Clackamas County</i>	Ruled that state/local holds liable for unlawful detention under 4 th Amendment; Ruled that ICE detainer requests require probable cause		✓*
2015	<i>Morales v. Chadbourne</i>	Detainer holds are an arrest under the 4 th Amendment (requiring probable cause)		✓*
2016	<i>Moreno v. Napolitano</i>	Nullified ICE detainers requests without a warrant, or a reason to believe that subjects are likely to escape before warrant (4 th Amendment)		✓*

- ✓ Outcome of the case
- * Part of the state law was preempted
- R A case referencing the constitutionality of state citizenship or anti-commandeering principle
- * A ruling by a lower court (not U.S. Supreme Court)

Tables 3.1 and 3.2 together point to a federalism conflict as the defining feature of America's regulations over free movement and presence, past and present. On state citizenship, Peter Markowitz explains that federal law does not preempt "a law merely declaring an undocumented immigrant to be a citizen of a state and bestowing upon such individual the rights which a state government may accord . . . but which does not purport to confer federal rights or insulate the individual from federal enforcement activities."¹¹⁹ By contrast, federal law does preempt restrictive state and local laws that either supersede or mirror federal immigration enforcement efforts.

To be clear, the courts have made very important distinctions on what state and local sanctuary laws can do to shield runaway slaves and undocumented immigrants. They cannot directly interfere in the enforcement of federal law by other jurisdictions, but they do have power to ban state and local officials and resources from actively enforcing federal fugitive slave law or federal immigration law. On runaway slaves, *Prigg v. Pennsylvania* (1842) ruled Northern sanctuary laws directly preventing the enforcement of federal law unconstitutional, but at the same time, upheld state laws preventing state or local enforcement of federal law under the 10th Amendment. Again, *Ableman v. Booth* (1858) ruled that state laws superseding federal control or nullifying federal fugitive slave law preempt, but it left state's sovereign power to choose not to enforce federal law untouched.

Contemporary cases have continued to anchor a federalism conflict by expressly prohibiting Congress from compelling state governments to enact, enforce, or administer federal policies under the 10th Amendment's anti-commandeering principle. In *New York*

v. United States (1992), the Supreme Court ruled that Congress could not order state legislatures either to regulate low-level radioactive waste in accordance with federal instructions or to take title to the waste. Similarly, in *Printz v. United States* (1997), it ruled that Congress could not order state executive officials to help conduct background checks on would-be handgun purchasers on an interim basis. In *NFIB v. Sebelius* (2012), it struck down the provision mandating states to expand Medicaid eligibility requirements or face federal withholding of funding. All of these cases have been applied as precedence to uphold sanctuary laws.

While the Supreme Court has not yet weighed in on contemporary sanctuary laws, lower federal courts have ruled on the use of ICE immigration detainer requests. In *City of New York v. United States* (1999), the Second Circuit court ruled that states and localities could not directly prevent communication of information obtained about legal status to federal immigration officers (“don’t tell”), but it also preserved state and local power to not inquire about immigrant’s legal status (“don’t ask”) under the 10th Amendment.¹²⁰ Furthermore, in *Galarza v. Lehigh County* (2014), the Third Circuit court ruled that states and localities are not required to imprison people based on ICE detainers. It also ruled that since Lehigh County, Pennsylvania was free to disregard the ICE detainer, it therefore shared in the responsibility for violating Galarza’s 4th Amendment and due process rights. Galarza settled and was paid \$50,000 in damages by the U.S. government, the City of Allentown and Lehigh County in Pennsylvania. Following this case, the Lehigh County Board of Commissions ended its policy of imprisoning people on ICE detainers. Lastly, in *Miranda-Olivares v. Clackamas County*

(2014), the Oregon U.S. District Court ruled that honoring ICE detainees without probable cause is a violation of the 4th Amendment, following *Galarza*'s lead.

The 10th Amendment's anti-commandeering principle is unique because it establishes conditions for states to decouple themselves from the national government and to pass laws that are in seeming conflict with federal law. Federalism conflicts have emerged in other areas of law, but it appears to be even more durable with regard to regulating free movement and bodily presence inside the U.S. States have passed laws protecting same-sex marriage that were in conflict with federal policy until the Supreme Court in *Obergefell v. Hodges* (2015) set up a Constitutional floor under the 14th Amendment that uniformly protects the right to marriage for all. By contrast, on regulating movement, a uniform national policy that would resolve the tension between restrictionist federal law on the one hand, and sanctuary and integrationist state and local laws on the other hand, is fundamentally more complicated.

Without Comprehensive Immigration Reform (CIR) passing, and more importantly, without removing "unlawful presence" from federal law, a federalism conflict will remain the historical norm. Removing legal presence from federal law has never been included as part of previous reform initiatives; instead, increased federal restrictions around unlawful presence and interior enforcement has taken place. Unlawful presence is currently a civil offence. The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), known as the Sensenbrenner bill, sought to criminalize unlawful presence in the U.S., and criminalize citizens' association with undocumented immigrants in the U.S.¹²¹ Federal reforms in immigration law

historically require broad coalitions, or what Daniel Tichenor terms “strange bedfellows.”¹²² The challenge of passing comprehensive immigration reform is constructing a compromise that addresses two opposite goals: restrictive advocates push for stronger border and interior enforcement, while pro-immigrant advocates push for legalization of undocumented Americans. The Sensenbrenner bill led to a powerful counter response of an estimated 5 million people marching in over 300 coordinated demonstrations across the country.¹²³ A federalism conflict over unlawful presence will remain a core feature in immigration federalism because legal presence will remain part of federal law and enforcement strategies, and at the subnational level, sanctuary policies will remain to sever connections to enforcement.

3.5 The Slavery Connection in Today’s Immigration Laws

In determining alienage cases, the courts differential approach towards what states and localities can do to regulate immigrants – narrowing their restrictive capacity and upholding their integrationist capacity – establishes the historical institutional framework for a federalism conflict. This section provides the only comprehensive comparison to date on laws regulating runaway slaves and undocumented immigrants. Immigration scholars have focused on distinguishing early and modern immigration systems as different, and they highlight a transition to federal power over restricting immigrants. By contrast, systematic review of the federalism conflicts in antebellum and contemporary America reveals a different narrative of continuity in the regulation of movement.

I argue that strong parallels drawn out in this section are not mere coincidences, but rather deep connections rooted in a federalism conflict that courts have institutionalized. States and localities had similar legal space for passing sanctuary laws in antebellum and contemporary America. Also, to be clear, the parallel this section draws is not intended to document modern forms of slavery like human trafficking, debt-bondage, and child labor.¹²⁴ Its primary intervention is revealing hidden patterns and connections in American federalism, immigration law, and complexities of illegality.¹²⁵

3.5.1 Federal Parallel

Immigration scholars are mostly correct in arguing that the federal government was absent from early immigration law, but on matters of regulating the movement of runaway slaves, the federal government took on an active and central role in passing highly restrictive fugitive slave laws and creating a regime to enforce these laws. Recaption – the legal process of removing runaway slaves – was routinely practiced throughout colonial America. As states began to abolish slavery within their borders and the federal government took on a more active role in territorial expansion, federal laws were passed to secure the institution of slavery.

The Northwest Ordinance of 1787 set up the first federal fugitive slave law, which was re-written into the U.S. Constitution, under Article 4, stating: “No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be

due.”¹²⁶ The Constitution’s fugitive slave clause did not specify the responsible entity or procedures for enforcing recaption; however, early federal law clearly established that slave owners had a right to reclaim any runaway slave in Northern states or federal territories, effectively making movement and presence of runaway slaves illegal in the North. The Fugitive Slave Act of 1793 clarified the rights of slave owners to recapture runaway slaves in northern states and federal territories, and gave them additional remedies and protections through an anti-harboring provision with up to a \$500 fine.¹²⁷

Under federal law from 1783-1842 slave owners had the right of recaption, including hiring slave catchers to remove runaway slaves and requesting Northern local and state officials to aid in recaption. In 1842, *Prigg v. Pennsylvania* established clearer guidelines, ruling that Congress had plenary power over fugitive slave laws and that state laws preventing recaption were unconstitutional.¹²⁸ The Fugitive Slave Act of 1850 further set up federal control over runaway slaves’ presence, creating new federal mechanisms for regulating recaption, including the appointment of a federal body to administer the system and procedures of issuing search and arrest warrants, certificates of removal and fines for interference. It also established the federal government’s ability to deputize citizens and to appoint commissioners in each federal circuit with powers to delegate authority to district and circuit court judges for fugitive slave claims.¹²⁹

Important parallels exist in federal immigration law today. In 1952, the Immigration and Naturalization Act fundamentally expanded the scope of federal immigration enforcement, making *unlawful presence* a civil offense. In particular, it made a person’s first illegal entry offense a misdemeanor crime with up to a six-month

prison sentence, and added a provision stating that any person who has been previously deported, caught illegally re-entering or found inside the U.S., would be given a second offense of a felony crime with up to two-years in prison.¹³⁰ Restrictive components of federal law continued to expand. In 1986, the Immigration Reform and Control Act (IRCA) established new interior enforcement mechanisms, criminalizing the practice of knowingly hiring unauthorized immigrants and making unauthorized immigrants ineligible for work.¹³¹ In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) further expanded federal control by linking proof of lawful status with who has access to public welfare.

In addition to these glaring similarities, in both periods, the federal government partnered with state and local governments to expand their enforcement capacity. In 1850, the federal government delegated power to state and local courts and private citizens to enforce federal law. Similarly, in 1986, the Criminal Alien Program established a cooperative program that granted federal immigration officers access to local jails in order to screen for unauthorized immigrants. In 1996, Section 287(g) of IIRIRA established a policy for the Department of Homeland Security to enter into agreements authorizing state and local officials to perform specific federal immigration functions under federal supervision.¹³² More recently, from 2008 and ending in 2014, the Secure Communities program established new federal partnerships with state and local jails by using federal immigration and criminal databases to identify and track unauthorized immigrants for deportation, which was replaced by the new Priority Enforcement Program in 2014.¹³³

The federal parallel drawn out in this section contributes a new vantage point for thinking about slavery laws' resonance with contemporary immigration. It shows that these two periods are not entirely dissimilar, and in fact, many of scholars' distinctions between antebellum and contemporary periods become blurred when the focus is placed on runaway slaves and undocumented immigrants. Whereas slavery scholars have focused on drawing out dual federalism by contrasting southern slave states' restrictive laws and the absence of federal law, this chapter reveals a federalism conflict emerging from robust policies regulating runaway slaves passed by northern free states and the federal government. The following two sections unpack state level parallels, and I argue two points: first, a weak restrictionist parallel exists; second, a strong inclusionary parallel exists and a federalism conflict connects these laws as durable features anchored in court precedent.

3.5.2 Restrictionist State-Level Parallel

In 1803, Ohio entered the Union with a state constitution banning slavery. However, it also added a clause permitting the indentured servitude of both whites and blacks. The state constitution also denied blacks' the ability to vote and hold public office.¹³⁴ In 1804, a year following admission to statehood, Ohio passed its first set of restrictive immigration laws, requiring blacks to show proof of freedom before entering, residing or searching for employment in the state, and requiring blacks to register with their county of residence, a practice not required for white immigrant residents. Regarding runaway slaves, the 1804 law mandated state institutions to aid in recaption

and made it a misdemeanor crime for anyone to interfere in recaption, with fines of up to \$1000. Notably, this law established the first state recaption policy in the U.S., one that was separate from enforcing the federal fugitive slave law.¹³⁵ In 1807, Ohio expanded its restrictions on entry by requiring blacks to attain two sponsors who were property owners and willing to post a \$500 bond that guaranteed future good behavior of new black residents. This law also banned black testimony against whites, increased fines for interfering in recaption, and mandated that employers and schools aid in the recaption of runaway slaves and verify certificates of freedom of all blacks in the state.¹³⁶

Following Ohio's lead, Indiana passed similar restrictions on black entry and registration. In 1816, Indiana entered the Union passing a constitution that prohibited both slavery and indentured servitude; however, it continued enforcing territorial laws requiring blacks to provide proof of freedom for entry, and excluding blacks from enumeration, voting, testimony and serving in the militia.¹³⁷ In the wake of major national attention on the Fugitive Slave Act of 1850 and Kansas-Nebraska Act in 1854, Indiana went further than Ohio in the 1850s, by shutting its doors to all blacks and developing a system of removal to rid the state of its current black residents. In 1851, Indiana passed a new state constitution that banned all new blacks from entering and gaining employment in the state. Moreover, fines from enforcing employer sanctions were applied towards a colonization program to remove black residents from the state.¹³⁸ In 1852, Indiana passed a law requiring all blacks residing in the state prior to November 1, 1851, to register or face removal.¹³⁹ In 1852, 1853 and 1855, Indiana passed three additional laws that strengthened its colonization program.¹⁴⁰

Paul Frymer recently highlighted similar dynamics in early homestead laws that banned or restricted free blacks from immigrating to new western territories and states.¹⁴¹ While slavery was formally ended in the North, as Ohio and Indiana highlight, black immigration restrictions were expansive. In many northern and western states, blacks were presumed to be runaway slaves and required to carry proof of freedom to protect themselves from removal and enslavement.

Functionally similar laws have been passed by states today to restrict undocumented immigrants' movement, residency and access to public resources. In 1993, California passed a law requiring all driver license applicants to provide a social security number and proof of lawful immigration status.¹⁴² By 2012, states requiring proof of lawful presence for access to driver licenses reached its highest point at 46 states.¹⁴³ States have also restricted immigrant access to employment by mandating employers to use E-Verify, an internet-based system that verifies work eligibility under the federal law IRCA. A clear antebellum parallel exists for these contemporary laws, particularly restrictions requiring blacks to carry certificates of freedom and anti-harboring laws mandating employers and schools to verify blacks' legal status.

Significantly, there is a separation and cut-off between the two period's restrictions, which emerges in state laws today that operate similarly to federal immigration laws on entry and removal, and that are justified as state level efforts to mirror or cooperate in enforcing federal immigration law.¹⁴⁴ SB 1070 is known to be one of the harshest state laws passed in recent decades; it made immigrants' physical presence and act of applying for a job in the state without proof of federal legal status a

state level crime, and it required state police officers to detain anyone they suspected to be unlawfully present inside the country.¹⁴⁵ These restrictions added to Arizona's Legal Arizona Workers Act (LAWA), passed in 2008, which restricted undocumented immigrants from gaining employment in the state by requiring employers to verify an applicant's work eligibility through the federal E-Verify system. Kris Kobach, key author of SB 1070, framed the law as a cooperative state effort to aid in enforcing immigration law, stating: "The [Arizona] legislature finds that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona."¹⁴⁶

Contemporary state level initiatives to enforce federal law and to supersede federal restrictions have been severely limited compared to antebellum states, which, by contrast, had unfettered authority to restrict the lives of free and enslaved blacks alike. The Supreme Court upheld LAWA, but it ruled most of SB 1070 unconstitutional with the exception of Section 2(B) – the "show me your papers" provision – requiring police to check the immigration status of anyone they suspect as being unlawfully present.¹⁴⁷ Similarly, in 1994, California's comprehensive restrictive immigration law, Proposition 187 – which banned unauthorized immigrants from receiving any public service in the state, including health care and public education, and mandated state law enforcement officers to check the legal status after arresting anyone suspected of being unlawfully present in the country – was immediately challenged in several lawsuits and held unconstitutional.

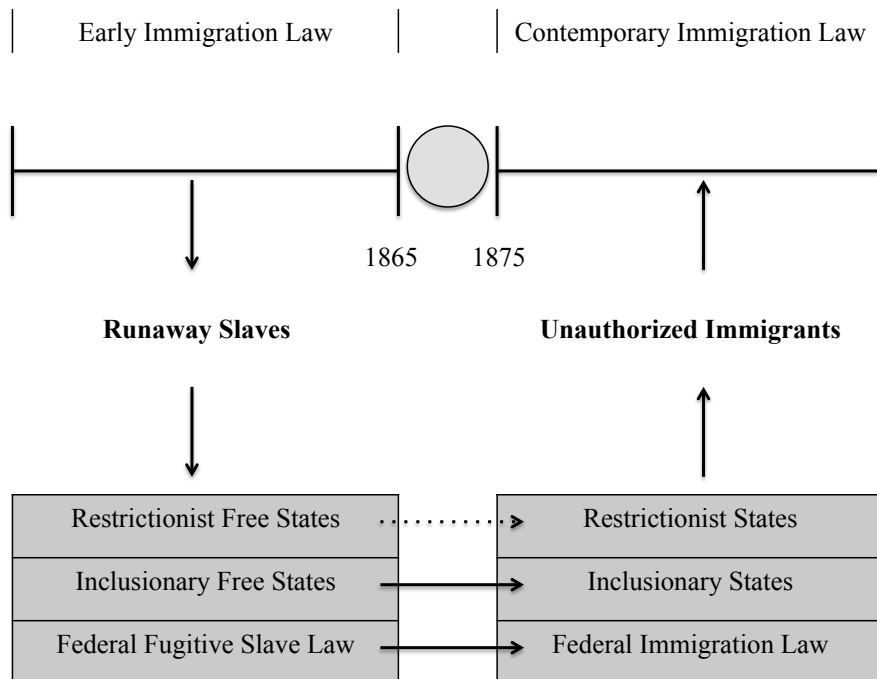
Immigration scholars are right to think of today's restrictions on immigrants as an

entirely modern system under the plenary powers doctrine and separate from early forms of immigration control.¹⁴⁸ While a state level parallel exists, it has significant gaps, and contemporary states in particular have significantly less power compared to antebellum states. I argue the opposite to be true for state level sanctuary and integrationist policies.

3.5.3 Inclusionary State-Level Parallel

In the North, restriction is only one side of the story. To add conceptual clarity to the parallels, Figure 3.3 below signifies a deep parallel existing on state level inclusionary laws with a solid arrow, and signifies a weak restrictionist parallel with a dashed arrow.

Figure 3.3 Slavery Parallel (Federal and State Levels)



Pennsylvania and Massachusetts led the North in passing a range of laws to protect and integrate all blacks within their territorial borders, including runaway slaves. In addition to ending slavery, both states passed laws automatically freeing any slave brought into their borders by slave owners – referred to as “slaves in transit.”¹⁴⁹ Most significantly, they passed a range of laws protecting all black residents of the state. Due process protections – which included habeas corpus (ensuring that a judge investigated recaption claims and afforded them a full hearing), writs of *replevin* (ensuring that all detained blacks were brought to court), trial by jury and black testimony – granted runaway slaves’ access to the state courts. Anti-kidnapping laws made it a punishable crime to remove *any* black person from the states’ jurisdictions without court approval. Most significantly, non-cooperation laws banned state and local officials from participating in enforcing federal fugitive slave law, and denied the federal government the right to use state and local courts and resources to hear cases.

In 1820, and again in 1826, Pennsylvania passed the first sanctuary laws banning all state officials and state resources from being used to enforce the 1793 fugitive slave law. In 1843, Massachusetts followed, modeling its first sanctuary law after Pennsylvania’s law, and in 1855, went further by passing an omnibus law, which forbid state officials from enforcing the federal fugitive slave law and included a strict anti-kidnapping law and additional due process protections (it appointed special state commissioners to defend runaway slaves in court, placed the burden of proof on slave owners and provided all blacks with the right of habeas corpus, trial by jury, and right to testify against whites in court).¹⁵⁰

Table 3.3 State Sanctuary Laws in Pennsylvania (PA) and Massachusetts (MA)

Year	State	Policy
1780	PA	Gradual emancipation law (first in the North)
1783	MA	Court ordered emancipation
1785	PA	Due process protection – habeas corpus
	MA	Anti-kidnapping law
	MA	Due process protection – habeas corpus
1787	MA	Due process protection – writ of replevin
1788	MA	Anti-kidnapping law
1820	PA	Non-cooperation law
1820	PA	Anti-kidnapping law
1826	PA	Non-enforcement law
1836	MA	Slaves in transit emancipation law
1837	MA	Due process protection – trial by jury
1843	MA	Non-cooperation law
1847	PA	Non-cooperation law
	PA	Due process protection – habeas corpus
	PA	Anti-kidnapping law
	PA	Slaves in transit emancipation law
1855	MA	Non-cooperation law
	MA	Anti-kidnapping law
	MA	Due process protection – habeas corpus
	MA	Due process protection – trial by jury
	MA	Due process protection – black testimony
	MA	Due process protection – burden of proof on claimant

States today are passing a range of laws that are similarly inclusive and protective of undocumented residents. In 2013, California passed a law granting state driver licenses to immigrants regardless of legal status, which notably included an anti-discrimination provision making it illegal for police to target and investigate drivers with new licenses for possible immigration violations. California also recently passed two laws granting undocumented residents access to professional licenses, including a law in

2012 that expressly authorizes them to practice law in the state, and a law in 2014 requiring forty licensing boards under the California Department of Consumer Affairs to consider applicants regardless of federal legal status.¹⁵¹ Furthermore, states have passed a range of laws that extend to undocumented residents access to workplace protections, higher education and health care.¹⁵²

Counties and cities are also taking important steps in the same direction. Between 2007 and 2012, San Francisco, Oakland, Richmond, and Los Angeles passed municipal ID ordinances, which provided identification cards to all residents including undocumented immigrants.¹⁵³ These city ID cards facilitate access to vital resources, including banking, health care services and libraries, and they make it easier for unauthorized residents to interact with public officials and law enforcement without fear of removal.¹⁵⁴

Most striking is today's parallel on non-cooperation laws, where states and localities have limited their participation in enforcing federal immigration law. In 2013, California and Connecticut enacted the first state TRUST Acts, which stipulate that officers can only enforce immigration detainers issued by the ICE for persons convicted of serious crimes.¹⁵⁵ Much like removal certificates issued to detain runaway slaves, a detainer request is a formal notice by ICE to federal, state or local law enforcement agencies of their intention to take custody of potential unauthorized immigrants. Moreover, at the local level, the District of Columbia currently restricts detainers by requiring ICE to provide court ordered warrants, and in a joint statement, every jail in

Colorado has stated their intention of not honoring ICE detainer requests. More than 100 counties and cities throughout the U.S. now have anti-detainer policies in place.¹⁵⁶

The recent event of Juan Francisco Lopez-Sanchez, a convicted felon and undocumented immigrant, shooting and killing San Francisco native Kathryn Steinle, has sparked heated debate on whether these sanctuary policies are Constitutional and whether they are preempted by federal immigration law. Even in states like California, which have led the movement to welcome, integrate and protect undocumented immigrants, political leaders responded to Kathryn Steinle's death by supporting legislation that would punish and possibly limit localities from passing sanctuary laws. As Table 3.2 highlights, however, the court has upheld both integrationist and sanctuary policies, and has ruled that the federal government cannot mandate states and localities to enforce federal law.

Similar debates emerged over runaway slaves. In 1851, one year following the passage of the Fugitive Slave Act, Shadrack Minkins, a runaway slave who worked at a café in the city of Boston, was arrested and detained by John Caphart (a slave catcher) and federal officials. Prior to this event, Massachusetts had passed a range of laws protecting runaway slaves, including due process, anti-kidnapping, and non-cooperation laws that prevented federal officers from using state resources during their arrest of Minkins. Immediately following his arrest, the Boston Vigilance Committee alerted city officials, activists and abolitionist lawyers, and an abolitionist petition was drafted and given to the State Supreme Court to delay federal action on Minkins' removal. Soon after, abolitionists entered the federal courthouse and physically remanded Minkins from

federal marshals, and Minkins successfully escaped to Canada, where he was granted permanent refuge. This story of a federalism conflict is deeply woven in the history of Northern sanctuary laws.

The Supreme Court ruled in *Prigg v. Pennsylvania* (1842) that the federal government had plenary powers over fugitive slave law, but equally important, it also ruled that the federal government could not mandate states and localities to enforce federal law. Months after the *Prigg* ruling, a slave named George Latimer and his pregnant wife escaped from Norfolk, Virginia to Boston, Massachusetts, where they were shortly thereafter arrested. Judge Joseph Story in Massachusetts ordered Latimer to be detained and asked for proof of ownership before ordering his removal. The Liberty Party and abolitionists immediately responded by establishing a Latimer Committee, purchased Latimer's freedom, and led in a targeted state petition campaign that received over 64,000 signatures for new state legislation to protect runaway slaves. Massachusetts passed its first non-cooperation law in 1843.

The deep tension between federal restriction and Northern sanctuary laws is most illuminated by the infamous 1854 rendition case of Anthony Burns, who escaped in 1843 and was recognized and detained the following year in Boston. During his hearing, abolitionists stormed the courthouse to physically remove Burns from federal custody. President Franklin Pierce responded by sending over two thousand U.S. troops to enforce the Fugitive Slave Act of 1850, demonstrating the federal government's resolve to enforce its laws and to use the rendition of Burns as an example of federal plenary power. The case ended with Burns' removal, but Massachusetts responded in 1855 by passing

the North's most comprehensive non-cooperation law, thereby showing its own resilience and resolve.

Federalism has always left an indelible mark on the regulation of movement, presence and life chances by preserving state and local governmental power to protect and integrate residents of various classes. The very existence of runaway slaves and undocumented immigrants creates conditions for a conflict to emerge between federal and subfederal laws, and history reveals that this is not easily resolved, especially in the context of federal preemption over fugitive slave law or contemporary immigration law.

Systematic review of state authority, to restrict and protect runaway slaves and undocumented immigrants, spotlights two divergent historical paths in state regulatory power – one of change and one of continuity. The latter pathway of continuity is a distinction that scholars overlook, and this chapter's concept of a federalism conflict fills this gap. This concept adds new light on the recent flurry of subnational integrationist laws by linking them to historical examples of state regulations and power.

Table 3.4 below maps the scope of state power to pass a range of restrictive and inclusive laws related to the movement and presence of runaway slaves and free blacks in the antebellum North and unauthorized and authorized immigrants today. Specifically, it addresses the question: What is the scope of state power to regulate the lives of runaway slaves and unauthorized immigrants (considered by federal law to be unlawfully present) and of lawfully present free blacks and immigrants? This sharper comparison clarifies what is and what is not fundamentally linked between slavery and immigration law, and

it reveals federalism conflict to be a durable feature in America's regulation of movement.

Table 3.4 Comparative Allocation of State Power to Pass Laws

	Runaway Slaves	Undoc. Immigrants	Free Blacks	Legal Immigrants	
Restriction	Entry Ban	✓	Preempt	✓	Preempt
	Cooperation in Enforcement	✓	*	N/A	N/A
	Private Enforcement	✓	✓	N/A	N/A
	Transportation Ban	✓	✓	✓	Preempt
	Internal Check Points	✓	*	✓	Preempt
	Harassment	✓	✓	✓	Preempt
	Segregation	✓	✓	✓	Preempt
	Detention	✓	*	✓	Preempt
	Expulsion/Removal	✓	Preempt	✓	Preempt
	Employment Ban	✓	✓	✓	Preempt
	Education Ban	✓	✓	✓	Preempt
	Voting Ban	✓	✓	✓	✓
	"Free Presence" (Cumulative)	High Scope	Medium Scope	Medium Scope	Low Scope
	"Life Chances" (Cumulative)	High Scope	High Scope	Medium Scope	Low Scope
Comparison Across Periods	Medium Similarity		High Difference		
Sanctuary / Integration	Non-Cooperation in Enforcement	✓	✓	N/A	N/A
	Transportation Access	✓	✓	✓	N/A
	Anti-Discrimination Protections	✓	✓	✓	✓
	Due Process Protections	✓	✓	N/A	N/A
	No Federal Status Req. For:				
	- Employment	✓	✓	✓	N/A
	- Education	✓	✓	✓	N/A
	- Voting	✓	✓	✓	✓
	"Free Presence" (Cumulative)	High Scope	High Scope	Medium Scope	Low Scope
	"Life Chances" (Cumulative)	High Scope	High Scope	High Scope	Low Scope
Comparison Across Periods	High Similarity (Parity)		Medium Difference		

✓ State Power

* State Power (only when partnered with the federal government)

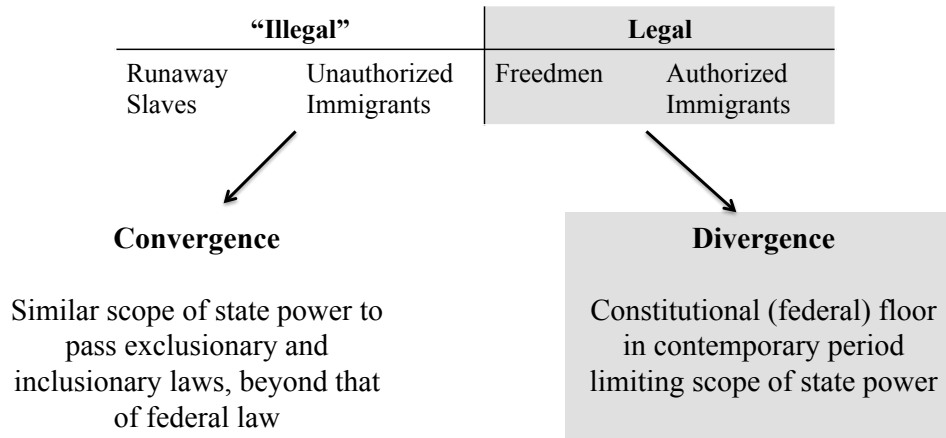
Preempt Power Exclusive to the Federal Government (preemption)

N/A Policy Not Applicable to Group

Table 3.4 highlights that on a range of both exclusionary and inclusionary laws, the distinction between the antebellum and contemporary periods is blurred. Northern states that welcomed free blacks, but also passed laws to restrict runaway slaves from entry, internal movement and access to public resources, created a sharp distinction between legal and “illegal,” which parallels contemporary states that pass laws excluding unauthorized immigrants. In these two contexts, both federal and state restrictionist laws sharpen illegality. A key difference here is that contemporary states have little power to exclude legal immigrants, while antebellum states had the power to restrict both free blacks and runaway slaves. Also, states today have less power to exclude unauthorized immigrants concurrent to federal enforcement, highlighted by the fact that states are unable to ban entry or practice in removal, and that they can only engage in many restrictive acts in partnership with the federal government. Most notable is the parity across periods of states’ power to pass laws inclusive of runaway slaves and unauthorized immigrants.

To summarize, for groups considered legal under federal law, there is a clear separation between the two periods. Federal protections and rights granted to legal immigrants supersede state power to restrict legal immigrants, and preempt legal conflicts from emerging. For groups considered unlawfully present under federal law, however, a blurring of the two periods takes place and reveals both federal and state governments as continuing to hold significant regulatory power.

Figure 3.4 Similarities and Differences in Power Allocation



For groups considered lawfully present under federal law, including free blacks and authorized immigrants, Table 3.4 and Figure 3.4 provide a very different picture of divergence and lack of commonality across periods. This fits the narrative given by Neuman and Law that emphasizes a break in immigration law between the antebellum and contemporary periods.¹⁵⁷ Whereas federal law considered free blacks to be lawfully present, unlike runaway slaves, the scope of state power to regulate free blacks were expansive during the antebellum period. In the South, states consolidated power not only over movement into and within its borders, it also had power to enslave free blacks and engage in the inter-state slave trade. By contrast, states today have limited power over legal immigrants, marking a clear divergence between the two periods. Notable similarities, however, exist on state powers to be inclusive of runaway slaves and unauthorized immigrants, and I argue that this is rooted in American federalism and the court’s interpretation of plenary power and state sovereignty.

3.6 Conclusion

Slavery law has much to offer immigration scholars. This is especially true for scholars seeking to explain the origin, development and precedence for today's immigration policies. Daniel Tichenor has long held that history is significant for revealing "crucial patterns and transformations in American immigration politics and policy over time."¹⁵⁸ Similarly, Anna Law argues that by not exploring immigration history our understanding of contemporary events gets distorted.¹⁵⁹ The first contribution this chapter makes is it reveals how slavery law established a multi-faceted system of immigration control, one that not only restricted the movement of slaves, but also included Northern sanctuary laws and a federalism conflict that resonate today.

The second contribution this chapter makes is it develops a new concept – what I term a *federalism conflict* – to better explain sanctuary laws in a historical perspective. Convention considers immigration law to be a cohesive set of national, state, and local laws, but the concept of a federalism conflict suggests the opposite.¹⁶⁰ I provide a systematic review of federal laws and sanctuary laws on runaway slaves and undocumented immigrants to reveal deep conflicts that span American history. Further, I argue that the courts set a historical baseline on what states can and cannot do to regulate free movement and presence preserves that institutionally connects antebellum and contemporary sanctuary laws. Until now, these dynamics and connections have gone hidden in the scholarship.

Given the institutional foundations for sanctuary laws in American federalism, Northern laws hold a special resonance for contemporary politics. States in the North

ended their enforcement of federal fugitive slave law and passed a range of laws protecting runaway slaves from recapture. Notably, these laws were part of a long battle over abolition, and the antebellum federalism conflict did not end from national compromise; it was resolved after tension between the North and South hit a violent tipping point that led to the Civil War, and Congress passed the 13th and 14th Amendments securing free movement and presence for all blacks.¹⁶¹

Comprehensive Immigration Reform (CIR) today is at a standstill and will likely not lead to the type of wholesale national change America experienced in ending slavery. As I argue in this chapter, sanctuary laws differ from other policy areas like same-sex marriage and marijuana because not all state policies that regulate immigrants are likely to serve as models for national change. All recent CIR proposals have left in tact “unlawful presence” in federal immigration law, and have focused on the issue of undocumented immigrants through legalizing their status under federal law. This does not resolve the federalism conflict. The 13th and 14th Amendment marked the culmination and victory of abolitionist sanctuary laws by permanently erasing slaves as a legal status under federal law. By contrast, CIR proposals preserve “unlawful presence,” and even blanket schemes to legalize all documented immigrants offer temporary reprieve to a conflict between restrictive federal laws and sanctuary laws.

This chapter makes a third contribution by adding significance to the cumulative affect state policies might have on the lives of runaway slaves and today’s undocumented immigrants. Scholars are now examining what pro-immigrant integration laws might mean for our notions of membership, and the concept of a federalism conflict help reveal

how sanctuary laws decouple state and national conceptions of citizenship.¹⁶² Karthick Ramakrishnan and Allan Colbern argue that a “growing number of state laws [today] that push towards greater immigrant integration, on matters ranging from in-state tuition and financial aid to undocumented students, to expanded health benefits and access to driver’s licenses” create a “de facto state citizenship” that is inclusive of undocumented immigrants.¹⁶³ Sanctuary laws provide an especially important function of decoupling states from federal notions of citizenry.

To be sure, sanctuary laws are also limited. Undocumented immigrants’ rights of free movement and presence only exist within the territorial borders of states and localities. While a U.S. citizen and authorized immigrant can use federal identity documents to cross borders and travel abroad, undocumented state residents with access to a drivers license or city ID card face high risks outside of their sanctuary jurisdictions. The ever present threat of federal enforcement remains; recaption by slave masters remained a constant danger in the North until the eventual abolition of slavery, and so too does the risk of deportation in the absence of national reform. Runaway slaves and undocumented immigrants exist in two worlds and are subject to two authorities – federal and state – that construct competing definitions of belonging and have varying capacities to enforce their laws.

Restrictionist mobilized behind the San Francisco incident in 2015 to gain larger traction on expanding how federal immigration law is enforced. Especially prominent in this debate has been an understanding of federal plenary power based on the ideal of a uniform national, state and local policy. This notion has led policymakers to target

sanctuary laws. Although anti-detainer policies are relatively new, extensive regulations on runaway slaves reveals historical precedence on this issue, and it sheds more favorable light in support of preserving states and localities' authority to be inclusive. Sanctuary laws are also rooted in the U.S. Constitution and have been preserved by court decisions on slavery, immigration and alienage cases throughout American history. Recognizing that a federalism conflict is not a mere aberration in law offers immigrant advocates a rebuttal in the ongoing sanctuary debate, and it illuminates opportunities at national, state and local levels for advocates to pursue policy changes that would facilitate the lives of undocumented Americans.

Chapter 4

Runaway Slaves and the Federalism Conflict: A Reappraisal, 1780-1860

In antebellum America, federal law and the U.S. Constitution considered runaway slaves to be unlawfully present in the North. Nevertheless, northern states passed laws welcoming and protecting runaway slaves and ending their enforcement of federal law. Conventional accounts explain Northern personal liberty laws (the equivalent to today's "sanctuary policies")³ as a response to increased sectional conflict between the North and South. This chapter provides new research systematically documenting restrictive and sanctuary laws passed by six northern states from 1780-1860 to highlight significant variation. Northern sanctuary laws were neither uniform nor simultaneously passed, but no attempt to explain such variation exists. This chapter contributes a new theory of how federalism shaped abolitionist coalition building that led to variation in sanctuary laws, explaining both their timing and spread across northern states. By focusing on how federalism shapes activism on sanctuary policy, this chapter also sets up why abolitionism has relevance for thinking about contemporary struggles over similar sanctuary policies for undocumented immigrants.

³ Please note that the historical term used for state laws granting runaway slaves and free blacks protection is "personal liberty" laws. However, throughout this chapter, I employ the contemporary term "sanctuary" policy with the goal of establishing a clearer functional connection between antebellum and contemporary policies. I use "personal liberty" laws only when referencing the secondary scholarship's use of the term.

4.1 Introduction

“12 Years a Slave” illustrates how the territorial border dividing the North and South fundamentally shaped the lives of blacks in America, particularly their status as either “free” or “slave.”¹⁶⁴ Solomon Northup, a free black person living in New York with his wife and children joined a circus in Washington, D.C. as a violinist, unknowingly with two white men who were slave catchers in disguise. After leaving the free North and entering the slave jurisdiction of D.C., Northup wakes from being drugged the following morning and is shackled in a slave pen. He is quickly sold into slavery. In slavery, Northup met Canadian abolitionist Samuel Bass, who wrote on Northup’s behalf to his family and friends revealing in the letter his kidnapping and location. In a sectional battle over slavery and freedom, Attorney Henry B. Northup, with the support of New York’s Governor, travelled to Louisiana to restore Northup’s freedom after 12 years of being unlawfully enslaved. Northup’s precarious position as a black person in antebellum America is highlighted by the fact that the North-South border determined his legal status.

Much like the Mason Dixon line separating the North and South marks an important political divide in antebellum America, this chapter reveals how fundamental lines of freedom were also constructed within the North through state laws that differentially regulated the movement and presence of runaway slaves and free blacks. In other words, freedom was not only determined by the Southern border. This chapter reveals the fundamental role of Northern sanctuary laws for shaping black freedom; specifically, I trace variation in the passage of laws across six northern states from 1780-

1860, capturing the timing, sequencing, and scope of Northern restriction and sanctuary laws. This chapter contributes a better empirical and theoretical understanding of Northern freedom to the slavery scholarship by accounting for the *timing and spread of Northern sanctuary laws*.

Conventional accounts focus on how sectionalism caused northern states to pass personal liberty laws, leaving important variation unaddressed. To summarize, the focus has been on how national slavery events (like the Missouri Compromise of 1820) increases sectional tension, thereby causing northern states to pass personal liberty laws. This account is limited, however: while it explains some sanctuary laws, it does not fully capture the variation that occurs across states, over time. This chapter contributes a new federalism framework for analyzing abolitionist reforms to explain policy variation; further, it builds on the scholarship by incorporating national events as an endogenous factor that explains some, but not all, sanctuary policies.

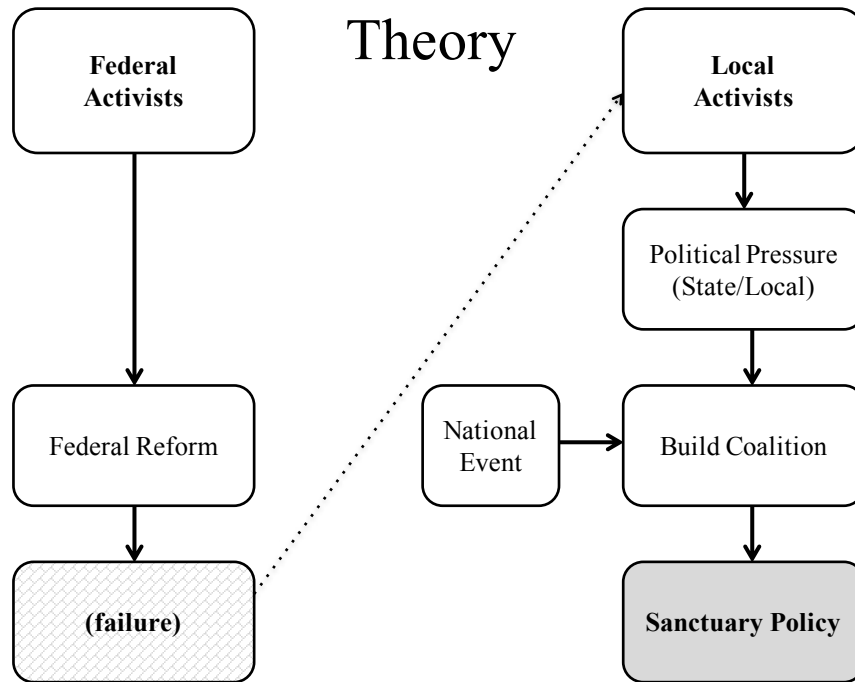
Federalism shapes how activist engage in policymaking and is critical for understanding the proliferation policies. This is especially true for Northern sanctuary policies that directly protected runaway slaves in conflict with federal law, creating what I call in Chapter 3 a *federalism conflict*. Article 4, Section 2 of the U.S. Constitution expressly forbid states from freeing and formally recognizing runaway slaves as free persons. Federal law also established a strict enforcement regime to aid slave owners in recapture – the removal and return of runaway slaves to slave owners – and the U.S. Supreme Court recognized the federal government’s plenary power over regulating runaway slaves in *Prigg v. Pennsylvania* (1842). Despite federal preemption and

restrictions on blacks, northern states passed a range of laws granting runaway slaves the right to free movement and presence in northern territorial borders. These state laws included non-cooperation laws (ending state participation in enforcing federal law), anti-kidnapping laws, due process laws, and abolition laws, all of which insulated and protected runaway slaves from recapture. The sectionalism account makes no attempt to examine how federalism shapes abolitionism, despite the significance of federal, state and local politics and policy that causes a federalism conflict to emerge.

4.2 Theory of Sanctuary Policies

Abolitionists in the late 1700s and early 1800s first directed their resources and energy to reforming national policy on slavery and fugitive slave law. After facing repeated failure, and in response to national events (the key factor in the sectionalism account), they shifted away from a national reform efforts to push for state sanctuary policies.

Figure 4.1 A Theory of Sanctuary Policies in a Federalism Framework



My theory builds on the abolitionism scholarship to document important variation in abolitionist coalitions and strategies at the federal level and in each state. An overview of my theory in Figure 4.1 above highlights activists existing at the national level and local level. By employing process tracing, I identify the primary abolitionist societies of each northern state and disaggregate them on their national and local orientation. My theory draws from the federalism scholarship, particularly on how federalism creates multiple venues for activists to engage in policymaking and reform. I reveal how policy reform at national and state/local levels was a central debate dividing abolitionists, on pursuing total national abolition or patchwork victories (like sanctuary policies) at the state or local level. I theorize that national abolitionists viewed sanctuary policies as a

risk to their national reform efforts because they threatened broad coalitions between Northern and Southern leaders in Congress. Local abolitionists, on the other hand, engaged in civil disobedience and resistance to federal law in the Underground Railroad, and welcomed state and local sanctuary policies alongside these efforts, but lacked the necessary political resources to push for them alone.

Repeated federal reform failures shifts the center of gravity of both national and local activists, and cause sanctuary policies to gain more clout. National abolitionists become open to new strategies at the state and local level, and open to forming state level coalitions with local abolitionists. Variation in the formation of state coalitions, I argue, explains why some states pass sanctuary policies while others do not. The conventional sectionalism account highlights national events as the key factor, which I incorporate into my theory: once state coalitions begin to form, national events then play a critical role as leverage used by these coalitions to pressure state officials to pass sanctuary policies. This federalism framework and account of state coalition building explain the timing and spread of sanctuary policies across northern states.

This new analysis not only offers an important reappraisal of abolitionist strategies, it also has relevance for contemporary struggles over sanctuary policies for undocumented immigrants, where advocates are pushing for state laws that stand in seeming conflict with Congressional law on immigration restriction. The chapter concludes with a brief discussion of how a federalism conflict over runaway slaves sheds new light on patterns today in immigration federalism and activism.

4.3 The Conventional Wisdom

Before describing Northern policy variation, this section reviews the literature on runaway slaves and sanctuary in the antebellum era in three bodies of scholarship: Northern emancipation, the Underground Railroad, and sectionalism. Despite their shared focus on the North and on runaway slaves, few scholars address Northern sanctuary laws directly, and scholars studying sectionalism provide the only theory of why northern states passed personal liberty laws.

Northern emancipation (beginning in 1780) has a rich scholarship and provides an important starting point for sanctuary laws, especially since state emancipation laws mark the first legal departure by northern states away from slavery. Arthur Zilversmith and David Gellman provide the classic account of Northern abolition by highlighting how egalitarian ideas led to their spread in the late 1700s and early 1800s.¹⁶⁵ Ever since, emancipation scholars have revealed critical variation across northern states and contestation over the passage of emancipation laws and treatment of free blacks, but only occasionally mention sanctuary laws. Gary Nash and Jean Soderland, for example, argue that abolitionists were the key actors driving emancipation laws, and faced significant state level opposition by pro-slavery advocates.¹⁶⁶ Leon Litwack's seminal study of the North reveals that after abolishing slavery, northern states disenfranchised and segregated free blacks through a myriad of political, economic, social and religious restrictions.¹⁶⁷ Joanne Melish explains that white Northerners pressured states to pass colonization policies to remove free blacks. Furthermore, Jane Pease and William Pease explain that even white abolitionists opposed black equality.¹⁶⁸ Collectively, emancipation scholars

provide great depth and nuance to abolition in the North and how free blacks are treated, but they do not directly address Northern personal liberty laws that protected runaway slaves and free blacks alike.

Notably, this gap in the scholarship does not result empirically from runaway slaves' lacking a presence in the free North. Franklin and Shweinger estimate that in the year 1860, potentially 50,000 slaves fled their slave owners in the South, and Stanley Campbell estimates that between 8,000 and 15,000 runaway slaves escaped to the North between 1850 and 1860.¹⁶⁹ To control slaves' movement, southern states created policing regimes.¹⁷⁰ Meanwhile, in the North, abolitionists created a vast network to aid runaway slaves in their escape.¹⁷¹ Nevertheless, an important gap exists; emancipation scholars have focused exclusively on the Northern treatment of free blacks, meanwhile Underground Railroad (UR) scholars have focused on abolitionists' extra-legal means to aiding runaway slaves, not state laws. Keith Griffler and Eric Foner's accounts of the UR, for example, focuses on revealing how free blacks were disproportionately involved, compared to whites, in facilitating slaves' escape to northern cities.¹⁷²

To date, only sectionalism scholars offer an analysis of Northern sanctuary laws, and they establish what I term the National Events Model (NEM), which emphasizes increased sectionalism between the North and South, and specifies national events related to slavery and sectionalism as the primary drivers of Northern legislation. NEM posits that the Missouri Compromise of 1820, among other national events, placed slavery in the forefront of national politics; this in turn led to increased sectionalism and was a catalyst to Northern legislation. Notably, I argue that NEM's top-down explanation

misses federalism dynamics and state level processes important to Northern legislation, and assumes that northern states moved simultaneously to pass sanctuary laws.

Paul Finkelman examines interstate court cases on runaway slaves to highlight the general timing of Northern legislation, particularly Northern and Southern courts' transition away from using the doctrine of comity – the recognition of out-of-state laws.¹⁷³ In the early 1800s, northern states ended their practice of comity by freeing slaves in transit, which effectively prevented slave owners from safely travelling to the North without risking their slaves becoming free. In the 1830s, the issue of fugitive slaves replaced the issue of slaves in transit as northern states began passing personal liberty laws that recognized all blacks in northern state borders as free, including runaway slaves. Finkelman's convincingly reveals thematic shifts that show a general decline in comity and increase in sectionalism over time, but offers only a limited explanation of Northern legislation.

Thomas Morris similarly explores Northern statutory and court case records to highlight increases in sectionalism.¹⁷⁴ He argues that emancipation laws led northern states to shift their presumptions about blacks' legal status from “slave” to “free.” Through state laws and court cases in Massachusetts, New York, Pennsylvania, Ohio and Wisconsin, Morris reveals an emerging conflict over the presumption of black's legal status between the North and South.

Finkelman and Morris's accounts are limited. They address key moments in the development of Northern laws by recognizing thematic regional shifts and junctures, but miss northern state level particularities. No explanation of important variation in the

timing and spread of laws across northern states if given. Moreover, binary treatments of blacks' legal status as either "slave" or "free" has prevented sharper analysis of the gradations of freedom granted to runaway slaves under Northern laws from taking place. Northern states' reception of runaway slaves differed greatly: some were highly welcoming and passed a range of laws to increase runaway slaves' freedom, while others passed minimal protections, and some led in the opposite direction of restricting runaway slaves. NEM's account misses such variation and nuance.

Norman Rosenberg and Stanley Campbell highlight the Kansas-Nebraska Act of 1854 as critical events causing northern states to pass personal liberty laws in 1854 and 1855.¹⁷⁵ Rosenberg posits that northern states no longer felt obligated to enforce the Fugitive Slave Act of 1850, since the Kansas-Nebraska Act severed the Missouri Compromise of 1820 between the North and South by extending slavery. However, he also explains that Northern legislation was more symbolic of frustration with national policymaking than a concerted movement.¹⁷⁶ Campbell provides a similar explanation of laws passed in the 1840s and between 1854 and 1855, arguing that these were Northern responses to *Prigg v. Pennsylvania* (1842) and the Kansas-Nebraska Act in 1854, which led to "indignation and resentment" in the North.¹⁷⁷

While these studies address the question of Northern legislation from different vantage points, they collectively point to top-down process of sectionalism. Finkelman and Morris highlight a growing resistance to comity and advancement of blacks' due process and equal protection in the North. Rosenberg and Campbell, on the other hand, point to individual national policies and events as sparking Northern reactions. To date,

no study documents the range of laws passed in the North, which leaves the actual scope of protection unexplored. The next section fills this gap by tracing variation across six northern states from 1780 to 1860.

4.4 Empirical Research on Northern Laws

In undertaking this research, I developed a typology of laws on the free movement and presence of free blacks and runaway slaves, and I employed the method of structured focused comparison to document all of laws in my typology considered either a sanctuary and restrictionist law, across six northern states.¹⁷⁸ I selected six states by turning to the secondary literature and identifying the three most recognized inclusive and three most restrictive states with long histories, in order to maximize variation. Empirically, through extensive secondary and original archival research, I traced four “sanctuary” policies in all six states – 1) abolition, 2) anti-kidnapping, 3) due process, and 4) non-cooperation – all of which expanded runaway slaves’ right to free movement and bodily presence. Archival research of these laws and abolitionist movements included the Historical Society in Pennsylvania, Massachusetts Historical Society and New York Historical Society, where I focused on the general archives of state laws, court case histories and abolitionist societies records.

To summarize my findings, northern states passed a variety of sanctuary policies. These included due process rights (the right to testify against whites, right to a trial by jury, access to writs of habeas corpus, and access to writs of replevin), and anti-kidnapping laws that protected free blacks from being kidnapped and runaway slaves

from facing recaption. States also passed slave transit laws that emancipated slaves brought into northern states by their masters. Most like our contemporary understanding of sanctuary policies, northern states passed non-cooperation laws banning state officials and state resources from aiding in recaption and even mandating state officials to interfere in recaption.

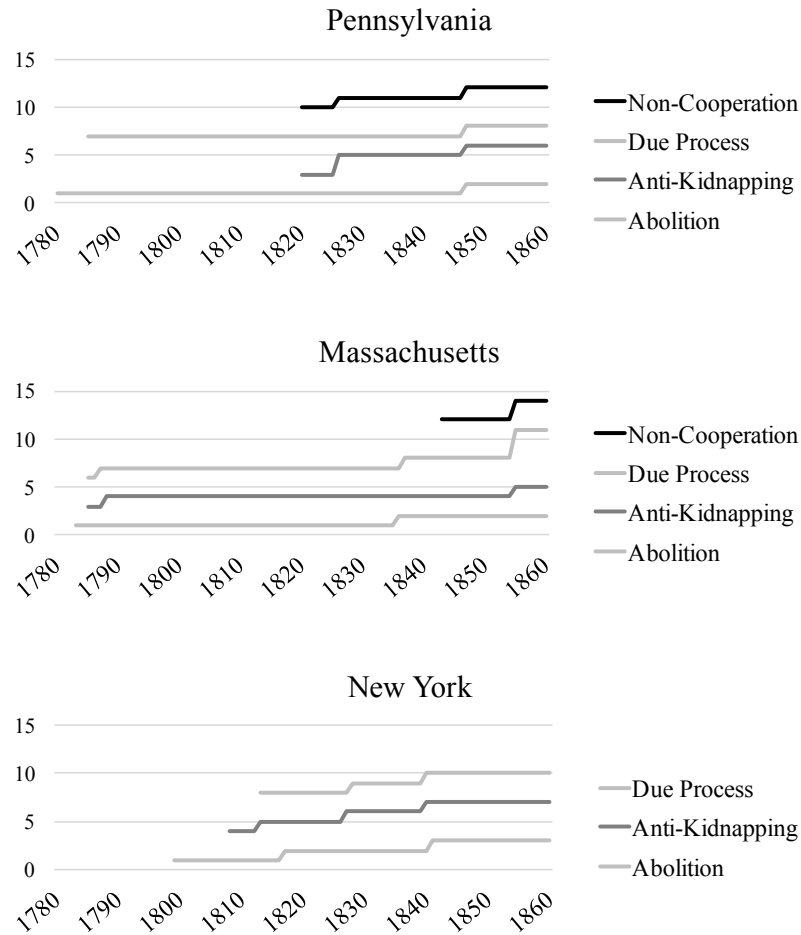
Over the antebellum era, three states created robust sanctuaries shielding runaway slaves from federal law. By 1860, Massachusetts established a high level of protection with a cumulative number of fourteen laws enacted to protect free blacks and runaway slaves, with Pennsylvania not far behind at twelve and New York at ten cumulative sanctuary laws. Massachusetts made its most significant policy expansion in 1855 when it passed an omnibus law packing together multiple sanctuary policies.¹⁷⁹ Figure 4.2 and Table 4.1 below provide a snapshot of each state's policies on abolition, anti-kidnapping, due process, and non-cooperation (please note: states passed multiple laws in one policy area, such as non-cooperation; Figure 4.2 highlights each new law as a single unit increase in the y-axis).

Table 4.1 Federal Restrictions and Northern Sanctuary Laws

Year	Jurisdiction	Policy
1780	PA	Gradual emancipation law (first in the free north)
1783	MA	Court ordered emancipation (<i>Commonwealth v. Jennison</i>)
1785	PA	Due process protection – habeas corpus
	MA	Anti-kidnapping law
	MA	Due process protection – habeas corpus
1787	Federal	U.S. Constitution, Article 4 (Fugitive Slave Clause)
1787	MA	Due process protection – writ of replevin
1788	MA	Anti-kidnapping law
1793	Federal	Fugitive Slave Act
1799	NY	Gradual emancipation law
1808	NY	Anti-Kidnapping Law
1813	NY	Anti-Kidnapping Law
	NY	Due process protection – habeas corpus
1817	NY	Gradual emancipation law
1820	PA	Non-cooperation law
1820	PA	Anti-kidnapping law
1826	PA	<i>Non-enforcement law</i>
1827	NY	Anti-kidnapping law
1828	NY	Due process protection – habeas corpus
1836	MA	Slaves in transit emancipation law
1837	MA	Due process protection – trial by jury
1840	NY	Anti-Kidnapping Law
	NY	Due process protection – trial by jury
1841	NY	Slaves in transit emancipation law
1842	Federal	<i>Prigg v. Pennsylvania</i> (U.S. Supreme Court)
1843	MA	Non-cooperation law
1847	PA	Non-cooperation law
	PA	Due process protection – habeas corpus
	PA	Anti-kidnapping law
	PA	Slaves in transit emancipation law
1850	Federal	Fugitive Slave Act
1855	MA	Non-cooperation law
	MA	Anti-kidnapping law
	MA	Due process protection – habeas corpus
	MA	Due process protection – trial by jury
	MA	Due process protection – black testimony
	MA	Due process protection – burden of proof on the claimant

Please note: PA’s 1826 *non-enforcement* law differs from *non-cooperation*: it severed cooperation in enforcing federal law (non-cooperation), but went beyond this to establish state control over rendition, essentially nullifying federal fugitive slave law.

Figure 4.2 Number of State Laws Promoting Free Presence



Please note: New York did not enact a non-cooperation law.

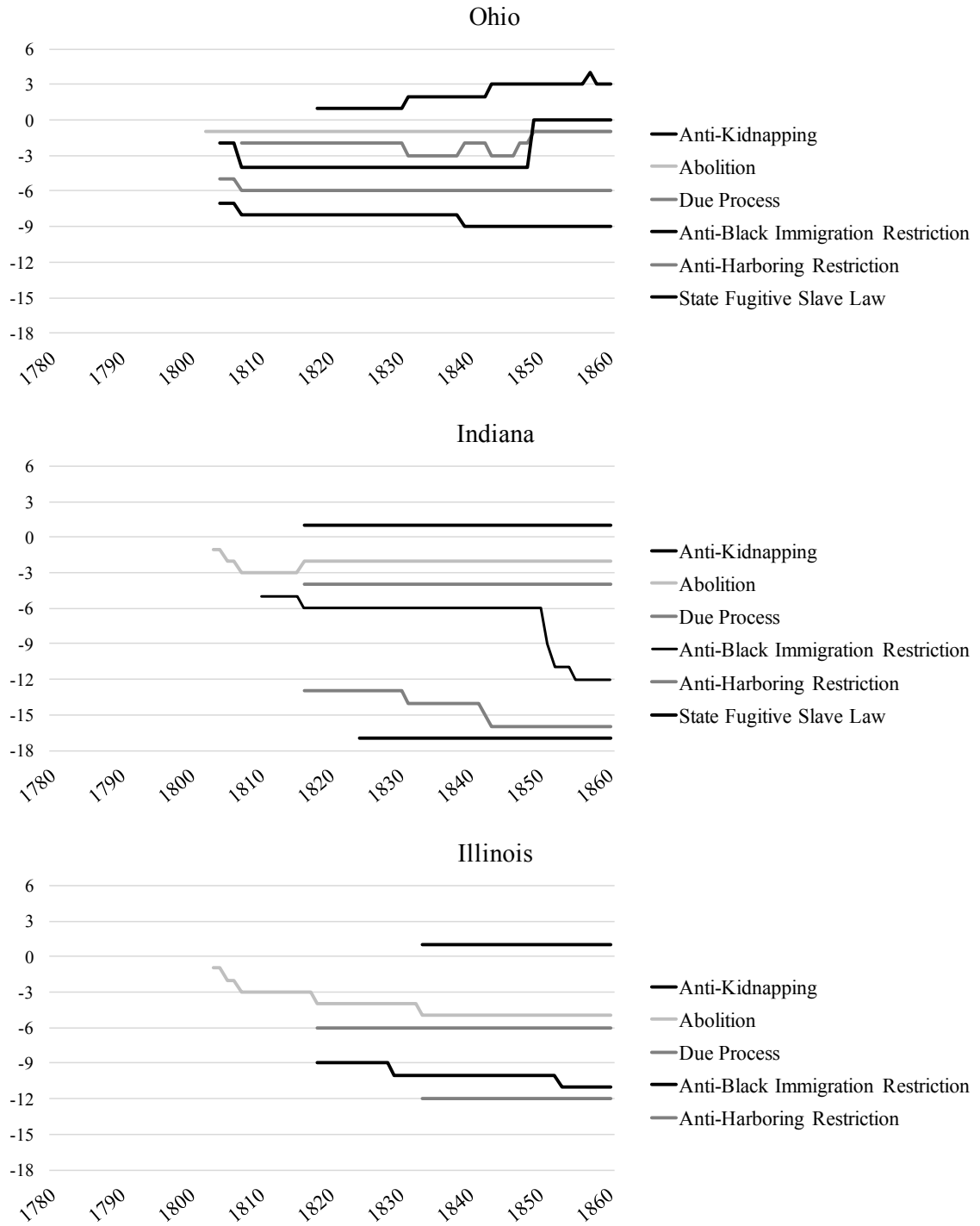
To document restrictive Northern laws in Ohio, Illinois and Indiana, I referred to Stephen Middleton’s compilation of black laws, secondary sources and compilations of state statutes.¹⁸⁰ I documented “sanctuary” policies (which were rarely passed, and specific to free blacks only) across restrictive states to show variation across all six states and to make an important qualitative distinction later in the chapter on how to define a sanctuary state; importantly, no restrictive state passed a non-cooperation policy. I

documented three types of restrictive policies across states, which included anti-immigration, anti-harboring, and state fugitive slave laws (please note: none of the three sanctuary states passed these policies).

To summarize, Indiana led as the most restrictive northern state, passing a cumulative number of fourteen restrictive laws, and Illinois followed by passing eleven laws. Many of these restrictions were applied to all blacks. For example, Indiana's 1851 state constitution restricted all black immigrants from entering the state, restricted all blacks without proof of residency within the state before 1851 from being employed, and set up the state's first colonization program to remove resident blacks to Africa.¹⁸¹ Indiana also established its own fugitive slave law in addition to its enforcement of federal law.

Ohio's pattern of development stands out. Between 1802 and 1829, Ohio was the most restrictive northern state, and many of Indiana and Illinois's laws were modeled after Ohio's laws. However, in 1849, Ohio passed a repeal law ending its restrictive immigration (entry) requirement for blacks of posting a \$500 bond and being sponsored by two property owners. It also ended the state's black registration requirement, employment verification law, and ban on black testimony.¹⁸² Figure 4.3 below provides a snapshot of each state's policies (please note: states passed multiple laws in one policy area, and often increased or decreased their restrictiveness, over time; a single unit decrease in the y-axis marks an increase in restrictiveness for that given policy area, and a single unit increase in the y-axis marks a decrease in restrictiveness).

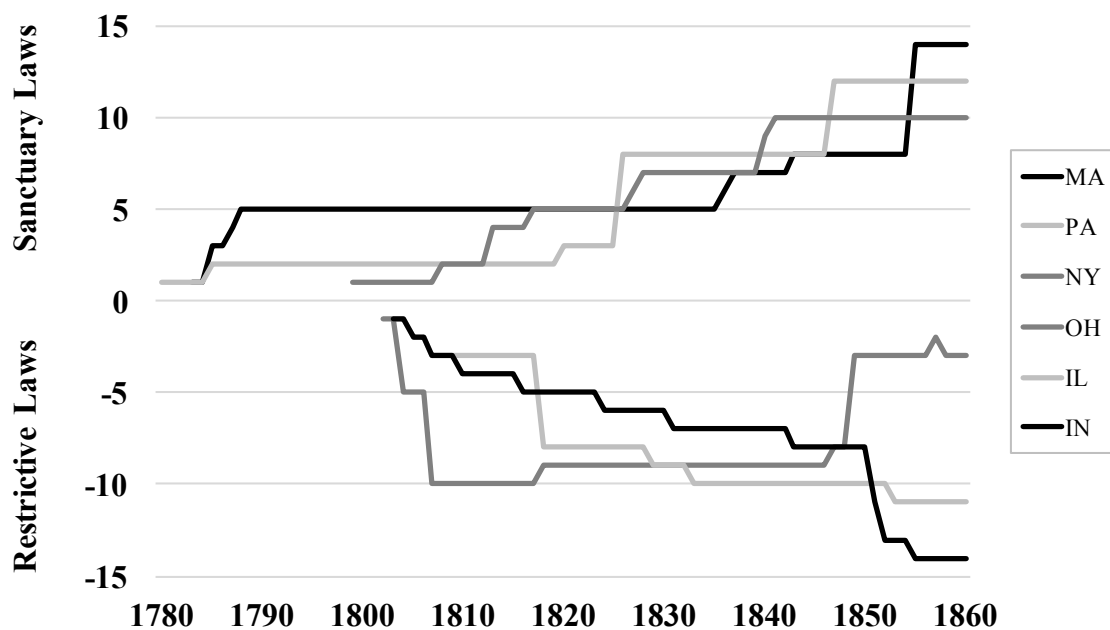
Figure 4.3 Number of State Laws Restricting Free Movement and Presence



Please note: Illinois did not enact a state fugitive slave law.

The strategy applied here goes well beyond what has been done in the scholarship to document Northern legislation. Figure 4.4 below collapses individual policy types to provide an overview of the cumulative timing and spread of sanctuary and restrictive policies (please note: A change in the y-axis marks the passage of a new policy, which either increased the state’s level of protection indicated by a positive jump in the y-axis, or increased the state’s level of restriction indicated by a negative jump).

Figure 4.4 Cumulative Number of Northern Sanctuary and Restrictive Laws



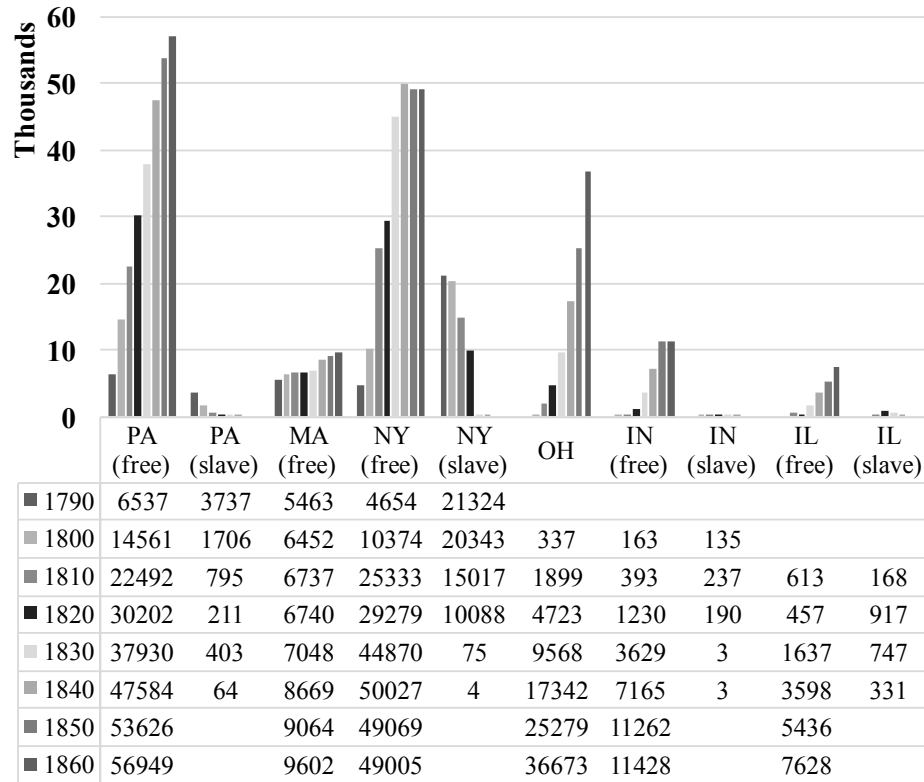
The National Events Model (NEM) does not capture or explain the types of variation highlighted here. While the general trend in Pennsylvania, Massachusetts and New York towards greater protection of runaway slaves confirms Paul Finkelman and Thomas Morris’s findings, the passage of each state’s policies are not simultaneous.¹⁸³

Similarly, Norman Rosenberg and Stanley Campbell's accounts, which highlight individual national events as catalyst of Northern laws, does not explain Northern variation, particularly why some states and not others mobilized over national events to change state policy.¹⁸⁴

Scholars have also linked sectional tension to state proximity to the North-South border and to demographic factors in northern states. Stanley Harrold argues that the border between the North and South created a significant interface for escalating sectionalism over runaway slaves.¹⁸⁵ Harrold's argument would suggest that northern states bordering the South are more likely to pass sanctuary laws than states further removed. However, variation highlighted in Figure 4.4 does not map onto bordering and non-bordering states. Both Massachusetts and New York, leading sanctuary states in the North, were far removed from the border. Ohio, an early restrictive state that shifted towards protection in the 1850s, directly bordered the two slave states of Virginia and Kentucky. Indiana and Illinois, restrictive states throughout the antebellum period, also bordered the southern state of Kentucky. The only case corroborating a border account is Pennsylvania, which bordered the southern states of Maryland and Virginia.

Demographic factors – particularly the size of the black population – are similarly unable to account for Northern variation. Specifically, black population size in the U.S. Census between 1790 and 1860 do not map onto the patterns of state restriction or protection (see Table 4.2 below).

Table 4.2 “Free” and “Slave” Black Population in Northern States, 1790-1860



Source: U.S. Census. Negro Population, 1790-1915 (Washington: G.P.O., 1915), 57.

Pennsylvania and Ohio both significantly increased their black population throughout the antebellum period, but passed opposite policies regarding runaway slaves. Moreover, the limited growth in Massachusetts’s black population, which increased from 1790 to 1860 by only 4,139 blacks, and never exceeded a total black population of 10,000, greatly contrasts the significant growth in Pennsylvania, and these two states passed the most extensive protections over runaway slaves.

4.5 Method of Analysis: Strengths and Limitations

I employ process tracing at the federal and state levels to show evidence of my theory (detailed in section 4.2 above): Repeated federal reform failures shift the center of gravity of both national and local activists, and cause sanctuary policies to gain more clout; national abolitionists turn their focus for the first time to forming state level coalitions with local abolitionists, and variation in their formations explains why some states pass sanctuary policies while others do not.

Process tracing provides a way to unpack interacting parts of a causal mechanism that is theorized to produce a particular outcome: in this case, sanctuary policies. John Gerring explains that investigating causal mechanisms enables us to go further in examining causal relationships than correlation by “peering into the box of causality to locate the intermediate factors lying between some structural cause and its purported effect.”¹⁸⁶ Theory testing occurs at two levels in this chapter. At the federal level, I employ process to identify and trace when abolitionist groups pushed for national reforms, and evidence of multiple federal failures and a related shift towards state coalition building. Next, at the state level, I employ process tracing to examine state coalition building and policy reform activities of abolitionist societies in Pennsylvania, Massachusetts, Ohio, Indiana, and Illinois. My larger theory accounts for how national and state level reform dynamics are interlocked; this chapter also develops a State Coalition Model (SMC) intended to clarify the mechanism’s parts at the state level, once a shift from federal to state occurs.

Theory testing is intended to show that each part of the hypothesized causal

mechanism is *present* in given cases and to provide within-case inference that a mechanism functioned as theorized.¹⁸⁷ The focus is therefore on primary and secondary sources that provide some evidence of the *presence* or *absence* of federal reform efforts and state coalition building and reform efforts. I first show that a broader sequencing from federal to state coalition building occurs in states that pass sanctuary policies, but not others. Turning to the state level, I show that whether theorized intermediate parts of the mechanism are *present* or *absent* is linked to enacting or not enacting sanctuary policies: non-accommodation and alliances with state leaders are two systematic parts that are *present* across all states that pass non-cooperation sanctuary policies, and absent in others; moreover, varying reform strategies exist across states, but are linked to individual state coalition building and policy reform efforts and outcomes (please see Table 4.4 found in Section 4.7 below on state level factors). In short, sanctuary policies are theorized to emerge when predicted factors are *present*, not *absent*, and when they interlock together: this includes national abolitionists' shift to building state coalitions, systematic configurations in state coalitions (non-accommodation and access to state leaders), and non-systematic configurations unique to each state.

The method applied here goes well beyond what has been done in the scholarship to explain Northern legislation by capturing the timing of federal and state level dynamics and variation in sanctuary policies. Since my theory is on sanctuary policy, not restrictive policy proliferation, one could argue that not much is gained from examining similar processes in restrictive states (Ohio, Indiana, and Illinois). However, abolitionists in these states did push for reforms and employed similar strategies, making them

comparable cases. Another limitation is that New York is not included in the analysis. Time constraints in acquiring primary and secondary sources prevent New York from being included in this analysis. Despite being an abolitionist stronghold, highly inclusive state, and passing a range of sanctuary policies, New York did not pass a non-cooperation policy. There is suggestive evidence that, unlike in Pennsylvania and Massachusetts, national abolitionists in New York accommodated federal fugitive slave law and deep divisions emerged in the state because of national abolitionists' accommodation. The presence or absence of these intermediate parts of the mechanism (especially non-accommodation) provides strong evidence for my theory. To leverage my cases, I disaggregate Pennsylvania and Massachusetts into two periods, before and after non-cooperation sanctuary policies are enacted, to reveal how sequencing of the mechanism and how federal and state level dynamics interlock, as theorized.

Lastly, another limitation of my theory is that abolitionists might pursue a multi-pronged strategy that is not accounted for, rather than what I theorize to be a shift in focus away from federal and towards state policy. Evidence presented in this chapter reveals a general shift in Pennsylvania and Massachusetts' abolitionists and on federal fugitive slave policy reform, in particular. New York might complicate this as an abolitionist state that pursued policy reforms at all levels simultaneously, but, it is important to note that New York did not pass a non-cooperation policy. There is suggestive evidence that a perceived trade-off between federal and state reform does exist when it comes to fugitive slave policy, but might not apply equally to other slavery policies. Future analysis will include adding New York and sanctuary states that emerge

after 1850, and expanding the types of federal reform efforts in slavery policy beyond fugitive slave law, to distinguish when and where a multi-pronged approach might exist compared to a state specific approach to policy reform.

4.6 Theoretical Background: Immigration Federalism and State Policy Formation

This chapter builds on theories in immigration federalism and policy change to develop what I term the State Coalition Model (SCM) of Northern sanctuary laws. U.S. immigration policy since the early 1900s has largely been the purview of the federal government, which establishes rules on entry, residency, naturalization and deportation. Despite the “plenary power” doctrine, scholars show that states and localities have historically passed laws that regulate the lives of immigrants and directly influence national policy.¹⁸⁸ Two features from this scholarship inform my explanation of antebellum Northern sanctuary laws: federalism provides an institutional framework connecting policy efforts at the national, state and local levels; and, because of this, political actors pursue policy change through federal and state level strategies.

Scholars have well established that states and localities controlled early American immigration policy in the absence of federal regulation.¹⁸⁹ Gerald Neuman documented colonial and antebellum state laws restricting unwanted migration to refute the long-held belief that the U.S. had open borders prior the federal government’s first immigration law, the Page Act of 1875.¹⁹⁰ On the early period, Anna Law explains the federal government chose not to take control of immigration law to avoid regional differences brought on by slavery, which paved the way for the 19th Century to be an era of

subnational governments' "exclusive control" over regulating movement.¹⁹¹ Anna Law also explains that the 1787 U.S. Constitution, which "purposely 'did not resolve' the question of how to balance national and state power," set limits on the federal government's broad Constitutional claims of plenary power.¹⁹²

Scholars are now revealing how America's federalist system explains the emergence of state level policies even after the federal government gained control. Daniel Tichenor and Alexandra Filindra argue that states have led in "open combat" with the federal government.¹⁹³ Restrictionist actors in particular have historically enacted state laws as a way to pressure Congress to enact similar restrictionist immigration reforms. This strategy was employed in the 1860s through anti-Chinese immigration laws, and 1970s through employer sanction laws prohibiting employers from "knowingly" hiring undocumented immigrants. Again, in the 1990s, "in an effort to force federal action," states "initiated legal action against the federal government . . . urging Washington to reimburse them" and "lobbied Washington with resolutions" before turning to a state level strategy and the passage of California's Proposition 187 in 1994.¹⁹⁴ Tichenor and Filindra explain, "from [a] federalism perspective, Proposition 187 was a last resort effort by a state to force the immigration issue on the federal agenda."¹⁹⁵

Christina Rodriguez explains that federalism is an integrated regulatory structure that directly shapes policies.¹⁹⁶ The courts and U.S. Congress set the balance of power, but national, state and local governments control the passing of their own policies and have discretion to enforce those policies, thereby creating a "de facto multi-sovereign"

immigration system.¹⁹⁷ Despite federal plenary power, state and local immigration laws emerge because federalism generates opportunities for negotiations.¹⁹⁸ Embedded in federalism, federal law and enforcement strategies can also directly expand room for state and local policymaking. The National Academies report in 2015 revealed two new trends that make the role of states and localities even more central to immigration policy: the federal government's cooperative enforcement schemes and changes in federal law that decentralize immigrant integration.¹⁹⁹

Jessica Bulman-Pozen similarly reveals how America's federalist system provides scaffolding for partisan debate to emerge and shape policy.²⁰⁰ Since political parties can leverage federalism, partisan conflict at the national level is linked to what immigration policy looks like at the state and local level.²⁰¹ With federal immigration reform deadlocked since 1996, states and localities have upped their role in regulating undocumented immigrants, with the number of enacted state laws and resolutions increasing from 27 in 2005 to 437 in 2013.²⁰² Pratheepan Gulasekaram and Karthick Ramakrishnan explain the recent proliferation of subfederal immigration policies by underscoring federalism's strategic environment.²⁰³ They theorize that issue entrepreneurs engineered federal stalemate on immigration reforms in order to pass numerous state and local anti-immigrant policies between 2001 and 2012. Restrictionists were able to capitalize on polarization in Congress to create a narrative of federal inaction that caused states and localities to become more receptive towards passing anti-immigrant policies of their own.

Notably, restrictivist processes are distinguished from integrationist processes to

explain the timing and scope of subnational policy proliferation. Whereas restrictionists engineered federal stalemate to push for state and local policies between 2001 and 2012, pro-immigrant advocates remained largely focused on national reform until 2011. The latter group “had been playing defense” against the passage of anti-immigrant legislation, and they focused on federal preemption as the best way to limit restrictive state and local laws. After 2011, with the failure of the DREAM Act in 2010 and failure of multiple efforts at comprehensive immigration reform, pro-immigration groups finally “began to play offense” at the state and local levels.²⁰⁴ Partisan politics has therefore led to a patchwork of state and local policies, with Republican states on average passing more restrictive policies, and Democratic states passing more integrationist policies.

Collectively, immigration federalism scholars reveal how America’s federalist system sets up strategic sites for policymaking at the national, state and local levels. While the federal government has plenary power over U.S. immigration policy, Tichenor and Filindra show that historically the federal government has lagged behind state level efforts to regulate new immigration patterns. Gulasekaram and Ramakrishnan show how contemporary federal deadlock similarly led to increased subnational policymaking. This chapter builds on these insights about federalism, polarization and state level policymaking to make sense of abolitionists’ mobilization efforts at the national and state levels as they relate to the timing and sequencing of Northern sanctuary laws.

Please note that the immigration federalism scholarship does not address sanctuary policies specifically, but examines broader patterns in state and local integration laws that are inclusive of sanctuary policies. My dissertation builds on the

scholarship's insights about how federalism works, but advances a new understanding of how and why activists push for sanctuary policies within federalist systems.

4.7 State Coalition Model's (SCM) in a Federalism Context

This section briefly introduces federal fugitive slave law and develops the State Coalition Model's (SCM) account of abolitionist's federalism strategy. SCM explains Northern legislation by connecting federal and state level policymaking, and posits that the entire process of policy change on runaway slaves – from agenda setting to political mobilization at the national and state levels – is shaped by southern states' power to block Northern efforts at national reform, and shifting coalitional configurations and strategies among Northern abolitionists to pass state laws. Like contemporary immigration actors, abolitionists in the North sought to first change federal policy, but after facing numerous roadblocks, shifted their strategy to target state level policies instead. Just because they were motivated to act, however, did not mean that abolitionists were able to succeed; variations in the scope of state protective laws depended critically on the opportunities available to them, as elaborated below.

The first federal laws to restrict runaway slaves' movement passed uncontested by northern states. Paul Finkelman notes: “unlike the debates over the slave trade, the three-fifths clause, the taxation of exports, and the regulation of commerce, the proposal for a fugitive slave clause generated no serious opposition.”²⁰⁵ Northern and Southern officials negotiated on many areas of law directly affecting slavery, building a broad national coalition required to draft and ratify the U.S. Constitution. This included issues like

agreeing on the end date of 1808 on international slave trade. How the North would treat runaway slaves, however, was not part of the original debates. Northern states did not push for anti-kidnapping provisions to protect free blacks, and did not fight against a federal law that considered runaway slaves to be unlawfully present in the North. In part, absence of Northern contestation to federal fugitive slave law resulted from recaption being a regular practice in colonial America in both the South and North, as well as a political choice to preserve national unity during the formative years of the U.S.

Article 6 of the Northwest Ordinance of 1787 established the first federal fugitive slave law, stating: “There shall be neither slavery nor involuntary servitude in the said territory . . . Provided always, That any person escaping into the same, from who labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed.”²⁰⁶ The founders re-wrote Article 6 as Article 4 of the U.S. Constitution in 1787, stating: “No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.”²⁰⁷ These laws established slave owners’ right of recaption of runaway slaves in northern states and federal territories. Importantly, while Article 4 set up basic protections for slave owners, it did not address jurisdictional conflict that might occur between Northern laws on runaway slaves, the U.S. Constitution and federal law.

Early conflicts emerged from abolitionists preventing the recaption of runaway slaves, and from slave catchers unlawfully removing free blacks from the North, both of

which led to pushes for national level reform. Importantly, in 1793, Congress only addressed Southern concerns in passing the Fugitive Slave Act, which clarified the rights of slave owners to recapture runaway slaves in northern states and federal territories by giving them new remedies and protections: it penalized “any person” from obstructing their efforts at recaption.²⁰⁸ Section 4 of the Fugitive Slave Act stated:

That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent, or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given and declared; or shall harbor or conceal such person after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars.²⁰⁹

From 1793 to 1850, slave owners had the right of recaption, including hiring slave catchers to remove runaway slaves and requesting northern state and local officials to aid in recaption. Federal law did not, however, mandate northern states and localities to enforce the fugitive slave law, and federalism’s institutional framework preserved space for northern states to pass policies protecting runaway slaves that created a federalism conflict.

While U.S. Congress responded in 1793 to the concerns of slaveowners, Northern abolitionists, who sought federal reforms, including adding anti-kidnapping provisions to the federal fugitive slave law, faced opposition from Congress. National abolitionists continued to focus on federal reform initiatives, but after repeatedly facing failures, they became open to state and local policy options. Table 4.3 below shows all proposed federal reforms by abolitionists to add an anti-kidnapping provision to the federal law.²¹⁰ Notably, these proposals were attempts by abolitionists to balance protecting free blacks

in the North while continuing to accommodate slavery in the South by accepting recaption. After 29 years and 6 failed proposals, national abolitionists' federalism strategy shifted from a national level strategy of accommodation to a state level strategy of non-accommodation, but only after realizing that national progress was impossible.

Table 4.3 National Reform Proposals and State Non-Cooperation Policies

Year	Jurisdiction	Policy	Policy Leader
1787	Federal	U.S. Constitution, Article 4 (Fugitive Slave Clause)	
1791	Federal	Proposed Anti-Kidnapping Bill in the House (dropped)	PA
1792	Federal	Proposed Anti-Kidnapping Bill in the Senate (amended and removed anti-kidnapping provision)	
1793	Federal	Fugitive Slave Act of 1793 (passed)	
1797	Federal	<i>Petition</i> for Proposed Anti-kidnapping Bill to Amend the Fugitive Slave Act of 1793 (failed)	PA
1817	Federal	Proposed Anti-kidnapping Bill to Amend the Fugitive Slave Act (amended into restrictive law)	PA
1818	Federal	Proposed Bill to Strengthen the Fugitive Slave Act (failed)	
1820	Federal	Proposed Anti-kidnapping Bill to Amend the Fugitive Slave Act (dropped)	PA
1820	PA	Non-cooperation law	PA
1822	Federal	Proposed Bill to Strengthen the Fugitive Slave Act (failed)	MD
1826	PA	Non-Enforcement Law	PA
1842	Federal	<i>Prigg v. Pennsylvania</i> (Established Federal Plenary Powers over Fugitive Slave Law)	PA & MD
1843	MA	Non-Cooperation Law	MA
1847	Federal	Proposed Congressional Bill to Amend the Fugitive Slave Act of 1793 (failed)	KY
1847	PA	Non-Cooperation Law	PA
1850	Federal	Fugitive Slave Act	
1855	MA	Non-Cooperation Law	MA

While state laws were passed prior to this shift by national abolitionists in 1820, state laws were functionally different before and after the shift. Massachusetts passed the

first state level anti-kidnapping law in 1785, and many northern states similarly passed laws to protect their newly freed black population after abolishing slavery. State non-cooperation laws were only passed after national abolitionist shift occurs in 1820, and by contrast, these laws cast a wider net than prior laws that protected runaway slaves. By not enforcing federal fugitive slave law in northern states' territorial borders, these Northern laws challenged federal notions of "free" and "slave," and federal control over the migration and treatment of runaway slaves. Abolitionists' failure to pass federal level anti-kidnapping initiatives, which would have been limited to protecting free blacks, led them to begin pushing for state level non-cooperation laws with far reaching consequences for the protection of not only free blacks, but also runaway slaves. Severing states' enforcement of federal law effectively extended state anti-kidnapping and due process protections to runaway slaves.

A shift from pursuing federal reforms, which included accommodations towards opposite views in order to form broad national coalitions, to a state level reform strategy rooted in non-accommodation to existing federal law is not unique to abolitionists. Megan Ming Francis highlights a similar shift in the NAACP's anti-lynching movement in the early 1900s. At first, the NAACP sought to change public opinion of "acceptability in the South and indifference in the North" through a media strategy to articulate the terror of lynching.²¹¹ Incidences of black lynching continued to increase, causing the NAACP to begin a new strategy of changing national policy. Only after failing to get an anti-lynching bill passed in Congress, the NAACP shifted to a strategy of non-accommodation elsewhere: instead of reforming federal policy, it turned to

“challenging the boundaries of constitutional doctrine in the area of criminal procedure.”²¹² NAACP’s non-accommodation strategy led to the landmark U.S. Supreme Court decision *Moore v. Dempsey* (1923) and ushered in a new era of judicial activism on civil rights. Abolitionists’ non-accommodation emerged at the state level (in contrast to NAACP’s venue: the Supreme Court), setting in motion a resistance and challenge to federal fugitive slave law through sanctuary policies over runaway slaves.

In 1820, the shift towards non-accommodation (sanctuary policies) resulted from Pennsylvania abolitionists’ national and state level leadership. Pennsylvania was the first state to end slavery, and the Pennsylvania Abolition Society (PAS) fought at the national level to end slavery and reform the fugitive slave law through petition campaigns, forming special committees, and writing amendments for proposed bills. In 1817, PAS petitioned Congress to add more procedural protections for free blacks, arguing that the Fugitive Slave Law of 1793’s only requirement of obtaining certificates of removal gave slave owners immunity from Northern courts. This led to the first real national consideration of revising federal law with Northern interests in mind.²¹³

A special House committee introduced a bill to amend federal law on December 29, 1817. Significantly, instead of addressing PAS’s concern over kidnapping protections, and under pressure from Southern officials, the bill moved in the opposite direction of proposing to expand protections for slave owners in the recaption process.²¹⁴ It removed Northern courts from the legal process whenever certificates were granted by southern states to remove runaway slaves from the North. It also proposed that Northern officials aid in recaption and return fugitives to any Southern courts that issued a

certificate of removal. Moreover, slave catchers with certificates were made immune from “assaulting, beating, [or] imprisoning” fugitives. In 1818, Northern officials in U.S. Congress prevented the final bill from being passed, which died in the Senate, leaving the Fugitive Slave Act of 1793 unchanged.

In 1818, once it was clear that an anti-kidnapping provision was infeasible under the Southern controlled U.S. Congress, PAS led the effort to prevent the more restrictive federal fugitive slave law from passing. Following this event, PAS changed its strategy, moving away from national reform to focusing instead on state level policies. In 1820, Pennsylvania passed the first state non-cooperation law limiting its enforcement of the fugitive slave law, and emerged as a leader in the North in passing the most far-reaching protections over runaway slaves through to the mid-1850s. Failed national reform in 1818 marked a tipping point and caused PAS to usher in a new era in the North of innovative state sanctuary policies. Southern gains in federal fugitive slave law in 1842 and 1850 further solidified Northern abolitionists’ state level strategy (see Table 4.2 above). Paul Finkelman and Thomas Morris rightly highlight an 1830 shift in the types of Northern laws being passed, but their accounts ignore the pivotal role of abolitionists pushing for federal reform and their strategic shift to pursuing state level initiatives.²¹⁵

In 1842, the power of subnational jurisdictions was defined for the first time by the Supreme Court in *Prigg v. Pennsylvania*, which established clearer guidelines over questions on federal regulatory power and enforcement procedures.²¹⁶ The Court ruled that Congress had plenary powers over fugitive slave laws and that state laws preventing recapture were unconstitutional; it also ruled that the federal government did not have

power to mandate that states enforce federal law. *Prigg* established federal control over the process of recaption, but preserved states' power to integrate and protect all persons residing within their territorial borders.

The Fugitive Slave Act of 1850 formalized the federal government's control. It creating new federal mechanisms for regulating the process of recaption, including the appointment of a federal body to administer the system and procedures of issuing search and arrest warrants, certificates of removal, and fines for interference. It also established the federal government's ability to deputize citizens (but not state or local officials) and appoint commissioners in each federal circuit to delegate authority to district and circuit court judges for fugitive slave claims.²¹⁷

Despite federal restrictions, American federalism preserved space for Northern sanctuary laws to establish free presence for runaway slaves. Judith Rusnik describes federalism as a framework that opens space for multiple jurisdictions to deliberate and pass policies.²¹⁸ On federalism conflicts, Jessica Bulman-Pozen argues that "competition between today's ideologically coherent, polarized parties leads state actors to make demands for autonomy, to enact laws rejected by the federal government, and to fight federal programs from within."²¹⁹ Throughout the antebellum period, the federal government was denied power to mandate northern states' enforcement of federal law, and this framework along with deadlock in national politics to reform fugitive slave law explains why and how abolitionist were able to take their fight to the state level.

The abolitionist movement was also divided. On fugitive slave law, political abolitionists turned away from national reform. However, a much broader national

coalition of abolitionists continued to pressure Congress on other matters. Their goal was to slowly weaken national slavery through a moral campaign, and to build a broad national coalition to secure federal laws or Constitutional amendments severing the federal government's connection to slavery. Northern abolitionists circulated massive amounts of anti-slavery literature to the South; New York alone, according to Corey Brooks, mailed 175,000 separate items to slave states in the summer of 1835.²²⁰ They also regularly petitioned Congress in order to shine a national spotlight on the problems of slavery. In 1834, for example, the American Anti-Slavery Society led in a large national petition campaign that gathered 34,000 signatures for a House bill to end slavery in the District of Columbia. This incident led to the infamous gag rule by the Democratic controlled U.S. Congress, which "stipulated that all petitions or resolutions 'relating in any way, or to any extent whatsoever, to the subject of slavery or the abolition of slavery' were to be automatically and indefinitely 'laid on the table.'"²²¹

Despite the gag rule being enforced from 1836 to 1844, abolitionists continued to petition for national abolition in the District of Columbia, abolition in federal territories, a ban on new slave states, prohibition of slavery at federal forts and on the high seas, and prohibition of the extensive interstate slave trade.²²² Importantly, these other federal reform efforts differed from the effort to reform fugitive slave law: they had no state level alternative because the only goal was to end the federal government's connection to slavery. America's federalist system preserved space for abolitionists to fight at multiple levels of governmental policy since enforcement of federal fugitive slave law extended to federal, state and local government and private individuals. States had the choice of

whether they would enforce federal law or not, and Pennsylvania abolitionists led the first efforts to pass sanctuary laws. The timing is critical: federal efforts by abolitionists to reform fugitive slave law died after 1820, and Northern sanctuary policies emerge in 1820, and spread in scope and across states from 1820 to 1860.

4.8 State Coalition Model (SCM) of Northern Variation

The North was not a united front. This section explains variation by focusing on the timing and sequencing of laws in the two most inclusive states – Pennsylvania and Massachusetts – and the unique case of Ohio as the only state to alter its path from restriction to inclusion on some policies.²²³ It also briefly addresses Indiana and Illinois’ restrictive laws. All five cases illustrate how Northern sanctuary laws were neither uniform nor simultaneous, and SCM points to a common set of factors to make sense of this variation.

After numerous setbacks on federal reform, my theory posits that abolitionists would shift their strategy to passing policies at the state level. Abolitionists are theorized to operate as interest groups who built state level coalitions, and variation in the configuration of these coalitions made a critical difference in the timing and scope of state-level policies.²²⁴ The first configuration SCM account for is whether or not the coalition’s underlying motivation was that of non-accommodation, which is a necessary, but not sufficient condition for explaining the passage of “non-cooperation policies.” The second configuration is whether the coalition had access to state leaders, which is also a necessary, but not sufficient condition for passing state sanctuary laws.²²⁵

The opportunities and strategies for coalition building mattered as well. As interest groups, abolitionists sought political leverage to set the agenda in northern state legislatures. This section reveals four specific coalitional strategies: they waged focused petitions campaigns, questioned state political candidates, engaged in third-party politics, and mobilized around national slavery events.²²⁶ Daniel Carpenter conducted similar research on antebellum slavery petitions at the national level, but little research has been done linking state level petitions and policies on runaway slaves.²²⁷ Also, while NEM's top-down use of national slavery events misses Northern variation, I integrate national events within SCM as a coalitional strategy employed to mobilize and frame state level policy initiatives and to build relationships with state legislators.

To summarize, SCM posits that state coalition's configuration (internal motivation and access to state leaders) and strategies made a critical difference in the timing and scope of state-level policies. Table 4.4 below provides an overview of these factors and the cumulative level of protection, or free presence, granted to runaway slaves in each state (high/low freedom, or high/low restriction). Systematic factors (indicated by ✓) are consistently present in the state coalition's mobilization efforts to pass state policies, while non-systematic factors (indicated by *) are found in individual incidences of state policies. To leverage the fact that some state coalitions vary in their configuration over time, Table 4.4 splits Pennsylvania, Massachusetts and Ohio into two distinct periods demarcated by major changes in their state coalition's configuration. Specifically, each state's early coalition is made up of only local abolitionists, while each

state's later coalition marks a new period of national and local abolitionists joining to form a broader state level coalition (this periodization, therefore, differs across states).

Table 4.4 State Coalition Model's (SMC) Key Factors

States	Coalition Configuration		Coalition Strategy				Outcome	
	Non-Accommodation of Federal Law	Alliance w/ State Leaders	Petitions	Question Political Candidates	3 rd Party Politics	Mobilize Over Nat'l Events	Free Presence	Unlawful Presence
PA 1780-1820		✓	*				Low	
PA 1820-1860	✓	✓	*	*		*	High	
MA 1780-1843		✓	*				Low	
MA 1843-1860	✓	✓	*	*	*	*	High	
OH 1780-1849			*		*	*		High
OH 1849-1860		✓	*		*			Low
IN 1780-1860								High
IL 1780-1860	^					*		High

- ✓ Systematic (present in all cases)
- * Non-systematic (specific to each case)
- ^ Local non-accommodation only

Table 4.4 shows that, by 1860, Pennsylvania and Massachusetts created high levels of free presence for runaway slaves, while Ohio, Indiana and Illinois moved in the opposite direction of enforcing federal law. The coalition's configuration on non-accommodation and access to state leader were critical to producing that variation in sanctuary policies and free presence. Furthermore, as immigration scholars highlight, federalism creates opportunities for national, state and local policymaking. Coalition's

ability to seize coalition building opportunities and employ the four strategies in Table 4.4 were also critical to the timing and overall number of sanctuary laws in each state.

4.8.1 Pennsylvania

In 1775, Quakers established the Pennsylvania Abolition Society (PAS), formally known as “The Pennsylvania Society for the Relief of Free Negroes Unlawfully Held in Bondage,” as a group who met regularly to discuss the abolition of slavery and protection of free blacks. Early on, PAS led in Northern activism at the national and state levels. In 1780, Pennsylvania passed the first gradual emancipation law in the North, and soon after, in 1785, passed its first right of habeas corpus law, which authorized Pennsylvania judges to fully investigate the claims of slave owners in recaption cases.²²⁸ After these laws, PAS abolitionists turned its sights to reforming federal fugitive slave law.

In 1791, slave catchers kidnapped a free black citizen in Pennsylvania and took him to Virginia to be sold into slavery. PAS pressured the Governor of Pennsylvania to request that the slave catchers be extradited to Pennsylvania to be tried in court for kidnapping, but a national law protecting free blacks did not exist.²²⁹ PAS therefore proposed a federal anti-kidnapping bill in 1791, but the Southern controlled Congress dropped the bill and later passed the stronger Fugitive Slave Law of 1793. A similar incident emerged in 1796 of four blacks being arrested and removed from Philadelphia by slave catchers, which led PAS in 1797 to petition Congress to draft a federal anti-kidnapping bill. This petition was tabled indefinitely.²³⁰

Two years later, in 1799, blacks in Philadelphia petitioned for a national plan to end the slave trade and a plan to amend the Fugitive Slave Law by considering passing a

federal anti-kidnapping bill, stating, “[blacks] should be admitted to partake of the liberties and unalienable rights therein held forth.”²³¹ As in its previous national efforts, Pennsylvania’s abolitionists’ petition was unsuccessful in getting Congress to consider legislation. Throughout the early 1800s, PAS continued to petition the American Convention for Congress to pass a national anti-kidnapping law, and led in numerous attempts to reform federal fugitive slave law by adding anti-kidnapping provisions.²³² Most significantly, in 1817, PAS proposed its last federal anti-kidnapping bill, this time leading to the first real national consideration of revising the Federal Fugitive Slave Law of 1793. The revised Senate bill, however, advanced Southern interests with no mention of free blacks, and PAS mobilize Northern Congressmen to defeat the federal bill. Realizing the futility of achieving federal reform, PAS turned its focus to state level policies.

In the process, however, PAS grew into a strong organization. It gained official incorporation in 1789 from the Pennsylvania General Assembly and had high levels of access in state politics compared to abolitionists in other states.²³³ This access allowed PAS leader James Forten to directly appeal to the Senate of Pennsylvania for the “unalienable rights” of all blacks in 1813.²³⁴ PAS also formed specialized committees that met regularly to plan and draft national and state level legislation and petitions.²³⁵ The short amount of time between PAS’s transition to non-accommodation and its role in passing the country’s first sanctuary law is particularly revealing of its organization’s strength and capacity to employ targeted petitions and mobilize around national events.²³⁶ Two weeks after the Missouri Compromise passed, which raised national attention on the

extension of slavery in federal territories and allowing Missouri to enter the Union as a slave state, PAS led in a massive petition campaign to its state legislature asking for immediate emancipation, the first state non-cooperation law and an anti-kidnapping law.²³⁷ It was successful in passing the latter two laws.²³⁸

Pennsylvania's anti-kidnapping law established a maximum sentence of twenty-one years of hard labor for kidnapping any black person in the state and included seizing a man by "force or violence" as an act of kidnapping. Most importantly, the 1820 law established the first non-cooperation law in the North denying the federal government the right to use state officials in recaption and removed jurisdiction from "alderman and justices of the peace over cases involving claims to runaways."²³⁹ It also made it a misdemeanor crime for state judicial officials to participate in recaption under federal jurisdiction.

Pennsylvania's sanctuary laws led to strong opposition by neighboring slave states. Commissioners from Maryland drafted and introduced a proslavery bill to the state of Pennsylvania. PAS's high level of access to the Pennsylvania General Assembly, however, ensured that PAS learned about the initiative from state leaders, who disclosed Maryland's efforts. PAS responded by organizing a special meeting with two goals: to appoint a committee to draft new state legislation and another committee to deliver the bill to state leaders.²⁴⁰ While Pennsylvania's political environment was highly progressive, PAS faced constraints on the types of policies it could pass. It sent the draft of a new non-enforcement (one that went beyond non-cooperation) legislation to house leader William Meredith (Whig-PA), which included stipulations that "no interested or ex

parte testimony” would be used as evidence in recaption cases and that state officials were not obligated to accept southern states’ “jurisdiction of claims to alleged runaways.”²⁴¹ While Meredith shared the same anti-slavery views as PAS, he was a conservative Whig who opposed providing blacks the right to trial by jury. To gain Meredith’s support, PAS chose to focus exclusively on its jurisdictional concerns in recaption cases, and tabled its concern for expanding due process rights to all blacks in the state.

The 1826 non-enforcement law shifted the state’s strategy from preventing state officials from aiding in recaption to acquiring full state control over the recaption process, making enforcement nearly impossible. It created strict standards for issuing certificates of removal that were controlled by the state, established an equal protection clause making it a crime to seize any black person without a warrant, and implemented PAS’s amendment for securing state control over all blacks within its jurisdiction.²⁴² The nuances to this case are revealing. While PAS mobilized around the Missouri Compromise to pass its 1820 law, confirming Norman Rosenberg and Stanley Campbell’s accounts, no such national event emerged in 1826. Instead, political processes inside the state – particularly PAS’s access to state leaders and ability to build a coalition with Meredith – led to the passage of its 1826 state sanctuary law.

State level access and constraints continued to shape PAS’s success. Between 1830 and 1832, PAS successfully resisted backlash legislation to repeal the 1820 and 1826 laws, and it prevented new restrictive legislation from passing that would have banned black immigration into the state.²⁴³ Again, access to the state legislature allowed

PAS to quickly form special committees and meet with state house and senate members to ensure that these laws failed.²⁴⁴ In addition to its defense against backlash legislation, PAS faced regular constraints on its offense strategy. They faced important challenges to changing ideas about blacks equality, and PAS's political coalition with state leaders, while instrumental to their success in passing sanctuary and integrationist measures, also placed great limits on their progressive agenda. In 1836, PAS led another petition campaign to secure jury trials for all blacks, a specific protection that house leader Meredith opposed in 1826. Again, Meredith opposed the bill, but this time went even further by threatening to enforce the harsher Fugitive Slave Law of 1793 if the jury trial bill passed.²⁴⁵ PAS's bill was defeated seventy-six to thirty-nine, opposed by both Democrats and Whigs.

In 1842, the Supreme Court in *Prigg v. Pennsylvania* placed the constitutionality of Pennsylvania's laws into national spotlight.²⁴⁶ Four professional slave catchers, Edward Prigg, Nathan Bemis, Jacob Forward, and Stephen Lewis seized Margaret Morgan in Pennsylvania in 1837, after successfully completing pre-seizure procedures by making a demand for recaption to Pennsylvania state officials.²⁴⁷ Morgan's former slave owner, John Ashmore, had allowed her to live freely, and in 1832, Morgan moved to Pennsylvania where she married a free black man and had one child. State officials refused to grant the slave catchers a certificate of removal, and the slave catchers responded by abducting Morgan and her child and taking them to Maryland. The Governor of Maryland extradited Prigg to the Governor of Pennsylvania for kidnapping

after agreeing that the state of Pennsylvania would expedite the case to the U.S Supreme Court for a uniform rule on extradition cases.

Prigg ruled that the federal government has plenary powers over fugitive slave law, establishing any form of state interference in recaption unconstitutional. Moreover, Justice Story stated: “it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the Constitution.”²⁴⁸ The case ruled that states could not interfere in recaption, but provided no clear legal definition of what constitutes interfering in recaption. More significantly, *Prigg* ruled that while states could voluntarily aid in the enforcement of federal law, the federal government could not mandate states to enforce federal law.

Pennsylvania’s 1820 and 1826 laws were ruled unconstitutional on preemption grounds since they established state control over recaption, an area of regulation that *Prigg* considered exclusive to the federal government. The ruling in *Prigg* complicated the enforcement of federal law, however, since the federal government had not yet developed the capacity to enforce recaption. States also continued to pass protections over runaway slaves and expand on the model set by Pennsylvania’s first non-cooperation law. In 1847, Pennsylvania passed a new non-cooperation law, anti-kidnapping law and due process law of habeas corpus, authorizing state judges to fully investigate recaption claims and conduct full hearings. This same year, the state passed a new abolition law, automatically freeing slaves in transit upon entry into the state. *Prigg* set limitations on what states could do legally to protect runaway slaves by preventing

them from superseding federal control over recapture. At the same time, it preserved a legal framework for northern states to pass laws severing their enforcement of federal law and granting all black residents, including runaway slaves, the same level of rights and benefits as state citizens.

4.8.2 Massachusetts

Massachusetts' abolition of slavery was unique from Pennsylvania and other northern states: early on, abolitionist and Quaker movements successfully campaigned for private emancipation efforts, which virtually ended slavery in the state without official legal emancipation. By 1783, the year that the Justice Cushing in *Commonwealth v. Jennison* interpreted the state constitution as ending slavery in the state, nearly all slaves had been voluntarily emancipated. According to the U.S. Census of 1790, the state no longer had a single slave, in contrast to Pennsylvania and New York where slaves were counted as late as the 1840 Census (See Figure 4 in the Appendix).

Abolitionists in Massachusetts, like Pennsylvania, developed strong early ties to state officials, allowing them to pass two anti-kidnapping laws and two due process laws, including the right to habeas corpus and right to replevin, in 1785, 1787 and 1788.²⁴⁹ Unlike Pennsylvania, however, Massachusetts did not take on an early active role in national politics. Moreover, while Pennsylvania was leading the North in passing two non-cooperation laws among other integrationist policies, between 1788 and 1836, Massachusetts remained inactive on runaway slaves and free blacks. The state's lack of organized abolitionist societies until 1830, and early divisions in its abolitionist

movement in the early 1830s, explains Massachusetts's late entrance into passing Northern sanctuary laws.

In 1831, William Lloyd Garrison began publishing the *Liberator*, marking the beginning of immediate abolitionism, which followed the motto – “No union with Slaveholders.” Garrison also formed the New England Anti-Slavery Society (NEASS) in 1832 and the American Anti-Slavery Society (AASS) in 1833, officially marking Massachusetts's entrance into a national leadership role. By this time, however, Pennsylvania had already shifted its strategy away from reforming the federal fugitive slave to instead, passing state level non-cooperation laws. After 1820, only two attempts to reform federal law occurred, both led by southern states to strengthen the fugitive slave law. All policies were now being proposed and passed at in northern states.

In the 1830s, Massachusetts took on a leadership role in advancing the non-accommodation strategy, but one that did not include state level policies. In 1837, for example, Alvan Steward articulated a new interpretation of the Fifth Amendment's due process clause as a possible way to end slavery, arguing that “any judge in the United States, who is clothed with sufficient authority, to grant a writ of *Habeas Corpus*” has the power to “discharge the slave and give him full liberty.”²⁵⁰ Notably, non-accommodation for Garrisonian abolitionists differed from PAS's shift in 1820 towards non-cooperation. They focused on the national abolition of slavery, not passing state level policies to limit federal fugitive slave law from being enforced.

The abolitionist movement's internal division in Massachusetts explains why its sanctuary laws emerged late. Garrison's immediatism articulated new ideas about

freedom and formed a mass abolitionist movement across the North, but he also led NEASS and AASS to reject traditional forms of political activism that were essential to PAS's success in Pennsylvania.²⁵¹ Between 1831 and 1835, Garrisonian abolitionists did not push for legislation to protect runaway slaves. NEASS (renamed the Massachusetts Anti-Slavery Society (MASS)), however, was divided between Garrisonian abolitionists and Elizur Wright's political abolitionists, and the latter group applied non-accommodation to mobilize state level policies. In 1836, Wright's group within MASS led Massachusetts to pass a law automatically emancipating slaves brought into the state by slave owners, referred to as slaves in transit.²⁵² Again, in 1837, they successfully petitioned for a due process law providing all blacks the right of trial by jury.

In the 1838 election, Wright went against Garrison's opposition by leading MASS members in a vote scattering campaign. Wright's primary goal was to gain a foothold in the state's politics by convincing electoral candidates that his coalition of abolitionists was an important interest group. They threatened candidates to support anti-slavery and pro-black policies by scattering votes to prevent electoral winners from emerging out of non-supportive candidates. Strategically, these tactics had the chance of being highly effective due to Massachusetts' electoral rules, which required candidates to win a majority of votes. In Middlesex County, which had a large abolitionist population, vote scattering was employed successfully and forced three election runoffs before a candidate won the required majority vote. However, in the end, they failed to seat an abolitionist candidate.²⁵³

Wright's abolitionist following formally cut ties with Garrison's MASS in the early 1840s, which was critical to the state establishing sanctuary over runaway slaves. On January 23, 1839, at the annual meeting of MASS, Wright and Henry Stanton (a political abolitionist from New York) proposed a resolution requiring political activity from all MASS members, but Garrison and his allies killed this resolution after heated confrontation.²⁵⁴ Wright's abolitionists used this to break its ties with MASS and to form the Massachusetts Abolition Society (MAS) in Boston, and soon after, Wright also established the state's Liberty Party, both of which served as formal organizations to his abolitionist coalition. Wright then began in earnest to pursue state sanctuary laws through all four strategies: petition campaigns, questioning candidates, third party politics and mobilizing national events.²⁵⁵

MAS's most significant success occurred in 1843 with the passage of the state's first non-cooperation law, twenty-three years after Pennsylvania. MAS and the Liberty Party strategically mobilized behind two national events in 1842 – *Prigg v. Pennsylvania* and the George Latimer Case – to build a network of support and targeted petition campaign for new sanctuary legislation. And, for the first time, in 1842 the Liberty Party won seats in a state election, which the coalition used as leverage. It was the confluence of factors, from Wright's newly organized coalition, to the emergence of national events and wins in state electoral politics that led to the state's first sanctuary law.

Prigg offered abolitionists an important learning moment for how to avoid preemption challenges in drafting sanctuary laws, and seven months after *Prigg* was decided, MAS and the Liberty Party applied its knowledge in response to a local incident.

Slave catchers arrested runaway slave George Latimer, who fled from Norfolk, Virginia with his wife to Boston, on October 21, 1842. Judge Joseph Story of Massachusetts ordered Latimer to be detained and asked for proof of ownership before ordering his removal under federal law. Facing a short window, the Liberty Party quickly established a Latimer Committee, purchased Latimer's freedom and led in a targeted state petition campaign. Called the "Great Massachusetts Petition," MAS and the Liberty Party sent Latimer petitions to every town in the state, and by the end received over 64,000 signatures. It underlined three changes in state policy: to "forbid all persons holding office" in the state from "aiding or abetting the arrest or detention of any person claimed as a fugitive from slavery," to "forbid the use of our jails or public property . . . in the detention of any alleged fugitive," and to separate Massachusetts from all connections with slavery.²⁵⁶ Wright's coalition mobilized behind *Prigg* and Latimer to build support and set these clear policy goals.

Ultimately, it was the third-party strategy and Liberty Party's successes in the 1842 state election that led to the Latimer policies being formally introduced in the legislature. For the first time, the Liberty Party created numerous deadlocks, including preventing a winner in the Gubernatorial race, multiple House and Senate seats in the state legislature, and U.S. Congressional seats, all of which required candidates to win majority votes. Capturing six House seats in the state, the Liberty Party also prevented a majority win in the House, leaving Democrats and Whigs unable to elect a House speaker. Wright's coalition used its political seats as leverage to align themselves with

House Whigs by agreeing to elect H.A. Collins (Whig) as speaker, in return for Whig support in passing the 1843 non-cooperation law.²⁵⁷

Massachusetts modeled its 1843 law after Pennsylvania's 1820 law, banning all state officials and state resources from being used to enforce the Fugitive Slave Law of 1793. Alongside previous protections – which included due process protections of habeas corpus, replevin and trial by jury and an anti-kidnapping law – the new law significantly advanced Massachusetts's position in the North as a sanctuary.

In the 1850s, Massachusetts took on a new regional leadership role of mobilizing northern states around three national events. A year following the passage of the Federal Slave Act of 1850, the State Senate of Massachusetts organized a committee to issue a report and bill concerning the new federal law. The report stated: “We regard the fugitive slave law, therefore, as morally — not legally, but morally — invalid and void . . . [and] the committee can see no moral difference between enslaving a white man and a black one, or a fugitive and one always free.”²⁵⁸ The 1851 sanctuary bill did not pass. However, it was tabled and re-introduced in 1855.

In 1854, the Kansas-Nebraska bill expanded slavery and ended the lines drawn by the Missouri Compromise of 1820, sparking opposition throughout the North. At the same time, in 1854, Anthony Burns was detained by a slave catcher in Boston, and during his hearing, a large group of abolitionists stormed the courthouse to physically remove and protect Burns from recaption. President Franklin Pierce sent over two thousand U.S. troops to enforce the Fugitive Slave Act of 1850, returning Burns to slavery. Mobilizing around these two events, MAS led a large petition campaign. Over eight thousand

individual petitions were sent to the standing committee on Federal Relations in the state legislature. The petitions stated:

The undersigned citizens of _____ respectfully ask you to declare that any person who engages in arresting, holding or returning a fugitive slave – either as United States judge, commissioner, marshal, deputy-marshal, or in any other capacity whatever, or even as a private citizen – shall be forever incapable of holding any office of trust, honor or emolument, whether such office be State, county, city or town office, unless relieved from such merited disgrace by pardon. And we also ask you to pass a law which shall punish with fine and imprisonment, any State, county, city or town officer, who shall, during his continuance in such office, aid, in any way, in arresting, holding or returning, a fugitive slave – whether such acts are apparently done in virtue of his office or otherwise. And also to punish, by fine and imprisonment, any claimant of an alleged slave, or any aider or abettor of such claimant who shall attempt to remove such alleged slave from this State, without his first having had a jury trial on the question of his slavery or freedom.²⁵⁹

In 1855, the state re-introduced, amended and passed the 1851 bill.

Soon after, Massachusetts met with five Northern legislatures (CT, VT, RI, MI and ME), who passed similar laws in 1855 to protect runaway slaves.²⁶⁰ Massachusetts passed the most comprehensive package of laws in the North, which included a non-cooperation law forbidding state officials from enforcing the federal fugitive slave law, a strict anti-kidnapping law and additional due process protections, including appointing special state commissioners to defend runaway slaves in court, placing the burden of proof on slave owners and providing all blacks with the right of habeas corpus, trial by jury, and testimony against whites.²⁶¹

4.8.3 Ohio

In contrast to Pennsylvania and Massachusetts, abolitionists in Ohio were at a significant political disadvantage. The most populated region was southern Ohio, which was made up primarily of white Democrats with strong ties to slave states. Throughout the antebellum period, despite a strong abolitionist movement in northern Ohio, Democrats in the South controlled the state legislature and passed numerous restrictive laws.

Article 6 of the Northwest Ordinance of 1787 stated that slavery would not exist in the states that would be created from that territory. Ohio was a territory under the Ordinance, and Democrats chose strategically not to add restrictive provisions to its state constitution to avoid slowing the process of acquiring statehood. In 1803, Ohio entered the union with a state constitution banning slavery. It added, however, an indentured servitude clause that allowed servitude of both whites and blacks until the age of twenty-one for males and eighteen for females, and allowed for the hiring out of servants. The constitution also denied blacks suffrage and the ability to hold public office.²⁶² The Northwest Ordinance's constraints on a pro-slavery constitution preserved many rights for free blacks in the state, including the right to a trial by jury, freedom of assembly, right to petition, and access to public education; however, these rights were also never expressly granted in the constitution.

Democrats had an early control over politics in Ohio and set up an extensive legal regime restricting black immigration, rights of black residents, and formed its own state run fugitive slave policy in addition to actively enforcing federal law. In 1804, a year

following admission to statehood, Ohio passed its first set of restrictive laws, requiring blacks to show proof of freedom before entering, residing or searching for employment in the state. Moreover, free blacks in the state were required to register with their county of residence. Regarding runaway slaves, the 1804 law mandated state institutions to aid in recaption and made it a misdemeanor crime for anyone to interfere in recaption with fine of up to \$1000, providing the first state recaption policy in the North, on top of cooperating in the enforcement of the federal fugitive slave law.²⁶³ In 1807, Ohio expanded its restriction on entry, requiring blacks to attain two property owners as sponsors willing to post a \$500 bond as a guarantee of future good behavior by new black residents. This law also banned black testimony against whites, increased fines for interfering in recaption, and mandated that employers and schools aid in the recaption of runaway slaves and verify certificates of freedom of all blacks.²⁶⁴

It is not surprising that after statehood, Democratic leaders quickly passed these restrictive laws. Paul Frymer shows that westward expansion was achieved through homestead laws establishing different forms of racial control, particularly policies to restrict black immigration aimed at creating exclusively white populated states.²⁶⁵ The state's restrictive laws were enforced selectively, leaving blacks in northern Ohio in a constant position of vulnerability. For example, in 1829, a campaign to remove blacks in Cincinnati was led by white mobs, overseers of the poor and state officials, who issued a proclamation for "illegal" blacks to leave the state by June 29. In response, abolitionists secured international sanctuary from the Lieutenant Governor of Upper Canada for Cincinnati blacks in the state unlawfully under federal and state laws, which meant

lacking proof of freedom and registration in their county of residence. Over 1,200 blacks migrated north to Canada.²⁶⁶

Despite the state's anti-black laws, Northern Ohio had a large black population and abolitionist movement by the 1830s, who were very active in the Underground Railroad protecting runaway slaves through local and extra-legal mechanisms. Between 1790 and 1840, the black population doubled its size every ten years, and by 1860, Ohio reached over 36,000 black residents, establishing it as the third most "black" populated state in the North. Abolitionist coalitions in Ohio faced significant constraints. Ohio Democrats and conservative Republicans considered free blacks to be outside of politics and banned them from voting, holding office or testifying in court. State leaders also ignored black petitions. Despite this, blacks strategically aligned with white abolitionists and sympathetic white officials in northern Ohio to form large petition campaigns, most of which were oriented towards repealing existing restrictions (not passing sanctuary policies).

They first unsuccessfully petitioned to repeal Ohio's black testimony law. In response, Democrats proposed a constitutional amendment in 1819 that, if it were passed, would have allowed slavery in the state. Ohio abolitionists shifted away from equal political rights in 1819 to successfully petition for an anti-kidnapping law that would protect its free black residents from unlawful enslavement.²⁶⁷ In the context of Ohio's restrictive laws and its enforcement of the Fugitive Slave Law of 1793, the 1819 anti-kidnapping law offered limited protection to free blacks, not runaway slaves.

In 1822, a petition campaign to repeal the black testimony law for the first time led to a bill being introduced in the House. While it failed 36 to 32, abolitionists' access to state level officials in getting their proposal through in the form of a bill was an important success.²⁶⁸ In 1831, a petition campaign led to a stronger anti-kidnapping law that created a new procedural rule requiring the use of recaption claims through justices of the peace.²⁶⁹ And in 1843, mobilizing around *Prigg*, abolitionists passed another anti-kidnapping law that established a sentence of up to seven years of hard labor for kidnapping. The three legislative successes were confined to anti-kidnapping laws and were an exception rather than a rule in Ohio's anti-black immigration laws, bans on black due process rights, and anti-harboring laws.

Ohio's restrictions were not only the result of pro-slavery politicians, but also abolitionist coalitions' configuration and strategy. Prominent abolitionists existed in Ohio, but they lacked the organization of Pennsylvania and Massachusetts' coalitions, which sought non-accommodation state level policies. Salmon Chase, one of Ohio's most celebrated abolitionists reveals this difference. Chase was known as the "Attorney General for Fugitive Slaves," and led the Liberty Party in Ohio from 1841 to 1848. In his Liberty Party address in 1841, Chase stated: "The Constitution found slavery and left it a State institution—the creature and dependent of State law—wholly local in its existence and character. It did not make it a national institution." He further added, "The very moment a slave passes beyond the jurisdiction of the state, . . . he ceases to be a slave."²⁷⁰ Chase's statement parallels the ideas of non-cooperation in Pennsylvania and Massachusetts, especially his point that slavery is confined or limited to slave

jurisdictions.²⁷¹ The critical difference is that Chase focused on political reform in the courts where he defended runaway slaves and abolitionists, and national level reforms that would sever the federal government's ties to slavery. State sanctuary was not a goal.

By contrast, Chase did not assume the same kind of leadership role Elizur Wright assumed in Massachusetts, who very effectively organized MAS and the Liberty Party into a political coalition to change state level policy. Chase led Ohio's Liberty Party with national level goals and vigorously focused on building a broad national anti-slavery coalition. He argued against requiring Liberty Party members to adhere to the doctrine of immediate emancipation in order align himself with Whigs and Democrats' more moderate anti-slavery positions. While the coalition in Ohio greatly different from the non-accommodation coalition of sanctuary states, third-party maneuvering and Chase's broad coalition led to success in 1849 by passing Ohio's most notable legislation, a repeal law ending the state's black testimony restriction (after nearly 50 years of trying), ending its 1804 and 1807 restrictions on black entry, registration and employment.²⁷²

In 1848, Chase created the Free Soil Party in Ohio with a moderate anti-slavery position compared to the Liberty Party, hoping that he could convince anti-slavery Whigs and Democrats to join forces with Liberty members under the banner of Free Soil. According to Brooks, "the Free Soil Party can be best understood as the product of a conscious effort by Liberty managers and a small group of dedicated Whig allies to expand the reach of anti-Slave Power politics."²⁷³ In 1849, the new Free Soil Party won key victories. Free soilers Joshua Giddings and Joseph Root were elected to the state

legislature. Most significantly, state legislators Norton Townshend (a former Liberty man) and John F. Morse (a former Whig) used their votes to gain control of the state legislature in an apportionment dispute and elected Salmon Chase to the U.S. Senate. In return, Chase momentarily focused on state level legislation. He helped draft and pass Ohio's 1849 repeal law, which he passed by mobilizing his broad coalition of anti-slavery Democrats and Whigs in the state legislature.²⁷⁴ Chase then refocused his commitment to comprehensive reform at the national level.

Ohio's abolitionist coalition's configuration and institutional constraints explain why it did not pursue sanctuary laws. Early on, the state banned blacks from entering state politics, and the pro-slavery Democrats' early control over the state legislature prevented abolitionists from achieving the types of access to state leaders achieved in Pennsylvania and Massachusetts. Ohio abolitionists engaged mostly in state level defense against the proliferation of restrictive black laws, and they did this through similar strategies of petitions and mobilizing over national slavery events. In the late 1840s, the new Free Soil Party and divisions in the Democratic and Whig parties led to a re-configuration of Ohio's abolitionist coalition by giving them access to anti-slavery state leaders. This change led to the 1849 repeal law, which proved to be a momentary focus on state level reform. Chase and the Free Soil coalition was not configured around non-accommodation at the state level, but instead, sought a broad national anti-slavery membership and national change. For this reason, Ohio remained a strong enforcer of the Fugitive Slave Law of 1783 and 1850, and its anti-kidnapping laws were exclusive protections given only to free blacks.

4.8.4 Indiana and Illinois

Like southern Ohio, Indiana and Illinois had strong relationships with slaveholders in the South. In 1755, both territories passed laws protecting the rights of slaveholders visiting with their slaves, laws that remained in force once they gained statehood.²⁷⁵ In 1803, they went well beyond the path set by Ohio's constitution, which legalized indentured servitude of both whites and blacks until the age of twenty-one for males and eighteen for females, by creating a system of *de facto* slavery through a lifetime indentured servitude clause.²⁷⁶ They also passed laws mirroring Ohio's 1804 and 1807 restriction on black immigration by requiring a \$500 of bond for entry and registration with the overseer of the poor.

Unlike the constraints abolitionists faced, pro-slavery forces in Indiana and Illinois had little opposition. In 1816, Indiana entered the union, passing a constitution that prohibited both slavery and indentured servitude, continued its previous requirement of proof of freedom for entry, and excluded blacks from enumeration, voting, testimony and serving in the militia.²⁷⁷ In 1818, Illinois entered the Union, passing a constitution that prevented slavery, but expanded its territorial policy on lifetime indentured servitude by allowing slave owners to sign labor contracts when entering the state in order to retain lifetime control over their slaves. Since slave owners' rights were protected in Illinois, the status of slaves and indentures were nearly indistinguishable. Illinois also required blacks to have proof of freedom for entry and employment, excluded blacks from enumeration and voting, and authorized the overseer of the poor to remove any indigent blacks regardless of their freedom.²⁷⁸

Both states, however, passed anti-kidnapping laws. In 1816, Indiana passed an anti-kidnapping law requiring slave catchers to attain a warrant from a justice of the peace or judge of the supreme circuit. Similarly, in 1833, Illinois passed its only anti-kidnapping law that “provided sanctions against anyone who forcibly arrested anyone else to remove him from the state without having established a claim according to the laws of the United States.”²⁷⁹ To minimize the scope of these laws, they simultaneously passed strict state laws enforcing federal fugitive slave law, and Indiana passed a stricter anti-harboring law in 1816 regulating the false documentation and harboring of runaway slaves.²⁸⁰

Where abolitionist movement existed, they were highly constrained. A relatively large abolitionist movement emerged in Chicago, Illinois, that remained powerful at the local level, but did not have the organizational capacity and access to shape state legislation. In response to the federal Fugitive Slave Act of 1850, the Chicago Common Council prohibited city police from assisting in the arrest of any fugitive slave, and explained “that State officers are under no obligations to fulfill duties imposed upon them as such officers by an act of Congress, we do not, therefore, consider it our duty to counsel the city officers of the city of Chicago, to aid or assist in the arrest of fugitives from oppression.”²⁸¹ U.S. Senator from Illinois and resident of Chicago, Stephen Douglas (Democrat), was chairman of the Congressional Committee on Territories and led in the passage of the new Fugitive Slave Act. Douglas rebuked the city’s proposed sanctuary policies, but the city council voted in favor of non-cooperation by a 9 to 3 vote.

Nevertheless, Illinois remained a strong enforcer of federal law.²⁸² In the wake of major national attention on slavery, including the Fugitive Slave Act of 1850 and Kansas-Nebraska Act in 1854, Illinois and Indiana began to shut their doors entirely to blacks. In 1851, Indiana passed a new state constitution banning all blacks from entering the state and from gaining lawful employment in the state. The state enforced employer sanctions and applied any fines towards the state's colonization program to remove resident blacks.²⁸³ Moreover, in 1852, Indiana passed a law requiring all blacks residing in the state prior to November 1, 1851, to register or face removal.²⁸⁴ Again, in 1852, 1853 and 1855, Indiana passed laws strengthening its colonization program.²⁸⁵ In 1852, Illinois similarly passed laws banning black immigration into the state, but it did not take on the extensive effort to enforce its immigration ban or to remove resident blacks from the state.²⁸⁶

Both Illinois and Indiana lacked large black populations and had localized abolitionist movements with little access to state officials. While abolitionists were able to secure a local sanctuary policy in Chicago, Illinois, no such efforts were made in Indiana. And both states reveal the process of passing restrictive laws to be less constrained than passing sanctuary laws. Federal law denied free blacks national citizenship, blacks were denied U.S Constitutional due process and equal protections, and Southern officials in U.S. Congress prevented all attempts by abolitionists to add an anti-kidnapping provision to the federal fugitive slave law. Legalizing slavery was the only national constraint Indiana and Illinois faced, and even this proved minimal as evidenced by Indiana's lifetime indentured servitude policy.

4.9 Conclusion and Broader Implications

This chapter explored a conflict between federal and state laws on runaway slaves, reveals new evidence of variation in Northern sanctuary laws, and advanced a theory of sanctuary policies in a federalism framework. The State Coalition Model goes beyond conventional top-down explanations of sectionalism by examining how abolitionists differ in their orientation and coalition building capacity, placing both federalism and state level dynamics front-and-center to explain Northern variation. National abolitionist led by groups in Pennsylvania first focused their efforts on reforming federal fugitive slave law between 1791 and 1820. During this same period, Northern states passed a few state laws to protect free blacks from kidnapping, but had not yet committed to protecting runaway slaves. After years of setback on national reform, Pennsylvania's abolitionists shifted to a state level, non-accommodation approach, which meant severing the state's enforcement of federal law. Through process tracing across six states, I show that motivation alone was not enough for Northern sanctuary laws to emerge: the configuration of abolitionist's coalition and orientation of their strategies made a critical difference in the timing and scope of each state's sanctuary policies.

Important variation in protection emerged out of Northern sanctuary laws. This chapter focuses on how state abolition, anti-kidnapping, due process and non-cooperation laws set up different levels of freedom for both free blacks and runaway slaves in the North. Rather than viewing freedom as a binary, this chapter demonstrates how a federalism system preserves space for gradations of *free presence* to emerge, particularly

from state laws protecting free movement and presence. Northern laws ranged from minimal access to due process protections in recaption cases to the high levels of protection, which cumulated through a packaging of non-cooperation, anti-kidnapping, due process, and abolition laws. Pennsylvania and Massachusetts were the only two northern states to pass all four policies, creating a high level of free presence for runaway slaves. More importantly, the concept of free presence transcends Northern laws on runaway slaves by resonating with today's state and local sanctuary laws and federalism conflict over the lawful presence of undocumented immigrants.

For over half a century, federal law has considered it a crime for immigrants to be inside the U.S. without legal authorization. The Immigration and Naturalization Act of 1952 added "unlawful presence" to immigration law, and federal laws have required proof of lawful status for immigrant to access federal resources, including employment, public welfare and identification cards.²⁸⁷ As before, states have taken on an active role in regulating the lives of undocumented immigrants, despite federal plenary power. Many states have passed restrictionist laws that require proof of federal legal status for immigrants to gain access to state level resources of employment, higher education, health care, housing, professional licenses and identification cards.

Arizona's Legal Arizona Workers Act (LAWA), passed in 2008, restricted undocumented immigrants from gaining employment in the state by requiring employers to verify an applicant's work eligibility through the federal E-Verify system. Arizona's SB 1070, passed in 2010, went much further and is known to be one of the harshest state laws in recent decades; it made immigrants' physical presence and act of applying for a

job in the state without proof of federal legal status a state level crime, and it required state police officers to detain anyone they suspected to be unlawfully present inside the country.²⁸⁸ The Supreme Court upheld LAWA, but ruled most of SB 1070 unconstitutional with the exception of Section 2(B) – the “show me your papers” provision – requiring police to check the immigration status of anyone they suspect as being unlawfully present.²⁸⁹

Whereas Arizona is a highly restrictive state, the more recent trend has been in the opposite direction of integration, with California passing the most far-reaching laws from granting all immigrants inside the state access to in-state tuition and financial aid, access to driver licenses and professional licenses, and access to health care and workforce protections, regardless of their federal legal status.²⁹⁰ California’s AB 60, passed in 2013, granted undocumented immigrants access to state driver licenses and made it illegal for state police to target and investigate California drivers for possible immigration violations.

States and localities are also passing non-cooperation laws.²⁹¹ California and Connecticut were the first two states to enact laws called Transparency and Responsibility Using State Tools (TRUST) Acts in 2013, which stipulate that officers can only enforce immigration detainers issued by the U.S. Immigration and Customs Enforcement (ICE) for persons convicted of serious crimes.²⁹² Much like removal certificates issued to detain runaway slaves, a detainer request is a formal notice by ICE of their intention to take custody of potential unauthorized immigrants. The Third Circuit recently ruled in *Galarza v. Lehigh County* (2014) that immigration detainers are requests

and cannot mandate state or local compliance. Since the early 2000s, hundreds of counties and cities have also ended or limited their participation in enforcing federal law.²⁹³

This chapter's analysis, therefore, offers more than an important reappraisal of abolitionist strategies in a federalist framework. The notion of *free presence* animates long-standing debates about American federalism, rights and race by placing focus on state and local roles in regulating movement, and by revealing the cumulative effect states laws might have on the lives of immigrants today as they did for runaway slaves. An estimated 11 million immigrants inside the U.S. today are considered unlawfully present under federal law, and even lawfully present immigrants have federal statuses with different degrees of permanence and security.²⁹⁴ Federal legal status and illegality shapes much of immigration scholarship today because it is a central factor in shaping immigrant integration at all levels of government.²⁹⁵ Without comprehensive immigration reform at the national level, states like California are playing a critical role and have gone a long way to insulate undocumented immigrants from racial discrimination and abuse due to their lack of federal legal status, and to integrate all immigrants regardless of their status.

In addition to its TRUST Act and range of integrationist policies on education, health care and licensing, California also bans employers from using federal legal status to extort undocumented workers, and bans restrictive landlord ordinances from similarly using legal status to target undocumented residents. State and local free presence through non-cooperation and through legal protection creates inclusive communities and facilitate

progress towards non-discrimination and equality. At the same time, sanctuary laws have their limits; just as recaption by slave masters remained a danger until the eventual abolition of slavery, so too does the risk of deportation in the absence of legislative reform on immigration at the national level. Pending that national resolution, it is critically important to continue studying variation in state and local laws on free presence, and analyzing the factors that produce changes in these laws over time.

Chapter 5

The 1980s Central American Sanctuary Movement in a Federalist Framework

5.1 Introduction

On March 24, 1982, Southside Presbyterian in Tucson and five churches in Berkeley, California, led the country by publicly declaring themselves as sanctuaries for Central American “refugees,”⁴ who the federal government deemed unlawfully present.²⁹⁶ Over a short span of a few years, the sanctuary movement developed into a national network of churches and synagogues that harbored and transported Central Americans, protecting them from being deported. At its center, California was home to the largest number of church-declared sanctuaries (over one hundred), forty of which were in the San Francisco Bay area. Three years following the first church declaration of sanctuary, cities and states began to enact their own sanctuary policies.

Despite important questions sanctuary policies raise about immigration law, the immigration scholarship has done little to examine sanctuary policies. This gap exists because scholars have primarily focused on immigration law’s national story.²⁹⁷ Since the Page Act passed in 1875, scholars have primarily considered immigration law to be

⁴ The status of Central Americans and battle over asylum was politically animated, particularly over the distinction between refugees, asylum seekers and unauthorized immigrants. Refugees largely reside in camps outside U.S. territory (for example, World War II’s Displaced Persons or today’s Syrian refugees), where they are vetted for an extended period of time. Asylees enter U.S. territory and seek asylum as entrants making their claims on U.S. soil. Undocumented immigrants reside inside U.S. territory without authorization by the federal government. Throughout this chapter, I use all three terms interchangeably to highlight the contentiousness of Central American’s status inside the U.S. that was at the heart of the sanctuary movement, but mostly refer to them as refugees.

the exclusive domain of the federal government. This account, however, has recently been challenged by a new set of scholars studying the post-2000 period of immigration federalism.²⁹⁸

By examining sanctuary policies' historical development, my dissertation contributes a new understanding of their place in immigration law. Chapter 3 of my dissertation complicates a purely national understanding of immigration law by explaining how sanctuary policies, despite federal preemption, are a permanent feature of American federalism. Chapter 4 explores sanctuary policies' political development in the antebellum period: despite federal preemption over fugitive slave law, I reveal how Northern antebellum states passed a range of policies to protect runaway slaves, raising important conflicts with federal law. In this chapter, I similarly reveal the importance of the subnational policies in an era of federal preemption in immigration law, by explaining important variation in church, local, and state level sanctuary policies passed in the 1980s to protect Central American refugees.

The Central American Sanctuary Movement (CASM) has been the subject of numerous of books, articles, documentaries and feature films, much of which grew out of the resistance movement in the 1980s to raise public consciousness on the plight of Central Americans.²⁹⁹ Academy Award–winning documentary *Americas in Transition*, among other films and much of the scholarship focuses on the role U.S. foreign policy played in causing hundreds of thousands of Salvadorans, Guatemalans, Nicaraguans, and Hondurans to become dislocated and to flee violent civil wars.³⁰⁰ Many of these refugees fled to the U.S. in search of protection, but were denied by the federal government and

targeted for deportation. Like the scholarship on immigration law, the dominant narrative in CASM scholarship is nationally focused, despite the prominent role that subnational jurisdictions played in policymaking at the time. Scholars have primarily focused on how international organizations and U.S. churches mobilized a resistance movement to shape U.S. foreign policy and asylum policy. No focus exists on American federalism or dynamics connecting federal immigration/asylum law to patterns in state and local policymaking.

Maria Cristina Garcia provides one of the most developed political accounts of the rise and consequences of CASM, explaining that an international network formed between non-governmental actors and local grassroots activists in the U.S. to change national policy.³⁰¹ Susan Bibler Coutin advances a similar theoretical explanation of the movement's origin. Tracing how Central American immigrants were actively involved in Los Angeles' Association of Salvadorans of Los Angeles, El Rescate, and Central American Refugee Center, Coutin provides an important account of how refugees and immigrants were able to mobilize the law to change national policy (specifically legalization in the 1990s).³⁰²

Many scholars of CASM – including Ann Crittenden, Hillary Cunningham, Miriam Davidson, Renny Golden, and Michael McConnell – connect the movement's moral discourse to changes in U.S. foreign and asylum policy.³⁰³ Lane Van Ham builds on this work by connecting churches to immigration activism in U.S. history, arguing that churches form a distinct church-based immigrant advocacy (CBIA). CBIA's first used biblical calls for hospitality at the end of World War II to pressure the U.S. to admit

thousands of displaced persons from Europe, and they have remained involved as critical service providers to political refugees and undocumented immigrants. Ham develops a theory, which posits that CBIAs develop political discourses “outside of a nation-state framework” after experiencing double standards in refugee admissions. CBIAs defense of undocumented immigrants today, in other words, stems from its moral “appreciation of global poverty as an oppressive force that challenges assumptions about the regulation of national boundaries.”³⁰⁴ Ham’s theory of CBIA discourse development and more permanent advocacy role in immigration law helps bridge immigration scholarship and CASM scholarship, but her work focuses exclusively on national policy development.

Only a few scholars begin to fill the gap in our understanding of subnational governmental sanctuary policies. Peter Mancina provides a detailed account of San Francisco’s sanctuary movement and policies beginning in 1985, offering rich context to understanding local debates, activists, and events, but does not advance a theoretical understanding of sanctuary policies. Rose Cuison Villazor similarly focuses on San Francisco’s “sanctuary” policies in the 1980s, making the normative case that they create forms of local memberships that contribute to work on urban citizenship, but offers no theory or political explanation of sanctuary policies.³⁰⁵ The CASM literature as a whole focuses on churches’ declaration of sanctuary as a national story to change policy, making Coutin’s rich account of Los Angeles, and Mancinas’ and Villazor’s accounts of San Francisco the only studies on city sanctuary policies.

This chapter offers the first systematic analysis of sanctuary policies by churches, cities and states in the 1980s. I construct an original dataset of sanctuary policies by

documenting policies found in the secondary literature and original research using LexisNexis and ProQuest's newspaper archives and city government websites and archives. This chapter not only offers new analysis of sanctuary policies' timing and sequencing in 1980s, it develops a general theory of sanctuary policies in a federalism context, connecting contemporary sanctuary policies to antebellum policies protecting runaway slaves.

By examining how federalism structures activists' strategies for policy reform, particularly how they decide on a venue (national, state, local or grassroots), my dissertation reveals historical patterns in the politics shaping the passage of sanctuary policies. In Chapter 4, for example, I explain that abolitionists first pushed for national abolition of slavery, but after facing repeated failures in these attempts, they turned their efforts to building subnational coalitions with sympathetic state and local officials to push for sanctuary laws that protected runaway slaves. This chapter applies the same federalism framework to examine dynamics in coalition building and policy formation in the 1980s Central American Sanctuary Movement. It also contributes to the immigration and CASM scholarship by going beyond the traditional national story to fill important gaps in our understanding of state and local politics.

Roadmap. The chapter begins first with an overview of my theory of the timing and spread of city and state sanctuary policies in the 1980s and method of analysis, followed by a brief background of the push factors that led to a large influx of Central American migrants to the U.S. in the 1980s. Two subsequent sections begin to establish my theory and method by laying out the origin and spread of the church sanctuary

movement, and the formation of a national coalition and strategy during the early 1980s that faced important failures in their efforts to reform federal policy. The next section addresses how a national event sparks a strategic shift in the national sanctuary movement and provides the first systemic account of the 1980s city and state sanctuary policies. The chapter ends with a section identifying the factors that explain the plateau in sanctuary policies and re-emergence of national reform strategies towards Central American asylum.

5.2 Theory of Sanctuary Policies

Pro-refugee activists in the 1980s first directed their resources and energy to reforming national policy (from 1981 to 1985). After facing repeated failure, however, and in response to two national events in 1985 and 1986, they shifted away from a national policy reform effort to push for local and state level sanctuary policies.

Figure 5.1 A Theory of Sanctuary Policies in a Federalism Framework

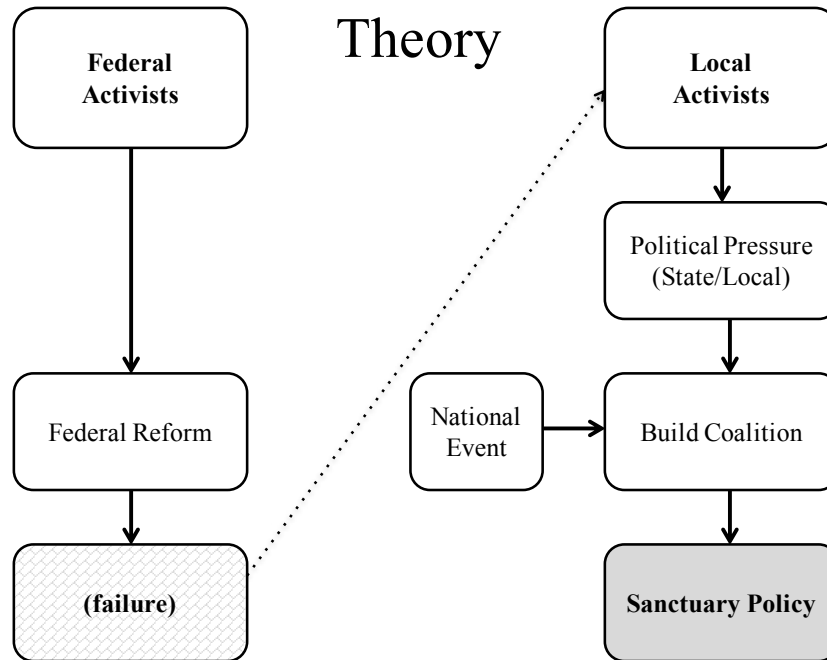


Figure 5.1 highlights two sets of activists in the 1980s, one at the national level and one at the local level. My theory builds on the scholarship, which examines how international organizations and NGOs pressured for changes in U.S. asylum policy. Specifically, I analyze for the first time how national strategies by international and national organizations, what I call national activists, directly affects the timing of subnational sanctuary policies. Federalism creates multiple venues for policymaking, and I posit that a national focus on reform prevents activists from pursuing subnational sanctuary policies. The scholarship also accounts for the rise of church declarations of sanctuary, beginning in 1982, by linking them to international and national movements. Building on this work, I distinguish between national bodies (like Presbyterian Church

U.S.A.) that connect sanctuary activists nationally from local churches and local committees whose primary activity centers around acts of civil disobedience like harboring and transporting refugees. National and local activists worked together and simultaneously to aid Central American refugees through national reform and civil disobedience, but they were distinct in their national or local orientation.

My theory posits that repeated federal reform failures shift the center of gravity of both national and local activists, and cause sanctuary policies to gain more clout. National activists, including sanctuary movement leaders and U.S. Senators and Representatives fought together to reform U.S. asylum policy. After federal failure, many national activists begin to look elsewhere for reform and revised their strategic coordination of sanctuary movement activities. The important change that explains the emergence of city and state sanctuary policies in the 1980s is national and local activists' new political strategy to build up state and local coalitions with public officials. National events, I argue, fuel this strategic shift and activists' coalition building capacity to partner with sympathetic Governors, Mayors, and other city officials as critical allies in their push for sanctuary policies.

The 1980s contrast the robust spread of sanctuary policies passed in the antebellum period and is comparatively short lived. The movement that began with churches offering sanctuary in 1982, grew to include local and state policies in 1985, plateauing in 1987. I argue that the federalism dynamics focusing energy away from national policy to local and state policy returned the focus back to the national level. Before 1987, national efforts to reform asylum policy had all failed, making sanctuary

policies a viable option. The Supreme Court decided a case in 1987 that brought new optimism to the national strategy, and thereafter, activists experienced multiple successes in federal Court decisions and federal policy reforms.

5.3 Method of Analysis: Strengths and Limitations

As in Chapter 4, I employ process tracing at the federal and state levels to show evidence of my theory, and to unpack interacting parts of the causal mechanism theorized to produce sanctuary policies. Theory testing occurs at two levels. At the federal level, I employ process to identify and trace when groups pushed for national reforms, and evidence of multiple federal failures and a related shift towards state/local coalition building. Next, at the state level, I employ process tracing to examine state coalition building and policy reform activities in three cities: Los Angeles, San Francisco, and Rochester.

The analysis this chapter provides focuses on primary and secondary sources that offer evidence of federal reform efforts' *presence* and *absence*. Its focus is on showing evidence of broader sequencing from federal to local coalition building in states/cities to pass sanctuary policies, and the three in-depth city case studies show evidence of this. However, unlike Chapter 4, it does not employ cross case analysis of the *presence* or *absence* of factors within state/local coalitions linked to policy variation. Future analysis will cover all 1980 sanctuary jurisdictions (27 cities and 3 states) and pair them to non-sanctuary jurisdictions with similar demographic and political characteristics to provide a stronger test of my theory on sanctuary policy proliferation.

5.4 Background: Undocumented Central Americans

Jim Corbett, founder of the church sanctuary movement, explains that he “envisioned a network of ‘safe houses’ for the refugees similar to the Underground Railroad that hid escaped slaves in the antebellum period.”³⁰⁶ The movement to harbor and aid refugees and asylum seekers emerged as a reaction to U.S. geopolitical goals that preserved a protected status almost exclusively for migrants fleeing communist regimes or governments viewed as hostile to U.S. interests. President Reagan and GOP allies in Congress considered Central Americans in the 1980s, specifically those fleeing Nicaragua, El Salvador, Guatemala, and Honduras, not as refugees welcomed under the Refugee Act of 1980, but rather, as economic migrants who unlawfully entered the U.S. and were subject to removal.

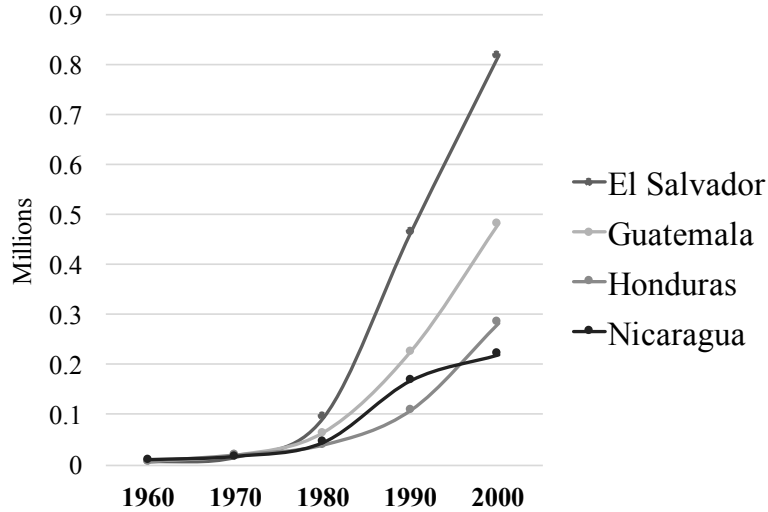
Prior to 1980, migration from Central American countries to the U.S. was uncommon, with only a few thousand immigrants residing in cities like San Francisco, New York, and Miami.³⁰⁷ Out-migration from Nicaragua, El Salvador, Guatemala and Honduras to the U.S. from 1970 to 1979 averaged 7,834 per year, but this number grew dramatically in the early 1980s, peaking in 1990 at 136,000. Approximately 450,000 undocumented migrants entered the U.S. from El Salvador, Guatemala, and Honduras between 1980 to 1995, surpassing the 331,000 documented immigrants from these countries.³⁰⁸

The crises in Central America are well documented by scholarship on the 1980s sanctuary movement. Revolutions led to violent civil wars that devastated the economic infrastructure and displaced millions. In Nicaragua, the Sandinista Revolution of 1979, a

leftist movement that overthrew a repressive Anastasio Somoza government, sparked a civil war. President Jimmy Carter sought to work with the Sandinista regime, but these efforts ended in 1981 when President Reagan aimed to overthrow the Sandinista regime by sending military aid and helping train the Contras, a right-wing militant group. The Reagan administration also funded right-wing leaders of El Salvador, Guatemala, and Honduras to prevent leftist revolutions from spreading, exacerbating civil wars in these countries. Central Americans in all four countries fled north to Mexico, the U.S. and Canada to escape violence and economic catastrophe.

Figure 5.2 below highlights the dramatic increase in immigrant population from Central American countries beginning in 1980, and Table 5.1 provides a comparison between the U.S.'s treatment of asylum-seekers originating in Central America (who were denied and considered unlawfully present) to ten other countries that were granted refugee status.

Figure 5.2 U.S. Foreign Born Population from Central America, 1960-2000



Source: MPI, "Countries of Birth for U.S. Immigrants, 1960-Present"

Table 5.1 Inconsistency in U.S. Asylum Policy, 1981-1990

Country of Birth (migrants coming to U.S.)	1981-1990 (total #)	Regime Type	Immigration Status in U.S. (for majority of immigrant population)
<u>Central America</u>			
El Salvador	370,986	Pro U.S.	Unlawful
Guatemala	162,666	Pro U.S.	Unlawful
Nicaragua	124,493	Pro U.S.	Unlawful
Honduras	69,769	Pro U.S.	Unlawful
<u>Other</u>			
Vietnam	324,453	Communist	Refugee
Laos	142,964	Communist	Refugee
Cambodia	114,064	Communist	Refugee
Cuba	113,367	Communist	Refugee
Soviet Union	72,306	Communist	Refugee
Iran	46,773	Anti-U.S.	Refugee
Poland	33,889	Communist	Refugee
Romania	29,798	Communist	Refugee
Afghanistan	22,946	Communist	Refugee
Ethiopia	18,542	Communist	Refugee

Sources: Tichenor 2002, 266; MPI "Countries of Birth for U.S. Immigrants, 1960-Present"

The Refugee Act of 1980 brought U.S. law into line with international human rights standards, specifically the 1951 UN Convention and the 1967 Protocol Relating to the Status of Refugees. It was modeled on the convention's "well-founded fear of persecution" standard. Despite the transformation in U.S. refugee policy, President Reagan's foreign policy goals in Central America were opposed to leftist revolutionary movements, which caused the administration to officially consider Central American migrants as economic migrants unlawfully residing in the U.S. To consider them refugees would cast a negative light on U.S. foreign policy and geopolitical goals. Throughout the 1980s, the U.S. government denied political asylum to Central American applicants on the basis that they were fleeing economic stagnation and generalized conditions of violence, not political persecution.³⁰⁹

This chapter treats Central American refugees of the 1980s as an aggregate whole, but it is important to note their differential experiences. Nicaraguans were by far the most successful in acquiring asylum at a 25.2% success rate between 1983 and 1990, whereas Salvadoran and Guatemalan applicants averaged a 2.6% and 1.8% success rate during the same period.³¹⁰ Important to note, however, Nicaraguan rates fluctuated dramatically in the 1980s, with rates falling below 12% from 1983 through 1985, and then increasing to 27% in 1986 and then to 84% and 53% in 1987 and 1988.³¹¹ In contrast, on average, 76.7% of USSR refugees were successful in their asylum applications from 1983 through 1990.³¹² I will argue later that these changes in Nicaraguan rates were part of the larger national reform movement to change U.S. policy towards Central Americans.

Together as a collective unit the majority of Central American refugees were excluded throughout the 1980s from protection under the Refugee Act of 1980, and a church sanctuary movement led in a two-front campaign to change U.S. policy: it led at the grassroots level in civil disobedience by aiding and harboring undocumented Central Americans from deportation, and at the national level by aligning with U.S. Senators and Representatives to change national policy.

5.5 Church Sanctuary Movement

Central American churches and international organizations sought religious allies in the U.S., and sympathetic churches in the U.S. led the sanctuary movement with these international networks in place. U.S. churches viewed national policy as immoral, and led in debates over refugee and foreign policy in town halls, churches, and college campuses across the United States. The National Association of Evangelical's immigration resolution, for example, linked the church sanctuary movement to the Bible as a moral act:

The Bible contains many accounts of God's people who were forced to migrate due to hunger, war, or personal circumstances. Abraham, Isaac, Jacob, and the families of his sons turned to Egypt in search of food. Joseph, Naomi, Ruth, Daniel and his friends, Ezekiel, Ezra, Nehemiah, and Esther all lived in foreign lands. In the New Testament, Joseph and Mary fled with Jesus to escape Herod's anger and became refugees in Egypt. Peter referred to the recipients of his first letter as "aliens" and "strangers," perhaps suggesting that they were exiles within the Roman Empire. These examples from the Old and New Testaments reveal God's hand in the movement of people and are illustrations of faith in God in difficult circumstances.³¹³

Jim Corbett (leader of the U.S. sanctuary movement) similarly declares morality as the justification for churches to harbor Central Americans:

Because the U.S. government takes the position that aiding undocumented Salvadoran and Guatemalan refugees in this country is a felony, we have no middle ground between collaborating and resistance.... For those of us who would be faithful to our allegiance to the Kingdom, there is also no way to avoid recognizing that in this case collaboration with the government is a betrayal of our faith.... We can serve the Kingdom, or we can serve the kingdoms of this world-but we cannot do both. Maybe as the Gospel suggests, this choice is perennial and basic, but the presence of undocumented refugees here among us makes the definitive nature of our choice particularly clear and concrete.³¹⁴

Beginning in 1980, the media reported a growing number of Central Americans apprehended by the Border Patrol and deported. Community groups that assisted immigrants also noticed a steady increase in the number of Central Americans arriving at their offices asking for help.³¹⁵ But the movement really began with Jim Corbett, a Quaker goat rancher in Tucson, Arizona, who first assisted Central Americans in 1981 who were detained by the federal government for crossing the U.S. border unlawfully. Corbett sought to facilitate access to asylum by connecting with the Manzo Area Council in Tucson and forming the Tucson Ecumenical Council Task Force on Central America (TEC), both of which aided refugees detained by Immigration and Naturalization Service (INS) at the border zone by posting bonds for their release, offering legal assistance in deportation hearings, and preparing asylum applications.³¹⁶ Lacking such legal assistance, asylum-seekers were routinely forced by federal officials to sign voluntary departure forms leading to their deportation back to Central America.³¹⁷ The Council and

Task Force raised over \$150,000 to use towards posting bail and providing legal services in 1981 alone.³¹⁸

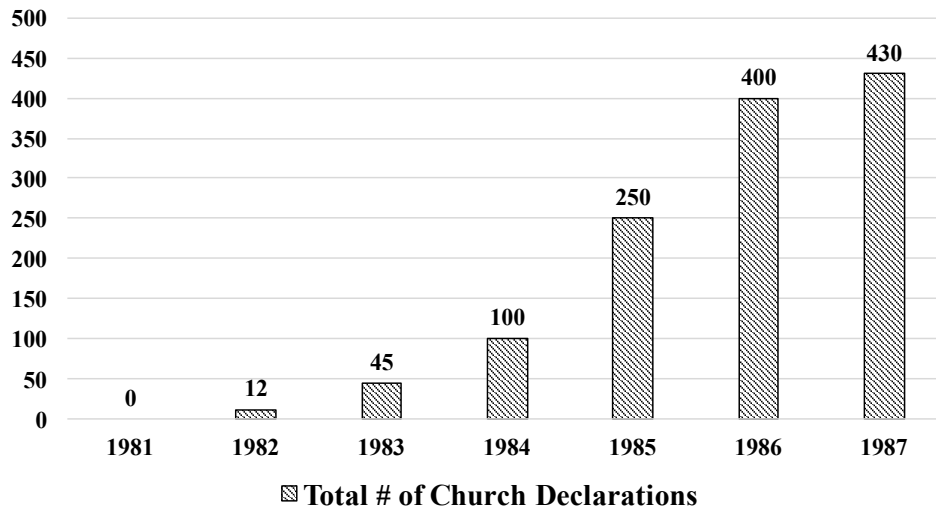
June 26, 1981, marks a critical turning point in Corbett's activism that led to the church sanctuary movement. Corbett had taken three Salvadoran refugees into the Tucson INS office to apply for political asylum, with the understanding that INS allowed asylum applicants to go free while their applications were being reviewed, if they were under custody of a local minister. William Johnson, Tucson INS director, instead ordered them to be arrested and set their bail at \$3,000 each, a significant increase from previous bail amounts. Moreover, INS director Johnson said that he was under orders from the State Department not to grant asylum to Salvadorans and that all applicants in the future would be arrested and sent to El Centro, the local jail.³¹⁹ Realizing that he was unable to work with INS directly to fight for asylum under federal law, Corbett turned to a strategy of grassroots resistance. This incident sparked the sanctuary movement.

Corbett approached members of the Tucson community, including Southside Presbyterian minister John Fife, about building up a local network of safe houses, and began to build contacts in Mexico to provide temporary housing and help aid in the illegal transportation of refugees across the Mexico-U.S. border. Southside Presbyterian Church members met regularly to study and discuss the scriptures and liberation theology, the situation in Central America, and the eventual deportation of refugees unable to secure asylum. They studied the history of sanctuary, both in its Judeo-Christian and American civic forms, and debated the legal consequences of harboring refugees. In November 1981, the church voted in favor of serving as a safe house for

Central American refugees.³²⁰ Soon after, in January 1982, Southside voted 59 to 2 (by secret ballot) to become a sanctuary, and strategically set March 24, 1982, the second anniversary of Archbishop Romero's assassination, as the day they would publicly declare themselves a sanctuary.

Effective sanctuary required a network of safe houses across the U.S. and international borders. Task Force member Tim Nonn, therefore, sent letters to congregations throughout the country asking them to join the movement. Corbett also wrote a series of "Dear Friend" letters to over five hundred Quaker meetings explaining the plight of the refugees, and criticizing INS practices of deporting refugees without legal counsel. He wrote: "if Central American refugees' rights to political asylum are decisively rejected by the U.S. government or if the U.S. legal system insists on ransom that exceeds our ability to pay, active resistance will be the only alternative to abandoning the refugees to their fate."³²¹ Between January and March 1982, five churches in Berkeley, CA, and a few churches in Los Angeles, CA, Washington, D.C., and Lawrence, Long Island, agreed to declare sanctuary on March 24, 1982.

Figure 5.3 Annual Growth of Church Sanctuary in the 1980s



Note: These annual church sanctuary declaration are taken from the secondary literature and news articles found using LexisNexis and ProQuest.

In a letter to U.S. Attorney General William French Smith, Fife explained, “We take this action because we believe the current policy and practice of the US 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 terror, persecution, and murder in El Salvador and Guatemala.”³²² Tucson sanctuary leaders contacted media outlets to maximize the effect of their bold statement against federal policy and to make the March 24 sanctuary declarations a national event.

The movement took on a new national presence in 1982 when the Chicago Religious Task Force on Central America (CRTFCA) joined and took over coordinating efforts to grow the movement. In addition to coordinating the transportation and

placement of refugees at churches and houses throughout the U.S., the Chicago Task Force printed and distributed various “nuts-and-bolts” manuals for sanctuary organizers with detailed instructions on every phase of the process and how to use it as a political tool.³²³ While much of the activity remained decentralized and local in nature, the Chicago Task Force provided an important connective tissue and strategic roadmap to grow the movement throughout the 1980s. They stressed the importance of fully informing members of the congregation, including providing “material on the historical and political situation in Central America, the legal situation and consequences, theological and biblical background of sanctuary and financial cost and support for such a project.”³²⁴

By early 1983, there were 45 sanctuary churches and synagogues throughout the country and 600 secondary sanctuary groups endorsing the movement (but not actively involved in harboring).³²⁵ This increased to 150 churches by mid-1984 with 18 national religious denominations and commissions endorsing the movement.³²⁶ In 1985, 250 churches declared sanctuary and the Central Conference of American Rabbis endorsed the Sanctuary movement, including its civil disobedience strategies. By 1985, the movement had also grown from secular institutions to include universities, local and state government.³²⁷

5.6 National Strategy

Scholarship on the Sanctuary Movement is largely silent on what caused 29 cities and 4 states to join the movement by passing sanctuary policies of their own. One puzzle

is the gap separating church declarations in 1982 and the quick proliferation of city sanctuary policy in 1985. A related puzzle is why the church movement successfully spread to an estimated 430 churches and an estimated “70,000 active participants” spread across 39 states by 1987, while city and state sanctuary policies were limited to 13 states and far fewer in total number.³²⁸ Scholars’ international and foreign policy focus has led to an important gap in our understanding of the Sanctuary Movement by not addressing what explains the timing and sequencing of city and state sanctuary policies in the 1980s.

I argue that sanctuary policies in the 1980s emerged in a similar federalism context as abolitionist sanctuary policies. Pro-refugee activists first directed their resources and energy to reform national policy, but after facing repeated failure, and in response to two national events in 1985 and 1986, they shifted away from a national policy reform effort to push for local and state level sanctuary policies. In his first year of activism, Corbett sought to aid refugees by facilitating their asylum applications, but after INS policy created a roadblock to Central Americans gaining asylum, he turned to creating a network of churches and houses to provide safe harbor and transportation to refugees, in violation of federal law.

Concurrent to their grassroots efforts, sanctuary leaders built up a national coalition with U.S. Senators and Representatives to pressure the White House to grant Central Americans “extended voluntary departure,” which would legalize their status and later, sought new federal policies to provide them “temporary protected status.” Sanctuary activists’ national reform campaigns naturally intersected with two prominent reform movements: The Central American Peace Movement to end U.S. military

involvement and aid in Central America, and federal immigration reform (known in the 1980s as the Immigration Reform and Control Act, or IRCA). I argue that early focus on national reform explains the gap between church declarations and city sanctuary policies. Until 1985, activists saw national reform as a viable and ideal option, but repeated failure to pass national reforms led them to reconsider local and state options.

Corbett, Fife, and other sanctuary organizers created a vast network of church sanctuaries with an understanding that illegally transporting and harboring Central American asylum seekers was a necessary temporary measure that made sense only in conjunction with pursuing their primary goal: national reform that would legalize Central Americans. They sought to achieve this by teaming up with the Manzo Area Council, the national organization of the Society of Friends (Quakers), the Tucson Ecumenical Council, the Southside Presbyterian Church, the Unitarian Universalist Service Committee, and the Chicago Religious Task Force on Central America.

Their national focus was further reinforced by the movement's connection to the Witness for Peace movement and Pledge of Resistance movement, which protested U.S. foreign policy and military involvement in Central America. The Chicago Religious Task Force, which assumed the primary coordinating efforts to grow the Sanctuary Movement in 1982, connected the movement to national organizations that were leading these other issues, including the Carolina Interfaith Task Force on Central America, Clergy and Laity Concerned, the American Friends Service Committee, the New York InterReligious Task Force on Central America, the Fellowship of Reconciliation, the Presbyterian Church U.S.A., Sojourners Peace Ministry, the Convent of the Good

Shepherd, the New Abolitionist Covenant retreat group, Sojourners magazine, American Friends Service Committee, Witness for Peace, among others.³²⁹

Most importantly, national reform in the early 1980s had the appearance of a sound strategy with great potential. The Sanctuary Movement's policy reform efforts were spearheaded by a group of vocal Democrats in Congress, including Michael Barnes, Edward Boland, Gerry Studds, David Bonior, Christopher Dodd and Joseph Moakley.³³⁰ Groups like Citizens for Participation in Political Action, led in a campaign in Massachusetts to publicize U.S. officials' views and actions regarding U.S. military aid to El Salvador. They also engaged in a massive national media strategy to change public opinion and provide leverage to their Democratic allies in Congress to pressure President Reagan's administration. This strategy began to experience success when Congress passed the Boland Amendment in 1982 prohibiting the federal government from aiding Nicaragua's Sandinista regime. However, President Reagan continued to advance U.S. aid and covert operations in Nicaragua, among other Central American countries, causing Congress to pass additional Boland Amendments in 1983 and 1984 to reign in the U.S.'s widely unpopular role in Central America. These efforts, however, were disregarded by the President.

The national movement faced repeated failures in the early 1980s, which led the Sanctuary Movement to turn to other venues and reform options. Table 5.2 below highlights important failures the Sanctuary Movement experienced at the national level, prompting them to look to cities and states for reform.

Table 5.2 National Failures at Reform

Year	Proposed Federal Reforms on <i>Asylum Status</i>	Outcome
1981	UNHCR request to Reagan for EVD status	fail
	House & Senate pass non-binding EVD resolutions	fail
	Reagan Task Force on Central America	fail
1982	Moakley Letter to the President	fail
	UNHCR – EVD status	fail
1983	House & Senate pass “safe haven” resolution	fail
1985	Moakley-DeConcinni proposed provision in IRCA	fail
1986	Immigration Reform and Control Act (IRCA)	fail

EVD: Extended Voluntary Departure

In March 1981, the first national reform effort began. Strong advocate of the Sanctuary Movement, Senator Dennis DeConcinni (D-AZ), introduced S.R. 336 to the Senate Subcommittee on Immigration and Refugee Policy, along with co-sponsor Senator Daniel Patrick Moynihan (D-NY).³³¹ One month later, Representative Ted Weiss (D-NY), joined by 31 co-sponsors, introduced a House version of the resolution, H.R. 126, “expressing the sense of the House of Representatives that extended voluntary departure [EVD] status should be granted to El Salvadorans in the United States whose safety would be endangered if they were required to return to El Salvador.”³³² Extended Voluntary Departure (EVD) is a discretionary status given to a group of people when the State Department determines that conditions in the sending country make it is dangerous for them to return. Since 1960, EVD has been granted to a large number of groups, including Cubans, Dominicans, Cambodians, Vietnamese, Hungarians, Romanians,

Iranians, Lebanese, Ethiopians, Afghans, Czechs, Chileans, Ugandans and Poles. While these two resolutions were non-binding, they were important symbolic challenges to the White House to reform asylum policy and specifically, to grant EVD status to Salvadoran asylum seekers. After passing these non-binding resolutions, allies of the sanctuary movement in U.S. Congress called on the Secretary of State to recommend to the Attorney General that asylum seekers from El Salvador be granted EVD status.

The Reagan Administration responded to Congressional pressure by creating a Task Force in 1981 to lead to a review of the concerns. However, the Task Force's report pushed the administration to continue resisting EVD and warned the administration of the "demographic consequences" of Latin American immigration.³³³ The Reagan administration now officially resisted (referring to the report) the idea of EVD for Central Americans on the grounds that the violence in El Salvador, Nicaragua, and Guatemala was not enough to warrant temporary protection, and claimed that existing asylum procedures were sufficient to address Central American migrants' needs.³³⁴ At the request of the Sanctuary Movement coalition, Representative John Joseph Moakley (D-MA) sent letters to President Reagan in 1982, challenging the President to change his policy on El Salvador. Moakley referenced a United Nations Human Rights Commission report, estimating over 9,000 political murders in occurring in El Salvador in 1981 alone, and called U.S. foreign policy "unconsciouable."³³⁵ The Sanctuary Movement and its allies in Congress failed to acquire temporary protected status for migrants fleeing Central America and failed at reforming foreign policies linked to the civil wars.

In 1983, Senator DeConcini and Representative Moakley led a new effort to push for “safe haven” resolutions in the Senate and House in 1983, again pushing President Reagan to provide Salvadoran’s with EVD status. In May 1983, the State Department advised that the U.S. not grant EVD “because it would encourage further illegal immigration.”³³⁶ After these resolutions failed to achieve reform in the administration’s policy, DeConcini and Moakley introduced H.R. 822 in 1985, which passed the House and was attached to the omnibus Immigration Reform and Control Act (IRCA). But this effort was also short-lived.

IRCA was passed in 1986 and marked the culmination of a decade long effort to build a broad bi-partisan coalition to reform a “broken” U.S. immigration system. The 1965 Immigration and Nationality Act removed national quotas and prioritized skills and family ties, but also, for the first-time, set a cap on migration originating from Mexico that led to a rise in undocumented immigrants. President Reagan took up immigration reform as a major policy goal, and in 1981, a bipartisan Select Commission on Immigration and Refugee Policy proposed a bi-partisan solution combining amnesty with employer sanctions. Despite Reagan’s eagerness to pass reform, he targeted the 1985 EVD provision threatening to veto IRCA if it was not removed.³³⁷

IRCA reformed many aspects of immigration law, but it further exacerbated the Central American refugee crises. It created federal sanctions on employers for hiring undocumented workers, an amnesty program for undocumented immigrants who entered the country prior to January 1, 1982, a guest worker program, and funding for border enforcement. The majority of Central Americans arrived in the U.S. after 1982, making

them ineligible for amnesty, and IRCA now made them ineligible for employment in the U.S.³³⁸ Fearing increased immigration enforcement, Central Americans began to flee from the U.S. to Canada, but were soon denied asylum there as well due to a change in Canada's refugee policy in 1987, which led to hundreds of fleeing refugees being stranded the border towns of Plattsburgh, New York and Montreal.³³⁹

5.7 Local and State Sanctuary Policies

What explains the proliferation of local and state sanctuary policies? I argue that failure to reform federal policy set the conditions for the Sanctuary Movement to re-focus their resources and efforts towards city and state level sanctuary policies, which were intended to limit the capacity for the federal government to deport undocumented Central Americans. Fueling this shift in 1985 were national events that cast a negative light on national policy and a positive image of the sanctuary movement that opened new opportunities for the sanctuary leaders to build coalitions with local and state officials.

The Sanctuary Trials began in 1984, when the first sanctuary workers, Stacey Lynn Merkt and Sister Diane Muhlenkamp from Brownsville, Texas were arrested and sentenced to 269 days in prison. Soon after, multiple sanctuary leaders from the same organization, Casa Oscar Romero, were arrested for conspiracy and transporting illegal aliens through south Texas.³⁴⁰ The White House not only actively resisted national level reforms, but beginning 1982, the Justice Department began a covert surveillance operation against the Sanctuary Movement called Operation Sojourner. After arrests were made in Texas, in 1985, 16 sanctuary leaders were arrested in Tucson, Arizona,

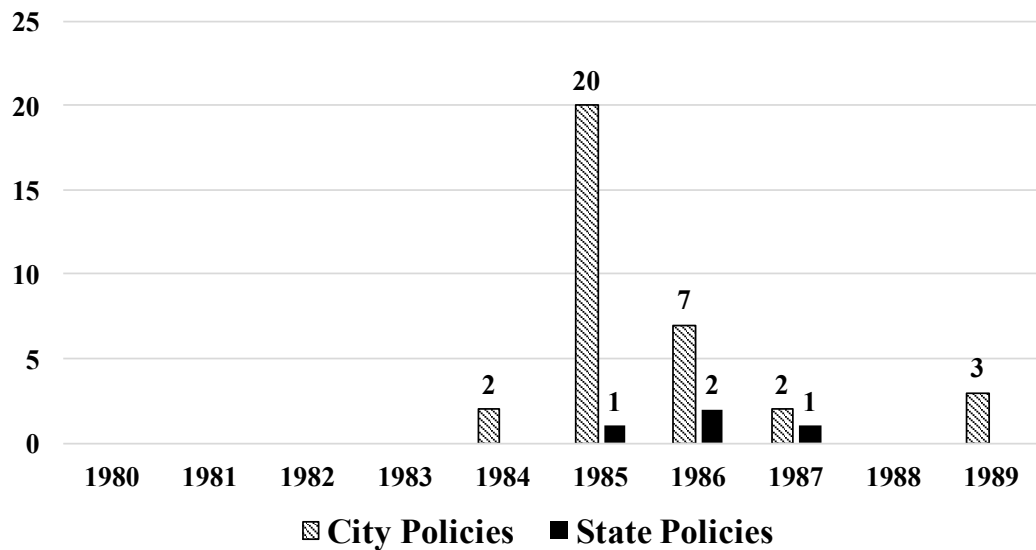
after INS agents infiltrated Southside Presbyterian Church and made over one hundred tape recordings of over ten-months of Sanctuary Movement activities. Corbett and Fife were among those arrested, charged with seventy-one counts of conspiracy, transporting and harboring illegal aliens.³⁴¹

After years of stalemate at the national level, the timing for a strategy change was ripe for the Sanctuary Movement. The Tucson Trials began in January 1985, sparking a search by national and local advocacy organizations, including churches, for a new legal and political strategy. During the Trials, U.S. prosecutor Donald Reno blocked all evidence relating to defendants' religious and humanitarian motives, US foreign policy, human rights abuses, and the asylum process.³⁴² Eight defendants were found guilty, but all were given suspended sentences ranging from three to five years of probation.³⁴³ Forty-seven members of U.S. Congress, who were allies of the sanctuary movement's national efforts, sent letters to Judge E. H. Carroll urging leniency.³⁴⁴ Already primed for a new strategy as a result of federal reform failures, the Trials sparked the sanctuary movement to quickly shift its strategy to passing city and state sanctuary policies.

Sanctuary leaders built coalitions with sympathetic Mayors and Governors while continuing to build their underground network. Passed in 1985, Sacramento's sanctuary resolution, for example, declared that the "historical and moral tradition of the nation is rooted in the provision of sanctuary to persecuted peoples."³⁴⁵ Similarly, Berkeley's resolution explains, "the best tradition of our country, which was founded on the principles of providing a safe haven for those fleeing political oppression."³⁴⁶ Figure 5.4

below provides a snapshot overview of the year and spread of cities and states passing sanctuary policies in the 1980s.

Figure 5.4 Annual Number of Sanctuary Policies Enacted in the 1980s



Note: these annual policy counts are from an original dataset that I created of all church, local and state sanctuary policies passed from 1980 to 1990, by documenting policies highlighted in the secondary literature, searches using LexisNexis and ProQuest’s newspaper archives and city government websites.

On June 7, 1983, Madison, Wisconsin passed a resolution commending the church sanctuary declarations made in the city. One year later, in 1984, San Jose, California joined by one other city passed the first sanctuary policies, and cities across the country began to consider similar proposals. The movement spread and peaked in 1985, with 19 cities (from 10 different states) and the State of Massachusetts passing some form of sanctuary policy that ended their cooperation with INS investigations or

arrests of Central American refugees, pledged their support for the church moral sanctuary movement, and supported the end goal of national reform. By 1986, the total number grew to 27 total cities and three states, and plateaued in 1987 with 29 total cities (some enacting more than one policy) and four states. While no other new cities or states passed sanctuary policies after 1987, San Francisco updated its policy and New York City and Chicago re-issued their executive orders in 1989.

Table 5.3 Timing and Geographic Spread of Sanctuary Policies in the 1980s

Year	Sanctuary City	Sanctuary State	Policy Type
1984	San Jose, CA		Resolution
	Duluth, MN		Resolution
1985	Berkeley, CA		Resolution
	Los Angeles, CA		Resolution
	West Hollywood, CA		Resolution
	Sacramento, CA		Resolution
	San Francisco, CA		Resolution
	Santa Cruz, CA		Resolution
	Santa Fe, NM		Resolution
	Olympia, WA		Resolution
	Minneapolis, MN		Resolution
	St. Paul, MN		Resolution
	Burlington, VT		Resolution
	Madison, WI		Resolution
	Chicago, IL		Mayor Issued Executive Order
	Tacoma Park, MD		Resolution & Ordinance
	Cambridge, MA		Resolution
	Brookline, MA		Resolution
	Summerville, MA		Resolution
New York City, NY		Mayor Issued Memorandum	
Ithaca, NY		Resolution	
	Massachusetts	Governor Issued Executive Order	
1986	Berkeley, CA		Revised Resolution
	Santa Barbara, CA		Resolution
	Oakland, CA		Resolution
	Davis, CA		Resolution
	Seattle, WA		Resolution
	Rochester, NY		Resolution
	Fargo, ND		Resolution
	New York	Resolution	
	New Mexico	Governor Sanctuary Proclamation	
1987	San Diego, CA		Police Department Policy
	Detroit, MI		Mayor Issued Executive Order
	Oregon	House Bill 2314	
1989	San Francisco, CA		Ordinance
	Chicago, IL		Mayor Issued Executive Order
	New York City, NY		Mayor Issued Executive Order
	*New York	*Bill No. 1072-A	

* Proposed, but failed to pass

The following section provides analysis of sanctuary movements in Los Angeles, San Francisco and Rochester to demonstrate the strategic shift that occurs in 1985 resulting from the Trials. I show in Chapter 4 that abolitionists similarly shifted from national reform to pursue sanctuary policies to protect runaway slaves, and I argue that configurations of state level coalitions (partnerships between national and local abolitionists) explains the critical difference in the timing and scope of sanctuary policies protecting runaway slaves across Northern states. The following sections provide a similar explanation of variation in the 1980s. In addition to explaining the timing and spread of policies, the following section also addresses the related puzzle of why the church movement spread across 39 states, while city and state sanctuary policies passed in only 13 states (see Table 5.3 above).³⁴⁷ National failures and events explain only part of the sanctuary policy story; the Central American Sanctuary Movement's capacity to form alliances with local and state officials explain critical to policy variation in the 1980s.

In the cases of Los Angeles and San Francisco, I show that their respective Sanctuary Movements developed robust coalitions that likely would have succeeded in earlier pushes for local governmental sanctuary policies. San Francisco's coalition as early as 1982, at the time when church sanctuaries first emerged, included city officials as allies. The fact that they did not push for sanctuary policies before 1985 lends strong support to my argument activists often focus first on national strategies. Federalism establishes multiple venues for policy activism, and sanctuary leaders focused on national policy during the early 1980s. Sanctuary policies gained more clout, however, after

federal failures (specifically in 1985), and configurations and dynamics specific to locally based coalitions, including their sanctuary policy strategy and alliances with city officials, explains the timing of passing city and state policies.

5.7.1 Los Angeles in 1985

Los Angeles is an important test case for my theory of the timing and sequencing of sanctuary policies. More than other sanctuary cities, Los Angeles had a large immigrant and Latino population that immediately welcomed Central Americans and integrated them into the robust network of religious and advocacy organizations, which dedicated themselves to reforming national policy while providing local protection and support to refugees in waiting. For example, responding early in 1981 to the emerging refugee crisis, Salvadoran immigrants legally in the U.S. joined religious and humanitarian organizations like the Southern California Ecumenical Council to form a new organization, El Rescate, that would focus on providing services for fleeing Central American refugees. The coalition of Salvadoran immigrants and refugees, church leaders, attorneys, and community activists continued to grow the city's support structure in 1983, creating the Central American Refugee Center (CARECEN) of Los Angeles, and creating the Clinica Oscar Romero to provide medical services to refugees.³⁴⁸

Despite Los Angeles having a strong coalition of advocates and resources, it did not pass a city sanctuary policy until 1985. From 1980 and until 1985, strategic focus was on national reform. Protection under church sanctuaries and access to local resources played a critical role by temporarily facilitating the needs of refugees, while

also galvanizing public opposition to an “immoral” national policy. After repeated failure to reform federal policy, Los Angeles’ robust advocacy network mobilized to pass one of the very first city sanctuary policies in country.

The federalism dynamics that shape the timing of city and state sanctuary policies in the 1980s were steered by the Los Angeles Sanctuary Movement’s coordinating organization: The Southern California Inter-Faith Task Force on Central America (SCITCA). Formed in 1980 in response to the assassination of Roman Catholic Archbishop Oscar Romero of El Salvador on March 24, SCITCA originated as a national grassroots solidarity organization, with offices in Los Angeles and Washington, DC. Its primary goal was to change national policy and oppose U.S. intervention and aid in the Salvadoran Civil War. As an organization directly connected to the cause of Central American refugees and with strong ties to churches, in 1982, Los Angeles churches designated SCITCA’s to be their strategic coordinator on future actions and strategies.

Beginning in 1982, one of the first coordinating efforts by SCITCA, El Rescate, CARECEN, and the Romero Clinic was to have sanctuary workers meet refugees sent from San Diego and other locations and arrange for their placement at Los Angeles sanctuary locations in churches or homes. In addition to facilitating on the ground sanctuary, SCITCA’s national role was leading rallies, demonstrations, fund-raisers, delegations and congressional visits, all of which focused on placing political pressure to end U.S. interventions in El Salvador and Central America. In addition to SCITCA, in 1980, The Committee in Solidarity with the People of El Salvador (CISPES) formed as a national organization and opened a regional office in Los Angeles, which similarly joined

in grassroots efforts while steering the focus to change foreign policy. Don White, leader of CISPES in Los Angeles, was actively involved in Central American issue as early as 1976, traveling to Guatemala to perform relief work in the wake of a devastating earthquake, and throughout the 1980s, he made many trips to Guatemala, Honduras, Nicaragua, and El Salvador as fact-finding missions to challenge U.S. policy.³⁴⁹

The robust advocacy network in Los Angeles set the conditions for it to join churches led by Southside Presbyterian as the first to declare sanctuary on March 24, 1982. The First Unitarian Church led in this Los Angeles movement to declare sanctuary, but importantly, its first act of sanctuary wasn't until a year later, on March 1983, when it welcomed the Gonzales family.³⁵⁰ Roberto Gonzalez obtained asylum early in the U.S. and his daughter was a U.S. citizen by birth, but his wife was ordered to be deported, causing them to seek sanctuary. They were moved from one church to another, roughly every two weeks, to prevent INS from becoming aware of their location. Taking in asylum seekers like the Gonzalez family contributed to the growth of the Los Angeles advocacy movement. After facilitating Mrs. Gonzalez's asylum, the Gonzalez family became active sanctuary workers in Los Angeles' Congregacion Oscar Romero.³⁵¹ A dual strategy guided the church movement in Los Angeles: aid fleeing refugees from the threat of deportation and join national organizations' effort to place political pressure on the U.S. government to change its asylum policy.

After repeated failure from 1981 to 1985, CARECEN led the Los Angeles Sanctuary Movement to engage in a new local political strategy towards sanctuary policies. The arrests and trials of Texas and Arizona sanctuary workers in 1985 caught

the national spotlight and helped fuel a change towards local policy reforms. On November 27, 1985, Los Angeles passed its first sanctuary resolution by an 8-6 vote, preventing city employees from using legal immigration status when providing public services. It also specifically called on the federal government to end its deportation of Salvadoran refugees, which made up the largest refugee population in the city.³⁵² To explain why the policy originated and was passed, it is critical to consider the timing of the policy in a federalism context, where competing national, state, local and grassroots strategies exist.

The Sanctuary Movement lobbied for a city sanctuary resolution, but only after first attempting to “persuade the U.S. government to offer asylum to any Central American with a believable claim of political persecution.”³⁵³ After four years of federal failure, they backed a city sanctuary policy. More than 400 Sanctuary Movement leaders attended the council meeting and led in a massive celebration after the vote was announced.³⁵⁴ Dave Cunningham and Gilbert Lindsay, two of the council's three black members, opposed the resolution on the grounds that a large influx of new refugees would increase tensions in poor neighborhoods.³⁵⁵ The Sanctuary Movement, however, formed a strong alliance with Michael Woo, the first Asian American to serve on the City Council, who took the lead by authoring and pushing for the city sanctuary policy. The resolution was an “advisory motion, not a law,” which meant that it did not require Mayor Tom Bradley to approve of the resolution.³⁵⁶

The policy faced a lot of opposition. At a press conference, Western Regional Commissioner of INS, Harold Ezell, attacked it, stating: “This is a ridiculous and

disastrous kind of thing for a city council to do that has no business being involved in national policy in the first place.” Ezell went further, stating that “Los Angeles is the illegal (alien) capital of America” and a sanctuary policy would “promote the violation of federal law.”³⁵⁷ After the resolution passed, Ezell threatened to seek federal legislation by working with U.S. Senator Alan K. Simpson (R-WY) and Representative Daniel E. Lungren (R-CA) “to sponsor legislation that would cut back federal funds to the city as a reprisal for its sanctuary resolution.”³⁵⁸ According to Simpson’s press secretary, Mary Kay Hill, the Senator had considered two other anti-sanctuary federal bills during that time, which were similarly in response to other local jurisdictions passing sanctuary policies. Simpson also considered adding a provision to IRCA in 1985 making it “illegal for employers to hire illegal aliens,” which would deny certain types of funding to sanctuary cities.³⁵⁹ However, none of these federal options were pursued in 1985 or 1986, likely because they would have hindered the bi-partisan coalition over immigration reform, IRCA.

Opposition also emerged at the county level from Supervisor Michael D. Antonovich, who proposed a resolution to the County Board of Supervisors to officially oppose any future effort to make the county a sanctuary, and to stress the county’s support for federal efforts to include employer sanctions in IRCA. In response, County Board of Supervisors Chairman Peter Schabarum recognized, however, the “strong moral and public health reasons dictating that public services be made available to [refugees].”³⁶⁰

Author of the sanctuary resolution, City Councilman Woo justified the reform on the moral grounds of protecting Guatemalan and Salvadoran refugees fleeing political persecution. In a *Los Angeles Times* op-ed, Woo stated:

It pains me to think that the fate of the Central American refugees will be the same as the fate of the Jews in the 1930s and 1940s who were denied entry into several democratic nations—including the United States—as they desperately sought to escape certain death under Nazism. We have learned from those experiences and the vow of “never again” should apply today in this case as well.³⁶¹

Woo also framed the policy as a community policing reform, stating, “he hoped to encourage the estimated 250,000 Salvadorans and Guatemalan immigrants in Los Angeles to report crimes to police without fear of being deported.”³⁶² The city council specifically endorsed the 1979 police department policy known as Special Order 40 preventing local police officers from reporting undocumented immigrants to federal immigration authorities unless they committed serious crimes.³⁶³

After the sanctuary resolution passed, more opposition emerged. The Sanctuary Trials pit the federal government against church sanctuaries that not only fueled sanctuary movement leaders to push for sanctuary policies, but also empowered the movement’s opposition by casting sanctuary as “illegal.” City Councilman Ernani Bernardi (who voted against the sanctuary resolution) began a petition drive collecting signatures to modify the resolution. He opposed the idea of a city government joining organizations or individuals who were subject to criminal prosecution for “harboring illegal immigrants” by passing a sanctuary policy.³⁶⁴ Fearing backlash against immigrants and refugees by the Los Angeles community, Councilman Woo sought a compromise by removing the term “sanctuary” from the resolution. In February 1986,

the council rescinded the resolution and passed a compromise resolution, omitting the word “sanctuary” but retaining most of the declaration, including the stipulation that law enforcement personnel not report undocumented immigrants to the INS.

Following the success in passing a sanctuary resolution, in late 1986, the Coalition for Humane Immigrant Rights in Los Angeles (CHIRLA) was formed to coordinate immigrant services provided by private and public agencies, and to focus on the issue of protecting undocumented workers, day laborers and other low-wage workers. Councilman Woo along with CHIRLA formed a task force on street vending that brought together city representatives, merchants, activists, and representatives of the vendors—many of them Central Americans—to legalize street vending in 1986.³⁶⁵

5.7.2 San Francisco in 1985

Like Los Angeles’ coalition, San Francisco had a robust partnership whose local focus was on facilitating the “life-sustaining needs of refugees,” and national focus was on reforming national policy. Years before 1982 when the first churches declared sanctuary, San Francisco Catholic Archdiocese's Catholic Social Service (CSS-SF) and the Commission on Social Justice's Latin American Task Force (LATF) began to educate local religious leaders on the wars in Central America, the plight of refugees, and introduced them to the idea of sanctuary. Important to the early formation of a coalition was San Francisco Archbishop John Quinn’s international network and access to resources, which was used to establish a San Francisco-based action network of social workers, lawyers, health services providers, employers, and private family sponsors to

facilitate the immediate needs of refugees. Between 1980 to 1982, CSS-SF, LATF, and an Ad Hoc Committee to Stop the Deportations (AHCSA), engaged in mass public demonstrations and speaking events to highlight inconsistencies in U.S. asylum policy and treatment of Central Americans, and at the local level, they made attempts to partner with local immigration officials to assist refugees.

Strategic focus on national reform was consolidated when the new San Francisco coalition joined national efforts led by a transnational organization that was based in Central America, the Central American Refugee Committee (CRECE), who led various efforts abroad and in the U.S. to change national policy. Most notably, they led an information campaign by mailing letters to national public officials, especially Democrats in Congress including Representative Joseph Moakley, author of the failed national EVD and safe haven bills.³⁶⁶ The San Francisco coalition also partnered with labor unions, church officials and local government officials, but focused their reform efforts on national policy and civil disobedience.³⁶⁷ Advocates were a key constituency of many San Francisco Board of Supervisors and built alliances with these officials early on by attending board meetings open to the public to provide testimony on the wars in Central America and to make the case that deportation policies were immoral and refugees were deserving of local assistance.

Despite support from city officials, the Sanctuary Movement did not push for a city sanctuary policy until 1985. CSS-SF, LATF, and AHCSA developed close relationships with newly elected Supervisors Nancy Walker and Harry Britt, who would later lead the sanctuary resolution and ordinance movement, but together, they joined the

broader effort to push for national legislation to withdraw the U.S. from Central America, to immediately halt deportations, and to change national policy by recognizing Central Americans as refugees.³⁶⁸ Church sanctuaries emerged in San Francisco soon after Berkeley's five congregations' March 24, 1982 declaration, and by 1984, seven San Francisco congregations declared public sanctuary and formed the San Francisco Sanctuary Covenant (SFSC). SFSC consisted of a steering committee of two representatives from each congregation in the city and two representatives from CRECE and CSS-SF.³⁶⁹ Importantly, these church sanctuaries were largely independently run, with a focus on providing immediate safety and aid to refugees, while the steering committee facilitated the transportation and assignment of refugees within the network of churches and houses. Sanctuary workers only engaged in political efforts to reform policy in concert with national organizations.

The Sanctuary Trials beginning in January 1985 changed how sanctuary workers engaged in politics and sparked an important change in the San Francisco movement's strategy. Following the indictments of sanctuary workers in Texas and Arizona, San Francisco's "City of Refuge" campaign emerged as a push to unite the San Francisco sanctuary movement's base members and "reinvigorate them in a time of legal uncertainty."³⁷⁰ From this change, a year-long strategy to pass the city's first sanctuary resolution emerged, which included working with city officials to pass a resolution in 1985, and a backup plan of acquiring enough signatures from city residents to place a resolution on the 1986 ballot for a popular vote. Strategic leaders, CSS-SF and SFSC, led

in this new direction by organizing closed-door discussions with local church sanctuary committees about their proposed City of Refuge resolution.

At the local government level, the Sanctuary Movement consulted old allies, Supervisors Walker and Britt, who joined the effort and set up meetings with each Supervisor, the Mayor, and other city officials, including the Police, Sheriff, Public Health, and Education departments. The purpose of the resolution was not only to declare sanctuary as a non-cooperation policy, but also to establish a city-wide support structure for refugees. Father Peter Sammon and Sister Kathleen of Healy of St. Teresa's Catholic Church, Eileen Purcell of CSS-SF, Lana Dalberg of SFSC, and a lead attorney in the sanctuary movement, Marc Van Der Hout, led the meetings with city officials.³⁷¹ One tactic of SFSC was to organize delegation trips for city officials to go to El Salvador and personally witness the civil war.³⁷² In February 1984, the previous year, SFSC had taken their ally Supervisor Walker to Nicaragua, El Salvador and Honduras. In late November 1985 at a critical time during the campaign for the sanctuary resolution (one month before the vote), SFSC, CSS-SF and Father Sammon similarly invited Assemblyman Art Agnos and Supervisor Doris Ward to El Salvador, where they visited refugee camps, church organizations, war torn areas, and prisons.³⁷³ Sanctuary organizers simultaneously led a successful public outreach effort acquiring nearly 50,000 San Francisco residents' signatures, enough to put a resolution for a vote on the 1986 general elections ballot, if the coalition with city officials was unable to pass the resolution.

On December 9, Supervisor Walker officially presented the City of Refuge resolution to the Board for a vote, which passed on December 23 by an 8-3 vote and was signed into law December 17 by Mayor Dianne Feinstein.³⁷⁴ City officials embraced the movement and viewed sanctuary as a moral step in the absence of federal reform. Rev. Peter J. Sammon, pastor of St. Teresa's Roman Catholic Church and leader of the Sanctuary Movement in San Francisco, stated: "In our view, sending these people back to El Salvador or to Guatemala is the same thing as putting Jews on a boxcar bound for Dachau. We claim what we are doing is based not only on religious conviction but the deepest values of our United States traditions of being a place of refuge, a place to where persecuted people can come."³⁷⁵

The timing and quick spread in 1985 of city sanctuary policies was no coincidence. According to *New York Times* reporter Robert Lindsey, local activists in San Francisco were hopeful that the new push for cities to pass sanctuary policies will help "spur Congress to pass pending legislation, sponsored originally by Senator Dennis DeConcini, Democrat of Arizona, that would allow Salvadorans who entered the country illegally to remain here for extended periods, at least until it is safe for them to return."³⁷⁶ Twenty cities passed sanctuary policies in 1985 alone, all making similar declarations against national asylum policy and in favor of protecting Central Americans like they were refugees. Failures at the federal level and the Sanctuary Trial events beginning in January 1985 sparked the city sanctuary policy strategy.

San Francisco's policy commended church sanctuaries in city, stating that "immigration and refugee policy is a matter of federal jurisdiction" and that "federal

employees, not City employees, should be considered responsible for implementation of immigration and refugee policy.” The Board of Supervisors affirmed that “City departments shall not discriminate against Salvadoran and Guatemalan refugees because of immigration status, and shall not jeopardize the safety and welfare of law-abiding refugees by acting in a way that may cause their deportation.”³⁷⁷ This included, for example, local law enforcement, health, education and social services in the city. Supervisor Walker justified the policy saying, “We are not asking anyone to do anything illegal. We have got to extend our hand to these people. If these people go home, they die. . . . They are asking us to let them stay.”³⁷⁸

By 1985, San Francisco had an estimated 80,000 Salvadorans and Guatemalan residents, which continued to grow. Like in Los Angeles, where Councilman Woo and local advocacy organizations continued to expand their support of undocumented immigrants (for example, legalizing street vending in 1986), coalition-building efforts by the San Francisco Sanctuary Movement to pass its resolution fundamentally altered city politics towards protecting undocumented immigrants.

Two events in San Francisco occurred in 1989. San Francisco police officers photographed CRECE leaders during a protest and gave the pictures to the Salvadoran Consulate, placing the lives of these organizers at risk. In another incident, city police officers worked with INS (despite the 1985 sanctuary resolution) to raid Club Elegante, detaining over one hundred employees and patrons, and leading to the deportations of 28 undocumented immigrants transported in SFPD patrol cars to INS detention. Prior to these events, in November 1988, San Francisco Mayor Agnos appointed Father Sammon,

the SFSC chair who led in the 1985 campaign, to be a Commissioner on the San Francisco Human Rights Commission (HRC) and oversee police conduct in the city. Sammon spearheaded the new effort that led to San Francisco passing Ordinance 375-89 in 1989, legally prohibiting city officials from asking for immigration status unless required by state or federal statute and regulation.³⁷⁹

5.7.3 Rochester in 1986

Rochester joined cities throughout the U.S. in becoming a sanctuary, and made it clear that this was a direct result of discriminatory federal policy and in solidarity with the Sanctuary Movement and refugee residents in the city. In June 1984, Alejandro Gomez, along with his wife Lucila, her mother, and their four children, fled El Salvador and arrived in Rochester. Gomez and his family were arrested by the INS in 1985 (for the first time). The Rochester Sanctuary Committee, established in 1983 and including six local religious congregations (Downtown United Presbyterian Church, Downtown United, Corpus Christi Church, Temple B'rith Kodesh, the House Church, the Religious Society of Friends and the Lake Avenue Baptist Church), quickly mobilized in 1985 to post the bail of \$3,000 for the Gomez family. From 1985 to 1986, the Sanctuary Movement facilitated their asylum applications and provided them housing, education and employment. Suzanne Schnittman, an active member of the Sanctuary Committee, explained: "We welcomed them as if they were our family members in trouble, falling on hard times. And we recognized their humanity."³⁸⁰

In May 1986, after meeting with their lawyer, Gomez and his wife were on Main Street walking to their temporary home within the Downtown United Presbyterian Church, when Alejandro Gomez was approached and arrested by INS agents. His bail was set at \$50,000, and within 24 hours, the Sanctuary Committee contacted 170 donors to raise the funds and return Gomez to his family. Importantly, this event mobilized the Sanctuary Committee to push for the first city sanctuary resolution passing on May 27th, 1986, by a 6-2 vote in the city council, four days after Gomez's release. The U.S attorney in Buffalo, New York, and the INS district director, both made personal appearances during the city council meeting to oppose the resolution, but the Gomez incident and pressure from the Sanctuary Committee established a coalition with city council members. Before their asylum case was decided, and seven weeks after Rochester passed its sanctuary policy, the Gomez family fled to Canada where they were granted legal status.

The city's sanctuary policy specifically called on Congress to require "nondiscriminatory compliance" with the Refugee Act of 1980's definition of refugee, and explained Rochester's "long tradition of support for the vulnerable and dispossessed, as exemplified by Rochester citizens' strong acceptance of Frederick Douglass, whose statue stand in Highland Park, and the Rev. Thomas James, whose bust is in the Hall of Justice, and by Rochester citizens' well-known participation in the underground railroad one hundred years ago." The sanctuary policy was a cornerstone development in the Sanctuary Movement in Rochester, symbolically linking local government with the city's church movement and refugee residents. It also created a new legal foundation for what I

call a federalism conflict to emerge between federal law and local law, which is clearly specified in Rochester's sanctuary resolution:

WHEREAS, the City Councils of Seattle, Olympia, Berkeley, San Francisco, West Hollywood, Los Angeles, Tacoma, Cambridge, Brookline, Ithaca, Madison, St. Paul and Duluth have reaffirmed their support for the principle of sanctuary for persons fleeing persecution. The Mayors of New York City and Chicago have issued Executive Orders supporting sanctuary in their cities; and the State of New Mexico has now declared itself a sanctuary state; now, therefore

BE IT RESOLVED, That the City Council recognizes that Rochester has become a "City of Sanctuaries" underscoring both the historical and present effort by numerous communities within Rochester to provide shelter to many who are fleeing general conditions of persecution in their homelands; and be it further

RESOLVED, That the City Council find that immigration and refugee policy is a matter of Federal jurisdiction; that Federal employees, not City employees, should be considered responsible for implementation of immigration and refugee policy; and further that the City Council requestes the administration to direct(s) employees to exclude refugee status as a consideration in their daily activitis and routine dealings with the public, with the provisio that this directive should not be construed as approval to violate any law or encourage interference in law enforcement efforts; and be it further.³⁸¹

Council members removed an earlier provision stating that city resources would not be used to assist or cooperate with investigations of alleged immigration violation, but the resolution that passed made it clear that the city would no longer partner with the federal government to enforce federal immigration law. The last provision of the resolution ordered that the policy be sent to all city departments and committees, to the state delegations, and to national directors of INS and President Reagan.³⁸² Unlike Los Angeles and San Francisco, Rochester did not have a robust coalition of organizations and churches, and therefore, the Sanctuary Trials at the national level did not have the

same weight. However, the smaller local Sanctuary Movement quickly galvanized behind the local arrest (for the second time) of a Salvadoran family to secure funds to bail them out from custody. This event sparked advocates to mobilize quickly over the short period of four days to draft and pass the city's resolution declaring Rochester a "city of sanctuaries."

5.8 Sanctuary Policies' Short-Lifespan

Why were the sanctuary policies in the 1980s so short-lived? The dynamics in federalism that refocused energy away from national policy in 1985 and in 1987 returned the focus back to national reform. The Supreme Court's ruling in *INS v. Luz Marina Cardoza-Fonseca* (1987) was as a critical event, similar to the Sanctuary Trials. It marked the first national success of the sanctuary movement by ruling that an asylum applicant only needs to demonstrate a "well-founded fear" of persecution, thereby making the asylum process for Central American applicants equal to applicants from other countries. The Immigration Act of 1990 and Court decision in 1991 reaffirmed the movement's national strategy and focus, and ended efforts for subnational sanctuary policies. Lastly, the Nicaraguan Adjustment and Permanent Central American Relief Act of 1997 marked the culmination of the sanctuary movement's effort to reform U.S. policy, formally granting Central American refugees a pathway to legal permanent residency.

After the Moakley-DeConcinni EVD provision was removed from IRCA in 1985, marking a federal failure, national policy reform efforts paused and city and state level

sanctuary policies emerged and spread from 1985 to 1987. The only active national battle was fought in the courts. National advocacy organizations, national religious organizations, the American Civil Liberties Union, the Center for Constitutional Rights, and the National Lawyers Guild, among others, set up a National Sanctuary Defense Fund for arrested sanctuary workers in 1984, raising more than \$1.8 million dollars.³⁸³ Despite a pause in national reform campaigns, national activists led important defenses in court and filed lawsuits against the federal government that would re-invigorate the national effort after 1987.

In 1985, the INS began deportation proceedings against Luz Marina Cardoza-Fonseca, a Nicaraguan national, whose non-immigration visa had expired. During her hearing, she conceded to being in the country unlawfully, and requested political asylum and a stay of deportation while her application was processed, claiming that she faced a real threat of persecution by the Sandinistas. The Immigration Judge denied her requests for asylum and withholding of deportation because she had not established a clear probability of persecution. The Board of Immigration Appeals agreed with the ruling. In 1987, however, The Court of Appeals for the Ninth Circuit reversed the decision, ruling that the standard for asylum was lower than the standard for withholding of deportation. It required a showing of a “well-founded fear” of persecution, not a “clear probability.” At the heart of the sanctuary movement was a challenge to U.S. foreign policy and inconsistencies in asylum policy that resulted in the exclusion of Central Americans from refuge in the U.S. *Cardoza-Fonseca* marks an important victory for a movement that had

lost steam in pursuing national policy reform, by requiring INS to apply a lower standard for Central American asylum cases, in accordance with the Refugee Act of 1980.

On May 7, 1985, national legal groups filed a class action lawsuit in *American Baptist Churches vs. Thornburgh* (ABC case) against the Immigration and Naturalization Service (INS), the Executive Office for Immigration Review (EOIR) and the United States Department of State (DOS), alleging that the federal government violated the plaintiffs' (arrested sanctuary workers) first amendment right to freely exercise their religion by infiltrating churches during Operation Sojourner. They also charged the governments with disregarding its responsibilities to Central American refugees under the Refugee Act of 1980, thereby making the arrest of sanctuary workers and denial of Central Americans' asylum claims unlawful. The ABC case lasted 6 years before it was settled January 31, 1991, marking another important national victory for the sanctuary movement by reopening nearly 150,000 asylum cases and letting over 100,000 more Central Americans apply for new decisions.

A second lawsuit in 1986, *Presbyterian Churches v. United States*, by four Lutheran and Presbyterian churches in Arizona (including Southside Presbyterian) and their national denominations, was filed against the United States, INS, and Department of Justice for violating 1st and 4th Amendment rights in Operation Sojourner's covert recording of church services. The U.S. District Court on October 30, 1986, dismissed the case stating that the churches lacked standing. The Ninth Circuit heard the case on July 14, 1987, and decided on March 15, 1989 that the churches did have standing and remanded the case back to the district court. On December 10, 1990, a final ruling

affirmed that the government had a right to infiltrate churches and record services, but instructed government officials that they can only do so “in good faith” of not “abridging first amendment freedoms.”³⁸⁴ Despite this loss in court, the larger legal trend beginning in 1987 with *Cardoza-Fonseca* was legal victory. Table 5.4 below provides a brief overview of major national legal and policy victories, all of which occur just as sanctuary policies plateau in 1987.

Table 5.4 National Victories

Year	National Policies & Court Cases	Outcome
1987	<i>INS v. Luz Marina Cardoza-Fonseca</i>	Fair Asylum Review
1987	Moakley-DeConcinni “Task Force” Bill	Congressional Review of Refugee Crisis
1990	Immigration Act of 1990	Temporary Protected Status
1991	<i>American Baptist Churches vs. Thornburgh</i>	Reopened 150,000 Asylum Cases
1997	Nicaraguan Adjustment and Central American Relief Act	Pathway to Legal Permanent Residency

Following the *Cardoza-Fonseca*, authors of early 1980s national policy reforms, Representative Moakley and Senator DeConcinni proposed a task force bill asking for an in-depth GAO study of the conditions in Central America, especially in El Salvador, and urged Congress to apply the report’s findings in future policy reforms. The bill passed the House in 237 to 181 in 1987, and was shortly stalled in the Senate by Senator Simpson, but passed in 1988 and was signed by President Reagan. The final report

provided analysis on the conditions of those deported from the U.S. back to El Salvador and Nicaragua, national comparisons to groups that have been granted Extended Voluntary Departure by the U.S., both of which confirmed the sanctuary movement's appeals to grant asylum to those fleeing Central America. Representative Moakley issued the final task force report in 1990 to Congress, which outlined the atrocities in Central America, and used the report to author a provision in the Immigration Act of 1990 offering 18 months of Temporary Protected Status (TPS) to Salvadoran refugees and making them eligible to apply for asylum after TPS ended.³⁸⁵

Following the 1990 legislative victory, the federal government officially “agreed [to] stop detaining and deporting most [undocumented] immigrants from El Salvador and Guatemala and to adopt new procedures for their applications for political asylum.”³⁸⁶ Immigration Reform and the ABC Case were important steps in the right direction. Lucas Guttentag, director of the ACLU's Immigrants' Rights Project, said, “We hope that 10 years of bias and hostility are finally over. . . . For the first time, Salvadoran and Guatemalan refugees will have a meaningful opportunity to secure political asylum under United States law.”³⁸⁷ Marc Van Der Hout, with the National Lawyers Guild, and the lead lawyer for the plaintiffs in the ABC case, called it a tragedy that “it took 10 years for the Government to reverse its policy of putting support for the military governments of El Salvador and Guatemala over its human rights obligations to grant asylum to legitimate refugees.”³⁸⁸ Rev. Gustav H. Schultz, president of the National Sanctuary Defense Fund, called the ABC settlement “a vindication of the hundreds of people in the sanctuary

movement who put life and liberty on the line to assist Central American refugees who were fleeing for their lives.”³⁸⁹

Following these two national victories, the federal government teamed up with the sanctuary movement by allocating \$200,000 to help churches, refugee social service centers and advocacy groups in their effort to reach out to undocumented Central Americans, particularly in San Francisco, Los Angeles, New York, Washington, Miami, Houston, Dallas and Chicago, in order to facilitate their asylum applications. It added new asylum officers and immigration judges, required new training in international human rights issues, and sought the help of churches and immigrant rights groups to conduct the training.³⁹⁰ In 1997, U.S. Congress passed The Nicaraguan Adjustment and Central American Relief Act, marking a final victory for the Central American Sanctuary Movement. The new law granted legal permanent residency to Nicaraguans, Cubans, Salvadorans, Guatemalans, nationals of former Soviet bloc countries, and their dependents, provided that they were registered asylum seekers residing in the U.S. for at least 5 years since December 1, 1995.

5.9 Conclusion

This chapter contributes an important bridge between the immigration scholarship and Central American Sanctuary Movement scholarship, and fills gaps in each by going beyond the traditional national story to explain policy developments occurring at the state and local levels. Specifically, I advance a theory that accounts for the timing and spread of church, city and state sanctuary policies in the 1980s, showing that national and local

activists pursue sanctuary only after experiencing defeats in their attempts at federal reform. This theory of activism in a federalist system accounts for sanctuary policies throughout American history, including those passed to protect runaway slaves. It therefore re-enforces my argument in Chapter 3 that sanctuary policies are a core feature of American federalism rooted in the U.S. Constitution.

The fight over sanctuary continues today. In his first month in office, President Trump wasted no time in attacking “sanctuary cities” issuing an executive order on January 30, 2017 that targets jurisdictions for “willfully violat[ing] Federal law in an attempt to shield aliens from removal from the United States.”³⁹¹ At the core of his order is the narrative that “these jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.”³⁹² Scholars studying the impact of sanctuary policies on crime refute the President’s “threat” narrative.³⁹³ While the status of “illegal alien” and the complex history of immigration federalism make it easy to equate federal power as superseding sanctuary polices, my dissertation reveals the opposite. The federal government and its agencies have the exclusive responsibility for passing and enforcing immigration law, but the federal government forms partnerships with states and localities to expand its own capacity in enforcing federal law. State and local governments have always had the power to refuse to cooperate and sever their connection to immigration enforcement, thereby creating a major obstacle to over-expansive federal enforcement goals.

President Trump’s narrative that sanctuary policies violate federal law and challenge core American values ignores their critical place in American history. Parallels

between Northern protections of runaway slaves and contemporary protections of undocumented immigrants help establish a positive image of sanctuary policies, which have historically advanced core American values of freedom, equality, non-discrimination and building inclusive communities.

When San Francisco, New York and Chicago passed revised versions of their sanctuary ordinances in 1989, advocates began to assert for the first time that City of Refuge ordinances were part of a civil rights policy. They brought the city in line with the principle “that all persons residing within the city and county have fundamental human, civil and constitutional rights”³⁹⁴ Sanctuary policies became less connected to the specific struggles of Central American refugees, and assumed broader goals related to civil rights, community policing and local governance. In immigrant-welcoming cities, sanctuary-city status provides a moral standard with regard to the rights of undocumented residents. In the post-2000 contemporary period, a range of sanctuary policies have been passed by law enforcement agencies, churches, colleges, cities, counties and states, all limiting federal immigration enforcement through non-cooperation.

At the state level today, California has led the way on this issue. In 2013, it passed the Trust Act stipulating that officers can only enforce immigration detainers issued by the ICE for persons convicted of serious crimes. In 2016, it passed the Truth Act providing additional due process protections to detained immigrants: it requires local jails to provide advanced written notice to the immigrant and their legal representative of ICE hold requests before transferring them to federal custody, allowing for proper legal defense, and it adds new accountability and review processes of local detainer practices.

The next step underway in 2017, in response to Trumps' presidency, is SB 54, appropriately named The California Values Act, which would end the use of state and local resources and officials from “performing the functions of a federal immigration officer” and require that ICE obtain a court warrant to transfer violent offenders to their custody for deportation. Additionally, it would create “safe zones” that prohibit immigration enforcement on public school, hospital, and courthouse premises, and require state agencies to review and update confidentiality policies. Additionally, proposed bills SB 6 and AB 3 would commit state resources to the legal representation of those facing deportation in the state.

The biblical roots of the 1980s Central American Sanctuary Movement, together with the abolitionist roots of antebellum sanctuary policies, make it clear that sanctuary policies are not aberrations in immigration law or American history. They are fundamentally an American tradition.

Chapter 6

Conclusion

This dissertation contributes an American Political Development (APD) approach to advance a new way to think about the relationship between slavery and immigration. It provides empirical evidence of how antebellum laws on black migration were not only restrictive in nature, but also operated to open state borders and facilitate free presence. Northern free states passed laws to welcome, integrate, and protect runaway slaves, in conflict with the federal fugitive slave law, which I connect to functionally similar contemporary immigration laws.

In this conclusion, I highlight how the dissertation employs an APD approach to develop historical parallels and a new framework for thinking about sanctuary policies, which fills important conceptual and theoretical gaps in interdisciplinary scholarships on slavery and immigration policy. I then turn to President Trump's anti-sanctuary executive order and recent court injunction on the order to explain why the dissertation is especially timely, and I juxtapose California's sanctuary policies and resistance against Trump's agenda to clarify how sanctuary policies remain a healthy feature in American federalism and democracy today.

6.1 Why an APD Approach to Sanctuary Policies?

The APD subfield in political science (that also spans across other disciplines) offers innovative ways to examine politics. Leaders in the subfield, Karen Orren and Stephen Skowronek, explain that there is nothing that “has more effectively transformed the historical study of American politics than impatience with conventional demarcations of time.”³⁹⁵ APD’s focus on American political orders, defined loosely as the political arrangement of institutions, policies, and groups, allows it to provide innovative studies on governmental authority and power. Despite its strengths, Daniel Galvin explains that APD scholarship often produces standalone projects closed off from scholarly debates and comparisons, and points to tools that might help advance APD’s conceptual analysis and generalizability, including Giovanni Sartori’s “checklist,” David Collier and Steven Levitsky’s “diminished subtypes,” and scholarship on indicators of conceptual stretching, min-max strategies, and fuzzy-set coding.³⁹⁶

Inspired by Richard Valelly, Paul Frymer, Daniel Tichenor, Rogers Smith, Desmond King, Karen Orren, and Stephen Skowronek, among other leading APD scholars, this dissertation fundamentally challenges conventional understandings of demarcations separating antebellum and contemporary American periods.³⁹⁷ Moreover, in addressing Galvin’s concerns, it is through an APD approach that I bridge the study of American slavery, asylum, and immigration law to address unexplained patterns in American history of conflicting federal and state/local policies on free movement and presence. My dissertation contributes to multiple disciplines, from political science to law, sociology and history, because it addresses fundamental gaps in each through

developing general concepts, theories, and empirical explanations of American federalism and sanctuary policies, which have impacted multiple groups in U.S. history.

A few notable immigration scholars set up the empirical standing ground of exploring early American immigration law, which my dissertation builds on. Gerald Neuman first revealed a robust range of early immigration laws passed by states and localities to restrict unwanted migration in the antebellum period, fundamentally challenging prior wisdom that the 1870s and 1880s marked the formative period of immigration law.³⁹⁸ Building on this, Anna Law argues that early immigration laws reveal new patterns of early American state building, one emerging at the state and local level, not national.³⁹⁹ Together, they define immigration law in flexible terms that highlight a range of laws that restrict blacks, criminals, paupers, and the diseased from entering national, state, and local borders, which effectively operated as early immigration controls. Fast forward to today, contemporary immigration has experienced a re-birth in state and local policy proliferation, which immigration federalism scholars have begun to explain. The scholarship on early and contemporary policies, however, have remained isolated from one another.⁴⁰⁰

Through an APD approach, my dissertation provides a fundamental intervention in immigration scholarship by systematically connecting the two seemingly disparate periods in a way that addresses central concerns about federalism and how power is allocated between federal, state, and local governments. Re-imagining these historical connections is critical to the advancement of scholarship. According to Sartori, “We are now engaged in world-wide, cross area comparisons [and there] is apparently no end to

the proliferation of political units. Now, the wider the world under investigation, the more we need conceptual tools that are able to travel.”⁴⁰¹ APD’s engagement with conceptualizing historical periods helps capture this widening world, and I argue, provides a unique way to advance concepts that travel far. Specifically, I draw federal and state/local level parallels between antebellum laws on runaway slaves and contemporary immigration laws on undocumented immigrants to advance a new conceptual and theoretical understanding of American federalism and sanctuary policies.

My dissertation’s concepts of *free presence* and *federalism conflict*, and theory of sanctuary policy proliferation, are important contributions to slavery and immigration scholarship alike. Conventional wisdom from the slavery scholarship on why Northern states passed sanctuary policies focuses on sectionalism, and a few scholars hold that federal preemption over fugitive slave law supersedes state/local sanctuary policies, making them acts of nullification. Similar wisdom has emerged in immigration scholarship, where the primary focus is on federal preemption and national developments, and subfederal policies are viewed as temporary aberrations in America’s national immigration story. Because of these wisdoms, both slavery and immigration scholarship have relied on time-bound concepts like comity, sectionalism, and nullification confined to antebellum politics, and federal preemption analysis confined to contemporary immigration law.⁴⁰² By rethinking the periodization of American history, my dissertation provides the first systematic historical study of sanctuary policies, advances universal concepts that apply across periods, and develops a general theory of sanctuary policy proliferation in a federalist system.⁴⁰³

6.2 President Trump’s (*Failing*) Anti-Sanctuary Policy

On April 25, 2017, William H. Orrick, a federal judge in San Francisco, issued a nationwide injunction temporarily blocking President Trump’s anti-sanctuary executive order, “Enhancing Public Safety in the Interior of the United States,” which threatened to withhold federal funding from any sanctuary jurisdiction that did not fully comply with federal immigration laws. The injunction is temporary, but Orrick “signaled that San Francisco and Santa Clara County” were likely to win the case, and the executive order was likely to be ruled unconstitutional.⁴⁰⁴

The order Trump issued on Wednesday, January 25, 2017, put cities and counties on notice that they would lose federal funding if they did not start cooperating. It mandates that “the Attorney General and the [Homeland Security] Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 are not eligible to receive Federal grants.”⁴⁰⁵ Section 1373 denies federal, state, or local governments and officials from interfering with information sharing “regarding the citizenship or immigration status, lawful or unlawful, of any individual.” Once states and localities obtain such information, they cannot prevent it from being shared with ICE.

In 1989, New York City Mayor Ed Koch issued executive order 124 prohibiting city employees from voluntarily providing federal immigration authorities with information on immigration status. The Second Circuit Court of Appeals in *City of New York v. United States* (1999) ruled that federal immigration law (specifically, Sections 434 and 642) preempted 124 on the grounds “states do not retain under the Tenth

Amendment an untrammelled right to forbid all voluntary cooperation by state or local officials with particular federal programs.” Notably, the court also clarified that New York City could opt not to gather immigration status information in the first place.

President Trump’s threat of removing federal funding applies to jurisdictions refusing to comply with 8 U.S.C. 1373 (refusing to share information). It does not prevent or threaten funding from state or local jurisdictions that do not collect information, which is unconstitutional. Cities like San Francisco and Seattle hailed as strong sanctuaries are in full compliance with the executive order because they do not collect information on immigration status. It is also clear, however, that while President Trump’s order focused on compliance, it was intended as a broader attack on sanctuary jurisdictions and part of the administration’s strategy in immigration enforcement. Despite raising serious Constitutional concerns, the order symbolically demonstrated President Trump’s resolve on strict immigration enforcement. Dennis Herrera, San Francisco’s City Attorney, said “[t]his is why we have courts — to halt the overreach of a president and an attorney general who either don’t understand the Constitution or chose to ignore it.”⁴⁰⁶

Judge William H. Orrick explained in his temporary injunction that the federal government cannot mandate states/localities, nor coerce them through funding, to administer federal programs like immigration enforcement. The federal government and its agencies have the exclusive responsibility for passing and enforcing immigration law. Partnerships with states and localities significantly expand federal capacity in this regard, which is why the executive order targets sanctuary policies and makes interior

enforcement partnerships a top priority. State and local governments that refuse to cooperate present a major obstacle to Trump's anti-immigrant agenda.

Seattle, WA, Richmond, CA, Lawrence and Chelsea, MA, have also sued President Trump's administration challenging the anti-sanctuary order. Mayor of Seattle, Ed Murray, stated: "Our lawsuit is staying true to our values. . . We value civil rights, we value the courts and we value the Constitution."⁴⁰⁷ More than 50 other cities and counties filed amicus curia (known as friends of the court) in support of San Francisco and Santa Clara County's lawsuit challenging the order.⁴⁰⁸

Sanctuary laws spotlight states' capacity to contest national policy, but they remain widely misunderstood and under-theorized. This dissertation reveals how these tensions and immigration debates over sanctuary policies today are not unprecedented, but rather add to long-standing debates in American federalism, slavery, immigration, and civil rights. Chapter 3 reveals that sanctuary policies are present in both antebellum and contemporary America because the courts have set up an institutional foundation under the 10th Amendment's anti-commandeering clause and 14th and 4th Amendment's equal protection and due process clauses, which allow for what I term a *federalism conflict* to emerge. While immigration law is federally regulated, it does not supersede sanctuary laws. *Federalism conflict* advances a clearer understanding of the autonomy and policy-making power states hold, and by drawing deep parallels between federal and state/local laws on runaway slaves and undocumented immigrants, I connect disparate periods of American history to reveal that state autonomy is a durable feature in American federalism.

6.3 Sanctuary States: A Moral Compass on National Reform and Civil Rights

In response to the recent federal injunction, on April 25, 2017, President Trump's administration argued that "[sanctuary] cities are engaged in the dangerous and unlawful nullification of Federal law in an attempt to erase our borders."⁴⁰⁹ The invaluable takeaway my dissertation offers is that northern states played the critical role as a moral compass on national reform and civil rights. Northern sanctuary laws and vigilant activism by abolitionists effectively constrained federal enforcement of fugitive slave law, which they saw as immoral and unjust, and they paved the way for Congress to pass the 13th and 14th Amendments, securing blacks' freedom from slavery and access to American citizenship. A key innovation of Northern sanctuary policies were state level due process and equal protection given to runaway slaves, which later informed the basis for the 14th Amendment's protections. Forceful confrontation by abolitionists and northern states and localities against slavery and unjust federal law serves as a historical model for contemporary resistance against Trump's immigration enforcement agenda, and casts a positive light on sanctuary policies.

Chapters 4 and 5 reveal how antebellum and contemporary sanctuary policies emerge out similar fights for federal abolition and federal immigration reform. Without comprehensive reform, states and localities began to play critical roles in protecting runaway slaves and undocumented immigrants from facing re-enslavement and deportation. Activists have always been divided over where (federal, state or local) to focus their efforts and resources. I show that national activists first commit to a federal reform strategy, and pursue sanctuary policies only after numerous federal failures occur.

Once sanctuary policies gain clout (following federal failures), national activists revise their strategy to include building new state and local coalitions with existing grassroots activists and state/local political officials, and together, they push for sanctuary policies.

The 11 million undocumented immigrants and 16 million immigrant families of mixed legal status today are vulnerable to deportation, with little likelihood of national reform passing. While Chapters 3-5 help make sense of why sanctuary policies emerge, Chapter 2 provides an important foundation through my concept of *free presence* for how to make sense of sanctuary policies' cumulative significance. No singular policy or definition of sanctuary exists; instead, I show that a range of state and local policies function as some form of sanctuary, and rich variation exists across jurisdictions. *Free presence* makes sense of past and present sanctuary policies as a gradation of protections set up under state and local policies facilitating free movement, presence, and access to resources. This concept challenges popular and scholarly notions, like the all too often use of “unlawful” and “lawful” presence, to frame undocumented immigrants as outside the law. Conceptually, it places state and local sanctuary policies front-and-center, and in contradistinction to how federal law defines legal status.

Today, California has led the way in setting up free presence. In 2013, it passed the Trust Act, which stipulates that officers can only enforce immigration detainers issued by the ICE for persons convicted of serious crimes. In 2016, it passed the Truth Act providing additional due process protections to detained immigrants: it requires local jails to provide advanced written notice to the immigrant and their legal representative of

ICE hold requests before transferring them to federal custody, allowing for proper legal defense, and it adds new accountability and review processes of local detainer practices.

Underway in 2017, in response to Trump's presidency, the proposed California Values Act (SB 54) would end the use of state and local resources and officials from "performing the functions of a federal immigration officer" and require that ICE obtain a court warrant to transfer violent offenders to their custody for deportation. Additionally, it would create "safe zones" that prohibit immigration enforcement on public school, hospital, and courthouse premises, and require state agencies to review and update confidentiality policies. SB 6 and AB 3 have also been introduced, which would commit state resources to the legal representation of those facing deportation in the state.

My dissertation shines important light on why normative weight exists in considering sanctuary policies to be a healthy feature in American federalism and democracy. California's resistance against President Trump's immigration enforcement agenda, among other states and localities, provide an important moral compass on immigrant rights today, much like past abolitionist states. Immigrant activists today are fighting to preserve families and communities. State and local sanctuary policies are critical to these efforts because they help create higher standards in immigrant rights and due process, and they foster inclusive community building. Much like abolitionists strategies to end Northern enforcement of federal fugitive slave law, state autonomy remains a powerful defense for today's immigrant advocates in the fight against Trump's immigration policies.

Appendix A

Glossary of Common Terms

This appendix provides a short glossary for terms used in the dissertation to help facilitate reader access. Please note that this is not a full index of each term's reference throughout the dissertation. For the following terms, the referred chapter and pages provide the recommended starting point for how the terms are employed throughout the dissertation: *Free presence* (Chapter 2), *Federalism conflict* (Chapter 3), *Personal liberty laws* (Chapter 2, 26-30; Chapter 4, 86, footnote 1), *Sanctuary policy* (Chapter 2 for an overview; Chapters 3-5), *Unlawful presence* (Chapter 1, 10-15; Chapter 2, 33-38; Chapter 3, 63-67); *Nullification* (Chapter 3, 48); *Comity* (Chapter 3, 48); *American Political Development* (Chapter 6, 206-209).

Footnotes

¹ “The Lost Century of American Immigration Law (1776-1875),” *Columbia Law Review* 93, no. 8 (December 1, 1993): 1833–1901.

² Neuman 1993, *Ibid.*, 1848–1849.

³ Anna O. Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State,” *Studies in American Political Development* 28, no. 02 (October 2014): 107–28.

⁴ *Ibid.*, 108.

⁵ Anna O. Law, “The Historical Amnesia of Contemporary Immigration Federalism Debates,” *Polity* 47, no. 3 (July 2015): 309.

⁶ Jennifer Chacón, “The Transformation of Immigration Federalism,” *William & Mary Bill of Rights Journal* 21, no. 2 (December 1, 2012): 577; Pratheepan Gulasekaram and S. Karthick Ramakrishnan, “Immigration Federalism: A Reappraisal,” *NYUL Rev.* 88 (2013): 2074–2319; Pratheepan Gulasekaram and S. Karthick Ramakrishnan, *The New Immigration Federalism* (New York: Cambridge University Press, 2015); Hiroshi Motomura, *Immigration Outside the Law* (Oxford; New York: Oxford University Press, 2014); Cristina M. Rodriguez, “The Significance of the Local in Immigration Regulation,” *Michigan Law Review* 106, no. 4 (February 1, 2008): 567–642; Daniel J. Tichenor and Alexandra Filindra, “Raising Arizona v. United States: Historical Patterns of American Immigration Federalism,” *Lewis & Clark L. Rev.* 16 (2012): 1215; Monica Varsanyi, ed., *Taking Local Control: Immigration Policy Activism in U.S. Cities and States* (Stanford, CA: Stanford University Press, 2010); Monica W. Varsanyi et al., “A Multilayered Jurisdictional Patchwork: Immigration Federalism in the United States,” *Law & Policy* 34, no. 2 (April 1, 2012): 138–58.

⁷ “The Lost Century of American Immigration Law (1776-1875).”

⁸ Neuman 1993, *Ibid.*, 1837–1838.

⁹ Neuman 1993, *Ibid.*, 1848–1849.

¹⁰ Neuman *Ibid.*, 1849–1851, 1961–1862.

¹¹ Kunal M. Parker, “State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts,” *Law and History Review* 19, no. 03 (September 2001): 583–643.

¹² Kerry Abrams, “Polygamy, Prostitution, and the Federalization of Immigration Law,” *Columbia Law Review* 105, no. 3 (April 1, 2005): 641–716.

¹³ Hidetaka Hirota, “The Moment of Transition: State Officials, the Federal Government, and the Formation of American Immigration Policy,” *Journal of American History* 99, no. 4 (March 1, 2013): 1107.

¹⁴ Magee 2010; David A. Martin et al., *Forced Migration: Law and Policy*, 2nd ed. (West Academic, 2013); Rhonda V. Magee, “Slavery As Immigration?,” *University of San Francisco Law Review Research Paper No. 2010–30* (2010): 12.

¹⁵ Lolita K. Buckner Inniss, “Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness,” *DePaul L. Rev.* 49 (1999): 91.

¹⁶ Daniels 1990, 54-55.

¹⁷ Robin L. Einhorn, *American Taxation, American Slavery* (Chicago: University of Chicago Press, 2006); Robin L. Einhorn, "Slavery and the Politics of Taxation in the Early United States," *Studies in American Political Development* 14, no. 02 (October 2000): 156–83; Avidit Acharya, Matthew Blackwell, and Maya Sen, "The Political Legacy of American Slavery," *Unpublished*, August 28, 2013, <http://scholar.harvard.edu/files/msen/files/slavery.pdf>.

¹⁸ Neuman 1993, 1872.

¹⁹ Law, 2014; 2015.

²⁰ Law, "Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State."

²¹ Law, "The Historical Amnesia of Contemporary Immigration Federalism Debates," 309.

²² James A. Kraehenbuehl, "Lessons from the Past: How the Antebellum Fugitive Slave Debate Informs State Enforcement of Federal Immigration Law," *The University of Chicago Law Review* 78, no. 4 (October 1, 2011): 1465–1502.

²³ Karla Mari McKanders, "Immigration Enforcement and the Fugitive Slave Acts: Exploring Their Similarities," *Catholic University Law Review* 61 (2012): 921; Jeffrey M. Schmitt, "Immigration Enforcement Reform: Learning from the History of Fugitive Slave Rendition," *The Georgetown Law Journal Online* Vol. 103 Online: 1 (2013): 1–7.

²⁴ McKanders, "Immigration Enforcement and the Fugitive Slave Acts," 939.

²⁵ Craig B. Mousin, "Clear View from the Prairie: Harold Washington and the People of Illinois Respond to Federal Encroachment of Human Rights, A," *S. Ill. ULJ* 29 (2004): 316.

²⁶ Christopher N. Lasch, "Rendition Resistance," *North Carolina Law Review* 92 (2014 2013): 149.

²⁷ Magee, "Slavery As Immigration?," 7.

²⁸ See, e.g., Neuman 1993, Peter Wallenstein, *Blue Laws and Black Codes: Conflict, Courts, and Change in Twentieth-Century Virginia* (Charlottesville: University of Virginia Press, 2004). Neuman similarly addresses laws regulating slaves and free blacks jointly.

²⁹ U.S. Const. art. I, sect. 9, cl. 1

³⁰ William Edward Burghardt Du Bois, *The Suppression of the African Slave-Trade to the United States of America, 1638-1870* (Cambridge: Harvard University Press, 1904).

³¹ Act of Feb. 28, 1803, ch. 10, 2 Stat. 205 (this law banned importing or bringing in "any negro, mulatto, or other person of colour, not being a native, a citizen, or registered seaman, of the United States"); Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton, New Jersey: Princeton University Press, 2010), 36.

³² Neuman, "The Lost Century of American Immigration Law (1776-1875)," 1876.

³³ Neuman 1993, *Ibid.*, 1893.

³⁴ Hirota 2013, Law 2014, Neuman, “The Lost Century of American Immigration Law (1776-1875)”;
Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State”;
“The Moment of Transition.”

³⁵ Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation Publications, 2003); Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton University Press, 2004).

³⁶ Andrew Fede, *People Without Rights: An Interpretation of the Fundamentals of the Law of Slavery in the U.S. South*, Distinguished Studies in American Legal and Constitutional History (New York: Garland Pub, 1992); Andrew Fede, *Roadblocks to Freedom: Slavery and Manumission in the United States South* (New Orleans, LA.: Quid Pro Books, 2011).

³⁷ James M Campbell, *Slavery on Trial: Race, Class, and Criminal Justice in Antebellum Richmond, Virginia* (Gainesville, FL: University Press of Florida, 2007); Ariela Julie Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, N.J.: Princeton University Press, 2000); Ariela Julie Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge, MA: Harvard University Press, 2010); Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas*, Harvard Historical Studies, v. 138 (Cambridge, Mass: Harvard University Press, 2001); Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA: Harvard University Press, 1999); Glenn McNair, *Criminal Injustice: Slaves and Free Blacks in Georgia's Criminal Justice System* (Charlottesville: University of Virginia Press, 2009); Paul Finkelman, ed., *Statutes on Slavery: The Pamphlet Literature, Slavery, Race, and the American Legal System, 1700-1872*, ser. 7 (New York: Garland Pub, 1988); Paul Finkelman, ed., *Slavery & the Law*, 1st ed (Madison, Wis: Madison House, 1996); William Goodell, *The American Slave Code In Theory and Practice: Its Distinctive Features Shown By Its Statutes, Judicial Decisions, and Illustrative Facts*, Reprint 1968 (USA: Johnson Reprint Corporation, 1853); A. Leon Higginbotham, *In the Matter of Color: The Colonial Period, Race and the American Legal Process*, v. 1 (New York: Oxford University Press, 1978); John C. Hurd, *The Law of Freedom and Bondage in the United States* (Clark, N.J: Lawbook Exchange, 2006); Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994); Jenny Bourne Wahl, *The Bondsman's Burden: An Economic Analysis of the Common Law of Southern Slavery*, Cambridge Historical Studies in American Law and Society (Cambridge ; New York: Cambridge University Press, 1998).

³⁸ Thomas Cooper and David James McCord, eds., *The Statutes at Large of South Carolina: Containing the Acts from 1682 to 1716, Inclusive*, vol. Volume 2 (Columbia, S.C.: A.S. Johnston, 1836), 23.

³⁹ Thomas Cooper and David James McCord, eds., *The Statutes at Large of South Carolina*, vol. Volume 7 (Columbia, S.C.: A.S. Johnston, 1836), 343.

⁴⁰ Hadden, *Slave Patrols*, 18.

⁴¹ Cooper and McCord, *The Statutes at Large of South Carolina*, 1836, Volume 2:254–255.

⁴² Herbert Aptheker, *American Negro Slave Revolts* (New York: International Publishers, 1983); Gabor Boritt and Scott Hancock, eds., *Slavery, Resistance, Freedom* (Oxford: Oxford University Press, 2007); Larry Gara, *The Liberty Line: The Legend of the Underground Railroad* (Lexington: University of Kentucky Press, 1961).

- ⁴³ John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Oxford University Press, 1999), 282.
- ⁴⁴ *Ibid.*, 279.
- ⁴⁵ Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina Press, 1970), 168.
- ⁴⁶ Frederick Douglass, *Narrative of the Life of Frederick Douglass, An American Slave* (Boston: Anti-Slavery Office, 1845).
- ⁴⁷ The first known slave narrative written by a runaway slave is William Grimes, *Life of William Grimes, the Runaway Slave* (New York, 1825). Also see: Henry Box Brown, *Narrative of the Life of Henry Box Brown, Written by Himself*, 1851.
- ⁴⁸ William Still, *The Underground Railroad* (Philadelphia: Porter & Coates, 1872).
- ⁴⁹ Wilbur Henry Siebert, *The Underground Railroad: From Slavery to Freedom* (New York: The Macmillan Company, 1898).
- ⁵⁰ Gara, *The Liberty Line: The Legend of the Underground Railroad*.
- ⁵¹ Franklin and Schweninger, *Runaway Slaves: Rebels on the Plantation*, 97–123; 124–148.
- ⁵² *Ibid.*, 112.
- ⁵³ W. E. B. Du Bois, *The Philadelphia Negro*, ed. Henry Louis Gates, 1 edition (New York, NY: Oxford University Press, 2014).
- ⁵⁴ For an extensive collection of primary resources related to northern laws and court cases, see Paul Finkelman, ed., *Slavery, Race, and the American Legal System, 1700-1872: A Sixteen Volume Facsimile Series Reproducing Over One Hundred and Seventy Rare and Important Pamphlets*, 16 vols. (New York: Garland, 1988).
- ⁵⁵ Rose Cuison Villazor, “What Is a Sanctuary,” *SMU Law Review* 61 (2008): 135–136.
- ⁵⁶ *Ibid.*, 138.
- ⁵⁷ Benjamin Gonzalez, Loren Collingwood, and Stephen Omar El-Khatib, “The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration,” *Urban Affairs Review*, May 7, 2017, 5, doi:10.1177/1078087417704974.
- ⁵⁸ Tom K. Wong, “The Effects of Sanctuary Policies on Crime and the Economy,” *Center for American Progress*, January 26, 2017, <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.
- ⁵⁹ Christopher J. Lyons, María B. Vélez, and Wayne A. Santoro, “Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities,” *American Sociological Review* 78, no. 4 (August 1, 2013): 604–32, doi:10.1177/0003122413491964.
- ⁶⁰ Villazor, “What Is a Sanctuary,” 2008, 138–139.

- ⁶¹ Massachusetts, “1855 Chap. 0489. An Act To Protect The Rights And Liberties Of The People Of The Commonwealth Of Massachusetts.,” 1855, <http://archives.lib.state.ma.us/handle/2452/97312>.
- ⁶² Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (W. W. Norton & Company, 2015), 217.
- ⁶³ Benjamin Lorber, “Creating Sanctuary Faith-Based Activism for Migrant Justice,” *Tikkun* 28, no. 3 (July 1, 2013): 42–43, doi:10.1215/08879982-2307193.
- ⁶⁴ Michael Scott Feeley, “Towards the Cathedral: Ancient Sanctuary Represented in the American Context Immigration & Nationality XIV,” *San Diego Law Review* 27 (1990): 802.
- ⁶⁵ John Torpey, “Revolutions and Freedom of Movement: An Analysis of Passport Controls in the French, Russian, and Chinese Revolutions,” *Theory and Society* 26, no. 6 (December 1, 1997): 837–68; John Torpey, “Coming and Going: On the State Monopolization of the Legitimate ‘Means of Movement,’” *Sociological Theory* 16, no. 3 (1998): 239–59; John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State*, Cambridge Studies in Law and Society (Cambridge; New York: Cambridge University Press, 2000).
- ⁶⁶ Jane Caplan and John Torpey, eds., *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton, N.J: Princeton University Press, 2001); Craig Robertson, *The Passport in America: The History of a Document* (New York: Oxford University Press, 2010); Mark B. Salter, *Rights of Passage: The Passport in International Relations* (Boulder, Co: Lynne Rienner Publishers, 2003).
- ⁶⁷ David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore: Johns Hopkins University Press, 1996); Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago, 1994).
- ⁶⁸ Soysal, *Limits of Citizenship*.
- ⁶⁹ Elizabeth F. Cohen, *Semi-Citizenship in Democratic Politics* (Cambridge University Press, 2009).
- ⁷⁰ Rose Cuison Villazor, “Sanctuary Cities and Local Citizenship,” *Fordham Urban Law Journal* 37 (2010): 573.
- ⁷¹ *Ibid.*, 576, 578.
- ⁷² Cohen, *Semi-Citizenship in Democratic Politics*, 14.
- ⁷³ The Immigration and Nationality Act of 1952, Pub. L. No. 82–414, 66 Stat. 163.
- ⁷⁴ S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010); Randal C. Archibold, “Arizona Enacts Stringent Law on Immigration,” *The New York Times*, April 23, 2010, sec. U.S. / Politics, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.
- ⁷⁵ Stephen Dinan, “California Grants Driver’s Licenses to Illegal Immigrants,” *The Washington Times*, October 3, 2013, <http://www.washingtontimes.com/news/2013/oct/3/calif-grants-drivers-licenses-illegal-immigrants/>.
- ⁷⁶ Motomura, *Immigration Outside the Law*, 151.

⁷⁷ “Who We Are: Municipal ID Cards as a Local Strategy to Promote Belonging and Shared Community Identity,” The Center for Popular Democracy (February 10, 2014), <http://populardemocracy.org/news/who-we-are-municipal-id-cards-local-strategy-promote-belonging-and-shared-community-identity>, accessed December 4, 2014; Catherine Saillant, “L.A. Council Approves ID Cards for City Residents,” *Los Angeles Times*, November 7, 2012, <http://articles.latimes.com/2012/nov/07/local/la-me-city-id-card-20121108>.

⁷⁸ The Trust Act of 2013 Cal. Stat. 4650 (codified at CAL. GOV’T CODE §§ 7282–7282.5 (West Supp. 2014))

⁷⁹ “San Francisco Joins Neighboring Counties In Suspending Undocumented Immigrant Jail Holds,” accessed December 7, 2014, <http://sanfrancisco.cbslocal.com/2014/05/29/san-francisco-joins-neighboring-counties-in-suspending-undocumented-immigrant-jail-holds/>.

⁸⁰ Law 2014, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State,” 128.

⁸¹ Abrams, “Polygamy, Prostitution, and the Federalization of Immigration Law”; Hirota, “The Moment of Transition”; Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State”; Law, “The Historical Amnesia of Contemporary Immigration Federalism Debates”; Neuman, “The Lost Century of American Immigration Law (1776-1875)”; Neuman, *Strangers to the Constitution*; Parker, “State, Citizenship, and Territory”; Kunal M. Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000*, 1 edition (New York, NY: Cambridge University Press, 2015).

⁸² “The Lost Century of American Immigration Law (1776-1875).”

⁸³ Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State,” 108.

⁸⁴ Law, “The Historical Amnesia of Contemporary Immigration Federalism Debates,” 309.

⁸⁵ Rodriguez, “The Significance of the Local in Immigration Regulation,” 609.

⁸⁶ Cristina M. Rodriguez, “Negotiating Conflict through Federalism: Institutional and Popular Perspectives,” *Yale Law Journal* 123 (2014): 2098; Cristina M. Rodriguez, “Toward Detente in Immigration Federalism,” *Journal of Law & Politics* 30 (2015): 505–26.

⁸⁷ Tichenor and Filindra, “Raising Arizona v. United States,” 1245.

⁸⁸ *Ibid.*, 1235.

⁸⁹ *Ibid.*, 1237.

⁹⁰ National Conference of State Legislatures, 2012 Immigration-Related Laws and Resolutions in the States (Jan. 1-Dec. 31, 2012).

⁹¹ Jessica Bulman-Pozen, “Partisan Federalism,” *Harvard Law Review* 127 (2014 2013): 1077–1146.

⁹² Gulasekaram and Ramakrishnan, *The New Immigration Federalism*; Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics*, Second Edition (University of Chicago Press, 2010).

⁹³ Gulasekaram and Ramakrishnan, *The New Immigration Federalism*, 119–120.

- ⁹⁴ Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*; Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (The Lawbook Exchange, Ltd., 1974); Norman L. Rosenberg, "Personal Liberty Laws and Section Crisis: 1850-1861," in *Abolitionism and American Law*, History of the American Abolitionist Movement (New York: Garland Publishing, Inc., 1999), 320–40.
- ⁹⁵ Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (The Lawbook Exchange, Ltd., 1981).
- ⁹⁶ Shanna Rose and Cynthia J. Bowling, "The State of American Federalism 2014–15: Pathways to Policy in an Era of Party Polarization," *Publius: The Journal of Federalism* 45, no. 3 (July 1, 2015): 361.
- ⁹⁷ Sam Kamin, "The Battle of the Bulge: The Surprising Last Stand Against State Marijuana Legalization," *Publius: The Journal of Federalism* 45, no. 3 (July 1, 2015): 427–51.
- ⁹⁸ Kamin 2015, 431.
- ⁹⁹ J. Mitchell Pickerill and Cynthia J. Bowling, "Polarized Parties, Politics, and Policies: Fragmented Federalism in 2013–2014," *Publius: The Journal of Federalism* 44, no. 3 (July 1, 2014): 369–98.
- ¹⁰⁰ Rose and Bowling, "The State of American Federalism 2014–15."
- ¹⁰¹ T. Alexander Aleinikoff, "Citizens, Aliens, Membership and the Constitution," *Constitutional Commentary* 7 (1990): 19.
- ¹⁰² Michael Scaperlanda, "Partial Membership: Aliens and the Constitutional Community," *Iowa Law Review* 81 (1995): 707.
- ¹⁰³ *Ibid.*, 713 n15.
- ¹⁰⁴ *Ibid.*, 733.
- ¹⁰⁵ Linda Bosniak, "Membership, Equality, and the Difference That Alienage Makes," *New York University Law Review* 69 (1994): 1143.
- ¹⁰⁶ *Ibid.*, 1056.
- ¹⁰⁷ Scaperlanda, "Partial Membership," 734.
- ¹⁰⁸ Mary C. Waters and Marisa Gerstein Pineau, eds., *The Integration of Immigrants into American Society* (Washington, D.C.: National Academies Press, 2015), 67–68, <http://www.nap.edu/catalog/21746>; Gulasekaram and Ramakrishnan, *The New Immigration Federalism*, 20, 42; Elizabeth M. McCormick, "Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform," *Lewis & Clark Law Review* 20 (2016): 165–236; Peter L. Markowitz, "Undocumented No More: The Power of State Citizenship," *Stanford Law Review* 67 (2015): 1–42; Scaperlanda, "Partial Membership"; Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton University Press, 2008); Hiroshi Motomura, "The Curious Evolution of Immigration Law: Procedural Surrogates for Substantive Constitutional Rights," *Columbia Law Review* 92, no. 7 (1992): 1625–1704; Hiroshi Motomura, "Whose Immigration Law?: Citizens, Aliens, and the Constitution," *Columbia Law Review* 97, no. 5 (June 1, 1997): 1567–1602, doi:10.2307/1123443; Hiroshi Motomura, "THE RIGHTS OF OTHERS: LEGAL CLAIMS AND IMMIGRATION OUTSIDE THE LAW," *Duke Law Journal* 59, no. 8 (2010): 1723–86.

¹⁰⁹ Liliana M. Garces, “Evolving Notions of Membership: The Significance of Communal Ties in Alienage Jurisprudence,” *Southern California Law Review* 71 (1997): 1060–1070.

¹¹⁰ Gerald L. Neuman, “Territorial Discrimination, Equal Protection, and Self-Determination,” *University of Pennsylvania Law Review* 135 (1987 1986): 261; Gerald L. Neuman, “Whose Constitution,” *Yale Law Journal* 100 (1991 1990): 909; Gerald L. Neuman, “We Are the People: Alien Suffrage in German and American Perspective,” *Michigan Journal of International Law* 13 (1992 1991): 259; Gerald L. Neuman, “Human Rights and Constitutional Rights: Harmony and Dissonance,” *Stanford Law Review* 55 (2003 2002): 1863; Neuman, *Strangers to the Constitution*.

¹¹¹ Motomura, “The Curious Evolution of Immigration Law,” 1688–1689.

¹¹² *Ibid.*, 1700.

¹¹³ Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (Oxford ; New York: Oxford University Press, 2006), 152, 155.

¹¹⁴ Motomura, *Immigration Outside the Law*, 1.

¹¹⁵ Cristina M. Rodríguez, “The Citizenship Paradox in a Transnational Age,” ed. Hiroshi Motomura, *Michigan Law Review* 106, no. 6 (2008): 1111–28.

¹¹⁶ Bosniak, *The Citizen and the Alien*, 34–35, 38–39, 99–100.

¹¹⁷ Linda Bosniak, “Varieties of Citizenship,” *Fordham Law Review* 75 (2006): 2453.

¹¹⁸ Markowitz, “Undocumented No More”; McCormick, “Federal Anti-Sanctuary Law.”

¹¹⁹ Markowitz, “Undocumented No More,” 24.

¹²⁰ McCormick, “Federal Anti-Sanctuary Law.”

¹²¹ Tom K. Wong, *The Politics of Immigration: Partisanship, Demographic Change, and American National Identity* (Oxford University Press, 2016), 7.

¹²² Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America*, Princeton Studies in American Politics (Princeton, N.J: Princeton University Press, 2002).

¹²³ Wong, *The Politics of Immigration*, 7.

¹²⁴ David K. Androff, “The Problem of Contemporary Slavery: An International Human Rights Challenge for Social Work,” *International Social Work* 54, no. 2 (March 1, 2011): 209–22; Karen E. Bravo, “Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade,” *Boston University International Law Journal* 25 (2007): 207; Alison Brysk and Austin Choi-Fitzpatrick, eds., *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (Philadelphia: University of Pennsylvania Press, 2012); Gary Craig et al., *Contemporary Slavery in the UK* (York, United Kingdom: Joseph Rowntree Foundation, 2007), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.364.7102&rep=rep1&type=pdf>; Beth Herzfeld, “Slavery and Gender: Women’s Double Exploitation,” *Gender & Development* 10, no. 1 (March 1, 2002): 50–55; Mark Lusk and Faith Lucas, “The Challenge of Human Trafficking and Contemporary Slavery,” *Journal of Comparative Social Welfare* 25, no. 1 (February 1, 2009): 49–57; Joel Forbes Quirk, “The Anti-Slavery Project: Linking the Historical and Contemporary,” *Human Rights Quarterly* 28, no. 3 (2006):

565–98; Vincenzo Ruggiero, “Trafficking in Human Beings: Slaves in Contemporary Europe,” *International Journal of the Sociology of Law* 25, no. 3 (September 1997): 231–44.

¹²⁵ Massey, Durand, and Malone, *Beyond Smoke and Mirrors*; Ngai, *Impossible Subjects*.

¹²⁶ U.S. Const. art. IV, § 2, cl. 3.

¹²⁷ Act of February 12, 1793 (1 Stat. 302); *Annals of Congress*, 2nd Cong., 2nd sess. (1793), 1414–1415.

¹²⁸ *Prigg v. Com. of Pennsylvania*, 41 U.S. 539 (1842)

¹²⁹ Act of September 18, 1850, (9 Stat., 462).

¹³⁰ The Immigration and Nationality Act of 1952, Pub. L. No. 82–414, 66 Stat. 163.

¹³¹ The Immigration Reform and Control Act of 1986, Pub. L. No. 99–603, 100 Stat. 3445.

¹³² Tom K. Wong, “287(g) and the Politics of Interior Immigration Control in the United States: Explaining Local Cooperation with Federal Immigration Authorities,” *Journal of Ethnic and Migration Studies* 38, no. 5 (April 19, 2012): 737–56.

¹³³ Adam B. Cox and Thomas J. Miles, “Policing Immigration,” *The University of Chicago Law Review* 80, no. 1 (January 1, 2013): 87–136; Motomura, *Immigration Outside the Law*, 78–80.

¹³⁴ Oh. Const. of 1802, art. IV § I, reprinted in Thorpe 1909 (Vol. 5), 2901–2913; Middleton 2005, 19–41.

¹³⁵ An act to regulate black and mulatto persons, Oh. Laws, January 5, 1804; Stephen Middleton, *The Black Laws in the Old Northwest: A Documentary History*, Contributions in Afro-American and African Studies, no. 152 (Westport, Conn: Greenwood Press, 1993), 15–17; Middleton, *The Black Laws*, 49–51.

¹³⁶ An Act to Regulate Black and Mulatto Persons, Oh. Laws, January 25, 1807; Middleton, *The Black Laws in the Old Northwest*, 17–18; Middleton, *The Black Laws*, 51–52.

¹³⁷ Middleton, *The Black Laws in the Old Northwest*, 275–279, 286; Middleton, *The Black Laws*, 59.

¹³⁸ In. Const. of 1851 Art. 13 § 1, reprinted in Thorpe 1909 (Vol. 2), 1073–1095; Paul Finkelman, “Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North,” *Rutgers Law Journal* 17 (1986 1985): 434–435; Middleton, *The Black Laws in the Old Northwest*, 204.

¹³⁹ An act to enforce the 13th Article of the Constitution, In. Rev. Stat, June 18, 1852; Finkelman, “Prelude to the Fourteenth Amendment,” 439–440; Middleton, *The Black Laws in the Old Northwest*, 204.

¹⁴⁰ An act providing for the colonization of Negroes and mulattoes and their descendants, and appropriating 5,000 dollars thereof, constituting the State Board of Colonization, declaring the duties of said board, and of state treasurer and county treasurer in relation thereof, In. Rev. Stat, April 28, 1852 § 1–6; An act providing for the colonization of free Negroes, making appropriations thereof, and establishing a colonization agency, In. Rev. Stat, March 3, 1853 § 1–3; An act to give power to the State Board of Colonization, In. Rev. Stat, March 1, 1855 § 1–4; Middleton, *The Black Laws in the Old Northwest*, 219–221.

¹⁴¹ Frymer 2014. “‘A Rush and a Push and the Land Is Ours’: Territorial Expansion, Land Policy, and U.S. State Formation,” *Perspectives on Politics* 12, no. 01 (March 2014): 119–44.

¹⁴² Cal. S.B. 976, Reg. Sess. (1993)

¹⁴³ S. Karthick Ramakrishnan and Pratheepan Gulasekaram, “Driver’s Licenses for Undocumented Immigrants: How the Obama Administration’s Deferred Action Policy Paved the Way,” *San Jose Mercury News*, October 14, 2013, http://www.mercurynews.com/opinion/ci_24283776/drivers-licenses-undocumented-immigrants-how-obama-administrations-deferred.

¹⁴⁴ Kris W. Kobach, “Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests, The,” *Albany Law Review* 69 (2005): 179–235; Kris W. Kobach, “Attrition through Enforcement: A Rational Approach to Illegal Immigration,” *Tulsa Journal of Comparative and International Law* 15 (2007): 155–63; Kris W. Kobach, “Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration,” *Georgetown Immigration Law Journal* 22 (2007): 459–83.

¹⁴⁵ S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010); Archibold, “Arizona Enacts Stringent Law on Immigration.”

¹⁴⁶ S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010); S. Karthick Ramakrishnan and Pratheepan Gulasekaram, “Importance of the Political in Immigration Federalism, The,” *Arizona State Law Journal* 44 (2012): 1437.

¹⁴⁷ *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011); *Arizona v. United States* 132 S. Ct. 2492 (2012)

¹⁴⁸ Law 2014, Neuman 1993.

¹⁴⁹ *Commonwealth v. Ayes*, 35 Mass. (18 Pick.) 193 (1836); Finkelman, *An Imperfect Union*, 101–125; Finkelman, “Prelude to the Fourteenth Amendment,” 444.

¹⁵⁰ An Act to protect the Rights and Liberties of the People of the Commonwealth of Massachusetts, Mass. Gen. Laws ch. 0489 § 1-23 (1855), reprinted in *Acts and Resolves Passed by the General Court of Massachusetts, in the Year 1855: Together with the Messages*. Boston: Secretary of the Commonwealth, 924-929; *Mass. Senate Document No. 162*, 1855; *Mass. Senate Journal, 1855*, Mass. State Library, 76:801; *Mass. House Journal, 1855*, 77:1710; Morris, *Free Men All*, 167–170.

¹⁵¹ Motomura, *Immigration Outside the Law*, 151.

¹⁵² S. Karthick Ramakrishnan and Allan Colbern, “The California Package: Immigrant Integration and the Evolving Nature of State Citizenship,” *Policy Matters* 6, no. 3 (2015): 1–19.

¹⁵³ Saillant, “L.A. Council Approves ID Cards for City Residents.”

¹⁵⁴ Els de Graauw, “Municipal ID Cards for Undocumented Immigrants Local Bureaucratic Membership in a Federal System,” *Politics & Society* 42, no. 3 (September 1, 2014): 309–30.

¹⁵⁵ The Trust Act of 2013 Cal. Stat. 4650 (codified at CAL. GOV’T CODE §§ 7282–7282.5 (West Supp. 2014)).

¹⁵⁶ Gulasekaram and Ramakrishnan, *The New Immigration Federalism*; Ramakrishnan and Colbern, “The California Package: Immigrant Integration and the Evolving Nature of State Citizenship.”

¹⁵⁷ Law 2014, Neuman 1993.

¹⁵⁸ Daniel Tichenor, “The Political Dynamics of Unauthorized Immigration: Conflict, Change, and Agency in Time,” *Polity* 47, no. 3 (July 2015): 300.

¹⁵⁹ Law 2015, 318.

¹⁶⁰ Chacón, “The Transformation of Immigration Federalism”; Gulasekaram and Ramakrishnan, “Immigration Federalism”; Gulasekaram and Ramakrishnan, *The New Immigration Federalism*; Motomura, *Immigration Outside the Law*; Rodriguez, “The Significance of the Local in Immigration Regulation”; Tichenor and Filindra, “Raising Arizona v. United States”; Varsanyi, *Taking Local Control*; Varsanyi et al., “A Multilayered Jurisdictional Patchwork.”

¹⁶¹ Guy Gugliotta, “Civil War Toll Up by 20 Percent in New Estimate,” *The New York Times*, April 2, 2012, <http://www.nytimes.com/2012/04/03/science/civil-war-toll-up-by-20-percent-in-new-estimate.html>.

¹⁶² Linda Bosniak, “Universal Citizenship and the Problem of Alienage,” *Immigration and Nationality Law Review* 21 (2000): 373; Bosniak, *The Citizen and the Alien*; de Graauw, “Municipal ID Cards for Undocumented Immigrants Local Bureaucratic Membership in a Federal System”; Markowitz, “Undocumented No More”; Ramakrishnan and Colbern, “The California Package: Immigrant Integration and the Evolving Nature of State Citizenship.”

¹⁶³ Ramakrishnan and Colbern 2015, 1.

¹⁶⁴ Solomon Northup, *12 Years a Slave* (Graymalkin Media, 2014).

¹⁶⁵ Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: The University of Chicago Press, 1967); David N. Gellman, *Emancipating New York: The Politics of Slavery and Freedom, 1777-1827* (Baton Rouge: Louisiana State University Press, 2006).

¹⁶⁶ Gary Nash and Jean Soderlund, *Freedom by Degrees: Emancipation in Pennsylvania and Its Aftermath* (Oxford University Press, 1991).

¹⁶⁷ Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: The University of Chicago Press, 1961).

¹⁶⁸ Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and “Race” in New England, 1780-1860* (Ithaca: Cornell University Press, 1998); Eugene H. Berwanger, *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana: University of Illinois Press, 2002); Frymer, ““A Rush and a Push and the Land Is Ours””; Jane H. Pease and William Henry Pease, *They Who Would Be Free: Blacks’ Search for Freedom, 1830-1861*, Illini Books ed, Blacks in the New World (Urbana: University of Illinois Press, 1990).

¹⁶⁹ Franklin and Schweninger, *Runaway Slaves: Rebels on the Plantation*, 282; Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*, 168.

¹⁷⁰ Franklin and Schweninger, *Runaway Slaves: Rebels on the Plantation*, 151–181; Hadden, *Slave Patrols*.

¹⁷¹ Aptheker, *American Negro Slave Revolts*; Boritt and Hancock, *Slavery, Resistance, Freedom*; Gara, *The Liberty Line: The Legend of the Underground Railroad*; Still, *The Underground Railroad*; Siebert, *The Underground Railroad: From Slavery to Freedom*.

¹⁷² Keith P. Griffler, *Front Line of Freedom: African Americans and the Forging of the Underground Railroad in the Ohio Valley* (University Press of Kentucky, 2004); Foner, *Gateway to Freedom*.

¹⁷³ Finkelman, *An Imperfect Union*.

¹⁷⁴ Morris, *Free Men All*.

¹⁷⁵ Rosenberg, "Personal Liberty Laws and Section Crisis: 1850-1861"; Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*.

¹⁷⁶ Rosenberg, "Personal Liberty Laws and Section Crisis: 1850-1861," 328.

¹⁷⁷ Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*, 14.

¹⁷⁸ Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences*, BCSIA Studies in International Security (Cambridge: MIT Press, 2005), 67–124.

¹⁷⁹ An Act to protect the Rights and Liberties of the People of the Commonwealth of Massachusetts, Mass. Gen. Laws ch. 0489 § 1-23 (1855), reprinted in *Acts and Resolves Passed by the General Court of Massachusetts, in the Year 1855: Together with the Messages*. Boston: Secretary of the Commonwealth, 924-929; *Mass. Senate Document No. 162*, 1855; *Mass. Senate Journal, 1855*, Mass. State Library, 76:801; *Mass. House Journal, 1855*, 77:1710; Morris, *Free Men All*, 167–170.

¹⁸⁰ Middleton, *The Black Laws in the Old Northwest*.

¹⁸¹ In. Const. of 1851 Art. 13 § 1 ("No Negro or Mulatto shall come into, or settle in, the State, after the adoption of this Constitution"), reprinted in Thorpe, Francis Newton. 1909. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies, Now or Heretofore Forming the United States of America*. Vol. 2. Washington, DC: Government Printing Office, 1073-1095; Finkelman, "Prelude to the Fourteenth Amendment," 434–435; Middleton, *The Black Laws in the Old Northwest*, 204.

¹⁸² An act to authorize the establishment of separate schools for the education of colored children, and for other purposes, Oh. Gen. Laws ch 892 § 1-6 (1849), reprinted in *The Public Statutes at Large of the State of Ohio: From the Close of Chase's Statutes, February 1833 to the Present Time. And a Supplement Containing All Laws Passed prior to February 1833 Which Are Now in Force*. Edited by Maskell E. Curwen. Vol. 2, 1465-1466; Finkelman, "Prelude to the Fourteenth Amendment," 436–437; Middleton, *The Black Laws in the Old Northwest*, 38–40; Middleton, *The Black Laws*, 153–156.

¹⁸³ Finkelman, *An Imperfect Union*; Morris, *Free Men All*.

¹⁸⁴ Rosenberg, "Personal Liberty Laws and Section Crisis: 1850-1861"; Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*.

¹⁸⁵ Stanley Harrold, *Border War: Fighting Over Slavery Before the Civil War* (Chapel Hill: University of North Carolina Press, 2010).

¹⁸⁶ John Gerring, *Case Study Research* (Cambridge, MA: Cambridge University Press, 2007), 45.

¹⁸⁷ Derek Beach and Rasmus Brun Pedersen, *Process-Tracing Methods: Foundations and Guidelines* (Ann Arbor: University of Michigan Press, 2013), 3.

¹⁸⁸ Chacón, "The Transformation of Immigration Federalism"; Gulasekaram and Ramakrishnan, "Immigration Federalism"; Gulasekaram and Ramakrishnan, *The New Immigration Federalism*; Motomura,

Immigration Outside the Law; Rodriguez, “The Significance of the Local in Immigration Regulation”; Varsanyi, *Taking Local Control*; Varsanyi et al., “A Multilayered Jurisdictional Patchwork.”

¹⁸⁹ Abrams, “Polygamy, Prostitution, and the Federalization of Immigration Law”; Hirota, “The Moment of Transition”; Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State”; Law, “The Historical Amnesia of Contemporary Immigration Federalism Debates”; Neuman, “The Lost Century of American Immigration Law (1776-1875)”; Neuman, *Strangers to the Constitution*; Parker, “State, Citizenship, and Territory”; Parker, *Making Foreigners*.

¹⁹⁰ “The Lost Century of American Immigration Law (1776-1875).”

¹⁹¹ Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State,” 108.

¹⁹² Law, “The Historical Amnesia of Contemporary Immigration Federalism Debates,” 309.

¹⁹³ Tichenor and Filindra, “Raising Arizona v. United States,” 1245.

¹⁹⁴ *Ibid.*, 1235.

¹⁹⁵ *Ibid.*, 1237.

¹⁹⁶ Rodriguez, “The Significance of the Local in Immigration Regulation,” 571.

¹⁹⁷ *Ibid.*, 609.

¹⁹⁸ Rodriguez, “Negotiating Conflict through Federalism,” 2098; Rodriguez, “Toward Detente in Immigration Federalism.”

¹⁹⁹ Waters and Pineau, *The Integration of Immigrants into American Society*, 72.

²⁰⁰ Bulman-Pozen, “Partisan Federalism.”

²⁰¹ Alan I. Abramowitz, *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy* (Yale University Press, 2010); Morris P. Fiorina and Samuel J. Abrams, “Political Polarization in the American Public,” *Annual Review of Political Science* 11, no. 1 (2008): 563–88; Morris P. Fiorina, Samuel A. Abrams, and Jeremy C. Pope, “Polarization in the American Public: Misconceptions and Misreadings,” *The Journal of Politics* 70, no. 02 (April 2008): 556–60; Morris P. Fiorina and Samuel J. Abrams, *Disconnect: The Breakdown of Representation in American Politics* (University of Oklahoma Press, 2012); Marc J. Hetherington, “Review Article: Putting Polarization in Perspective,” *British Journal of Political Science* 39, no. 02 (April 2009): 413–48; Geoffrey C. Layman and Thomas M. Carsey, “Party Polarization and ‘Conflict Extension’ in the American Electorate,” *American Journal of Political Science* 46, no. 4 (2002): 786–802; Geoffrey C. Layman, Thomas M. Carsey, and Juliana Menasce Horowitz, “PARTY POLARIZATION IN AMERICAN POLITICS: Characteristics, Causes, and Consequences,” *Annual Review of Political Science* 9, no. 1 (2006): 83–110; Matthew Levendusky, *The Partisan Sort: How Liberals Became Democrats and Conservatives Became Republicans* (University of Chicago Press, 2009); Keith T. Poole and Howard Rosenthal, “The Polarization of American Politics,” *The Journal of Politics* 46, no. 4 (1984): 1061–79; John Sides and Daniel J. Hopkins, *Political Polarization in American Politics* (Bloomsbury Publishing USA, 2015); Barbara Sinclair, *Party Wars: Polarization and the Politics of National Policy Making* (University of Oklahoma Press, 2012).

- ²⁰² National Conference of State Legislatures, 2012 Immigration-Related Laws and Resolutions in the States (Jan. 1-Dec. 31, 2012).
- ²⁰³ Gulasekaram and Ramakrishnan, *The New Immigration Federalism*; Baumgartner and Jones, *Agendas and Instability in American Politics*.
- ²⁰⁴ Gulasekaram and Ramakrishnan, *The New Immigration Federalism*, 119–120.
- ²⁰⁵ Paul Finkelman, “The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793,” in *Race and Law before Emancipation*, ed. Paul Finkelman, Race, Law, and American History, 1700-1990. The African-American Experience, v. 2 (New York: Garland Pub, 1992), 134.
- ²⁰⁶ “Northwest Ordinance; July 13, 1787.” *Avalon Project*. Lillian Goldman Law Library, Yale Law School, http://avalon.law.yale.edu/18th_century/nworder.asp.
- ²⁰⁷ U.S. Const. art. IV, § 2, cl. 3.
- ²⁰⁸ Act of February 12, 1793 (1 Stat. 302); *Annals of Congress*, 2nd Cong., 2nd sess. (1793), 1414-1415.
- ²⁰⁹ *Annals of Congress*, 2nd Cong., 2nd sess. (1793), 1415.
- ²¹⁰ Marion Gleason McDougall, *Fugitive Slaves (1619-1865)* (Boston: Ginn & Company, 1891).
- ²¹¹ Megan Ming Francis, *Civil Rights and the Making of the Modern American State* (Cambridge University Press, 2014), 4.
- ²¹² *Ibid.*, 5–6.
- ²¹³ The Petition of the Pennsylvania Society for promoting the Abolition of Slavery, January 20, 1817, 14A.G13.3 (Senate Records), National Archives; Morris, *Free Men All*, 34.
- ²¹⁴ *Annals*, 15th Cong., 1st sess., Dec. 15, 1817; Dec. 29, 1817, 466, 447, 513; *Ibid.*, 35.
- ²¹⁵ Finkelman, *An Imperfect Union*; Morris, *Free Men All*.
- ²¹⁶ *Prigg v. Com. of Pennsylvania*, 41 U.S. 539 (1842)
- ²¹⁷ Act of September 18, 1850, (9 Stat., 462).
- ²¹⁸ Judith Resnick, “Federalism(s) Forms and Norms: Contesting Rights, Deessentializing Jurisdictional Divides, and Temporizing Accommodations,” in *NOMOS LV: FEDERALISM & SUBSIDIARITY*, ed. James Fleming (New York University Press, 2014).
- ²¹⁹ Bulman-Pozen, “Partisan Federalism,” 1078.
- ²²⁰ Corey M. Brooks, *Liberty Power: Antislavery Third Parties and the Transformation of American Politics* (University of Chicago Press, 2016), 17.
- ²²¹ *Ibid.*, 19–20.
- ²²² *Ibid.*, 18.

²²³ On process tracing methods and comparative methods, please see: Beach and Pedersen, *Process-Tracing Methods*; Andrew Bennett, "Process-Tracing: A Bayesian Perspective," in *The Oxford Handbook of Political Methodology* (Oxford: Oxford University Press, 2008), 702–21; Andrew Bennett, "Process Tracing and Causal Inference," in *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, 2nd ed. (Lanham, MD: Rowan and Littlefield, 2010), 207–20; Andrew Bennett and Jeffrey T. Checkel, eds., *Process Tracing: From Metaphor to Analytic Tool* (Cambridge ; New York: Cambridge University Press, 2014); Jeffrey T. Checkel, "Tracing Causal Mechanisms," *International Studies Review* 8, no. 2 (June 1, 2006): 362–70; George and Bennett, *Case Studies and Theory Development in the Social Sciences*; James Mahoney, "Strategies of Causal Inference in Small-N Analysis," *Sociological Methods & Research* 28, no. 4 (May 1, 2000): 387–424; James Mahoney and Dietrich Rueschemeyer, *Comparative Historical Analysis in the Social Sciences* (Cambridge University Press, 2003).

²²⁴ For a summary of the social movements framework, please see: Doug McAdam, *Political Process and the Development of Black Insurgency, 1930-1970* (University of Chicago Press, 2010).

²²⁵ A great example of work that similarly explores coalition building and institutions, please see: Tichenor, *Dividing Lines*.

²²⁶ For a summary of interest group scholarship, please see: Marie Hojnacki et al., "Studying Organizational Advocacy and Influence: Reexamining Interest Group Research," *Annu. Rev. Polit. Sci* 15 (2012): 9.1–9.21.

²²⁷ Daniel Carpenter and Colin D. Moore, "When Canvassers Became Activists: Antislavery Petitioning and the Political Mobilization of American Women," *American Political Science Review* 108, no. 03 (August 2014): 479–98; Daniel P. Carpenter, "The Petition as a Recruitment Device: Evidence from the Abolitionists' Congressional Campaign," *Harvard University. Typescript*, 2003, https://www.researchgate.net/profile/Daniel_Carpenter2/publication/228431896_The_Petition_as_a_Recruitment_Device_Evidence_from_the_Abolitionists'_Congressional_Campaign/links/09e41512f6f3864bf500000.pdf.

²²⁸ Morris, *Free Men All*, 10.

²²⁹ McDougall, *Fugitive Slaves (1619-1865)*, 17.

²³⁰ *Ibid.*, 19.

²³¹ The Petition of the People of Colour, free men, within the City and Suburbs of Philadelphia, December 30, 1799, 6A.G1.1 (House Records), National Archives; Morris, *Free Men All*, 31.

²³² Jesse Torrey, *American Slave Trade; Or, An Account of the Manner in Which the Slave Dealers Take Free People from Some of the United States of America, and Carry Them Away, and Sell Them as Slaves in Other of the States; and of the Horrible Cruelties Practiced in the Carrying on of This Most Infamous Traffic: With Reflections on the Project for Forming a Colony of American Blacks in Africa, and Certain Documents Respecting That Project* (C. Clement and published by J. M. Cobbett, 1822), 66.

²³³ Richard S. Newman, *The Transformation of American Abolitionism: Fighting Slavery in the Early Republic* (Chapel Hill: University of North Carolina Press, 2002), 22.

²³⁴ Alice Dana Adams, *The Neglected Period of Anti-Slavery in America, 1808-1831*, Radcliffe College Monographs, No. 14 (Gloucester, Mass: Peter Smith, 1964), 92.

²³⁵ Newman, *The Transformation of American Abolitionism*, 20–21.

- ²³⁶ Pennsylvania Abolition Society to Kentucky Abolition Society, October 30, 1809, Loose Correspondence, PAS Papers, reel 11; *Ibid.*, 39.
- ²³⁷ Adams, *The Neglected Period of Anti-Slavery in America, 1808-1831*, 107.
- ²³⁸ *Penn. House Journal, 1819-1820*, 339-341, 987, 1069, 1081, 1088; *Penn. Session Laws, 1820*, 104-106; Morris, *Free Men All*, 44-45.
- ²³⁹ *Ibid.*, 45.
- ²⁴⁰ Pennsylvania Abolition Society Minutes (1825-1847), 3: 28-29; *Ibid.*, 48.
- ²⁴¹ *Penn. House Journal, 1825-1826*, 386.
- ²⁴² An Act to give effect to the provisions of the constitution of the United States, relative to fugitives from labour, for the protection of free people of colour, and to prevent kidnapping, Pa. Gen. Laws, March 25, 1826 § 1-11, reprinted in Purdon, John. 1837. *A Digest of the Laws of Pennsylvania from the Year 1700 to the 16th Day of June, 1836*. 5th ed. Philadelphia: M'Carty & Davis, 746-749; *Penn. Session Laws, 1826*, 150-155; *Penn. Senate Journal, 1825-1826*, 339, 353-354, 466, 481, 494, 511, 516-517, 522; Morris, *Free Men All*, 46-53.
- ²⁴³ *Ibid.*, 63-64.
- ²⁴⁴ Pennsylvania Abolition Society Minutes (1825-1847), 3: 152, 158-161; *Penn. House Journal, 1832*, 283; *Ibid.*, 64.
- ²⁴⁵ *Ibid.*, 85.
- ²⁴⁶ *Prigg v. Com. of Pennsylvania*, 41 U.S. 539 (1842)
- ²⁴⁷ Lasch, "Rendition Resistance," 175.
- ²⁴⁸ *Prigg*, 41 U.S. (16 Pet.) at 616.
- ²⁴⁹ An Act directing the process in Habeas Corpus, Ma. Gen. Laws, March 16, 1785 § 1-13, reprinted in *Laws of the Commonwealth of Massachusetts, from November 28, 1780 to February 28, 1807: With the Constitutions of the United States of America and of the Commonwealth, Prefixed*. Vol. 1. 3 vols. Boston: J.T. Buckingham, 236-241; An Act establishing the Right to, and the Form of the Writ *De Homine Replegiando*, or Writ for replevying a Man, Ma. Gen. Laws, February 19, 1787, reprinted in *Laws of the Commonwealth of Massachusetts, from November 28, 1780 to February 28, 1807: With the Constitutions of the United States of America and of the Commonwealth, Prefixed*. Vol. 1. 3 vols. Boston: J.T. Buckingham, 361-365; Morris, *Free Men All*, 1974, 11-12.
- ²⁵⁰ Jacobus TenBroek, *Equal Under Law*, New, enl. ed (New York: Collier Books, 1965), 67-68.
- ²⁵¹ Bruce Laurie, *Beyond Garrison: Antislavery and Social Reform* (Cambridge ; New York: Cambridge University Press, 2005).
- ²⁵² *Commonwealth v. Ayes*, 35 Mass. (18 Pick.) 193 (1836); Finkelman, *An Imperfect Union*, 101-125; Finkelman, "Prelude to the Fourteenth Amendment," 444.
- ²⁵³ Laurie, *Beyond Garrison*, 41-45.

- ²⁵⁴ Henry Mayer, *All on Fire: William Lloyd Garrison and the Abolition of Slavery*, 1st ed (New York: St. Martin's Press, 1998), 254–258; John L. Thomas, *The Liberator: William Lloyd Garrison*, 1st ed. (Boston: Little, Brown, 1963), 266–269.
- ²⁵⁵ Lawrence B. Goodheart, *Abolitionist, Actuary, Atheist: Elizur Wright and the Reform Impulse* (Kent, Ohio: Kent State University Press, 1990), 106–108.
- ²⁵⁶ “Great Massachusetts Petition: To the Senate and House of Representatives of the State of Massachusetts,” 1842, Latimer Committee: An Electronic Archive, Massachusetts Historical Society, http://www.masshist.org/database/viewer.php?item_id=1683&mode=small&img_step=1&; *House No. 41, Commonwealth of Massachusetts*, General Court, 1843, 1-2.
- ²⁵⁷ Laurie, *Beyond Garrison*, 80.
- ²⁵⁸ Joel Parker, *Personal Liberty Laws and Slavery in the Territories* (Boston: Wright & Potter, 1861), 28.
- ²⁵⁹ *Ibid.*, 32–33.
- ²⁶⁰ Morris, *Free Men All*, 166; Rosenberg, “Personal Liberty Laws and Section Crisis: 1850-1861,” 328.
- ²⁶¹ An Act to protect the Rights and Liberties of the People of the Commonwealth of Massachusetts, Mass. Gen. Laws ch. 0489 § 1-23 (1855), reprinted in *Acts and Resolves Passed by the General Court of Massachusetts, in the Year 1855: Together with the Messages*. Boston: Secretary of the Commonwealth, 924-929; *Mass. Senate Document No. 162*, 1855; *Mass. Senate Journal, 1855*, Mass. State Library, 76:801; *Mass. House Journal, 1855*, 77:1710; Morris, *Free Men All*, 167–170.
- ²⁶² Oh. Const. of 1802, art. IV § I, reprinted in Thorpe, Francis Newton. 1909. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies, Now or Heretofore Forming the United States of America*. Vol. 5. Washington, DC: Government Printing Office, 2901-2913; Middleton, *The Black Laws*, 19–41; *The Constitutions of Ohio*, 70–97.
- ²⁶³ An act to regulate black and mulatto persons, Oh. Laws, January 5, 1804; Middleton, *The Black Laws in the Old Northwest*, 15–17; Middleton, *The Black Laws*, 49–51.
- ²⁶⁴ An Act to Regulate Black and Mulatto Persons, Oh. Laws, January 25, 1807; Middleton, *The Black Laws in the Old Northwest*, 17–18; Middleton, *The Black Laws*, 51–52.
- ²⁶⁵ Frymer, ““A Rush and a Push and the Land Is Ours.””
- ²⁶⁶ Middleton, *The Black Laws*, 70–71.
- ²⁶⁷ An act to punish kidnapping, Oh. Laws, January 25, 1807; Middleton, *The Black Laws in the Old Northwest*, 26.
- ²⁶⁸ Adams, *The Neglected Period of Anti-Slavery in America, 1808-1831*, 86.
- ²⁶⁹ An act to prevent kidnapping, Oh. Laws, February 15, 1831; Middleton, *The Black Laws in the Old Northwest*, 27; Middleton, *The Black Laws*, 52.
- ²⁷⁰ Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (Oxford University Press, 1995), 150–188.

²⁷¹ Finkelman, *An Imperfect Union*, 159.

²⁷² An act to prevent kidnapping, Oh. Laws, February 15, 1831; Middleton, *The Black Laws in the Old Northwest*, 27; Middleton, *The Black Laws*, 52.

²⁷³ Brooks, *Liberty Power*, 129.

²⁷⁴ *Ibid.*, 147–152; Middleton, *The Black Laws*, 152–153.

²⁷⁵ Middleton, *The Black Laws in the Old Northwest*, 199–201.

²⁷⁶ *Ibid.*, 185–188.

²⁷⁷ *Ibid.*, 275–279, 286; Middleton, *The Black Laws*, 59.

²⁷⁸ Middleton, *The Black Laws*, 59.

²⁷⁹ Morris, *Free Men All*, xi–xii.

²⁸⁰ Middleton, *The Black Laws in the Old Northwest*, 228–229.

²⁸¹ Charles Wesley Mann, *The Chicago Common Council and the Fugitive Slave Law of 1850: An Address Read Before the Chicago Historical Society at a Special Meeting Held January 29, 1903* (Chicago Historical Society, 1903), 85–86; Craig B. Mousin, “Clear View from the Prairie: Harold Washington and the People of Illinois Respond to Federal Encroachment of Human Rights, A,” *Southern Illinois University Law Journal* 29 (2005 2004): 285.

²⁸² Mann, *The Chicago Common Council and the Fugitive Slave Law of 1850*, 86.

²⁸³ In. Const. of 1851 Art. 13 § 1, reprinted in Thorpe, Francis Newton. 1909. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies, Now or Heretofore Forming the United States of America*. Vol. 2. Washington, DC: Government Printing Office; 1073-1095; Finkelman, “Prelude to the Fourteenth Amendment,” 434–435; Middleton, *The Black Laws in the Old Northwest*, 204.

²⁸⁴ An act to enforce the 13th Article of the Constitution, In. Rev. Stat, June 18, 1852; Finkelman, “Prelude to the Fourteenth Amendment,” 439–440; Middleton, *The Black Laws in the Old Northwest*, 204.

²⁸⁵ An act providing for the colonization of Negroes and mulattoes and their descendants, and appropriating 5,000 dollars thereof, constituting the State Board of Colonization, declaring the duties of said board, and of state treasurer and county treasurer in relation thereof, In. Rev. Stat, April 28, 1852 § 1-6; An act providing for the colonization of free Negroes, making appropriations thereof, and establishing a colonization agency, In. Rev. Stat, March 3, 1853 § 1-3; An act to give power to the State Board of Colonization, In. Rev. Stat, March 1, 1855 § 1-4; Middleton, *The Black Laws in the Old Northwest*, 219–221.

²⁸⁶ An Act to prevent the immigration of free Negroes into this state, II Laws, February 12, 1853 § 1-11; Finkelman, “Prelude to the Fourteenth Amendment,” 435; Middleton, *The Black Laws in the Old Northwest*, 299–302.

²⁸⁷ The Immigration and Nationality Act of 1952, Pub. L. No. 82–414, 66 Stat. 163.

²⁸⁸ S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010); Archibold, “Arizona Enacts Stringent Law on Immigration.”

²⁸⁹ *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011); *Arizona v. United States* 132 S. Ct. 2492 (2012)

²⁹⁰ Ramakrishnan and Colbern, “The California Package: Immigrant Integration and the Evolving Nature of State Citizenship”; Allan Colbern and S. Karthick Ramakrishnan, “State Policies on Immigrant Integration: An Examination of Best Practices and Policy Diffusion,” *UCR School of Public Policy Working Paper Series*, February 2016, 1–20.

²⁹¹ Ramakrishnan and Colbern, “The California Package: Immigrant Integration and the Evolving Nature of State Citizenship”; Colbern and Ramakrishnan, “State Policies on Immigrant Integration: An Examination of Best Practices and Policy Diffusion.”

²⁹² The Trust Act of 2013 Cal. Stat. 4650 (codified at CAL. GOV’T CODE §§ 7282–7282.5 (West Supp. 2014))

²⁹³ “San Francisco Joins Neighboring Counties In Suspending Undocumented Immigrant Jail Holds.”

²⁹⁴ Waters and Pineau, *The Integration of Immigrants into American Society*, 44, 61.

²⁹⁵ Shannon Gleeson and Roberto G. Gonzales, “When Do Papers Matter? An Institutional Analysis of Undocumented Life in the United States,” *International Migration* 50, no. 4 (August 1, 2012): 1–19; Roberto G. Gonzales, *Lives in Limbo: Undocumented and Coming of Age in America* (Univ of California Press, 2015).

²⁹⁶ Maria Cristina Garcia, *Seeking Refuge* (Berkeley: University of California Press, 2006), 99.

²⁹⁷ Bosniak, *The Citizen and the Alien*; Law, “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State”; Motomura, *Americans in Waiting*; Motomura, *Immigration Outside the Law*; Ngai, *Impossible Subjects*; Tichenor, *Dividing Lines*; Tom K. Wong, *Rights, Deportation, and Detention in the Age of Immigration Control* (Stanford, CA: Stanford University Press, 2015); Wong, *The Politics of Immigration*.

²⁹⁸ Gulasekaram and Ramakrishnan, *The New Immigration Federalism*; Varsanyi, *Taking Local Control*.

²⁹⁹ Aguayo, Sergio, and Patricia Weiss Fagen. Central Americans in Mexico and the United States: Unilateral, Bilateral, and Regional Perspectives. Washington, DC: Hemispheric Migration Project, Center for Immigration Policy and Refugee Assistance, Georgetown University, 1988; Fagen, Patricia Weiss, and Sergio Aguayo. Fleeing the Maelstrom: Central American Refugees. Occasional Paper no. 10, Central American and Caribbean Program, School of Advanced International Studies, John Hopkins University, March 1986; Ferris, Elizabeth G. The Central American Refugees. New York: Praeger, 1987; Manz, Beatriz. Refugees of a Hidden War: The Aftermath of Counterinsurgency in Guatemala. Albany: State University of New York Press, 1988; Manz, Beatriz. Repatriation and Integration: An Arduous Process in Guatemala. Washington, D.C.: Center for Immigration Policy and Refugee Assistance, Georgetown University, 1988; Montes Mozo, Segundo, and Juan José García Vásquez. Salvadoran Migration to the U.S.: An Exploratory Study. Washington, D.C.: Hemispheric Migration Project, Center for Immigration Policy and Refugee Assistance, Georgetown University, 1988; Peterson, Linda S. Central American Migration: Past and Present. Washington, D.C.: Center for International Research, US Bureau of the Census, CIR Staff Paper no. 25, November 1986.

³⁰⁰ Garcia, *Seeking Refuge*, 93.

³⁰¹ Garcia, *Seeking Refuge*.

³⁰² Susan Bibler Coutin, *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency* (Ann Arbor: University of Michigan Press, 2003).

³⁰³ Ann Crittenden, *SANCTUARY: A Story of American Conscience and the Law in Collision*, 1st edition (New York: Grove Pr, 1988); Hilary Cunningham, *God and Caesar at the Rio Grande: Sanctuary and the Politics of Religion* (Minneapolis: University of Minnesota Press, 1995); Miriam Davidson, *Convictions of the Heart: Jim Corbett and the Sanctuary Movement*, First Edition edition (Tucson: University of Arizona Press, 1988); Renny Golden and Michael McConnell, *Sanctuary: The New Underground Railroad*, Second Printing edition (Maryknoll, N.Y.: Orbis Books, 1986); Gary Maceoin, ed., *Sanctuary: A Resource Guide for Understanding and Participating in the Central American Refugee Struggle*, 1st edition (San Francisco: Harpercollins, 1985); Robert Tomsho, *The American Sanctuary Movement* (Austin, TX: Texas Monthly Pr, 1987).

³⁰⁴ Lane Van Ham, "Sanctuary Revisited: Central American Refugee Assistance in the History of Church-Based Immigrant Advocacy," *Political Theology* 10, no. 4 (December 11, 2009): 367, doi:10.1558/poth.v10i4.621.

³⁰⁵ Villazor, "Sanctuary Cities and Local Citizenship"; Rose Cuisson Villazor, "What Is a Sanctuary," *SMU Law Review* 61 (2008): 133.

³⁰⁶ Garcia, *Seeking Refuge*, 98.

³⁰⁷ *Ibid.*, 31.

³⁰⁸ Douglas S. Massey, "Children of Central American Turmoil and the U.S. Reform Impasse," *SSN Forum on the Immigration Impasse*, 2014, <http://www.scholarsstrategynetwork.org/children-central-american-turmoil-and-us-reform-impasse>.

³⁰⁹ Susan Bibler Coutin, "Falling Outside: Excavating the History of Central American Asylum Seekers," *Law & Social Inquiry* 36, no. 3 (June 1, 2011): 574, doi:10.1111/j.1747-4469.2011.01243.x.

³¹⁰ Garcia, *Seeking Refuge*, 113.

³¹¹ Anthony Jensen, "Fleeing North: An Examination of U.S. Refugee and Asylum Policy towards Nicaragua" (College of Saint Benedict and Saint John's University, 2012), 7, http://digitalcommons.csbsju.edu/polsci_students/2.

³¹² Garcia, *Seeking Refuge*, 113.

³¹³ Ananda Rose, *Showdown in the Sonoran Desert: Religion, Law, and the Immigration Controversy* (Oxford University Press, 2012), 33.

³¹⁴ Crittenden, *SANCTUARY*, 56.

³¹⁵ Garcia, *Seeking Refuge*, 98.

³¹⁶ Pierrette Hondagneu-Sotelo, *God's Heart Has No Borders: How Religious Activists Are Working for Immigrant Rights* (University of California Press, 2008), 144.

³¹⁷ Ibid.

³¹⁸ Christian Smith, *Resisting Reagan: The U.S. Central America Peace Movement* (University of Chicago Press, 2010), 64.

³¹⁹ Ibid., 64–65.

³²⁰ Garcia, *Seeking Refuge*, 99.

³²¹ Smith, *Resisting Reagan*, 63–64.

³²² Garcia, *Seeking Refuge*, 99.

³²³ Norma Stoltz Chinchilla, Nora Hamilton, and James Loucky, “The Sanctuary Movement and Central American Activism in Los Angeles,” *Latin American Perspectives* 36, no. 6 (2009): 106.

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ Ibid., 107.

³²⁷ Ibid.

³²⁸ Garcia, *Seeking Refuge*, 107.

³²⁹ Smith, *Resisting Reagan*, 110.

³³⁰ Ibid., 99.

³³¹ Senator Dennis DeConcini, “S.R. 336” (1982), <https://www.congress.gov/bill/97th-congress/senate-resolution/336>.

³³² Rep. Ted Weiss, “H.R.126” (1981), <https://www.congress.gov/bill/97th-congress/house-resolution/126/all-info>.

³³³ “Immigration Reform: White House IGA Position Analysis,” n.d., Case file 253900, Box FG006–01, Reagan Presidential Library.

³³⁴ Garcia, *Seeking Refuge*, 89–90.

³³⁵ Representative John Joseph Moakley Moakley, “Letter to President Ronald Reagan from Congressman John Joseph Moakley about Moakley’s Objection to the Training of Salvadoran Troops by the United States Military,” February 1, 1982, Series 03.04 Legislative Assistant Files: Jim McGovern, Box 1 Folder 1 (shelf locator), Congressman Suffolk University, Moakley Archive & Institute. John Joseph Moakley Papers, 1926-2001 (MS100), <https://www.digitalcommonwealth.org/search/commonwealth-oai:tm70np740>.

³³⁶ Bernard Gwertzman, “Haig Fears Exiles from Latin Areas May Flood the US,” *The New York Times*, February 23, 1982.

³³⁷ Tichenor, *Dividing Lines*, 267.

- ³³⁸ Garcia, *Seeking Refuge*, 90–91.
- ³³⁹ Lydia Chavez, “REFUGEE WAVE CREATES A CRISIS IN BORDER CITY,” *The New York Times*, February 28, 1987, sec. N.Y. / Region, <http://www.nytimes.com/1987/02/28/nyregion/refugee-wave-creates-a-crisis-in-border-city.html>.
- ³⁴⁰ Garcia, *Seeking Refuge*, 105.
- ³⁴¹ *Ibid.*, 94.
- ³⁴² *Ibid.*, 96.
- ³⁴³ *Ibid.*, 106–107.
- ³⁴⁴ *Ibid.*, 96.
- ³⁴⁵ “Sacramento, Cal., Res. No. 85-973” (1985).
- ³⁴⁶ “Berkeley, Cal., Res. 52,596” (1985).
- ³⁴⁷ Garcia, *Seeking Refuge*, 107.
- ³⁴⁸ Chinchilla, Hamilton, and Loucky, “The Sanctuary Movement and Central American Activism in Los Angeles,” 108–109.
- ³⁴⁹ Don White, “Don White Committee in Solidarity with the People of El Salvador (CISPES) Collection, 1980-2007,” n.d., Special Collections and Archives, Oviatt Library, California State University, Northridge, <https://findingaids.csun.edu/archon/?p=collections/findingaid&id=358&q=&rootcontentid=109402>.
- ³⁵⁰ Chinchilla, Hamilton, and Loucky, “The Sanctuary Movement and Central American Activism in Los Angeles,” 110.
- ³⁵¹ *Ibid.*
- ³⁵² Victor Merina, “Woo Seeks a Compromise on Sanctuary Designation,” *Los Angeles Times*, February 6, 1986, http://articles.latimes.com/1986-02-06/local/me-4773_1_sanctuary-resolution; Laurie Becklund, “INS Blasts City Proposal on Sanctuary,” *Los Angeles Times*, November 26, 1985, http://articles.latimes.com/1985-11-26/news/mn-2218_1_city-of-los-angeles.
- ³⁵³ Jay Mathews, “Los Angeles to Be Refugee ‘Sanctuary,’” *The Washington Post*, November 28, 1985, https://www.washingtonpost.com/archive/politics/1985/11/28/los-angeles-to-be-refugee-sanctuary/ad4226ca-a1d7-4f32-b9b3-36a72a128fca/?utm_term=.c23891d22ddc.
- ³⁵⁴ *Ibid.*
- ³⁵⁵ *Ibid.*
- ³⁵⁶ Laurie Becklund, “Plans to Penalize L.A. on Sanctuary Issue Questioned,” *Los Angeles Times*, December 3, 1985, http://articles.latimes.com/1985-12-03/local/me-12797_1_city-council.
- ³⁵⁷ Becklund, “INS Blasts City Proposal on Sanctuary.”

- ³⁵⁸ Becklund, “Plans to Penalize L.A. on Sanctuary Issue Questioned.”
- ³⁵⁹ Ibid.
- ³⁶⁰ Schabarum, “County Is Stuck With Bill for Immigrants,” *Los Angeles Times*, December 30, 1985.
- ³⁶¹ Michael Woo, “City of Refuge’ Is All-American,” *Los Angeles Times*, December 8, 1985.
- ³⁶² Becklund, “INS Blasts City Proposal on Sanctuary.”
- ³⁶³ Mathews, “Los Angeles to Be Refugee ‘Sanctuary.’”
- ³⁶⁴ Merina, “Woo Seeks a Compromise on Sanctuary Designation.”
- ³⁶⁵ Chinchilla, Hamilton, and Loucky, “The Sanctuary Movement and Central American Activism in Los Angeles,” 118.
- ³⁶⁶ Peter Mancina, “The Birth of a Sanctuary-City: A History of Governmental Sanctuary in San Francisco,” in *Sanctuary Practices in International Perspectives: Migration, Citizenship and Social Movements* (Routledge, 2012), 207.
- ³⁶⁷ Ibid., 206–207.
- ³⁶⁸ Ibid., 207.
- ³⁶⁹ Ibid., 208–209.
- ³⁷⁰ Ibid., 210.
- ³⁷¹ Ibid.
- ³⁷² Ibid.
- ³⁷³ Ibid., 211.
- ³⁷⁴ Michael Wright and Caroline Rand Herron, “A HAVEN FOR CENTRAL AMERICANS?,” *The New York Times*, December 29, 1985, sec. Week in Review, <http://www.nytimes.com/1985/12/29/weekinreview/the-nation-a-haven-for-central-americans.html>.
- ³⁷⁵ Robert Lindsey, “AID TO ALIENS SAID TO SPUR ILLEGAL IMMIGRATION,” *The New York Times*, December 23, 1985, sec. U.S., <http://www.nytimes.com/1985/12/23/us/aid-to-aliens-said-to-spur-illegal-immigration.html>.
- ³⁷⁶ Ibid.
- ³⁷⁷ “San Francisco, Cal., Resolution No. 1087-85” (1985).
- ³⁷⁸ “S.F. Supervisors Adopt Sanctuary Resolution; Mayor Plans to Sign It,” *Los Angeles Times (1923-Current File)*; *Los Angeles, Calif.*, December 24, 1985.
- ³⁷⁹ Mancina, “The Birth of a Sanctuary-City: A History of Governmental Sanctuary in San Francisco,” 213.

³⁸⁰ James Goodman, “Sanctuary Has a Long History in Rochester,” *Rochester Democrat and Chronicle*, February 6, 2017, <http://www.democratandchronicle.com/story/news/2017/02/06/sanctuary-has-long-history-rochester/97517982/>.

³⁸¹ Rochester, New York, “Resolution No. 86-29 (City of Sanctuaries)” (1986), talkerofthetown.com/wp-content/uploads/2017/01/CityofSanctuaries1986.pdf.

³⁸² *Ibid.*

³⁸³ John Rosinbum, “A Crisis Transformed: Refugees, Activists and Government Officials in the United States and Canada during the Central American Refugee Crisis” (Arizona State University, 2014), 73, https://repository.asu.edu/attachments/135023/content/Rosinbum_asu_0010E_13984.pdf.

³⁸⁴ *The Presbyterian Church (U.S.A), et. Al., v. The United States of America, et. Al.* 752 F. Supp. 1505; 1990 U.S. Dist AZ, pp. 28-29.

³⁸⁵ Tichenor, *Dividing Lines*, 274.

³⁸⁶ Katherine Bishop, “U.S. Adopts New Policy for Hearings On Political Asylum for Some Aliens,” *The New York Times*, December 20, 1990, sec. U.S., <http://www.nytimes.com/1990/12/20/us/us-adopts-new-policy-for-hearings-on-political-asylum-for-some-aliens.html>.

³⁸⁷ *Ibid.*

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*

³⁹¹ Donald J. Trump, “Presidential Executive Order: Enhancing Public Safety in the Interior of the United States,” Pub. L. No. AILA Doc. No. 17012531 (2017), <http://www.aila.org/infonet/presidential-executive-order-enhancing-public>.

³⁹² *Ibid.*

³⁹³ Wong, “The Effects of Sanctuary Policies on Crime and the Economy”; Gonzalez, Collingwood, and El-Khatib, “The Politics of Refuge.”

³⁹⁴ Jennifer Ridgley, “The Birth of a Sanctuary-City: A History of Governmental Sanctuary in San Francisco,” in *Sanctuary Practices in International Perspectives: Migration, Citizenship and Social Movements* (Routledge, 2012), 225.

³⁹⁵ *The Search for American Political Development* (Cambridge; New York: Cambridge University Press, 2004), 121.

³⁹⁶ “Concept Misformation in Comparative Politics,” *The American Political Science Review* 64, no. 4 (December 1, 1970): 1033–53, doi:10.2307/1958356.

³⁹⁷ Richard M. Valelly, *The Two Reconstructions: The Struggle for Black Enfranchisement*, American Politics and Political Economy (Chicago: University of Chicago Press, 2004); Paul Frymer, *Uneasy Alliances: Race and Party Competition in America* (Princeton, N.J.: Princeton University Press, 2010);

Tichenor, *Dividing Lines*; Sidney M. Milkis and Daniel J. Tichenor, "Reform's Mating Dance: Presidents, Social Movements, and Racial Realignment," *Journal of Policy History* 23, no. 04 (October 2011): 451–90, doi:10.1017/S0898030611000261; Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (Yale University Press, 1997); Rogers M. Smith, "Substance and Methods in APD Research," *Studies in American Political Development* 17, no. 01 (April 2003): 111–15, doi:10.1017/S0898588X0300004X; Desmond S. King and Rogers M. Smith, "Racial Orders in American Political Development," *The American Political Science Review* 99, no. 1 (February 1, 2005): 75–92; Orren and Skowronek, *The Search for American Political Development*.

³⁹⁸ "The Lost Century of American Immigration Law (1776-1875)"; *Strangers to the Constitution*.

³⁹⁹ "Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State."

⁴⁰⁰ Chacón, "The Transformation of Immigration Federalism"; Gulasekaram and Ramakrishnan, "Immigration Federalism"; Gulasekaram and Ramakrishnan, *The New Immigration Federalism*; Motomura, *Immigration Outside the Law*; Rodriguez, "The Significance of the Local in Immigration Regulation"; Tichenor and Filindra, "Raising Arizona v. United States"; Varsanyi, *Taking Local Control*; Varsanyi et al., "A Multilayered Jurisdictional Patchwork."

⁴⁰¹ "Concept Misformation in Comparative Politics," 1034.

⁴⁰² Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*; Finkelman, *An Imperfect Union*; Morris, *Free Men All*; Rosenberg, "Personal Liberty Laws and Section Crisis: 1850-1861."

⁴⁰³ Rogan Kersh, "Rethinking Periodization? APD and the Macro-History of the United States," *Polity* 37, no. 4 (October 1, 2005): 513–22.

⁴⁰⁴ Vivian Yee, "Judge Blocks Trump Effort to Withhold Money From Sanctuary Cities," *The New York Times*, April 25, 2017, <https://www.nytimes.com/2017/04/25/us/judge-blocks-trump-sanctuary-cities.html>.

⁴⁰⁵ Donald J. Trump, "Executive Order: Enhancing Public Safety in the Interior of the United States" (2017), <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

⁴⁰⁶ Yee, "Judge Blocks Trump Effort to Withhold Money From Sanctuary Cities."

⁴⁰⁷ Daniel Beekman, "Seattle Sues Trump Administration over 'sanctuary Cities' Order," *The Seattle Times*, March 29, 2017, <http://www.seattletimes.com/seattle-news/politics/seattle-sues-trump-administration-over-sanctuary-cities/>.

⁴⁰⁸ Chelcey Adami, "Sanctuary City Funding Lawsuit Heard in Court," *The Salinas Californian*, April 14, 2017, <http://www.thecalifornian.com/story/news/2017/04/14/sanctuary-city-funding-lawsuit-heard-court/100488616/>.

⁴⁰⁹ The White House, Office of the Press Secretary, "Statement on Sanctuary Cities Ruling," *Whitehouse.gov*, April 25, 2017, <https://www.whitehouse.gov/the-press-office/2017/04/25/statement-sanctuary-cities-ruling>.

Bibliography

- Abramowitz, Alan I. *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy*. Yale University Press, 2010.
- Abrams, Kerry. "Polygamy, Prostitution, and the Federalization of Immigration Law." *Columbia Law Review* 105, no. 3 (April 1, 2005): 641–716.
- Acharya, Avidit, Matthew Blackwell, and Maya Sen. "The Political Legacy of American Slavery." *Unpublished*, August 28, 2013.
<http://scholar.harvard.edu/files/msen/files/slavery.pdf>.
- Adami, Chelcey. "Sanctuary City Funding Lawsuit Heard in Court." *The Salinas Californian*, April 14, 2017.
<http://www.thecalifornian.com/story/news/2017/04/14/sanctuary-city-funding-lawsuit-heard-court/100488616/>.
- Adams, Alice Dana. *The Neglected Period of Anti-Slavery in America, 1808-1831*. Radcliffe College Monographs, No. 14. Gloucester, Mass: Peter Smith, 1964.
- Aleinikoff, T. Alexander. "Citizens, Aliens, Membership and the Constitution." *Constitutional Commentary* 7 (1990): 9.
- Androff, David K. "The Problem of Contemporary Slavery: An International Human Rights Challenge for Social Work." *International Social Work* 54, no. 2 (March 1, 2011): 209–22.
- Aptheker, Herbert. *American Negro Slave Revolts*. New York: International Publishers, 1983.
- Archibold, Randal C. "Arizona Enacts Stringent Law on Immigration." *The New York Times*, April 23, 2010, sec. U.S. / Politics.
<http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.
- Baumgartner, Frank R., and Bryan D. Jones. *Agendas and Instability in American Politics*. Second Edition. University of Chicago Press, 2010.
- Beach, Derek, and Rasmus Brun Pedersen. *Process-Tracing Methods: Foundations and Guidelines*. Ann Arbor: University of Michigan Press, 2013.

- Becklund, Laurie. "INS Blasts City Proposal on Sanctuary." *Los Angeles Times*, November 26, 1985. http://articles.latimes.com/1985-11-26/news/mn-2218_1_city-of-los-angeles.
- . "Plans to Penalize L.A. on Sanctuary Issue Questioned." *Los Angeles Times*, December 3, 1985. http://articles.latimes.com/1985-12-03/local/me-12797_1_city-council.
- Beekman, Daniel. "Seattle Sues Trump Administration over 'sanctuary Cities' Order." *The Seattle Times*, March 29, 2017. <http://www.seattletimes.com/seattle-news/politics/seattle-sues-trump-administration-over-sanctuary-cities/>.
- Bennett, Andrew. "Process-Tracing: A Bayesian Perspective." In *The Oxford Handbook of Political Methodology*, 702–21. Oxford: Oxford University Press, 2008.
- . "Process Tracing and Causal Inference." In *Rethinking Social Inquiry: Diverse Tools, Shared Standards*, 2nd ed., 207–20. Lanham, MD: Rowan and Littlefield, 2010.
- Bennett, Andrew, and Jeffrey T. Checkel, eds. *Process Tracing: From Metaphor to Analytic Tool*. Cambridge ; New York: Cambridge University Press, 2014.
- Berkeley, Cal., Res. 52,596 (1985).
- Berwanger, Eugene H. *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy*. Urbana: University of Illinois Press, 2002.
- Bishop, Katherine. "U.S. Adopts New Policy for Hearings On Political Asylum for Some Aliens." *The New York Times*, December 20, 1990, sec. U.S. <http://www.nytimes.com/1990/12/20/us/us-adopts-new-policy-for-hearings-on-political-asylum-for-some-aliens.html>.
- Bois, W. E. B. Du. *The Philadelphia Negro*. Edited by Henry Louis Gates. 1 edition. New York, NY: Oxford University Press, 2014.
- Bois, William Edward Burghardt Du. *The Suppression of the African Slave-Trade to the United States of America, 1638-1870*. Cambridge: Harvard University Press, 1904.
- Boritt, Gabor, and Scott Hancock, eds. *Slavery, Resistance, Freedom*. Oxford: Oxford University Press, 2007.
- Bosniak, Linda. "Membership, Equality, and the Difference That Alienage Makes." *New York University Law Review* 69 (1994): 1047.

- . *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton University Press, 2008.
- . “Universal Citizenship and the Problem of Alienage.” *Immigration and Nationality Law Review* 21 (2000): 373.
- . “Varieties of Citizenship.” *Fordham Law Review* 75 (2006): 2449.
- Bravo, Karen E. “Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade.” *Boston University International Law Journal* 25 (2007): 207.
- Brooks, Corey M. *Liberty Power: Antislavery Third Parties and the Transformation of American Politics*. University of Chicago Press, 2016.
- Brown, Henry Box. *Narrative of the Life of Henry Box Brown, Written by Himself*, 1851.
- Brysk, Alison, and Austin Choi-Fitzpatrick, eds. *From Human Trafficking to Human Rights: Reframing Contemporary Slavery*. Philadelphia: University of Pennsylvania Press, 2012.
- Bulman-Pozen, Jessica. “Partisan Federalism.” *Harvard Law Review* 127 (2014 2013): 1077–1146.
- Campbell, James M. *Slavery on Trial: Race, Class, and Criminal Justice in Antebellum Richmond, Virginia*. Gainesville, FL: University Press of Florida, 2007.
- Campbell, Stanley W. *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*. Chapel Hill: University of North Carolina Press, 1970.
- Caplan, Jane, and John Torpey, eds. *Documenting Individual Identity: The Development of State Practices in the Modern World*. Princeton, N.J.: Princeton University Press, 2001.
- Carpenter, Daniel, and Colin D. Moore. “When Canvassers Became Activists: Antislavery Petitioning and the Political Mobilization of American Women.” *American Political Science Review* 108, no. 03 (August 2014): 479–98.
- Carpenter, Daniel P. “The Petition as a Recruitment Device: Evidence from the Abolitionists’ Congressional Campaign.” *Harvard University. Typescript*, 2003. https://www.researchgate.net/profile/Daniel_Carpenter2/publication/228431896_The_Petition_as_a_Recruitment_Device_Evidence_from_the_Abolitionists'_Congressional_Campaign/links/09e41512f6f3864bf5000000.pdf.

- Chacón, Jennifer. "The Transformation of Immigration Federalism." *William & Mary Bill of Rights Journal* 21, no. 2 (December 1, 2012): 577.
- Chavez, Lydia. "REFUGEE WAVE CREATES A CRISIS IN BORDER CITY." *The New York Times*, February 28, 1987, sec. N.Y. / Region.
<http://www.nytimes.com/1987/02/28/nyregion/refugee-wave-creates-a-crisis-in-border-city.html>.
- Checkel, Jeffrey T. "Tracing Causal Mechanisms." *International Studies Review* 8, no. 2 (June 1, 2006): 362–70.
- Chinchilla, Norma Stoltz, Nora Hamilton, and James Loucky. "The Sanctuary Movement and Central American Activism in Los Angeles." *Latin American Perspectives* 36, no. 6 (2009): 101–26.
- Cohen, Elizabeth F. *Semi-Citizenship in Democratic Politics*. Cambridge University Press, 2009.
- Colbern, Allan, and S. Karthick Ramakrishnan. "State Policies on Immigrant Integration: An Examination of Best Practices and Policy Diffusion." *UCR School of Public Policy Working Paper Series*, February 2016, 1–20.
- Cooper, Thomas, and David James McCord, eds. *The Statutes at Large of South Carolina*. Vol. Volume 7. Columbia, S.C.: A.S. Johnston, 1836.
- . , eds. *The Statutes at Large of South Carolina: Containing the Acts from 1682 to 1716, Inclusive*. Vol. Volume 2. Columbia, S.C.: A.S. Johnston, 1836.
- Coutin, Susan Bibler. "Falling Outside: Excavating the History of Central American Asylum Seekers." *Law & Social Inquiry* 36, no. 3 (June 1, 2011): 569–96.
 doi:10.1111/j.1747-4469.2011.01243.x.
- . *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*. Ann Arbor: University of Michigan Press, 2003.
- Cox, Adam B., and Thomas J. Miles. "Policing Immigration." *The University of Chicago Law Review* 80, no. 1 (January 1, 2013): 87–136.
- Craig, Gary, Aline Gaus, Mick Wilkinson, Klara Skrivankova, and Aidan McQuade. *Contemporary Slavery in the UK*. York, United Kingdom: Joseph Rowntree Foundation, 2007.
<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.364.7102&rep=rep1&type=pdf>.

- Crittenden, Ann. *SANCTUARY: A Story of American Conscience and the Law in Collision*. 1st edition. New York: Grove Pr, 1988.
- Cunningham, Hilary. *God and Caesar at the Rio Grande: Sanctuary and the Politics of Religion*. Minneapolis: University of Minnesota Press, 1995.
- Davidson, Miriam. *Convictions of the Heart: Jim Corbett and the Sanctuary Movement*. First Edition edition. Tucson: University of Arizona Press, 1988.
- DeConcini, Senator Dennis. S.R. 336 (1982). <https://www.congress.gov/bill/97th-congress/senate-resolution/336>.
- Dinan, Stephen. "California Grants Driver's Licenses to Illegal Immigrants." *The Washington Times*, October 3, 2013. <http://www.washingtontimes.com/news/2013/oct/3/calif-grants-drivers-licenses-illegal-immigrants/>.
- Douglass, Frederick. *Narrative of the Life of Frederick Douglass, An American Slave*. Boston: Anti-Slavery Office, 1845.
- Einhorn, Robin L. *American Taxation, American Slavery*. Chicago: University of Chicago Press, 2006.
- . "Slavery and the Politics of Taxation in the Early United States." *Studies in American Political Development* 14, no. 02 (October 2000): 156–83.
- Fede, Andrew. *People Without Rights: An Interpretation of the Fundamentals of the Law of Slavery in the U.S. South*. Distinguished Studies in American Legal and Constitutional History. New York: Garland Pub, 1992.
- . *Roadblocks to Freedom: Slavery and Manumission in the United States South*. New Orleans, LA.: Quid Pro Books, 2011.
- Feeley, Michael Scott. "Towards the Cathedral: Ancient Sanctuary Represented in the American Context Immigration & Nationality XIV." *San Diego Law Review* 27 (1990): 801–30.
- Finkelman, Paul. *An Imperfect Union: Slavery, Federalism, and Comity*. The Lawbook Exchange, Ltd., 1981.
- . "Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North." *Rutgers Law Journal* 17 (1986 1985): 415.

- . , ed. *Slavery, Race, and the American Legal System, 1700-1872: A Sixteen Volume Facsimile Series Reproducing Over One Hundred and Seventy Rare and Important Pamphlets*. 16 vols. New York: Garland, 1988.
- . , ed. *Slavery & the Law*. 1st ed. Madison, Wis: Madison House, 1996.
- . , ed. *Statutes on Slavery: The Pamphlet Literature*. Slavery, Race, and the American Legal System, 1700-1872, ser. 7. New York: Garland Pub, 1988.
- . “The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793.” In *Race and Law before Emancipation*, edited by Paul Finkelman, 133–58. *Race, Law, and American History, 1700-1990*. The African-American Experience, v. 2. New York: Garland Pub, 1992.
- Fiorina, Morris P., Samuel A. Abrams, and Jeremy C. Pope. “Polarization in the American Public: Misconceptions and Misreadings.” *The Journal of Politics* 70, no. 02 (April 2008): 556–60.
- Fiorina, Morris P., and Samuel J. Abrams. *Disconnect: The Breakdown of Representation in American Politics*. University of Oklahoma Press, 2012.
- . “Political Polarization in the American Public.” *Annual Review of Political Science* 11, no. 1 (2008): 563–88.
- Foner, Eric. *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War*. Oxford University Press, 1995.
- . *Gateway to Freedom: The Hidden History of the Underground Railroad*. W. W. Norton & Company, 2015.
- Francis, Megan Ming. *Civil Rights and the Making of the Modern American State*. Cambridge University Press, 2014.
- Franklin, John Hope, and Loren Schweninger. *Runaway Slaves: Rebels on the Plantation*. New York: Oxford University Press, 1999.
- Frymer, Paul. “‘A Rush and a Push and the Land Is Ours’: Territorial Expansion, Land Policy, and U.S. State Formation.” *Perspectives on Politics* 12, no. 01 (March 2014): 119–44.
- . *Uneasy Alliances: Race and Party Competition in America*. Princeton, N.J.: Princeton University Press, 2010.
- Gara, Larry. *The Liberty Line: The Legend of the Underground Railroad*. Lexington: University of Kentucky Press, 1961.

- Garces, Liliana M. "Evolving Notions of Membership: The Significance of Communal Ties in Alienage Jurisprudence." *Southern California Law Review* 71 (1997): 1037.
- Garcia, Maria Cristina. *Seeking Refuge*. Berkeley: University of California Press, 2006.
- Gellman, David N. *Emancipating New York: The Politics of Slavery and Freedom, 1777-1827*. Baton Rouge: Louisiana State University Press, 2006.
- George, Alexander L., and Andrew Bennett. *Case Studies and Theory Development in the Social Sciences*. BCSIA Studies in International Security. Cambridge: MIT Press, 2005.
- Gerring, John. *Case Study Research*. Cambridge, MA: Cambridge University Press, 2007.
- Gleeson, Shannon, and Roberto G. Gonzales. "When Do Papers Matter? An Institutional Analysis of Undocumented Life in the United States." *International Migration* 50, no. 4 (August 1, 2012): 1–19. doi:10.1111/j.1468-2435.2011.00726.x.
- Golden, Renny, and Michael McConnell. *Sanctuary: The New Underground Railroad*. Second Printing edition. Maryknoll, N.Y.: Orbis Books, 1986.
- Gonzales, Roberto G. *Lives in Limbo: Undocumented and Coming of Age in America*. Univ of California Press, 2015.
- Gonzalez, Benjamin, Loren Collingwood, and Stephen Omar El-Khatib. "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration." *Urban Affairs Review*, May 7, 2017. doi:10.1177/1078087417704974.
- Goodell, William. *The American Slave Code In Theory and Practice: Its Distinctive Features Shown By Its Statutes, Judicial Decisions, and Illustrative Facts*. Reprint 1968. USA: Johnson Reprint Corporation, 1853.
- Goodheart, Lawrence B. *Abolitionist, Actuary, Atheist: Elizur Wright and the Reform Impulse*. Kent, Ohio: Kent State University Press, 1990.
- Goodman, James. "Sanctuary Has a Long History in Rochester." *Rochester Democrat and Chronicle*, February 6, 2017. <http://www.democratandchronicle.com/story/news/2017/02/06/sanctuary-has-long-history-rochester/97517982/>.
- Graauw, Els de. "Municipal ID Cards for Undocumented Immigrants Local Bureaucratic Membership in a Federal System." *Politics & Society* 42, no. 3 (September 1, 2014): 309–30.

- Griffler, Keith P. *Front Line of Freedom: African Americans and the Forging of the Underground Railroad in the Ohio Valley*. University Press of Kentucky, 2004.
- Grimes, William. *Life of William Grimes, the Runaway Slave*. New York, 1825.
- Gross, Ariela Julie. *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom*. Princeton, N.J.: Princeton University Press, 2000.
- . *What Blood Won't Tell: A History of Race on Trial in America*. Cambridge, MA: Harvard University Press, 2010.
- Gugliotta, Guy. "Civil War Toll Up by 20 Percent in New Estimate." *The New York Times*, April 2, 2012. <http://www.nytimes.com/2012/04/03/science/civil-war-toll-up-by-20-percent-in-new-estimate.html>.
- Gulasekaram, Pratheepan, and S. Karthick Ramakrishnan. "Immigration Federalism: A Reappraisal." *NYUL Rev.* 88 (2013): 2074–2319.
- . *The New Immigration Federalism*. New York: Cambridge University Press, 2015.
- Gwertzman, Bernard. "Haig Fears Exiles from Latin Areas May Flood the US." *The New York Times*, February 23, 1982.
- Hadden, Sally E. *Slave Patrols: Law and Violence in Virginia and the Carolinas*. Harvard Historical Studies, v. 138. Cambridge, Mass: Harvard University Press, 2001.
- Ham, Lane Van. "Sanctuary Revisited: Central American Refugee Assistance in the History of Church-Based Immigrant Advocacy." *Political Theology* 10, no. 4 (December 11, 2009): 621–45. doi:10.1558/poth.v10i4.621.
- Harrold, Stanley. *Border War: Fighting Over Slavery Before the Civil War*. Chapel Hill: University of North Carolina Press, 2010.
- Herzfeld, Beth. "Slavery and Gender: Women's Double Exploitation." *Gender & Development* 10, no. 1 (March 1, 2002): 50–55.
- Hetherington, Marc J. "Review Article: Putting Polarization in Perspective." *British Journal of Political Science* 39, no. 02 (April 2009): 413–48.
- Higginbotham, A. Leon. *In the Matter of Color: The Colonial Period*. Race and the American Legal Process, v. 1. New York: Oxford University Press, 1978.

- Hirota, Hidetaka. "The Moment of Transition: State Officials, the Federal Government, and the Formation of American Immigration Policy." *Journal of American History* 99, no. 4 (March 1, 2013): 1092–1108.
- Hojnacki, Marie, David C. Kimball, Frank R. Baumgartner, Jeffrey M. Berry, and Beth L. Leech. "Studying Organizational Advocacy and Influence: Reexamining Interest Group Research." *Annu. Rev. Polit. Sci.* 15 (2012): 9.1–9.21.
- Hondagneu-Sotelo, Pierrette. *God's Heart Has No Borders: How Religious Activists Are Working for Immigrant Rights*. University of California Press, 2008.
- Hurd, John C. *The Law of Freedom and Bondage in the United States*. Clark, N.J: Lawbook Exchange, 2006.
- "Immigration Reform: White House IGA Position Analysis," n.d. Case file 253900, Box FG006–01. Reagan Presidential Library.
- Inniss, Lolita K. Buckner. "Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness." *DePaul L. Rev.* 49 (1999): 85.
- Jacobson, David. *Rights Across Borders: Immigration and the Decline of Citizenship*. Baltimore: Johns Hopkins University Press, 1996.
- Jensen, Anthony. "Fleeing North: An Examination of U.S. Refugee and Asylum Policy towards Nicaragua." College of Saint Benedict and Saint John's University, 2012. http://digitalcommons.csbsju.edu/polsci_students/2.
- Johnson, Walter. *Soul by Soul: Life Inside the Antebellum Slave Market*. Cambridge, MA: Harvard University Press, 1999.
- Kamin, Sam. "The Battle of the Bulge: The Surprising Last Stand Against State Marijuana Legalization." *Publius: The Journal of Federalism* 45, no. 3 (July 1, 2015): 427–51.
- Kersh, Rogan. "Rethinking Periodization? APD and the Macro-History of the United States." *Polity* 37, no. 4 (October 1, 2005): 513–22.
- King, Desmond S., and Rogers M. Smith. "Racial Orders in American Political Development." *The American Political Science Review* 99, no. 1 (February 1, 2005): 75–92.
- Kobach, Kris W. "Attrition through Enforcement: A Rational Approach to Illegal Immigration." *Tulsa Journal of Comparative and International Law* 15 (2007): 155–63.

- . “Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests, The.” *Albany Law Review* 69 (2005): 179–235.
- . “Reinforcing the Rule of Law: What States Can and Should Do to Reduce Illegal Immigration.” *Georgetown Immigration Law Journal* 22 (2007): 459–83.
- Kraehenbuehl, James A. “Lessons from the Past: How the Antebellum Fugitive Slave Debate Informs State Enforcement of Federal Immigration Law.” *The University of Chicago Law Review* 78, no. 4 (October 1, 2011): 1465–1502.
- Lasch, Christopher N. “Rendition Resistance.” *North Carolina Law Review* 92 (2014 2013): 149.
- Laurie, Bruce. *Beyond Garrison: Antislavery and Social Reform*. Cambridge ; New York: Cambridge University Press, 2005.
- Law, Anna O. “Lunatics, Idiots, Paupers, and Negro Seamen—Immigration Federalism and the Early American State.” *Studies in American Political Development* 28, no. 02 (October 2014): 107–28.
- . “The Historical Amnesia of Contemporary Immigration Federalism Debates.” *Polity* 47, no. 3 (July 2015): 302–19.
- Layman, Geoffrey C., and Thomas M. Carsey. “Party Polarization and ‘Conflict Extension’ in the American Electorate.” *American Journal of Political Science* 46, no. 4 (2002): 786–802.
- Layman, Geoffrey C., Thomas M. Carsey, and Juliana Menasce Horowitz. “PARTY POLARIZATION IN AMERICAN POLITICS: Characteristics, Causes, and Consequences.” *Annual Review of Political Science* 9, no. 1 (2006): 83–110.
- Levendusky, Matthew. *The Partisan Sort: How Liberals Became Democrats and Conservatives Became Republicans*. University of Chicago Press, 2009.
- Lindsey, Robert. “AID TO ALIENS SAID TO SPUR ILLEGAL IMMIGRATION.” *The New York Times*, December 23, 1985, sec. U.S.
<http://www.nytimes.com/1985/12/23/us/aid-to-aliens-said-to-spur-illegal-immigration.html>.
- Litwack, Leon F. *North of Slavery: The Negro in the Free States, 1790-1860*. Chicago: The University of Chicago Press, 1961.
- Lorber, Benjamin. “Creating Sanctuary Faith-Based Activism for Migrant Justice.” *Tikkun* 28, no. 3 (July 1, 2013): 41–45. doi:10.1215/08879982-2307193.

- Lusk, Mark, and Faith Lucas. "The Challenge of Human Trafficking and Contemporary Slavery." *Journal of Comparative Social Welfare* 25, no. 1 (February 1, 2009): 49–57.
- Lyons, Christopher J., María B. Vélez, and Wayne A. Santoro. "Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities." *American Sociological Review* 78, no. 4 (August 1, 2013): 604–32. doi:10.1177/0003122413491964.
- Maceoin, Gary, ed. *Sanctuary: A Resource Guide for Understanding and Participating in the Central American Refugee Struggle*. 1st edition. San Francisco: Harpercollins, 1985.
- Magee, Rhonda V. "Slavery As Immigration?" *University of San Francisco Law Review Research Paper No. 2010–30* (2010): 1–33.
- Mahoney, James. "Strategies of Causal Inference in Small-N Analysis." *Sociological Methods & Research* 28, no. 4 (May 1, 2000): 387–424.
- Mahoney, James, and Dietrich Rueschemeyer. *Comparative Historical Analysis in the Social Sciences*. Cambridge University Press, 2003.
- Mancina, Peter. "The Birth of a Sanctuary-City: A History of Governmental Sanctuary in San Francisco." In *Sanctuary Practices in International Perspectives: Migration, Citizenship and Social Movements*, 205–18. Routledge, 2012.
- Mann, Charles Wesley. *The Chicago Common Council and the Fugitive Slave Law of 1850: An Address Read Before the Chicago Historical Society at a Special Meeting Held January 29, 1903*. Chicago Historical Society, 1903.
- Markowitz, Peter L. "Undocumented No More: The Power of State Citizenship." *Stanford Law Review* 67 (2015): 1–42.
- Martin, David A., Thomas Alexander Aleinikoff, Hiroshi Motomura, and Maryellen Fullerton. *Forced Migration: Law and Policy*. 2nd ed. West Academic, 2013.
- Massachusetts. "1855 Chap. 0489. An Act To Protect The Rights And Liberties Of The People Of The Commonwealth Of Massachusetts.," 1855. <http://archives.lib.state.ma.us/handle/2452/97312>.
- Massey, Douglas S. "Children of Central American Turmoil and the U.S. Reform Impasse." *SSN Forum on the Immigration Impasse*, 2014. <http://www.scholarsstrategynetwork.org/children-central-american-turmoil-and-us-reform-impasse>.

- Massey, Douglas S., Jorge Durand, and Nolan J. Malone. *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*. New York: Russell Sage Foundation Publications, 2003.
- Mathews, Jay. "Los Angeles to Be Refugee 'Sanctuary.'" *The Washington Post*, November 28, 1985.
https://www.washingtonpost.com/archive/politics/1985/11/28/los-angeles-to-be-refugee-sanctuary/ad4226ca-a1d7-4f32-b9b3-36a72a128fca/?utm_term=.c23891d22ddc.
- Mayer, Henry. *All on Fire: William Lloyd Garrison and the Abolition of Slavery*. 1st ed. New York: St. Martin's Press, 1998.
- McAdam, Doug. *Political Process and the Development of Black Insurgency, 1930-1970*. University of Chicago Press, 2010.
- McCormick, Elizabeth M. "Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform." *Lewis & Clark Law Review* 20 (2016): 165–236.
- McDougall, Marion Gleason. *Fugitive Slaves (1619-1865)*. Boston: Ginn & Company, 1891.
- McKanders, Karla Mari. "Immigration Enforcement and the Fugitive Slave Acts: Exploring Their Similarities." *Catholic University Law Review* 61 (2012): 921.
- McNair, Glenn. *Criminal Injustice: Slaves and Free Blacks in Georgia's Criminal Justice System*. Charlottesville: University of Virginia Press, 2009.
- Melish, Joanne Pope. *Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860*. Ithaca: Cornell University Press, 1998.
- Merina, Victor. "Woo Seeks a Compromise on Sanctuary Designation." *Los Angeles Times*, February 6, 1986. http://articles.latimes.com/1986-02-06/local/me-4773_1_sanctuary-resolution.
- Middleton, Stephen. *The Black Laws in the Old Northwest: A Documentary History*. Contributions in Afro-American and African Studies, no. 152. Westport, Conn: Greenwood Press, 1993.
- . *The Black Laws: Race and the Legal Process in Early Ohio*. Ohio University Press, 2005.

- Milkis, Sidney M., and Daniel J. Tichenor. "Reform's Mating Dance: Presidents, Social Movements, and Racial Realignment." *Journal of Policy History* 23, no. 04 (October 2011): 451–90. doi:10.1017/S0898030611000261.
- Moakley, Representative John Joseph Moakley. "Letter to President Ronald Reagan from Congressman John Joseph Moakley about Moakley's Objection to the Training of Salvadoran Troops by the United States Military," February 1, 1982. Series 03.04 Legislative Assistant Files: Jim McGovern, Box 1 Folder 1 (shelf locator). Congressman Suffolk University, Moakley Archive & Institute. John Joseph Moakley Papers, 1926-2001 (MS100). <https://www.digitalcommonwealth.org/search/commonwealth-oai:tm70np740>.
- Morris, Thomas D. *Free Men All: The Personal Liberty Laws of the North, 1780-1861*. The Lawbook Exchange, Ltd., 1974.
- Motomura, Hiroshi. *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States*. Oxford ; New York: Oxford University Press, 2006.
- . *Immigration Outside the Law*. Oxford ; New York: Oxford University Press, 2014.
- . "The Curious Evolution of Immigration Law: Procedural Surrogates for Substantive Constitutional Rights." *Columbia Law Review* 92, no. 7 (1992): 1625–1704.
- . "THE RIGHTS OF OTHERS: LEGAL CLAIMS AND IMMIGRATION OUTSIDE THE LAW." *Duke Law Journal* 59, no. 8 (2010): 1723–86.
- . "Whose Immigration Law?: Citizens, Aliens, and the Constitution." *Columbia Law Review* 97, no. 5 (June 1, 1997): 1567–1602. doi:10.2307/1123443.
- Mousin, Craig B. "Clear View from the Prairie: Harold Washington and the People of Illinois Respond to Federal Encroachment of Human Rights, A." *S. Ill. ULJ* 29 (2004): 285.
- . "Clear View from the Prairie: Harold Washington and the People of Illinois Respond to Federal Encroachment of Human Rights, A." *Southern Illinois University Law Journal* 29 (2005 2004): 285.
- Nash, Gary, and Jean Soderlund. *Freedom by Degrees: Emancipation in Pennsylvania and Its Aftermath*. Oxford University Press, 1991.
- Neuman, Gerald L. "Human Rights and Constitutional Rights: Harmony and Dissonance." *Stanford Law Review* 55 (2003 2002): 1863.

- . *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law*. Princeton, New Jersey: Princeton University Press, 2010.
- . “Territorial Discrimination, Equal Protection, and Self-Determination.” *University of Pennsylvania Law Review* 135 (1987 1986): 261.
- . “The Lost Century of American Immigration Law (1776-1875).” *Columbia Law Review* 93, no. 8 (December 1, 1993): 1833–1901.
- . “We Are the People: Alien Suffrage in German and American Perspective.” *Michigan Journal of International Law* 13 (1992 1991): 259.
- . “Whose Constitution.” *Yale Law Journal* 100 (1991 1990): 909.
- Newman, Richard S. *The Transformation of American Abolitionism: Fighting Slavery in the Early Republic*. Chapel Hill: University of North Carolina Press, 2002.
- Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton University Press, 2004.
- Northup, Solomon. *12 Years a Slave*. Graymalkin Media, 2014.
- Orren, Karen, and Stephen Skowronek. *The Search for American Political Development*. Cambridge; New York: Cambridge University Press, 2004.
- Parker, Joel. *Personal Liberty Laws and Slavery in the Territories*. Boston: Wright & Potter, 1861.
- Parker, Kunal M. *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000*. 1 edition. New York, NY: Cambridge University Press, 2015.
- . “State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts.” *Law and History Review* 19, no. 03 (September 2001): 583–643.
- Pease, Jane H., and William Henry Pease. *They Who Would Be Free: Blacks’ Search for Freedom, 1830-1861*. Illini Books ed. Blacks in the New World. Urbana: University of Illinois Press, 1990.
- Pickerill, J. Mitchell, and Cynthia J. Bowling. “Polarized Parties, Politics, and Policies: Fragmented Federalism in 2013–2014.” *Publius: The Journal of Federalism* 44, no. 3 (July 1, 2014): 369–98.
- Poole, Keith T., and Howard Rosenthal. “The Polarization of American Politics.” *The Journal of Politics* 46, no. 4 (1984): 1061–79.

- Quirk, Joel Forbes. "The Anti-Slavery Project: Linking the Historical and Contemporary." *Human Rights Quarterly* 28, no. 3 (2006): 565–98.
- Ramakrishnan, S. Karthick, and Allan Colbern. "The California Package: Immigrant Integration and the Evolving Nature of State Citizenship." *Policy Matters* 6, no. 3 (2015): 1–19.
- Ramakrishnan, S. Karthick, and Pratheepan Gulasekaram. "Driver's Licenses for Undocumented Immigrants: How the Obama Administration's Deferred Action Policy Paved the Way." *San Jose Mercury News*. October 14, 2013. http://www.mercurynews.com/opinion/ci_24283776/drivers-licenses-undocumented-immigrants-how-obama-administrations-deferred.
- . "Importance of the Political in Immigration Federalism, The." *Arizona State Law Journal* 44 (2012): 1431–88.
- Resnick, Judith. "Federalism(s) Forms and Norms: Contesting Rights, Deessentializing Jurisdictional Divides, and Temporizing Accommodations." In *NOMOS LV: FEDERALISM & SUBSIDIARITY*, edited by James Fleming. New York: University Press, 2014.
- Ridgley, Jennifer. "The Birth of a Sanctuary-City: A History of Governmental Sanctuary in San Francisco." In *Sanctuary Practices in International Perspectives: Migration, Citizenship and Social Movements*, 219–31. Routledge, 2012.
- Robertson, Craig. *The Passport in America: The History of a Document*. New York: Oxford University Press, 2010.
- Rochester, New York. Resolution No. 86-29 (City of Sanctuaries) (1986). talkerofthetown.com/wp-content/uploads/2017/01/CityofSanctuaries1986.pdf.
- Rodriguez, Cristina M. "Negotiating Conflict through Federalism: Institutional and Popular Perspectives." *Yale Law Journal* 123 (2014): 2094–2133.
- Rodríguez, Cristina M. "The Citizenship Paradox in a Transnational Age." Edited by Hiroshi Motomura. *Michigan Law Review* 106, no. 6 (2008): 1111–28.
- Rodriguez, Cristina M. "The Significance of the Local in Immigration Regulation." *Michigan Law Review* 106, no. 4 (February 1, 2008): 567–642.
- . "Toward Detente in Immigration Federalism." *Journal of Law & Politics* 30 (2015): 505–26.
- Rose, Ananda. *Showdown in the Sonoran Desert: Religion, Law, and the Immigration Controversy*. Oxford University Press, 2012.

- Rosenberg, Norman L. "Personal Liberty Laws and Section Crisis: 1850-1861." In *Abolitionism and American Law*, 320–40. History of the American Abolitionist Movement. New York: Garland Publishing, Inc., 1999.
- Rose, Shanna, and Cynthia J. Bowling. "The State of American Federalism 2014–15: Pathways to Policy in an Era of Party Polarization." *Publius: The Journal of Federalism* 45, no. 3 (July 1, 2015): 351–79.
- Rosinbum, John. "A Crisis Transformed: Refugees, Activists and Government Officials in the United States and Canada during the Central American Refugee Crisis." Arizona State University, 2014.
https://repository.asu.edu/attachments/135023/content/Rosinbum_asu_0010E_13984.pdf.
- Ruggiero, Vincenzo. "Trafficking in Human Beings: Slaves in Contemporary Europe." *International Journal of the Sociology of Law* 25, no. 3 (September 1997): 231–44.
- Sacramento, Cal., Res. No. 85-973 (1985).
- Saillant, Catherine. "L.A. Council Approves ID Cards for City Residents." *Los Angeles Times*, November 7, 2012. <http://articles.latimes.com/2012/nov/07/local/la-me-city-id-card-20121108>.
- Salter, Mark B. *Rights of Passage: The Passport in International Relations*. Boulder, Co: Lynne Rienner Publishers, 2003.
- San Francisco, Cal., Resolution No. 1087-85 (1985).
- "San Francisco Joins Neighboring Counties In Suspending Undocumented Immigrant Jail Holds." Accessed December 7, 2014.
<http://sanfrancisco.cbslocal.com/2014/05/29/san-francisco-joins-neighboring-counties-in-suspending-undocumented-immigrant-jail-holds/>.
- Sartori, Giovanni. "Concept Misformation in Comparative Politics." *The American Political Science Review* 64, no. 4 (December 1, 1970): 1033–53.
 doi:10.2307/1958356.
- Scaperlanda, Michael. "Partial Membership: Aliens and the Constitutional Community." *Iowa Law Review* 81 (1995): 707.
- Schabarum. "County Is Stuck With Billfor Immigrants." *Los Angeles Times*, December 30, 1985.

- Schafer, Judith Kelleher. *Slavery, the Civil Law, and the Supreme Court of Louisiana*. Baton Rouge: Louisiana State University Press, 1994.
- Schmitt, Jeffrey M. "Immigration Enforcement Reform: Learning from the History of Fugitive Slave Rendition." *The Georgetown Law Journal Online* Vol. 103 Online: 1 (2013): 1–7.
- "S.F. Supervisors Adopt Sanctuary Resolution; Mayor Plans to Sign It." *Los Angeles Times (1923-Current File)*; *Los Angeles, Calif.* December 24, 1985.
- Sides, John, and Daniel J. Hopkins. *Political Polarization in American Politics*. Bloomsbury Publishing USA, 2015.
- Siebert, Wilbur Henry. *The Underground Railroad: From Slavery to Freedom*. New York: The Macmillan Company, 1898.
- Sinclair, Barbara. *Party Wars: Polarization and the Politics of National Policy Making*. University of Oklahoma Press, 2012.
- Smith, Christian. *Resisting Reagan: The U.S. Central America Peace Movement*. University of Chicago Press, 2010.
- Smith, Rogers M. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. Yale University Press, 1997.
- . "Substance and Methods in APD Research." *Studies in American Political Development* 17, no. 01 (April 2003): 111–15.
doi:10.1017/S0898588X0300004X.
- Soysal, Yasemin Nuhoğlu. *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago: University of Chicago, 1994.
- Still, William. *The Underground Railroad*. Philadelphia: Porter & Coates, 1872.
- TenBroek, Jacobus. *Equal Under Law*. New, enl. ed. New York: Collier Books, 1965.
- The Constitutions of Ohio: Amendments, and Proposed Amendments, Including the Ordinance of 1787, the Act of Congress Dividing the Northwest Territory, and the Acts of Congress Creating and Recognizing the State of Ohio*. The Arthur H. Clark Company, 1912.
- The White House, Office of the Press Secretary. "Statement on Sanctuary Cities Ruling." *Whitehouse.gov*, April 25, 2017. <https://www.whitehouse.gov/the-press-office/2017/04/25/statement-sanctuary-cities-ruling>.

- Thomas, John L. *The Liberator: William Lloyd Garrison*. 1st ed. Boston: Little, Brown, 1963.
- Tichenor, Daniel. *Dividing Lines: The Politics of Immigration Control in America*. Princeton Studies in American Politics. Princeton, N.J: Princeton University Press, 2002.
- . “The Political Dynamics of Unauthorized Immigration: Conflict, Change, and Agency in Time.” *Polity* 47, no. 3 (July 2015): 283–301.
- Tichenor, Daniel J., and Alexandra Filindra. “Raising Arizona v. United States: Historical Patterns of American Immigration Federalism.” *Lewis & Clark L. Rev.* 16 (2012): 1215.
- Tomsho, Robert. *The American Sanctuary Movement*. Austin, TX: Texas Monthly Pr, 1987.
- Torpey, John. “Coming and Going: On the State Monopolization of the Legitimate ‘Means of Movement.’” *Sociological Theory* 16, no. 3 (1998): 239–59.
- . “Revolutions and Freedom of Movement: An Analysis of Passport Controls in the French, Russian, and Chinese Revolutions.” *Theory and Society* 26, no. 6 (December 1, 1997): 837–68.
- . *The Invention of the Passport: Surveillance, Citizenship, and the State*. Cambridge Studies in Law and Society. Cambridge; New York: Cambridge University Press, 2000.
- Torrey, Jesse. *American Slave Trade; Or, An Account of the Manner in Which the Slave Dealers Take Free People from Some of the United States of America, and Carry Them Away, and Sell Them as Slaves in Other of the States; and of the Horrible Cruelties Practiced in the Carrying on of This Most Infamous Traffic: With Reflections on the Project for Forming a Colony of American Blacks in Africa, and Certain Documents Respecting That Project*. C. Clement and published by J. M. Cobbett, 1822.
- Trump, Donald J. Executive Order: Enhancing Public Safety in the Interior of the United States (2017). <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.
- . Presidential Executive Order: Enhancing Public Safety in the Interior of the United States, Pub. L. No. AILA Doc. No. 17012531 (2017). <http://www.aila.org/infonet/presidential-executive-order-enhancing-public>.

- Valelly, Richard M. *The Two Reconstructions: The Struggle for Black Enfranchisement*. American Politics and Political Economy. Chicago: University of Chicago Press, 2004.
- Varsanyi, Monica, ed. *Taking Local Control: Immigration Policy Activism in U.S. Cities and States*. Stanford, CA: Stanford University Press, 2010.
- Varsanyi, Monica W., Paul G. Lewis, Doris Marie Provine, and Scott Decker. "A Multilayered Jurisdictional Patchwork: Immigration Federalism in the United States." *Law & Policy* 34, no. 2 (April 1, 2012): 138–58.
- Villazor, Rose Cuison. "Sanctuary Cities and Local Citizenship." *Fordham Urban Law Journal* 37 (2010): 573.
- . "What Is a Sanctuary." *SMU Law Review* 61 (2008): 133–58.
- Wahl, Jenny Bourne. *The Bondsman's Burden: An Economic Analysis of the Common Law of Southern Slavery*. Cambridge Historical Studies in American Law and Society. Cambridge ; New York: Cambridge University Press, 1998.
- Wallenstein, Peter. *Blue Laws and Black Codes: Conflict, Courts, and Change in Twentieth-Century Virginia*. Charlottesville: University of Virginia Press, 2004.
- Waters, Mary C., and Marisa Gerstein Pineau, eds. *The Integration of Immigrants into American Society*. Washington, D.C.: National Academies Press, 2015.
<http://www.nap.edu/catalog/21746>.
- Weiss, Rep. Ted. H.R.126 (1981). <https://www.congress.gov/bill/97th-congress/house-resolution/126/all-info>.
- White, Don. "Don White Committee in Solidarity with the People of El Salvador (CISPES) Collection, 1980-2007," n.d. Special Collections and Archives, Oviatt Library, California State University, Northridge.
<https://findingaids.csun.edu/archon/?p=collections/findingaid&id=358&q=&rootcontentid=109402>.
- Wong, Tom K. "287(g) and the Politics of Interior Immigration Control in the United States: Explaining Local Cooperation with Federal Immigration Authorities." *Journal of Ethnic and Migration Studies* 38, no. 5 (April 19, 2012): 737–56.
- . *Rights, Deportation, and Detention in the Age of Immigration Control*. Stanford, CA: Stanford University Press, 2015.
- . "The Effects of Sanctuary Policies on Crime and the Economy." *Center for American Progress*, January 26, 2017.

<https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

———. *The Politics of Immigration: Partisanship, Demographic Change, and American National Identity*. Oxford University Press, 2016.

Woo, Michael. “City of Refuge’ Is All-American.” *Los Angeles Times*, December 8, 1985.

Wright, Michael, and Caroline Rand Herron. “A HAVEN FOR CENTRAL AMERICANS?” *The New York Times*, December 29, 1985, sec. Week in Review. <http://www.nytimes.com/1985/12/29/weekinreview/the-nation-a-haven-for-central-americans.html>.

Yee, Vivian. “Judge Blocks Trump Effort to Withhold Money From Sanctuary Cities.” *The New York Times*, April 25, 2017. <https://www.nytimes.com/2017/04/25/us/judge-blocks-trump-sanctuary-cities.html>.

Zilversmit, Arthur. *The First Emancipation: The Abolition of Slavery in the North*. Chicago: The University of Chicago Press, 1967.