

U.S. REFUGEE POLICY: A COMPARISON OF HAITI AND CUBA DURING THE  
COLD WAR AND POST-COLD WAR PERIODS

By

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by

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To my parents, whose continuing love and support is a thing of beauty

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## TABLE OF CONTENTS

|  | <u>page</u> |
|--|-------------|
| ACKNOWLEDGMENTS .....  | iv          |
| ABSTRACT .....   | viii        |
| CHAPTER  |             |
| 1 INTRODUCTION .....   | 1           |
| Significance of the Study .....                              | 1           |
| Purpose and Design of the Study .....                        | 3           |
| Who is a Refugee? .....                                      | 3           |
| Definition of Terms .....                                    | 4           |
| Literature Review .....                                      | 5           |
| Refugee Law .....  | 5           |
| U.S. Relations with Cuba and Haiti .....                     | 8           |
| U.S. Relations with Haiti .....                              | 9           |
| U.S. Relations with Cuba .....                               | 10          |
| Demographics of Cuban and Haitian Refugees .....             | 11          |
| U.S. Government Response to Cuban and Haitian Refugees ..... | 13          |
| Structure of the Study .....                                 | 15          |
| 2 DEVELOPMENT OF REFUGEE LAW .....                           | 17          |
| International Refugee Law .....                              | 17          |
| Principal International Refugee Instruments .....            | 17          |
| The 1951 convention .....                                    | 18          |
| The 1967 protocol .....                                      | 20          |
| Role of International Law in Domestic Courts .....           | 20          |
| Development of U.S. Refugee Law .....                        | 21          |
| U.S. Refugee Law: 1948-1980 .....                            | 22          |
| Parole Power and Executive Authority .....                   | 23          |
| The 1965 Attempts to Reform Domestic Refugee Law .....       | 24          |
| Refugee Act of 1980 .....                                    | 26          |
| Influence of Foreign Policy in Refugee Selection .....       | 29          |
| State Department Advisory Opinion .....                      | 30          |
| Summary .....  | 33          |

|   |   |     |
|---|---|-----|
| 3 | CHARACTERISTICS OF CUBAN REFUGEES AND THEIR RECEPTION AND TREATMENT IN THE UNITED STATES .....  | 35  |
|   | Introduction.....   | 35  |
|   | United States Relations with Cuba .....   | 36  |
|   | Characteristics of the Major Phases of Flight of Cuban Refugees .....                           | 39  |
|   | Arrival of Cuban Refugees from 1959 to 1962 .....   | 39  |
|   | Arrival of Cuban Refugees from 1965 to 1973 .....   | 41  |
|   | Arrival of Cuban Refugees during the “Mariel Boatlift” of 1980.....                             | 43  |
|   | Arrival of Cuban Refugees in the Post-Cold WarPeriod.....                                       | 46  |
|   | U.S.-Based Domestic Support for Cuban Refugees .....  | 49  |
|   | U.S. Public Opinion of Cuban Refugees .....   | 51  |
|   | Changes in the Domestic Support for Cuban Refugees during the Post-Cold War Period .....        | 54  |
|   | Human-rights Violations in Cuba.....  | 56  |
|   | The U.S. Government’s Policy toward Cuban Refugees .....  | 57  |
|   | U.S. Government Policy toward Cuban Refugees from 1959-1962 .....                               | 57  |
|   | U.S. Government Policy toward Cuban Refugees from 1965 to 1973 .....                            | 61  |
|   | U.S. Government Policy toward Cuban Refugees during the Mariel Boatlift of 1980 .....           | 63  |
|   | U.S. Government Policy toward Cuban Refugees from 1990-2004 .....                               | 68  |
|   | Summary.....  | 72  |
| 4 | CHARACTERISTICS OF HAITIAN REFUGEES AND THEIR RECEPTION AND TREATMENT IN THE UNITED STATES..... | 74  |
|   | Introduction.....   | 74  |
|   | United States Relations with Haiti.....   | 75  |
|   | Characteristics of the Major Phases of Flight of Haitian Refugees.....                          | 79  |
|   | Arrival of Haitian Refugees from 1957 to 1971.....  | 80  |
|   | Arrival of Haitian Refugees from 1971-1980 .....  | 81  |
|   | Arrival of Haitian Refugees in the Post-Cold War Period .....                                   | 83  |
|   | U.S.-Based Domestic Support for Haitian Refugees.....   | 84  |
|   | Public Resentment and Racism toward Haitian Refugees .....                                      | 87  |
|   | Early Success for Haitian Refugee Advocates in the Post-Cold War Period.....                    | 88  |
|   | Human-rights Violations in Haiti .....  | 89  |
|   | U.S. Government Policy toward Haitian Refugees .....  | 91  |
|   | U.S. Government Economic Justification for Excluding Haitians.....                              | 91  |
|   | U.S. Government Policy toward Haitian Refugees before 1970.....                                 | 92  |
|   | U.S. Government Policy toward Haitian Refugees from 1970-1980.....                              | 93  |
|   | U.S. Government Policy toward Haitian Refugees Arriving during the Mariel Boatlift of 1980..... | 97  |
|   | U.S. Government Policy toward Haitian Refugees from 1981-1990.....                              | 99  |
|   | U.S. Government Policy toward Haitian Refugees from 1990-2004.....                              | 100 |
|   | Summary.....  | 105 |

|   |  |     |
|---|--|-----|
| 5 | CONCLUSION.....  | 107 |
|   | Main Findings.....   | 107 |
|   | Continuing Differentiation in the Application of U.S. Refugee Policy ..... | 107 |
|   | Development of Refugee Law.....  | 110 |
|   | Foreign Policy as a Determinant in U.S. Refugee Policy.....                | 111 |
|   | Domestic Factors as Determinants in U.S. Refugee Policy .....              | 112 |
|   | U.S. Refugee Policy during the Cold War Period.....                        | 113 |
|   | U.S. Refugee Policy during the Post-Cold War Period.....                   | 114 |
|   | Future Research and Recommendations for Policy-Makers .....                | 116 |
|   | LIST OF REFERENCES.....  | 117 |
|   | BIOGRAPHICAL SKETCH .....  | 122 |

Abstract of Thesis Presented to the Graduate School  
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By

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Since the end of WWII, the United States has been a major destination for refugees fleeing for their safety, and the response of the U.S. government has covered the spectrum, from instances of generous welcome to strict rejection. During the Cold War, U.S. refugee policy was remarkably consistent in its acceptance of refugee populations fleeing communist governments. Possibly more than any other groups, U.S. policy regarding Cuban and Haitian refugees during the Cold War showed this unmistakable pattern of differential treatment.

Three main factors have influenced the formulation of U.S. refugee policy toward Cuban and Haitian refugees. The first, and most important, factor is the foreign policy bias based on the United States' relationship with the governments of the countries from which the refugees fled. Second, the demographic characteristics, notably the racial make-up, of these two populations have affected their respective levels of admission by the United States. Third, pressure from U.S.-based interests groups, vying for support of,

or resistance to the reception of refugee groups, has also been a factor in the ultimate treatment of a refugee group at the hands of the U.S. government. These three factors form the basis for understanding the formulation of greatly differing refugee policies toward Cuban and Haitian refugee groups whose qualifications under refugee law are very comparable.

Many of the political and social conflicts that caused the flight of refugees during the Cold War have subsided, resulting in dramatically lower rates of refugees arriving from some countries. However, the flow of Cuban and Haitian refugees since the end of the Cold War has persisted. Post-Cold War developments in U.S. refugee policy toward Cuban and Haitian refugees continued to exhibit a pattern of differential treatment; however, there has been an important convergence in their reception in the United States. While the anti-communist foreign policy continues to be a key influence on the formulation of U.S. refugee policy; other factors, such as race and the pressure from domestic interest groups are also of major significance. Collectively, these three factors help to explain the differential treatment toward Cuban and Haitian refugees since the 1950s; and provide the basis for predicting and understanding the future of U.S. refugee policy toward these two refugee groups.

## CHAPTER 1 INTRODUCTION

### **Significance of the Study**

The study of differential treatment of refugee groups within U.S. refugee policy is based on political, legal, social, and economic dimensions. The development of the refugee concept, for example, is inextricably connected to the greater question of the relationship between migration and society in general. As long as there have been wars, oppressive rulers, natural disasters, and economic deprivation, people have fled their homeland in a desperate search for safety or improved economic conditions. Likewise, as long as there have been refugees, there has been hospitality and xenophobia, open doors and closed ports, standards and double standards. While the movement of people in search of safety abroad is an old phenomenon, international refugee protection is a relatively recent concept. Even though the development of refugee law and policy has been driven by humanitarian principles, time has proven that the effective implementation of refugee policies has been highly susceptible to political interference and biases of host states. Possibly more than any other nation, the United States has struggled with the role of a refugee-receiving state.

Since the end of WWII, the United States has been a major destination for refugees fleeing for their safety, and the response of the U.S. government has covered the spectrum, from instances of generous welcome to callous rejection. During the Cold War, for example, U.S. refugee policy was remarkably consistent in its acceptance of refugee populations fleeing communist governments. Scholarship in this area reflects a

consensus that, in the context of the Cold War, ideological preferences inherent in U.S. foreign policy guided the application of a U.S. refugee policy. This domination of foreign policy's influence over U.S. refugee policy was evident in the acceptance and rejection rates among various refugee populations from Eastern Europe, Indochina, and Central America (Loescher and Scanlan 1986). Possibly more than any other groups, U.S. policy regarding Cuban and Haitian refugees during the Cold War showed this unmistakable pattern of differential treatment. While foreign policy was clearly the dominant influence in the formulation of U.S. refugee policy during the Cold War, other important factors exist, including race, economics and domestic pressures.

Many of the political and social conflicts that caused the flight of refugees during the Cold War have subsided, resulting in dramatically lower rates of refugees arriving from some countries. However, the flow of Cuban and Haitian refugees since the end of the Cold War has persisted. While the dominant reason for the differential treatment between Cuban and Haitian refugees during the Cold War was the U.S. foreign policy bias against communism, the explanation of differential treatment in the post-Cold War era, and whether it will persist, remains unclear.

Current political and economic conditions in Cuba and Haiti are such that the potential for a mass influx of refugees from these countries remains a real possibility. In Haiti, former President Aristide fled the country in March, 2004, in the face of an increasingly violent opposition that reduced the country to chaos and civil strife (Marquis 2004). In Cuba, Castro's reign of power may be in its twilight years, and a political transition that will follow may have serious political and economic implications. The threat of a new refugee crisis from these countries has important implications for the

citizens of the United States, and Florida residents in particular. Inevitably, a new flood of refugees would cause serious financial costs, political turmoil, and social backlash; not to mention the suffering of the refugees during their journey, and on arrival in the United States. In 2004, the examination of the recurrent dilemma of Cuban and Haitian refugees is as relevant and timely as it has ever been.

### **Purpose and Design of the Study**

The purpose of the study was to develop an explanation of the differential treatment by the U.S. government toward the two identified refugee populations during and after the Cold War era. A logical hypothesis relating to this issue might be that, in the absence of a guiding foreign policy preference toward refugees of communism, the differential treatment between Cuban and Haitian refugees would have come to an end. To this end, the central question of this study was whether (and to what extent) the pattern of differential treatment of Haiti and Cuban refugees has persisted; and what factors explain this policy.

This thesis is a case study of U.S. refugee policy during the Cold War and post-Cold War era, comparing the experiences of Cuban and Haitian refugees in the United States. A cross-case analysis was conducted, relying primarily on documents, scholarly articles and books relating to the experiences of Cuban and Haitian refugees.

### **Who is a Refugee?**

While international treaties and domestic legislation have carefully codified the official definition of refugee status as a person with a well-founded fear of persecution on account of race, religion, nationality, or political opinion, this concept is subject to various interpretations and meanings. The refugee concept is inevitably tied to the greater theme of human migration in general; however, the refugee concept diverges

from other forms of voluntary migration. While the legal definition of refugee status only recognizes certain sources of persecution or threats to persons as legitimate, the contemporary usage of the refugee concept connotes the basic flight of persons from their homeland in search of immediate safety from a variety of real threats to their lives. This study addressed both the strict construction of the legal definition of refugee status, as well as the more expansive usage of the refugee concept. Moreover, similar to the use of various terms in the literature on the subject, this study uses the terms refugee and asylum seeker interchangeably.

### **Definition of Terms**

- **Refugee:** An alien outside of the United States who can demonstrate a well-founded fear of persecution on account of his or her race, religion, nationality, or political opinion.
- **Asylum Seeker:** An alien already in (or at the border of) the United States who can demonstrated a well-founded fear of persecution on account of his of her race, religion, nationality, or political opinion.
- **Parole authority:** The power held by the president of the United States to admit an alien into the United States who has not gone through the asylum process, and does not have any other legal claim for entry into the country.
- **Interdiction:** The practice used by the U.S. Coast Guard and other State, local, or Federal Law Enforcement agencies to stop asylum seekers en route to the United States and to prevent their entry.
- **Domestic interest groups:** Public and private advocacy groups who are supportive of asylum seekers, as well as those public and private groups who are resentful of and resistant to the resettlement of asylum seekers in the United States.
- **Wet-foot dry-foot policy:** The special policy for Cuban asylum seekers who will be allowed to stay in the United States if they reach dry land; while Cubans, and all other nationalities, that are interdicted at sea are sent back to their country of origin.
- **Special humanitarian concern:** The requirement that an alien applying for refugee status while abroad must satisfy to be eligible for admission into the United States.

## **Literature Review**

There has been no dearth of literature on the issue of refugee law and policy in the United States. The issue of legal mechanisms codifying U.S. governmental duties to recognize and possibly provide a safe haven to persons seeking protection from persecution is one that involves economic, political, and social questions. During the Cold War, various scholars documented a pattern of inconsistency and discrimination in the application of U.S. refugee law to different refugee groups. Possibly more than any other refugee populations, the comparison of Cuban and Haitian refugees exemplifies the key factors leading to the pattern of differential treatment in U.S. refugee policy.

The comparative analysis of U.S. refugee policy toward Cuban and Haitian refugees requires reference to literature on various subjects. First, an examination of the development of international and refugee law and policy is necessary to provide the legal implications and contours for this thesis. Similarly, an investigation of the nature of U.S. governmental relations with the governments of Cuba and Haiti, of the demographic make-up of the refugee populations, and of the level of domestic support or resistance to the refugee populations was essential to this study. Equally important is information on actual U.S. government responses to the arrival of the refugee populations. This section provides an overview of the literature on these subjects used as the formation of this thesis.

### **Refugee Law**

To fully understand the history and scope of refugee law and how it fits into the greater body of immigration law, two sources stand out among the rest: Stephen Legomsky's *Immigration and Refugee Law and Policy*; and Karen Musalo, Jennifer Moore and Richard Boswell's, *Refugee Law and Policy: A Comparative & International*

Approach. Legomsky provided the most comprehensive legal text covering the entire spectrum of immigration law in general. He detailed the major aspects of the history of immigration in the United States, and the current legal framework governing immigration law. His text examined all facets of immigration law, including historical, political, economic, and social factors that have combined to mold the law into what it is today. A large portion of his work focused on the development of refugee law in the United States how it fits into the larger body of immigration law.

Musalo, Moore and Boswell's work was the most comprehensive text on the area of refugee law to date. They focused primarily on the development of refugee law in both international legal instruments and domestic law in the United States. Musalo, Moore and Boswell described the emergence of the refugee concept and legal codification from its origins in the aftermath of WWII, highlighting the original influence of pro-Western political values in the crafting of the refugee definition 1951 Convention. They outlined the implications of the geographical and temporal restrictions of the 1951 Convention in the first years of its application and then the modifications of the 1967 United Nations Protocol Relating to the Status of Refugees. Musalo, Moore and Boswell then presented a thorough review of the development of U.S. refugee law, noting the parallels and divergences in international refugee law. The work was largely a collection of excerpts of scholarly articles accompanied by a discussion of their significance by Musalo, Moore and Boswell. While Musalo, Moore and Boswell addressed the influence of foreign and domestic factors on the implementation of U.S. refugee law, the bulk of her text was dedicated to the statutory framework and procedural aspects for obtaining asylum in the United States.

A series of other scholarly articles has elaborated upon the issue of the influence of foreign policy and other factors on the application of U.S. refugee policy. Kathryn Bockley's, *A Historical Overview of Refugee Legislation: The Deception of Foreign Policy in the Land of Promise*, took the examination of the legal aspects of U.S. refugee law a step further, noting the disjunction between U.S. refugee principles and the application of U.S. refugee law. Bockley's discussion charted the development of U.S. refugee law from the early legislative attempts and failures to devise a national policy refugee policy, to the lingering problems and inconsistencies in the application of the first comprehensive refugee legislation. Bockley underscored the importance of the use of parole authority by presidents as a tool for circumventing the mandates of refugee legislation; and the subsequent congressional attempt with the 1980 Refugee Act to eliminate the use of parole and establish neutral principles for refugee selection. She then discussed the significant problems of implementing the Refugee Act, noting in particular the problems with the legal determination of refugee status and the continuing ability for influence of foreign policy.

Many scholars refer to the vulnerability of refugee policy to the influences of foreign policy and related prerogatives of the U.S. government. Several important articles, in particular, detail the manner in which this executive interference has occurred. Richard Preston's article, "Asylum Adjudications: Do State Department Advisory Opinions Violate Refugees' Rights And U.S. International Obligations?" addressed the problems presented by the U.S. State Department advisory opinions in individual asylum applications. Similarly, Davalene Cooper's article, "Promised Land or Land of Broken Promises? Political Asylum in the United States," examined the function of judicial

oversight, and the legislative and administrative framework of the asylum process in light of the failure of the Refugee Act to eliminate political and ideological bias. David Forsythe's book, *The Politics of International Law*, added to the discussion of the interplay between international law, U.S. foreign policy and international relations. Among other issues, Forsythe examined the efforts of the presidential branches to devise refugee policies consistent with political goals of extending asylum to some groups and not to others, based on then current foreign policy.

### **U.S. Relations with Cuba and Haiti**

The nature of U.S. governmental relations with Haiti and Cuba has been the fundamental variable in the comparative analysis of U.S. refugee policy toward Haitian and Cuban refugees. Scholars have generally agreed that during the Cold War the predominant distinguishing factor between on the formation of U.S. refugee policy toward Haitian and Cuban refugees was U.S. relations with the two countries, which sharply diverged along the ideological line of Cold War politics. The significance of U.S. policy toward the two governments, however, extends beyond the mere assessment of a particular country's ideological posture. An overview of the country conditions and records of human-rights violations existing in Haiti and Cuba was also important to understanding the extent to which U.S. foreign policy agenda has biased its refugee policy. There was abundant literature available on both the history of U.S. governmental relations with Haiti and Cuba, and on the particular country conditions propelling the flight of Haitian and Cuban citizens. Juxtaposing the accounts of U.S. policy toward these two governments, in light of each nation's particular records of persecution and human-rights violations, supports the assertion of many scholars that U.S. refugee policy

during the Cold War was guided by a foreign policy bias in favor of refugees fleeing communist regimes.

### **U.S. Relations with Haiti**

James Ferguson, *Papa Doc, Baby Doc: Haiti and the Duvaliers*, illustrated how the pattern of U.S. intervention in Haitian affairs persisted after the end of the occupation. Ferguson documented the role of U.S. military and financial aid to successive Haitian presidents leading up to and during the rule of “Papa Doc” Duvalier. Ferguson covered the rise and fall of the Duvalier regimes; highlighting the brutality of both the Papa Doc and Baby Doc regimes and arguing that their staying power was largely attributable to U.S. aid.

Although the history of U.S.-Haitian relations in the post-Cold War era was still being written at the time of the current study, and no single work captured the developments since the fall of the Baby Doc regime, several scholars provided an up-to-date account of the U.S.-Haiti governmental relations. Among others, Naomi Zucker and Norman Zucker’s book, *Desperate Crossings*, covered the U.S.-Haitian governmental relations from the fall of Baby Doc in 1986, until the reinstatement of Aristide in 1994. Zucker and Zucker provided a close look at the turbulent events after the election and subsequent overthrow of Aristide, with special attention to the effect of the threat of a mass exodus of Haitian refugees on the U.S. foreign policy toward Haiti. The best information on the most recent developments in U.S.-Haiti relations was taken from articles found in major newspapers and governmental and nongovernmental organizations’ websites.

## **U.S. Relations with Cuba**

As U.S.-Cuban relations were a focal point of foreign policy in the United States for the duration of the Cold War and beyond, there was an abundance of scholarly writings on the subject. Felix Masud-Piloto's *From Welcome Exiles to Illegal Immigrants*, for example, presented an excellent review of the political conflict between the U.S. and Cuban governments. His analysis focused on the two governments' attempted to use the issue of Cuban migration to the United States in ways calculated to gain political mileage against one another. Masud-Piloto's description of the political struggle behind the flow of Cuban refugees to the United States since 1959 revealed a clear picture of the ideological and geopolitical factors behind the nations' nearly fifty year standoff.

Other scholars have examined the nature of the hostility between the United States and Cuba, covering various military, political and economic approaches the U.S. government has employed against Cuba. Jorge Dominguez's article, "U.S.-Cuban Relations in the 1980s, Issues and Policies," tracked the U.S. policy toward Cuba in the context of the Soviet-Cuban military relations. Dominguez described the omnipresent danger of Cold War tensions deteriorating into warfare and the subsequent implications this threat had on U.S. policy-makers' decisions.

In a later article, "U.S.-Cuban Relations: From the Cold War to the Colder War," Dominguez examined the historic pattern of U.S. policy toward Cuba in the context of Cuba's political and economic contraction in the post-Cold War. Dominguez outlined the major changes in Cuba's position after the fall of the Soviet Union, and explored the reasons for a sharp contrast in U.S. policy toward Cuba as opposed to other previous Cold War adversaries. Dominguez presented and discussed various explanations for

post-Cold War U.S. policy toward Cuba, including consideration of the shift in the ideology and power distribution within the international system, as well as domestic politics within Cuba and the United States.

William M. LeoGrande's article, "From Havana to Miami: U.S. Cuba policy as a Two Level Game," expanded upon the post-Cold War state of U.S.-Cuba relations in the model of international affairs as a "two-level game." In so doing, LeoGrande emphasized the dual importance of negotiations between opposing nations' policy-makers, and interaction between these policy-makers and their own domestic constituencies. LeoGrande's article reasons that U.S. policy toward Cuba in the post-Cold War is a result of the combination of a perceived opening to press for the promotion of democracy in the absence of security issues, and the pressure from domestic groups resistant to any normalization of relations with Castro.

### **Demographics of Cuban and Haitian Refugees**

The best information available on the demographic make-up of the Cuban refugee populations was found in the works of Juan Clark, *The Exodus from Revolutionary Cuba (1959-1974): A Sociological Analysis*, and *The Cuban Balseros: Voyage of Uncertainty*. Clark's dissertation on the Cuban exodus examined in detail the socio-demographic background of the escaping Cubans. Clark considered numerous variables, including occupational history, educational status, age, income levels, race and sex. He analyzed the difference among these variables during the different episodes of major flight of Cuban refugees from the revolution in 1959 until the end of the Freedom Flights in 1974. Juan Clark's, *Voyage of Uncertainty*, provided the most recent account of the demographic make-up of Cuban arrivals. Felix Masud-Piloto's, *From Welcome Exiles to Illegal Immigrants*, and Marica Cristina Garcia, *Havana USA* offered insight into the

demographic shift, as well as the introduction of so-called undesirables into the refugee population, beginning with the 1980 Mariel Boatlift.

Marica Cristina Garcia's book, *Havana USA*, provided the best analysis of the domestic influence of the Cuban-American community. The seminal work on the Cuban-American exile community, *Havana USA* detailed the development, successes and shortcomings of the Cuban-American émigré community from the first refugees in the aftermath of the Cuban Revolution to the 1994 exodus. Her work examined the sources of unity within the Cuban-American community, the efforts to preserve a cultural identity, and the emergence of a powerful and sophisticated political lobby. Garcia also drew attention to the areas of discord and disunity within the Cuban-American community regarding exile politics. On the other hand, other writings, such as the Zuckers' *Desperate Crossings* and Loescher and Scanlan's *Calculated Kindness*, revealed an important and often underestimated level of public resistance to Cuban refugees. While many scholars have emphasized the high level of acceptance afforded to Cuban refugees as compared to other refugee groups, *Desperate Crossings* and *Calculated Kindness* provided an account of the scope and implications of local resentment toward the admission and resettlement of Cuban refugees.

In contrast with the more voluminous research on the demographic attributes of Cuban refugees, information on Haitian refugees was less abundant. Most of the available literature reflected only sparingly on the particular characteristics of Haitian arrivals, beyond simple generalizations that most are poor, uneducated and black. Loescher and Scanlan's *Calculated Kindness*, Jocelyn McCalla's *The Haitian Refugee Crisis: Origins Causes and Responses*, and Jake Miller's *The Plight of Haitian Refugees*

combined to provide the best picture possible of the demographic make-up of Haitian refugees. Loescher and Scanlan and McCalla showed that the second major phase of Haitian flight, beginning in 1972, revealed a significant shift in the educational and occupational status compared to the earlier arrivals who were generally welcomed.

Miller's work covered the various aspects contributing to the pattern of Haitian flight, ranging from the political, social, economic, and human-rights conditions. His discussion of the early level of domestic support present in the United States for Haitian asylum seekers was particularly insightful. Miller showed that the problem was not that the Haitian asylum seekers were lacking a domestic support network before the 1990s. There were several organizations dedicated to their advocacy, and multiple successful legal challenges to U.S. refugee procedures perpetuating the pattern of discriminatory treatment toward Haitian refugees; however, as Miller pointed out, these efforts were largely ineffective. The Zuckers explained in *Desperate Crossings*, that the U.S. based support network for Haitian refugees made significant progress in the early 1990s. While various factors were at play in the 1994 Haitian refugee crisis, it is indisputable that the level of domestic advocacy on behalf of the Haitian refugees had an effect on the policy decisions of the Clinton Administration.

### **U.S. Government Response to Cuban and Haitian Refugees**

There is no dearth of literature on the coverage of particular U.S. government responses to both Cuban and Haitian refugees. A number of books and scholarly articles have analyzed the various policy approaches to the arrival of refugees over the past fifty years. Principal among these are Loescher and Scanlan's works, namely, *Calculated Kindness: Refugees and America's Half-Open Door*, and the Zuckers' *Desperate Crossings and Guarded Gates*. Loescher and Scanlan documented the history of U.S.

refugee policy through the Cold War, from the refugee flows in the aftermath of WWII, to the most recent arrivals at the time of the books publication in 1986. While their work addressed all the major influxes of different groups, special attention is dedicated to the Cuban and Haitian refugees. Their work was supported by numerous scholarly articles, including a host of law review articles that are highly critical of the U.S. treatment of Haitian refugees (Miranda 1995; Lennox 1993; Zink 1998; Villiers 1994).

The Zuckers' *Desperate Crossings* took the presentation of U.S. refugee policy into the post-Cold War era. The authors argued that the traditional dominance of foreign policy in the formulation of refugee policy, while still important, will be diminished in the absence of Cold War ideological tension. According to the Zuckers, domestic pressures, both in the form of local resentment and advocacy groups, and the costs of resettlement will increasingly be considered by refugee policy-makers. The Zuckers' position was supported by Kathy Newland's article, "The Impact of US Refugee Policies on US Foreign Policy: A Case of the Tail Wagging the Dog?" Newland took the analysis of the domestic pressure group's effect on the formulation of U.S. refugee policy a step further. Newland argued that governmental efforts to control or prevent refugee flows was no longer guided by foreign policy objectives, but that in fact, the U.S. foreign policy agenda has become increasingly influenced by the threat of new waves of mass refugee arrivals. She contended that, in this scenario, the relative pressure of domestic interests, both supportive of and opposed to a particular refugee group, will play a major role in the response of the U.S. government in its refugee policy and in its foreign policy toward the country from which the refugees are fleeing.

While there was no shortage of analysis of the experiences of Cuban and Haitian refugees during the Cold War, no single study has provided an in depth comparative analysis of Cuban and Haitian refugees. Further, relatively few scholars have covered the developments in U.S. refugee policy regarding these two groups since the end of the Cold War. This work contributes to the existing literature by providing both a legal and political analysis of the changes and stability of U.S. refugee policy toward Cuban and Haitian refugee populations since the end of the Cold War.

### **Structure of the Study**

Chapter 2 provides an overview of the development of both international refugee treaties and domestic U.S. refugee laws, noting important areas of congruence and divergence between the two. This will include a discussion of the sometimes ambiguous and varying interpretations of the refugee concept. Further, Chapter 2 addressed the potential of refugee law and policy to be used as a mechanism for admitting some refugees who do not necessarily qualify as for refugee status, or alternatively, for excluding and deporting others with strong qualifications.

Chapter 3 and 4 describe the various factors that have influenced the formation of U.S. refugee policy toward Cubans and Haitians. The historical relations between the United States and Cuba and Haiti play a key role in the formulation of refugee policy. Similarly, demographic characteristics of the Cuban and Haitian refugee populations, such as race, level of education, occupational skills, wealth and health inevitably affect their respective levels of admission by the United States. To a lesser extent, but still importantly, the size and strength of refugee resettlement communities and other domestic advocacy groups can be influential in the development of refugee policy.

Chapter 3 first reviews the history of foreign relations between the United States and Cuba. Next, this chapter documents the major waves of migration, as well as explores the pertinent attributes, of Cuban refugees to the United States. Chapter 3 also documents the size and influence of the U.S. based Cuban-American community and advocacy groups. Finally, Chapter 3 details the reception and treatment afforded to the Cuban refugees by the U.S. government from 1959 to 2004.

Chapter 4 discusses the various factors which have contributed to the pattern of differential treatment afforded to Haitian refugees by the U.S. government, when compared to Cuban refugees. Chapter 4 first details the nature of U.S.-Haitian governmental relations, with attention to the tolerance by the U.S. government of human rights violations in Haiti. Second, Chapter 4 documents the major waves of migration from Haiti to the United States, noting the particular characteristics of the arriving refugees. Third, Chapter 4 examines the deficit of U.S.-based support for the Haitian refugee community. Finally, Chapter 4 reviews the U.S. government policy toward Haitian refugees since 1957.

Chapters 5 concludes the study with an analysis of the differential treatment of Cuban and Haitian refugees in U.S. refugee policy today and implications for the future of U.S. refugee policy regarding these two groups of refugees.

## CHAPTER 2 DEVELOPMENT OF REFUGEE LAW

### **International Refugee Law**

Throughout the age-old movement of peoples across borders in search of different social, economic and political circumstances, host states have met migrants with both acceptance and rejection. States, as sovereigns, have held the power to control their own borders, choosing either to exclude or to welcome foreigners in the name of protecting of their own nationals (Forsythe 1990: 89). Until relatively recently, states were under no legal obligation to accord special status or treatment to those persons fleeing life-threatening persecution as compared with migrants moving voluntarily. Differential treatment of Cuban and Haitian refugees in U.S. refugee policy has political, legal, social and economic elements. This chapter provides an overview of the development of both international refugee treaties and domestic U.S. refugee laws, noting important areas of congruence and divergence between the two.

### **Principal International Refugee Instruments**

While humans have always fled repression, international treaties established to provide protection to refugees are a distinctly modern concept (Legomsky 2002: 854). In the wake of WWI, the League of Nations' made the first efforts to tackle the problems associated with forced movement of massive numbers of displaced people (Musalo, Moore and Boswell 1997: 19). Later, at the end of World War II, the international community created the first international agency that dealt comprehensively with the legal and political protection of refugees, United Nations High Commissioner for

Refugees (Musalo, Moore and Boswell 1997: 32). The UNHCR has produced two major legal instruments designed to establish the international definition of refugee status and the legal obligations upon states resulting from this status.

### **The 1951 convention**

In 1951, the United Nations adopted the Convention Relating to the Status of Refugees (19 U.S.T. 6259, 189 U.N.T.S. 150, 1951, hereinafter 1951 Convention), paving the way for a universal definition for refugee status and a codification of national obligations toward such refugees (Musalo, Moore and Boswell 1997: 40). After much debate, the Convention refugee definition was established:

“Any person, who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.” (Art. 1, 1951 Convention)

In addition to creating the framework for international refugee status, the Convention established various obligations on states (Art. 3-30, 1951 Convention). Articles 3 through 30 of the Convention required states to provide various protections to refugees within their borders, including nondiscrimination, religious freedom, access to court, and free movement within the country (Art. 3-30, 1951 Convention). Article 31 stated that refugees cannot be penalized for illegally entering a country when they were fleeing a place where “their life or freedom was threatened” (Art. 31, 1951 Convention). Further, Articles 31 and 33 codified the international principle of non-refoulement. Non-refoulement conferred the duty upon states to refrain from returning anyone who was

within the state's borders back to a perilous situation where his or her life or safety would be in jeopardy, whether or not the person qualified as a refugee (Goodwin-Gill 1983).

Though the Convention refugee definition purported to be designed with a humanitarian purpose, the scope of the protections for refugees was actually quite limited and strategically infused with pro-Western political values (Musalo, Moore and Boswell 1997: 34). This definition restricted refugee status, and thus protection, to those persons whose flight was caused by the fear of persecution on grounds of civil or political oppression (Musalo, Moore and Boswell 1997: 35). Geographical and temporal restrictions in the original version of the Convention, namely the focus on pre-1951 events within Europe, exposed a flagrant eurocentric approach (Zucker and Zucker 1996: 34). "Groundbreaking in its time, the convention anticipated neither the wider grounds that today force individuals into flight nor the resistance of many signatories to meet their obligations fully" (Zucker and Zucker 1996: 131).

It is also important to note that, under international law, the rights of refugees are triggered only when a state has granted them asylum (Musalo, Moore and Boswell 1997: 40). The discretionary nature of the Convention regarding refugee admission gave states significant room to afford these protections based on a particular nations' political, ideological and geographical biases (Legomsky 2002: 33-35). Article 1 of the 1951 Convention did not regulate the granting of asylum, nor did it obligate a state to grant asylum to a person who satisfies the definition of a refugee (Art. 1, 1951 Convention). In other words, even if a state determined that an individual satisfied the requirements for refugee status, the state was not under any obligation to accept the individual or provide asylum within its own borders. Thus, while the Convention paved the way for

individuals fleeing their homelands due to a well-founded fear of persecution to obtain refugee status, it allowed potential host countries to lock them out (Zucker and Zucker 1996: 131).

### **The 1967 protocol**

These built-in biases remained unchanged until the 1967 United Nations Protocol Relating to the Status of Refugees (Protocol) expanded the scope of the Convention definition to encompass refugees from anywhere in the world (19 U.S.T. 6223, 606 U.N.T.S. 267, 1967, hereinafter Protocol). Article 1 of the Protocol eliminated the temporal requirements of the Convention which had restricted refugee protection to those refugees who had fled before 1951 (Article 1, Protocol). Similarly, the Protocol removed the geographical requirement that limited refugee protection to Europeans (Article 1, Protocol). Finally, the Protocol got rid of the overt ideological prerequisite that the refugee be fleeing communist persecution (Article 1, Protocol). The net effect of the restrictive language in international refugee doctrine has been that persons fleeing for reasons such as natural disaster, war, or broadly based political and economic crises were essentially precluded from obtaining refugee status (Musalo, Moore and Boswell 1997: 35). Proponents of the expansion of the refugee concept to incorporate persons fleeing a broader range of dangers contend that the international refugee definition needs to be updated.

### **Role of International Law in Domestic Courts**

Before examining the development of U.S. refugee law, it is essential to understand the effect of international treaties and principles on U.S. domestic jurisprudence. Generally, states incorporate international treaties into domestic law in one of two ways: either by automatically adopting the legal obligations imposed by treaty law into

domestic law; or alternatively, by requiring the passing of specific domestic legislation in order for the legal obligations to be enforceable in domestic courts (Zink 1998: 564). The United States approach merges these two models in a unique fashion. While, on the surface, the U.S. Constitution declares that treaties are the supreme law of the land, the doctrine of self-executing treaties provides a significant caveat (Zink 1998: 576). Under this doctrine, a treaty is considered to be the equivalent of domestic legislation unless it is deemed to be non self-executing, in which case it would not create a cause of action in U.S. courts without Congress first expressly adopting the treaty provisions in legislation (Zink 1998: 565). The United States deemed the 1967 Protocol to be non self executing and thus did not consider the legal obligations it pronounced to be binding in domestic U.S. courts without Congress passing independent legislation adopting the treaty provisions (Zink 1998: 577).

### **Development of U.S. Refugee Law**

This country has always served as a lantern in the dark for those who love freedom but are persecuted, in misery, or in need (John F. Kennedy, July 1961 in Masud. Piloto 1996: 44).

Can we doubt that only a divine Providence placed this land, this land of freedom, here as a refuge for all those people in the world who yearn to breathe free? Jews and Christians enduring persecution behind the Iron Curtain, the boat people of Southeast Asia, Cuba, and Haiti (Ronald Reagan, July 1980 in Loescher and Scanlan 1986: 188).

Ronald Reagan's proud declaration of the U.S. position as a beacon of light in a dark night for the persecuted and oppressed of the world certainly resonated in the psyche and hearts of many Americans. Citizens of the United States embrace the notion that their country rests on a rich tradition of openness to those fleeing persecution, regardless of race, nationality, or creed. However, over the years, congress and presidents have found that the U.S. promise of providing a refuge and humanitarian support to the

oppressed was often at odds with various interests. National security, economic, or social concerns, foreign policy, limited resources, and an intolerant and resentful public, have all, at times, caused U.S. policy to deviate from the ideal of being the world's "lantern in the dark for those who love freedom," as President Kennedy phrased it.

While the United States proudly bears the title of a nation of immigrants, a closer look reveals that the history of U.S. refugee policy has been slow to emerge and often subject to nativist and racist opposition to the reception of different groups. While the political, social and economic dimensions have changed over time, the development of U.S. refugee law has consistently been shaped by the struggle between restrictionist groups' desires to keep refugees out, and other advocacy groups' interest in welcoming refugees. During the formative years of the international refugee regime, restrictionist groups objected vociferously to the resettlement of displaced persons (Divine 1957). U.S. statutes in the 1800s, for example, explicitly targeted Asians for exclusion and deportation; after World War I, the imposition of national origins quotas restricted the entry of Southern and Eastern Europeans; and after World War II, thousands of Nazi victims desperately seeking refuge were turned away (Musalo, Moore and Boswell 1997: 62). Before 1948, the United States stood by idly as the international community struggled to address the rising tide of refugees; the United States was not a signatory to any international treaty and had yet to pass any domestic law to aid or admit any group of refugees (Musalo, Moore and Boswell 1997: 64).

### **U.S. Refugee Law: 1948-1980**

Prompted largely by the problem of massive dislocation of people in the wake of World War II, the United States passed the Displaced Persons Act of 1948 (Pub. L. No. 775, 2(b), 62 Stat. 1009, 1948). While some proponents of this legislation cited moral

and humanitarian reasons, others' support for the country's first refugee law was driven by a deliberate ideological strategy aimed at relieving population pressure on European countries that would be critical allies against communism (Divine 1957). The 1948 legislation allowed 400,000 refugees to enter the United States and ended the previous policy which excluded Jewish refugees fleeing anti-Semitism (Legomsky 2002: 858). With the Displaced Person Act, Congress made the first of several legislative attempts to design a national refugee policy; however, this legislation would soon prove unable to comprehensively address the refugee problem. In the following years, the United States continued to modify and adjust its refugee policy, on an ad hoc basis, to manage specific crises, but still did not have a statute generally authorizing the admission of refugees (Churgin 1996: 314).

### **Parole Power and Executive Authority**

With the Refugee Relief Acts of 1953 and 1954, the United States opened its gates to over 200,000 refugees and paved the way for the admission of vast numbers of refugees on an ad hoc basis. With the Immigration and Nationality Act (INA), Congress gave the executive branch the power to parole significant numbers of refugees without having to consider or accept congressional input. Initially intended by Congress to address individual isolated instances of extreme hardship, parole allowed U.S. presidents to provide temporary, discretionary admission to aliens who would have otherwise been excluded by the narrow refugee definition (INA § 212(2), 8 U.S.C.A § 1182). The parole mechanism was significant in that it was a temporary arrangement and thus did not represent an official and permanent entry into the United States. This meant that the parolee's status and safe haven could be terminated at any time (INA § 212(2)(5), 8 U.S.C.A § 1182). In 1956, President Eisenhower's parole of upwards of 40,000

Hungarians was the first major use of the parole power (Loescher and Scanlan 1986: 68). Soon thereafter, President Kennedy followed suit with his parole of several hundred thousand Cubans in the aftermath of the Cuban revolution (Loescher and Scanlan 1986: 68). The granting of parole did not automatically bestow permanent residency on an alien; instead, Congress would have to pass special legislation to adjust a specific groups' immigrant status (Churgin 1996: 314).

These major immigration policy determinations, which had previously required congressional authorization, were suddenly matters of executive power (Loescher and Scanlan 1986: 68). "Most decisions to admit refugees were initiated in the Department of State to meet specific foreign policy concerns approved by the President and then were submitted to key Congressional leaders for rubber-stamp approval" (Loescher and Scanlan 1986: 68). While Congress demonstrated its general approval of the parole system by allowing it to exist for over twenty years, Congress also considered parole to be a barrier to the formulation of a consistent refugee policy and that its original intent had been abused by successive presidential administrations (Anker and Posner 1981: 30-33). Mounting concerns from Congress in the early 1960s, particularly regarding the costs of ad hoc legislation in cases of immigration emergencies, presented the executive branch with the mandate for reform (Loescher and Scanlan 1986: 68).

### **The 1965 Attempts to Reform Domestic Refugee Law**

In 1965, Congress, attempting to assert its right to oversee refugee matters, eliminated the forty year-old National Origins Quota Law and replaced it with an emphasis on the promotion of family unification (Pub. L. 89-236). With the 1965 amendments, Congress provided permanent statutory basis for the admission of refugees fleeing persecution from a "Communist-dominated" country (Pub. L. 89-236, §3, 79 Stat.

911, 913 1965). U.S. presidents disregarded the congressional attempt to limit the executive branch's ability to use the parole power and continued to parole refugees. The flaws inherent in the 1965 amendments became rapidly apparent. The statutory allotment for refugees fleeing "Communist-dominated" countries was deemed insufficient at 6% of the total immigration slots. Moreover, the legislation's overt ideological bias toward refugees fleeing Communist-dominated countries soon became incompatible with the principles exposed by the United Nations' 1967 Protocol, to which the United States would become a signatory three years later (Legomsky 2002: 861).

As a signatory to the 1967 Protocol, the United States assumed various obligations for the protection of refugees. Ostensibly, acts such as the forcible return of a refugee, and ideologically biased admission policies, would not only thwart carefully crafted international agreements, but would also be direct violations of U.S. domestic law. While this would appear to have established a neutral and reliable refugee policy, recent history has shown that the protective legal mechanisms have been repeatedly ignored (Fitzpatrick 1997: 11). The United States considered the 1967 Protocol to be a non self executing treaty and, consequently, any violations of the principles of the treaty were not enforceable in the courts of the United States without domestic legislation specifically incorporating the treaty (Zink 1998: 577). Thus, the paramount determination of the granting of refugee status, and oversight of the admission process, remained exclusively within the domain of United States law.

The net effect of this caveat regarding refugee protection was that the United States could sidestep humanitarian safeguards within refugee law and grant asylum based on strategic political interests. The reasons why the United States acceded to the protocol

were not obvious and most likely primarily symbolic, as a sign of good faith in the United Nations' humanitarian focus (Loescher and Scanlan 1986: 83). "Certainly the Department of State, in its testimony advocating ratification of the protocol, believed that nothing in it would significantly alter the nation's obligations to refugees or require any changes in U.S. administrative practice" (Loescher and Scanlan 83). While President Johnson stated that the Protocol was a refugee's "Bill of Rights," the sincerity of the U.S. commitment under the 1967 Protocol seems to have been less than compelling (Loescher and Scanlan 1986: 83). "It is sobering to gauge how frequently U.S. refugee law is at odds with international norms, even when international standard is clear and preemptory" (Fitzpatrick 1997: 25).

Despite the 1965 reforms and the accession to the Protocol, between 1967 and 1980 U.S. presidents continued to use the parole power to selectively admit hundreds of thousands of refugees from Cuba, Indochina, and other zones of Soviet influence; while at the same time the U.S. excluded untold numbers of others fleeing areas not under communist control, such as Haiti (Legomsky 2002: 861). As the parole process persisted in facilitating the admission of large numbers of people based explicitly on ideological biases, it became progressively more controversial, and in large part triggered the formation of the most important and comprehensive reform of refugee law in U.S. history.

### **Refugee Act of 1980**

In an attempt to assert control of the management of refugee matters, Congress passed what became the principal U.S. refugee legislation, the Refugee Act of 1980 (Refugee Act) (Pub. L. No. 96-212, 94 Stat. 102). By formally adopting the United Nations Protocol, replacing prior ideological preferences with a neutral system of refugee

selection, and crafting a congressional role in the refugee process, the Refugee Act appeared to be a monumental change to the political and legal elements of refugee policy.

The Refugee Act set out to establish a uniform and unbiased standard for the admission of refugees. Hailed as "one of the most important pieces of humanitarian legislation ever enacted by a U.S. Congress" (Bockley 1995: 271), the Refugee Act took aim at the old geopolitically and ideologically biased refugee definition, as well as the practice of executive discretion in the refugee admission process (Tyson 1990: 921). With the Refugee Act, Congress modeled the statutory definition of refugee status after the United Nations 1967 Protocol: any person who is outside any country of such person's nationality . . . who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion (8 U.S.C.A. § 1158; 102; Pingeton 1999: 333).

Congress also endeavored to substantially diminish the use of the parole authority. Accordingly, the Refugee Act established two channels for admission of refugees, annual resettlement quotas and emergency procedures (Bockley 1995). Under the Refugee Act, the "normal flow" of refugee admissions each year, which also specified the allocation of refugee numbers for particular countries, was allocated by executive determination (Pub. L. No. 96-212, 94 Stat. 102). However, importantly, the legislation required that the president consult with Congress before making the determination of the numerical limit to be placed on refugee admissions (Pub. L. No. 96-212; Bockley 1995: 862).

The second component of the Refugee Act supplemented the “normal flow” of refugees with provisions for emergency parole. However, the parole provisions contained in the Refugee Act contrasted sharply with those which had been abused by presidential administrations for several decades. Congress restrained the prior excesses of parole authority by designing a flexible emergency admissions procedure that restricted parole to situations where “compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee” (Pub. L. No. 96-212, 94 Stat. 102, now INA § 207(d), 8 U.S.C.A. § 1157; Bockley 1995: 282). Section 212(d)(5)(B) of the INA, 8 U.S.C.A. 1182, further states that the Attorney General may not parole a refugee into the United States, “unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee” (INA § 212(d)(5)(B), 8 U.S.C.A. § 1182). Thus, current immigration statutes provide that the use of the parole power rarely be employed to admit refugees; however, Presidents could effectively parole in aliens, who would otherwise be deemed a refugee, under another immigrant status.

These and other significant modifications to the nation’s refugee policy were designed with the assumption that the basic make-up of the refugee population flows would not change significantly. Thus, despite the humanitarian undertones of the Refugee Act, the legislation was designed to respond to the basic refugee formula of the preceding decades. Two changes in the refugee arena, however, would prove to present major challenges to the Refugee Act’s capacity to manage the nation’s refugee process. First, policymakers had no way of anticipating that the previous pattern of individual

refugee applicants would be eclipsed by the phenomenon of mass flight. Similarly, while the main origins of refugees and the causes of their flight had previously originated in distant continents, U.S. policy makers soon found themselves confronted with the predicament of refugee groups arriving from countries close by. This potent combination of proximity and volume would prove to generate enormous troubles for the policy makers who would inherit the Refugee Act as the basis of the nation's refugee policy.

Another contribution of the Refugee Act was the codification of a distinction between the concepts of refugee status and political asylum. Before 1980, there was no legal distinction in international or U.S. refugee law between those aliens who sought refugee status while abroad, compared with those who had already reached the boundaries of the United States. "The UN convention and the 1967 protocol clearly state that refugees be outside their country of origin, yet the vast majority of refugees received by the United States have come not from refugee camps or countries of first asylum, but directly to the United States" (Zucker and Zucker 1996: 43). The Refugee Act marked a turning point in U.S. refugee law by creating a legal distinction between those aliens who were outside of the United States seeking admission, refugees, and those who had already entered the United States and sought to remain and attain legal status, political asylee (Pub. L. No. 96-212, 94 Stat. 102). In contrast with earlier patterns of refugee movement, beginning in the 1970s the United States experienced an increase in the numbers of aliens who had independently reached the U.S. border seeking asylum (Zucker and Zucker 1996).

### **Influence of Foreign Policy in Refugee Selection**

The chief differentiating factor between a refugee and an asylee is determined by the alien's physical location at the time they request asylum. While substantively alike,

the methods by which the foreign policy bias touches the two are different. As opposed to aliens seeking asylum in the United States, applicants for refugee status while abroad needs to be of “special humanitarian concern” to the United States, essentially that they are from a geographical region or priority group (8 U.S.C.A. §1157). The ability of the U.S. government to restrict the granting of refugee status to only those aliens considered to be of “special humanitarian concern” has kept the refugee process open to the infusion particular ideological preferences for or against aliens fleeing certain geographical regions or particular governmental systems. Conversely, while asylum seekers, already present in the United States, do not need to establish that they are of “special humanitarian concern,” interference by the State Department ensures that they are equally subject to the foreign policy bias (Preston 1986: 115).

### **State Department Advisory Opinion**

Once in the United States, there are two primary avenues for an alien to request political asylum: he or she can either apply for asylum via 8 U.S.C.A. §1158(a), or, in the event that deportation proceedings have been initiated, he or she can request withholding of deportation under section 8 C.F.R. §241(b)(3) (Preston 1986). If the alien is applying under INA §208(a), their claim of having a well-founded fear of persecution is subject to review of the immigration officials’ determinations by the U.S. government via the State Department advisory opinion (8 U.S.C.A. §1158(a); Preston 1986: 115).

Documentation relating to an asylum seeker’s claim of persecution is undoubtedly a crucial factor in an immigration judges’ determination as to whether the applicant’s fear is well-founded and substantiated. Advisory opinions have been the predominant resource utilized by immigration judges for information into the human-rights conditions of a particular country. Proponents of the use of advisory opinions point out that these

opinions perform an indispensable function in the asylum application process. On the other hand, critics aver that the absence of any mechanism to ensure the fundamental fairness of how the country information is used, and the level of deference given by immigration judges to advisory opinions, raises serious problems to the integrity of the refugee selection process (Kerns 2000).

Under current legal doctrine, section 208(a) vests the authority to grant asylum to a refugee already physically present in the United States to the Attorney General (8 U.S.C.A. § 1158). The Attorney General then delegates this authority to the United States Citizenship and Immigration Service, USCIS, under the Department of Homeland Security (previously the Immigration and Naturalization Service, INS) to regulate the legislative mandate (Preston 1986: 107). The process begins with the alien submitting an application to the INS district director who is charged with making the determination as to whether the applicant has established a well-founded fear of persecution (Preston 1986: 108).

The INS district director forwards the application to the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the State Department for advisory review (Preston 1986: 108). This review is first conducted on an individual basis by the Office of Asylum Affairs of the BHRHA, before being directed to the country desk officer who may take an additional step of requesting an opinion from either the Office of the Legal Advisor or from the particular U.S. Embassy in the applicant's home country (Preston 1986: 108). At this point, the asylum officer in the Office of Asylum Affairs of BHRHA and the desk officer in the Department reach an agreement regarding the proposed recommendation to the INS (Preston 1986: 108). This recommendation from the

advisory opinion is then reviewed by the Director of the Office of Asylum Affairs in BHRHA, and occasionally by the geographic officer in BHRHA or the Deputy Assistant Secretary for Asylum and Humanitarian Affairs (Preston 1986: 108).

The role of the advisory opinion in the asylum application process has been and remains a contested issue. Some observers claim that the advisory opinion is the main access point for the infusion of the political bias that Congress intended to root out in the Refugee Act (Cooper 1988). These critics of the advisory opinion contend that the deference given to the State Department regarding foreign policy and international affairs disrupts the integrity of the refugee selection process, rendering it highly permeable to the political persuasions of the current presidential administration (Cooper 1988). Some scholars assert that there is a presumption of persecution for certain nationalities resulting in differing levels of proof required to obtain asylum. According to this argument, certain nationalities, for example persons from Haiti or El Salvador need to have a “classic textbook case” in order to pass the scrutiny of the State Department advisory opinion; while other nationalities, Cubans or Nicaraguans for example, are afforded asylum despite their inability to meet even the minimal requirements of a well-founded fear of persecution (Cooper 1988: 933). “The asylum apparatus has the body of a border patrol officer and the mind of a foreign policy bureaucrat” (Fitzpatrick and Pauw 1992: 768).

Of particular concern to the critics of the advisory opinion function is the potent combination of, (1) under trained and unsophisticated immigration officials charged with making crucial asylum decisions and (2) the high degree of deference afforded to the advisory opinions handed down by the State Department (Loescher and Scanlan 1986:

82). “Congressional hearings held in 1975 and 1976 demonstrated that untrained American immigration officials systematically denied Haitian asylum seekers any meaningful opportunity to present their claims or to receive individualized evaluation of their purported fear of persecution” (Loescher and Scanlan 1986: 82).

Alternatively, some commentators have maintained that the advisory opinion is an indispensable element in the asylum adjudication process. This approach argues that only the State Department has the requisite expertise and sophistication in the arena of international affairs and politics, which INS officials and immigration judges lack (Preston 1986: 113). According to this view, “It would be unreasonable to expect these officials to keep abreast of human-rights conditions in foreign countries so that they, independently, can make informed decisions on the merits of individual claims for asylum” (Preston 1986: 112). Additionally, these commentators asserted that the State Department alone had access to the resources and country specific information necessary to confirm allegations of persecution. Thus, rather than an intrusion of foreign policy bias, the State Department advisory opinion were considered to be the essential element in verifying the accuracy and legitimacy of asylum applications, without which numerous genuine applications would be denied while spurious claims were accepted.

### **Summary**

Chapter 2 laid out the development of international and U.S. refugee law. It details the particular requirements necessary to obtain refugee status, as well as the change in refugee law from the original ideological and geographical limitations to a neutral system supposedly based on humanitarian principles. Importantly, this chapter illustrated that these principles of refugee law are often circumvented, through the use of the parole power, for political purposes. This divergence between the espoused legal principles of

refugee law and the actual reception and treatment afforded by the U.S. government has serious implications in an analysis of the particular experience of Haitian and Cuban refugees in their pursuit to find sanctuary in the United States. As showed in the following chapters, while the eligibility of most Cuban and Haitian refugees over the past fifty years for refugee status and protection would appear to be very similar, their reception at the hands of the U.S. government has been extremely inconsistent.

CHAPTER 3  
CHARACTERISTICS OF CUBAN REFUGEES AND THEIR RECEPTION AND  
TREATMENT IN THE UNITED STATES

**Introduction**

In order to understand fully the dynamics of a differential U.S. refugee policy toward Cuban and Haitian refugees, it is important to consider three main factors that influence the formulation of U.S. refugee policy. The first, and most important, factor is the foreign policy bias based on the United States' relationship with the governments of the countries from which the refugees fled. Second, the demographic characteristics of these two populations have affected their respective levels of admission by the United States. Third, pressure from U.S.-based interests groups, vying for support of or resistance to the reception of refugee groups, has also been a factor in the ultimate treatment of a refugee group at the hands of the U.S. government. These three factors form the basis for understanding the formulation of greatly differing refugee policies toward Cuban and Haitian refugee groups whose qualifications under refugee law are very comparable.

This chapter first discusses the nature of U.S.-Cuban governmental relations, with special attention to the ideological conflict that gripped the two countries since the triumph of the Cuban Revolution. Second, this chapter documents the major waves of migration from Cuba to the United States, noting the particular attributes of the arriving refugees. Next, this chapter details the emergence of the U.S.-based support network for the Cuban émigré community. Finally, this chapter documents the reception and

treatment of Cuban refugees by the U.S. government since 1959. Chapter 4 will provide the same examination of the experience of Haitian refugees in the United States.

Chapters 5 will compare and analyze the respective treatment of Cuban and Haitian refugees presented in Chapters 3 and 4.

### **United States Relations with Cuba**

Soon after the success of the Cuban Revolution in 1959, the U.S. and Cuban governments became entangled in a long conflict, complete with animosity, mistrust and confrontation (Masud-Piloto 1996: 23). Not long after consolidating his authority over Cuba, Castro began to indicate communist leanings and to assert a perception of future U.S.-Cuban relations, which, predictably, differed with the viewpoint of the U.S. government (Masud-Piloto 1996: 22). “Washington wanted Castro to accept United States leadership in the Western Hemisphere, staff his government with people of moderate views, reinstitute civil liberties, and proceed gradually with land reform, compensating American property interests at the prices they asked” (Alexander 1975 in Masud-Piloto 1996: 22). Above all else, U.S. nervousness with Cuba’s new government hinged on the ideological orientation of Castro.

After the United States’ initial recognition of the new Cuban government in 1959, bilateral relations quickly disintegrated when Castro’s regime brazenly expropriated U.S. property and hinted at the birth of a Marxist-Leninist governmental model just 90 miles off the shores of Florida (Masud-Piloto 1996). Not surprisingly, Castro’s actions won the enmity of the U.S. government and ignited hatred in Cuban exiles. In retaliation for Castro’s policies and his refusal to be submissive to Washington, the United States launched a series of measures, signaling the beginning of the end of diplomatic relations: an economic and arms embargo, termination of trade in sugar and oil, initiation of a

covert operation to train a force of Cuban exiles (Masud-Piloto 1996: 26). These foreign policy maneuvers on the part of the United States were designed to achieve the primary objective of isolating Cuba both economically and politically.

For the duration of the Cold War, U.S.-Cuban relations remained frozen and, at times, openly antagonistic, even while the United States was able to maintain workable relations with various other communist nations (Dominguez 1997: 50). Two events in the early 1960s, the Bay of Pigs invasion in April 1961 and the Cuban Missile crisis of October 1962, began a pattern of hostile encounters between successive U.S. presidential administrations and the Cuban government. Notable among these were U.S. efforts to counter Cuban interventions and adventurism in Africa and Latin America (Dominguez 1997). President Nixon dealt with the possible use of Cienfuegos, Cuba, as a base for Soviet submarines; President Ford grappled with the Cuban intervention in Angola, which ended the ongoing normalization talks of the 1970s; President Carter wrestled with Cuban presence in Ethiopia; President Reagan threatened an invasion and engaged in direct hostilities at nearby Grenada (Dominguez 1985: 17).

With the fall of the Berlin Wall, U.S. policy toward the former Soviet Union, China, Germany, and Vietnam shifted; yet the U.S. Cuba policy remained entrenched in the Cold War mindset (Hernandez-Truyol 1994) “For the State Department, the Cold War might be over in Europe, but at our doorstep, Cuba remained a mocking nemesis” (Zucker and Zucker 1996: 121). For the U.S. policy toward Cuba, the immediate security threat and preoccupation with the containment of Cuban Communism faded from the top of the priority list (Leogrande 1998: 73). Rather than making efforts to normalize relations with the Cuban government and create economic ties, the United States set the

promotion of democracy in Cuba at the top of its agenda (Leogrande 1998: 73). Thus, despite an international environment ripe for change and normalization of relations, the Cuban and U.S. governments continued to be entangled in a tense and bitter conflict.

With the collapse of the Soviet Union, Cuba experienced a severe contraction in its economy and almost immediate political isolation (Leogrande 1998: 73). As Cuba scrambled to adapt to the new political environment in the post-Cold War, the United States moved to tighten rather than ease the sanctions against Cuba. “As the weaker country adjusted, the stronger one expanded its intrusive ambitions beyond shaping international behavior toward determining the structure of domestic politics” (Dominguez 1997: 60). Although indicators revealed that Cuba was ceasing revolutionary initiatives abroad, improving its record on human-rights violations, and no longer shared economic or ideological ties or with the Soviet Union, the United States did not view the situation as a propitious moment to relax economic sanctions or political hostility (Smith 1998). “The U.S. hostility toward the Cuban government heightened as the Cold War came to an end and precisely when Cuba ceased to pose a security threat to most U.S. interests” (Dominguez 1997: 55). Stubbornly committed to regime change in Cuba, the U.S. government left no uncertainty about its policy as stated on the U.S. State Department website in May 2001:

“The fundamental goal of United States policy toward Cuba is to promote a peaceful transition to a stable, democratic form of government and respect for human rights. Our policy has two fundamental components: maintaining pressure on the Cuban Government for change through the embargo and the Libertad Act while providing humanitarian assistance to the Cuban people, and working to aid the development of civil society in the country” (U.S. State Department website 2001).

Several important events in the 1990s, including two bills in the U.S. Congress tightening economic sanctions against Cuba, a major migration crisis, and various other

confrontations between the two nations ensured that the continuing animosity would persist well after the end of the Cold War. While the strict U.S. policy on Cuba has failed to achieve regime change in Cuba, there is little evidence that Castro's grip on power has been diminished as the result of U.S. sanctions, and the relations between the nations remain hostile and tense.

### **Characteristics of the Major Phases of Flight of Cuban Refugees**

The analysis of the pattern of differential treatment received by the Cuban and Haitian refugee populations upon arrival in the United States is incomplete without an overview of the particular characteristics of the two refugee populations, when they came, and the influence of the political considerations upon their reception. Inevitably, documentation of the numbers of refugees, especially those who arrived without being screened, is hard to calculate with certainty. This section documents the best data available regarding the major periods of flight from Cuba and the particular policies and treatment they encountered upon arrival in the United States. The exodus of Cuban refugees has occurred in four major phases of flight from the island. The first phase began with the triumph of the Cuban Revolution until 1962. The next phase, commonly referred to as the "Freedom Flights" ran from 1965 to 1973. In 1980, the Mariel boatlift became the third major episode of mass flight from Cuba. Finally, in 1994, the fourth and most recent phase of mass flight from Cuba occurred.

### **Arrival of Cuban Refugees from 1959 to 1962**

In an event unparalleled in Cuban history, the overthrow of Cuban dictator Fulgencio Batista in 1959 set in motion a cycle of flight from Cuba to the United States that would become a significant phenomenon for the next fifty years (Loescher and Scanlan 1986: 61). Previously, whether at the hands of repressive colonial rule or a

series of dictators, flight from Cuba occurred on a much smaller scale (Juan Clark 1975:46). As the political and economic standoff between Cuba and the United States intensified during the first years of Castro's rule, thousands of disaffected Cubans began to leave the island in search of what was expected to be temporary escape from the crisis (Garcia 1996: 13-15). By measure of the volume of Cuban refugees, their method of departure, and the open access to the United States they received, the first wave of the post-Batista Cuban exodus was unprecedented (Clark 1975: 76). Between 1959 and 1962, roughly a quarter of a million Cubans left their homeland and fled to the United States (Garcia 1996: 13; Clark 1975: 74-75), arriving with ideological and political grievances congruent with the foreign policy agenda of the U.S. government (Garcia. Quinones 2002).

The overwhelming majority of the initial Cuban refugees to flee were persons with connections to the ousted Batista regime who were fleeing reprisals (Garcia 1996: 13). On the heels of those associated with the fallen dictatorship were fleeing Cubans who were predominantly represented by highly educated professional and semi-professional persons with the means to exit (McCoy and Gonzalez 1985: 15). These first refugees were soon followed by other groups negatively affected by the installation of Castro's government who fled for reasons of political persecution, rapidly deteriorating economic factors, the evaporation of a host of civil liberties, and other policies of revolutionary Cuba (Clark 1975: 77).

For the obvious reasons of proximity and a quickly established exile community support network, south Florida became the principal location for the settlement of Cuban refugees. During this first period of flight, Cubans had the opportunity of commercial

transportation, consisting of multiple daily airline flights from Havana to Miami, and of an American-based ferry traveling between Cuba and Florida (Clark 1975: 79). In contrast with pre-1959 policies that only required a passport for legal departure, Cubans fleeing revolutionary Cuba encountered a proliferation of requirements to leave the country (Clark 1975: 79).

After the failure of the Bay of Pigs expedition, the number of Cubans able to leave was considerably reduced, due to tightening of the exit process, the disruption of U.S. government reception programs, and the discontinuation of direct commercial transportation between the countries (Clark 1975: 82). Except for an escalation of illegal departures in the face of exit controls, the Cuban exodus slowed a great deal in the aftermath of the Cuban Missile Crisis (Clark 1975: 83). Between 1962 and 1965, approximately 56,000 Cubans found refuge in the United States, most of whom came via Mexico and Spain, due to the bar on direct transport to the United States; however, many also came secretly on rafts and inner tubes (Masud-Piloto 1996).

### **Arrival of Cuban Refugees from 1965 to 1973**

After a three-year lull, the Cuban exodus resumed on September 28, 1965, when Castro surprisingly announced the commencement of a policy to permit the departure of discontented Cubans who had relatives living in the United States (Masud-Piloto 1996: 57). Castro's offer to allow U.S. based Cuban dissidents to pick up relatives was officially accepted by the Johnson Administration, initiating the second major wave of the Cuban exodus, commonly referred to as the Freedom Flights (Clark 1975: 85). The seven year Freedom Flight phase began with the Castro government's opening of the port of Camarioca for exit by boat. From October 1965 to March 1972, approximately 277,242 Cubans took advantage of the Cuban government's new liberal policy on

emigration (Masud-Piloto 1996: 59-61). The motives for this change in Cuban emigration policy are less than clear. Scholars point to various possible explanations for this policy shift: international embarrassment over the number of boat escapes; the need to relieve mounting internal grievances among dissidents; and creating an immigration emergency for the United States (Clark 1975: 85).

Whatever the motives, the six-year wave of emigration that followed created major problems for both the Cuban and U.S. governments, with each blaming the other for the migration crisis. The flood of Cubans rushing to take advantage of this opportunity was tremendous, while relatives based in the United States hurried to get the boats needed to secure their loved ones awaiting departure in Cuba (Clark 1975: 80). The boatlift proceeded smoothly for the first few months, in which time nearly 5,000 refugees arrived in Florida (Masud-Piloto 1996: 61). However, dangerous weather and other complications soon led to an early cancellation of the boatlift and the launch of the formally agreed upon airlift.

During the Freedom Flights, the demographic characteristics of fleeing Cubans began to resemble the basic make-up of Cuban society. The first arrivals during the Freedom Flights were over represented by professionals who left despite exit regulations and other bars against their departure (McCoy and Gonzalez 1985: 17). However, as the Freedom Flights continued, the percentage of professionals and skilled workers diminished as larger numbers of young adult males and persons from semi-skilled and extractive occupations arrived (McCoy and Gonzalez 1985: 15). “By the end of the Freedom Flights in 1973, skilled, clerical and sales occupations surpassed other occupational categories among refugee arrivals” (McCoy and Gonzalez 1985: 17). This

trend of increased arrivals from across the socioeconomic spectrum would continue until the end of the airlift 1974 (McCoy and Gonzalez 1985: 17). In contrast with earlier groups, Cubans arriving after 1974 were primarily from the Cuban working class, with less education, whose flight was in large part induced by economic motives (McCoy and Gonzalez 1985: 17). Similarly, the racial make-up of Cuban refugees began to change during the 1970s. “Analyses of 1959-79 Cuban migration show that the overwhelming proportion of refugees were white. In fact, until 1974 there was no evidence of a trend toward increased proportions of blacks and mulattos among the arrivals” (McCoy and Gonzalez 1985: 17).

As criticism of the freedom flights increased and Congress discussed the cancellation of funds for the airlift, in 1973, Castro unilaterally terminated the airlift (Loescher and Scanlan 1986: 78). Despite the termination of the airlift, Cubans continued to flee the island by way of makeshift boats and third country arrivals in a fashion similar to the departures at the end of direct transportation after the Missile Crisis (McCoy and Gonzalez 1985: 18). Estimates of the number of refugees fleeing Cuba from the end of the airlifts until the Mariel boatlift are imprecise; however, it is clear that Cuban nullification of exit applications and restraints on illegal departures caused a considerable reduction in numbers of refugees (McCoy and Gonzalez 1985: 18). There was a shift in the demographic make up of the next wave of Cuban refugees after the termination of the airlift (McCoy and Gonzalez 1985: 17).

### **Arrival of Cuban Refugees during the “Mariel Boatlift” of 1980**

In the final years of the 1970s, the prospects for an improvement in U.S.-Cuba relations were encouraging. President Carter began his administration with a better relationship with Castro than any previous president. In October, 1978, Castro

unexpectedly released an estimated 10,000 to 14,000 political prisoners in October of 1978, and then allowed 100,000 U.S.-based Cuban refugees to visit relatives in Cuba (McCoy and Gonzalez 1985: 18). However, any suggestion of normalization in relations or a permanent immigration accord quickly vanished by April, 1980. In the wake of an internationally embarrassing situation where 10,000 Cubans crammed into the Peruvian Embassy in Havana, Castro unexpectedly announced that the port of Mariel would be open to those locked in the Peruvian Embassy, and all other Cubans wanting to leave (McCoy and Gonzalez 1985: 19).

Over 6,000 Cubans departed from Mariel Harbor in the first week of the boatlift; followed by an average of 3,000 people per day throughout the next month (Masud-Piloto 1996: 83). In just five months, U.S. based Cuban refugees succeeded in bringing 125,000 people to the United States from Mariel Harbor (McCoy and Gonzalez 1985: 19). Despite President Carter's humanitarian intentions, it quickly became obvious that his administration greatly underestimated the magnitude of the boatlift and the ensuing domestic social and political backlash.

The shift in demographic characteristics that began in the late 1970s became even more magnified during the Mariel boatlift in 1980. "The Cubans of Mariel were substantially different from those who arrived during the 1960s. They were about ten years younger, averaging thirty years of age" (Garcia 1996: 68). Another salient difference was the increased amount of nonwhite refugees. The Mariel Cubans were made up of 15 to 40 percent black and mulattos, as compared to approximately 3% from the earlier arrivals (Garcia 1996: 68). Primarily from the working-class, Mariel Cubans were similar to the refugees of the earlier freedom flights when it came to occupational

history. “They were predominantly craft workers and factory operators, or professional and technical workers” (Garcia 1996: 68). Beyond these general socio-demographic characteristics, there was also a glaring subtext regarding the background and character of the Mariel Cubans.

This new influx of Cubans received an extremely different response in comparison to their countrymen who had arrived before them. While both the U.S. government and the Cuban-American community made tremendous efforts to resettle and provide assistance to the waves of new arrivals, the Mariel Cubans became stigmatized with the label of political and social undesirables. Reports and rumors about Castro opening the sanitariums and prisons fueled further criticism among public opinion that Miami was being flooded with criminals and undesirables (McCoy and Gonzalez 1985: 19). Castro himself labeled the emigrants as “anti-socials,” “scum,” and “crazies,” while the Cuban government considered homosexuality, prostitution and criminality as acceptable reasons for leaving (Masud-Piloto 1996: 100).

The U.S. government supported this condemnation of the refugee population, stating that the Cubans “have admitted to committing, in Cuba, over fifty murders, over twenty rapes, over thirty arsons, over six hundred robberies and thefts and numerous other crimes” (Masud-Piloto 1996: 102). Further, research shows that 16 percent of the refugee population above fourteen years old had been imprisoned in Cuba (McCoy and Gonzalez 1985: 29). While there is debate as to the extent of the criminality of Mariel Cubans, it is clear that this perception tainted the new arrivals and inflamed the growing resentment among the local U.S. population concerned with the economic and housing strains caused by the refugees.

In an attempt to manage the migration crisis, Carter moved to institute restrictions on those Cubans admitted, reserving priority for several groups and ordering the denial of all others (Zucker and Zucker 1996: 54). “We are ready to start an airlift and a sealift for those screened and qualified people to come to our country and for no other escapees from Cuba” (Zucker and Zucker 1996: 54). The INS and Coast Guard issued warnings that anyone assisting the Cubans would face a \$1,000 dollar fine and have their boats confiscated (McCoy and Gonzalez 1985: 19). Further, Carter proposed an orderly departure program which aimed at regulating the screening and processing of refugees (Zucker and Zucker 1996: 54).

However, in order to succeed, Carter needed the cooperation of the Cuban government, which was not forthcoming, and thus the massive influx of Cubans continued to proceed in an uncontrolled manner (Zucker and Zucker 1996: 54). As thousands of the Cubans swarmed south Florida, Carter declared a state of emergency, placing thousands in resettlement camps (tent cities) or in detention for future deportation (McCoy and Gonzalez 1985: 19). Despite U.S. government efforts, the Cubans continued to arrive until September 26, 1980, when Castro finally closed Mariel Harbor (Zucker and Zucker 1996: 58).

### **Arrival of Cuban Refugees in the Post-Cold War Period**

Despite fundamental changes to the U.S. foreign policy agenda with the end of the Cold War, U.S.-Cuban relations remained hostile and the United States initially continued its historic pattern of open encouragement for Cubans fleeing Castro (Masud-Piloto 1996: 138). In the early 1990s, popular discontent and a severe economic crisis in Cuba exacerbated an already tenuous domestic situation, and sparked an increase of illegal departures (Masud-Piloto 1996: 138). Angered by the U.S. policy toward Cuban

refugees, Castro accused the United States of violating a 1984 immigration agreement by issuing only 11,222 visas, 7.1 percent of an agreed to 160,000 visas, while at the same time admitting a greater number, 13,275, Cuban refugees who had arrived illegally (Masud-Piloto 1996: 134). As incidents of boat hijackings, forcible entry into foreign embassies, riots and other domestic disturbances increased in Cuba, Castro issued the United States an ultimatum: establish mechanisms to discourage illegal emigration, or face another Mariel boatlift (Masud-Piloto 1996: 137).

After the Mariel boatlift, there had not been any significant increase of Cuban arrivals to the United States until approximately 45,575 came between 1991 and 1994 (Clark 1994). While in 1989 and 1990, the numbers of Cubans departing Cuba for the United States were 391 and 467 respectively, worsening country conditions precipitated another significant increase in illegal departures (Zucker and Zucker 1996: 121). Over the following four years the number of illegal departures grew steadily, from 2,203 in 1991, 2,608 in 1992, 3,881 in 1993 and 5,779 in the first seven months of 1994 (Zucker and Zucker 1996: 121). By 1994, the issue of Cuban migration had swelled to crisis proportions, with thousands of Cubans arriving on the coast of Florida in makeshift rafts, called “balsas” (Masud-Piloto 1996: 138). In August, 1994, “it was estimated that at least 25,000 “balseros” (rafters), traveling on anything that floated, had headed north from the port town of Cojimar, Cuba” (Masud-Piloto 1996: 139).

The Cubans entering in 1994 were younger than any other group of Cubans refugees to date, including more women and children. The percentage of nonwhite Cuban refugees arriving also exceeded earlier rates. Further, these latest arrivals were highly educated relative to their predecessors in most earlier phases, and the majority was

employed in skilled, technical, and unskilled occupations in Cuba (Ackerman et al. 1995: 25). It was clear that another exodus of Mariel proportions, or possibly greater, was underway.

Desperate to avoid another Mariel, the Clinton Administration made the unprecedented move of instituting a policy of interdiction and indefinite detention at the U.S. naval base as at Guantanamo, Cuba (Masud-Piloto 1996: 140). With this move, and with further collaboration with the Cuban government, the 1994 migration crisis was contained and another Mariel was avoided. This phase of the Cuban exodus was complete; however, similar to the previous phases, the flow was not completely sealed; Cubans continued to arrive on Florida's shores, albeit in fewer numbers. "Following 1994 legal Cuban migration flows tend to stabilize, as did restrictions to illegal entries through the coast" (Garcia-Quinones 2002)

There is disagreement over the accuracy of estimates of the numbers of Cubans interdicted en route or admitted upon arrival in the United States since the 1994 crisis. According to Rolando Garcia-Quinones (2002), "From 1994 up to the mid-2000 a total of 7,500 Cubans arrived in the U.S., including those who were intercepted by the U.S. Coastguard and returned to Cuba under the Migration Agreements." However, U.S. Coast Guard records indicate that approximately 7,921 Cubans alone were interdicted at sea between 1995 and 2003 (U.S. Coast Guard 2004). Further, records from the U.S. Bureau of Population, Refugees, and Migration indicate that approximately 24,176 Cubans refugees were admitted into the United States between 1995 and 2002 (U.S. Bureau of Population, Refugees, and Migration 2004).

### **U.S.-Based Domestic Support for Cuban Refugees**

Perhaps more than any other émigré community, the Cuban-American community established a powerful political lobby with a substantial financial base capable of directly affecting the decisions of policy-makers in the U.S. government. Since the first Cuban refugees arrived in the wake of the Cuban revolution, the Cuban émigré community has achieved a delicate balance between preserving and protecting their cultural identity as Cubans, their “Cubanidad,” while at the same time successfully assimilating into the U.S. business, legal and political communities. There are various factors which contributed to the emergence and effectiveness of the Cuban-American community.

During the Cold War, the Cuban-American community advanced to become a powerful political force, fueled by a collective animus toward Castro and strengthened by cohesion and cooperation within its own community. While significant disagreement existed among Cuban exiles over the right approach to dealing with Castro and what should occur in a post-Castro Cuba, the common denominator was a profoundly anti-Castro stance. Ultimately, despite the existence of resentment among the local U.S. population and the costs of resettlement, the Cuban-American community capitalized on the congruence between its own zealous opposition to Castro and the U.S. anti-communism Cold War policy (Garcia 1996: 121).

Cuban Americans became their own strongest advocates. With substantial resettlement support from the U.S. government, combined with their own education and employment skills, the Cuban refugees vigorously pursued business and political avenues to establish a strong foundation for their exile community, as well as a base for an anti-Castro campaign. Many efforts were made by Cuban-Americans to facilitate the transition for their fellow countrymen. Among other organizations, the “Cuban

Municipalities in Exile,” provided a variety of services to newly arriving Cuban refugees, including but not limited to educational, employment, housing and health assistance (Garcia 1996: 91-92).

While the U.S. government made efforts to disburse the resettlement of Cuban refugees across the country, inevitably south Florida became the nucleus of the Cuban émigré community. The concentration of such a large segment of the Cuban community in one area, and the concerted effort to maintain cultural unity, were central to the success of the Cuban-American community (Garcia 1996: 83). The early story of the establishment of the Cuban émigré community was one of taking advantage of resettlement opportunities and community development. As time moved on, the Cuban émigré community grew both in numbers and in strength.

Principal among the various efforts of the Cuban-American community to exert its influence upon the formulation of U.S. refugee and foreign policy was its emergence as a significant electoral force. Cubans took full advantage of the privileges afforded to them for adjustment of their immigration status and naturalization by the Cuban Adjustment Act (Pub. L. 89-732, 80 Stat. 1161 1966). Upon gaining U.S. citizenship, Cuban refugees were eligible to vote; as a group, their involvement in elections quickly developed into a substantial electoral force. The voter-participation rate of the Cuban-American community, which surpassed that of the general U.S. population, translated into political clout (Newland 1995: 204). “Émigrés became quite adept at getting bills passed through Congress and lobbying for tougher economic sanctions against the Castro government” (Garcia 1996: 121).

While not the sole Cuban-American lobby group, the Cuban American National Foundation (CANF) has stood apart as the most influential political lobby (Newland 1995: 204). Founded by a group of Cuban businessmen in 1981, CANF set out to affect the formulation of U.S. policy toward Cuba (Garcia 1996: 147). “CANF developed into a powerful and sophisticated lobby that vehemently opposed any relaxation whatsoever in Washington’s policy of hostility... No countervailing group, either within the Cuban American community or beyond it, could begin to match CANF’s influence” (Leogrande 1998: 74). While the Cuban-American community was highly successful in influencing U.S. politicians, the opinion of the general public was not as easily manipulated.

### **U.S. Public Opinion of Cuban Refugees**

From the first arrivals in the aftermath of the Cuban revolution, the local U.S. population has shown Cuban refugees mixed reaction. Initially, the media often praised the Cubans for their heroism and rarely questioned their legitimacy as political refugees (Garcia 1996: 20). Similarly, many U.S. citizens were generally supportive of the Cuban refugees’ case for political asylum. Rather than a question of the Cuban arrivals’ qualifications as genuine refugees, the main frustration among U.S. citizens was with the costs associated with their resettlement. “Most Miamians sympathized with the plight of the Cubans but could not understand why their community had to bear the burden of a crisis it did not create” (Garcia 1996: 20). Many local residents were particularly resentful of the competition for jobs, housing and other resources created by the arrival of Cubans (Garcia 1996: 20). While federal assistance relieved some of the pressure of the resettlement costs, resentment among local communities persisted, especially during the mass influxes of Cubans during the Freedom Flights and the Mariel boatlift. “While

Americans applauded the Cubans' struggle for political freedom, they did not necessarily want the Cubans to exercise that freedom in the United States" (Garcia 1996: 66).

State and local officials were still worried about shouldering the costs and responsibility of the new Cubans, while many among both the white and African American communities protested the open door policy toward Cubans (Zucker and Zucker 1996: 33). "Some white Floridians feared that the new influx would radically change the ethnic balance and disrupt the area politically and economically. Blacks felt threatened and angry. Those in unskilled menial and service jobs feared they would lose their jobs to the newly arriving Cubans" (Zucker and Zucker 1996: 33). In particular, the African-American community resented the disparity inherent in the federal assistance presented to the noncitizen Cubans through the Cuban Refugee Program and denied to African-American citizens. Among the clearest examples of this preferential treatment afforded to the Cubans over the African-American community was the integration of Cuban children into "white" public schools while African-American children remained segregated (Masud-Piloto 1996: 63). Though the Freedom Flights ended in 1973, tensions between arriving Cuban refugees and the local community were revived and exacerbated during the Mariel boatlift.

The level of public resentment in response to the Freedom Flights increased with what was perceived by some as a disorderly swarm of refugees during the Mariel boatlift. Once again, the African-American community was particularly resentful toward the arriving Cubans. The African-American community believed that the earlier Cuban arrivals had deprived them of jobs and affordable housing, which they charged would only be exacerbated due to the economic recession existing at the time of the Mariel

boatlift (Zucker and Zucker 1996: 55). The African-American community alleged that the arriving Mariel Cubans were afforded preferential treatment superior to that provided to other refugee populations, as well as the treatment given to the African-American community. "The arrival of the Cubans, moreover, had engendered resentment not only because they had been favored over other asylum seekers.... And again, the Cubans, as refugees, were eligible for greater amounts and more kinds of assistance than were made available to members of the black community" (Zucker and Zucker 1996: 46). While the African-American community openly expressed its frustration over the Cubans' perceived negative effect on their community, they were not alone in their irritation with the new Cuban arrivals.

White non-Hispanic citizens also voiced their contempt for the open door provided to the Cubans. "They saw a cultural shift in South Florida and were threatened by it" (Zucker and Zucker 1996: 55). Adding to the desire to deny entrance to the Cubans was the growing perception that many of the new arrivals were persons with criminal records and mental incapacities (Loescher and Scanlan 1986: 185). "Few immigrant groups elicited as much negative response as the marielitos. Public opinion turned against them when the press revealed that Castro had used the boatlift to rid the island of "undesirables" and that among the new immigrants were hundreds, if not thousands, of criminals" (Garcia 1996: 46). In addition to the local communities' resentment of the social and economic costs of Cuban arrivals, the state of Florida and other local governments in resettlement areas protested the financial burden which they believed was a responsibility of the federal government (Zucker and Zucker 1996: 55). These domestic concerns were not great enough to trump the foreign policy influence over the

U.S. refugee policy toward Cubans; however, the strong statement of disapproval regarding the Mariel Cubans undeniably complicated the situation and affected the decision making process for the Carter Administration.

Notably, the Cuban-American community's ardent support of the Mariel boatlift in the beginning was not immune to effect of the social stigma that became attached to the Mariel Cubans. As the boatlift began, U.S. based Cubans were the first in line to assist with the arrival of Cubans; many of them took it upon themselves to sail to Mariel and transport Cuban refugees back to Miami. While the Cuban-American community initially embraced the Mariel arrivals, their enthusiasm and sponsorship of this latest wave lessened as reports circulated bringing the moral character of the new arrivals into question. "Even the exile community turned against this new wave, afraid that their golden reputations as model immigrants would be tarnished by the criminal element. Unlike the earlier refugees, the marielitos encountered hostility and discrimination wherever they settled" (Garcia 1996: 46).

### **Changes in the Domestic Support for Cuban Refugees during the Post-Cold War Period**

The end of the Cold War did not diminish the political influence of the Cuban-American community. During a time of potential reconsideration of relations with Cuba, hard-liners within the Cuban-American lobby were instrumental in the decision to tighten rather than ease pressure and sanctions on Cuba. CANF was particularly effective in using its constituency's vote as political leverage, as evidenced by the statement of an official in the first Bush Administration, "The Foundation has had a chilling effect on the debate. Anytime anyone starts to think creatively about Cuba we're told: What do you want to do, lose South Florida for us?" (Newland, 1995:204). However, while the

Cuban-American lobby proved to be a significant player in U.S. policy toward Cuba in the early 1990s, there were important signs of changes in the Cuban-American community.

Despite CANF's continued political influence, it ceased to be the monolithic representative of the Cuban-American community. "CANF, however, was no longer the single voice of the Cuban-American community. The Cuban-American community was in transition, and so was its exile politics" (Zucker and Zucker 1996: 125). New organizations with different perspectives on dealing with Castro emerged in the Cuban-American community, including, among others, the Cuban Committee for Democracy, Cuban American Defense League, Cambio Cuba, and the Cuban-American Committee for Peace (Zucker and Zucker 1996: 125). In contrast with the traditional hard-line approach to Castro, some of the new groups promoted a more moderate approach, arguing that the sanctions have not produced changes in Cuban leadership, but rather hardship for the average Cuban (Zucker and Zucker 1996: 125). The alteration in the Cuban-American community reflected not only a change in perspectives on relations with Castro, but also with the appropriate response to a mass influx of Cuban refugees.

In the 1990s, Americans' hostility toward the arrival of another influx of refugees, and the costs associated with their resettlement, was reaching new heights. "The public in general, and Floridians specifically, viewed immigrants and escapees as unwelcome intruders" (Zucker and Zucker 1996: 105). The Cuban-American community in general, in a significant shift from previous position, was not united on refugee policy toward Cubans. "The Cuban-American Community itself was ambivalent about welcoming another mass escape, with its likely problems and the backlash it would cause" (Zucker

and Zucker 1996: 125). Many Cuban-Americans shared other local residents' concerns about the arrival of criminals, and the burdens that would be imposed on the school system, housing and other costs (Zucker and Zucker 1996: 125). Moreover, while individual Cuban-Americans wanted to receive family and friends, many believed that allowing a mass exodus from Cuba would relieve pressure on the Cuban government and thus delay Castro's demise (Zucker and Zucker 1996: 125).

### **Human-rights Violations in Cuba**

The Cuban government's poor record regarding civil and political rights has not gone unnoticed in the international community. "Cuba's failings, such as its failure to follow the 'rule of law,' as evidenced by the absence of an independent judiciary and the lack of independent legal representation, and to secure and ensure individual rights...are regressive relics eschewed by the aspirational new world model" (Hernandez-Truyol 1994: 21). The Inter-American Commission on Human-rights, supporting Hernandez-Truyol's assessment of political repression in Cuba, stated that fundamental civil and political rights have been systematically repressed by the Castro government (OAS 1997).

According to the Human Rights Watch, the Cuban government has often handed out harsh prison sentences as penalty for political opposition or expressing criticism of the government and shows no sign of lifting the restrictions on political dissent (Malinowski 2003). "[Cuba] has long denied its people basic rights to fair trial, free expression, association, assembly, movement and the press. It has frequently sought to silence its critics by using short term detentions, house arrests, travel restrictions, threats, surveillance, politically motivated dismissals from employment, and other harassment"

(2003). Reports in 2003 of governmental crackdowns on political opposition by the Cuban government showed that the problem persists (Malinowski 2003).

### **The U.S. Government's Policy toward Cuban Refugees**

Throughout the Cold War, the issue of Cuban refugees fleeing to the United States was a recurring problem. From the beginning of Castro's reign, U.S. presidents saw the reception of Cuban refugees as an instrument in its ideological face-off with Castro. U.S. Representative Walter Judd's statement on the symbolic value of Cuban refugees became a U.S. foreign policy mantra, "Every refugee who comes out [of Cuba] is a vote for our society and a vote against their society" (Williard 1960 in Masud-Piloto 1996: 33). In opening the gates to Cuban refugees, the United States saw the opportunity to embarrass Castro, disparage the communist system, consolidate and support anti-Castro factions, and deal a blow to the Cuban economy by draining the country of its educated and skilled professionals (Masud-Piloto 1996: 33 and 51).

From the earliest departures of Cuba exiles in 1961, the U.S. government proudly proclaimed that the "homes and hearts" of the American people had been opened to the "distressed Cubans fleeing from Communist oppression" (Masud-Piloto 1996: 34). While the tide of refugees and the political circumstances surrounding their departure would fluctuate over the course of the Cold War, this basic governmental directive for the automatic acceptance of Cubans fleeing communist oppression would continue to be the modus operandi of U.S. refugee policy toward that nation.

### **U.S. Government Policy toward Cuban Refugees from 1959-1962**

President Eisenhower responded cautiously to the first wave of Cuban refugees in the immediate aftermath of the Cuban Revolution. Several factors ultimately swayed his administration to initiate a policy to allow migration from Cuba, a policy which would be

duplicated throughout the rest of the century. The factors motivating the Eisenhower Administration were: “(a) humanitarian concerns, (b) the desire to overthrow the revolution with exile forces, (c) the wish to embarrass the Cuban government, and (d) the knowledge that many of the exiles could easily be assimilated because they had been linked by profession, business, education, and culture to the United States” (Masud-Piloto 1996: 33). With this decision, the Eisenhower Administration established a precedent of acceptance and support of Cuban refugees, the costs of which were ostensibly outweighed by the benefits of the propaganda gains in depicting the Communist Cuban government as a ruthless dictatorship.

While the U.S. government earned political mileage out of publicly labeling the Cubans as victims of political persecution, the first Cuban refugees did not receive official refugee status. “The government pursued a passive policy designed to let virtually any Cuban enter the United States without legal formalities” (Loescher and Scanlan 1986: 61). Instead, the first to arrive generally came with visas and simply were permitted to overstay their tourist or other visa status. Many scholars have asserted that the initial *laissez faire* U.S. policy was based on the expectation that the Cubans were temporary visitors and would return to Cuba upon resolution of the conflict within Cuba (Garcia 1996: 22; Loescher and Scanlan 62). “The Cubans were not to be assimilated but rather assisted until they could resume their normal lives back in Cuba” (Garcia 1996: 22). However, to the surprise and dismay of both the U.S. government and the Cuban refugees, the Cuban crisis did not dissipate, instead it rapidly intensified.

For those Cubans heading for the United States, this prerequisite was initially achieved by application for an immigrant or tourist visa with the American Embassy

(Clark 1975: 82). However, with the breaks in diplomatic relations in 1961, this procedure became immensely more difficult and costly to complete, and passage through a third-country to the United States became the only option for fleeing Cubans seeking refuge in the United States. (Clark 1975: 82). Responding to Cubans' difficulty obtaining a foreign visa, the U.S. government initiated a "visa waiver" process, whereby Cubans would be generally allowed to enter the United States without a visa (Clark 1975: 82). The "visa waiver" program permitted over 700,000 Cubans to enter, but was promptly terminated in the aftermath of the Bay of Pigs invasion (Clark 1975: 82).

Strengthening its commitment to those disaffected by the Communist system in Cuba, the U.S. government soon implemented a visa-waiver procedure which eliminated the visa requirement in "emergency cases" and enabled the resumption of direct flight to the United States (Masud-Piloto 1996: 34). With the implementation of the visa-waiver procedure, any Cuban claiming to flee communism was allowed into the United States (Masud-Piloto 1996: 35). "The Coast Guard made no attempt to turn away undocumented Cubans, who even during this early period were arriving quite regularly in small boats. And the Immigration and Naturalization Service (INS) avoided instituting deportation proceedings against those arriving illegally or remaining in the United States after the expiration of their visas, and began the process of granting "extended voluntary departure" as a deportation avoidance device" (Loescher and Scanlan 1986: 61). Arriving Cubans would prove to be the beneficiaries of substantial support and assistance, both from the government and, perhaps more importantly, from a growing private support network.

Most refugees arriving from Cuba came without the means necessary to secure their basic needs of food, housing, health care, or access to employment (Clark 1975: 112). For the first two years of the exodus, private aid from church groups and other supporters was the only source of assistance for the refugees (Clark 1975: 112-115). President Eisenhower eventually established the Cuban Refugee Emergency Center, “to coordinate the relief efforts of all the voluntary relief agencies and oversee the resettlement program” (Garcia 1996: 21). While the Eisenhower Administration’s initial efforts to support the Cuban refugees did not include direct governmental financial assistance to the volunteer agencies or the Cuban refugees themselves, Eisenhower’s successor, President Kennedy, elevated the role of the U.S. government in the support and resettlement of Cuban refugees (Garcia 1996: 21).

Following the inauguration of President Kennedy, U.S. government support of the Cuban refugees steadily increased. “Beginning in 1961, the Kennedy administration became more active in refugee relief efforts, considering the Cubans to be victims of the Cold War and thus a national responsibility” (Garcia 1996: 22). The Kennedy Administration established the Cuban Refugee Program that provided assistance for health, employment and educational training, food and other relief needs (Garcia 1996: 22; Masud-Piloto 1996: 49). The state of Florida’s education system, from Dade County schools to the state universities, offered extensive support, while the “Cuban Children’s Program” facilitated both the reception and resettlement services (Garcia 1996: 24). The passage of the Migration and Refugee Assistance Act in 1962 took the governmental efforts a step further. Cuban refugees became the recipients of a massive support campaign, and were eventually allowed to adjust their immigration status and apply for

U.S. citizenship (Loescher and Scanlan 1986: 66). With this Act, successive presidents wielded broad authority over refugee policy and continued the trend of welcoming, supporting and resettling of large numbers of Cubans.

### **U.S. Government Policy toward Cuban Refugees from 1965 to 1973**

“I declare this afternoon to the people of Cuba that those who seek refuge here in America will find it. The dedication of America to our tradition as an asylum for the oppressed is going to be upheld.” (Lyndon B. Johnson 1965 in Masud-Piloto 1996: 57)

The commencement of the freedom flights in 1965 triggered an immediate response, in the Cuban exile community, U.S. government officials and policy makers, and in domestic voices of resistance to the influx of thousands of new refugees. As Castro opened the gates to Cubans wishing to flee to the United States, the Cuban exile community rushed to help with the reception of newly arriving Cubans. As has been described above, some within the United States, particularly the African-American community, expressed their concerns over the costs and problems of a new influx of refugees (Garcia 1996: 62). Other critics claimed that the new Cuban arrivals were not victims of political persecution, but instead consumer refugees who, “left Cuba largely because they were used to a standard of living they could no longer have in Cuba” (Loescher and Scanlan 1986: 75). A Central Intelligence Agency report supported this claim, concluding that most Cubans were “disaffected because of the economic situation and not political oppression” (CIA Report in Masud-Piloto 1996: 60).

In spite of these voices of protest, the Johnson Administration used the opportunity of accepting Cuban refugees, as a “ballot for freedom,” in a propaganda move against Cuban Communism. “The American reception of Cuban migrants between 1965-73 demonstrated how far the concept of asylum could be stretched when those seeking

admission were regarded as ideologically valuable” (Loescher and Scanlan 1986: 78). In November 1965, negotiations between the Castro government and the Johnson Administration, culminating in a formal Memo of Understanding, named the “Freedom Flight Program,” led to an orderly flow of two daily flights from Cuba (Zucker and Zucker 1996: 33.) In response to the arrival of nearly 4,000 Cubans a month, the U.S. government granted the Cubans admission into the country and redoubled efforts to resettle the new arrivals (Loescher and Scanlan 1986: 75). “The U.S. handled the Camarioca Boatlift and the Cuban airlift... without making any adjustments to the legal regime governing admission to the United States. Cubans were simply paroled into the U.S.” (Hughes 1999: 135) The use of the parole power, which enabled presidents to admit aliens into the country without having to apply for asylum or demonstrate a well-founded fear of persecution, was the primary mechanism for admitting Cuban refugees. In 1966, Congress passed special legislation that paved the way for the adjustment of status to permanent residency and citizenship for the arriving Cubans (Pub. L. 89-732, 80 Stat. 1161 1966).

With the Cuban Adjustment Act, Congress authorized the Attorney General, “to grant permanent status to any native or citizen of Cuba who was admitted or paroled into the United States after January 1, 1959, and had been physically present in the United States for at least one year” (Miranda 1995: 681; Pub. L. 89-732, 80 Stat. 1161 1966). This law eliminated the requirement that made Cubans who were present in the United States and applying for residency travel to a third country to get an immigrant visa and reenter the United States (Garcia 1996: 42). In addition to facilitating the permanent status of Cuban refugees, the Cuban Adjustment Act was intended to “help Cuban

professionals meet state licensing requirements and to assist the Cuban elderly in receiving benefits (such as Medicare) that were available only to U.S. citizens” (Garcia 1996: 42).

As the freedom flights continued, pressure exerted in Congress and by local resentment increasingly called for an end to the airlifts (Masud-Piloto 1996: 67-68). “Those pressures reflected a growing belief that Cuban migration had lost its original political character, that it was bringing to the United States larger numbers of people less easily assimilable to the domestic labor market and more dependent on welfare aid, and that the money spent on the airlift and related resettlement programs might better be spent on the American poor”(Loescher and Scanlan 1986: 79). In 1973, as congressional efforts to cut funds for the airlift mounted, Castro independently terminated the airlift (Loescher and Scanlan 1986: 78). After over 7 years of lenient admission of upwards of 200,000 Cubans, the freedom flights ended (Masud-Piloto 1988: 68).

### **U.S. Government Policy toward Cuban Refugees during the Mariel Boatlift of 1980**

Before 1980, U.S. legislation unambiguously allowed for admission of refugees fleeing Castro’s Cuba on the simple grounds that they were escaping a communist government (Loescher and Scanlan 1986: 74). In March of 1980, only weeks before the onset of the Mariel boatlift, Congress adopted the Refugee Act, which aimed to do away with overt ideological and political standards for granting refugee status. While the Refugee Act appeared to have stripped Cuban refugees of their preferential treatment, as it turned out this was not the case (Preston 1986: 105). In spite of the promising language and intent of the Refugee Act, it rapidly became apparent that the realities of the Mariel refugee crisis would prove to thwart any real reform. “Within the space of a few months, the U.S. received nearly 140,000 Cubans and Haitians, and the smooth functioning of the

asylum provisions of the Refugee Act which had been envisioned by its framers was effectively sabotaged” (Loescher and Scanlan 1986: 180).

The Mariel Boatlift triggered an unprecedented migration crisis which had a dramatic effect on both domestic and foreign policy in the United States. Several factors, including the ongoing hostage standoff in Iran and the Soviet incursion into Afghanistan, election year political attacks from Republican candidate Ronald Reagan, as well as a national recession, all complicated the Carter Administration’s ability to handle the crisis effectively (Zucker and Zucker 1996: 53). Although certain political and social factors combined to make the management of the Mariel refugee crisis much more problematic than previous waves of Cuban immigration, the U.S. response to the Mariel boatlift in many ways showed the continuing predominance of ideological considerations in refugee policy.

As nearly 125,000 Cubans poured into the United States, the Carter Administration was faced with the prospect of having to apply the measures of the Refugee Act to a situation of mass asylum, something for which the Act was not originally intended to manage. According to the Refugee Act, Cuban refugees were to be limited to a yearly quota of 19,500 and subject to the requirement of individual case reviews to determine the credibility of their asylum claim (Hughes 1999).

President Carter initially pledged to provide “an open heart and open arms” to the Cuban refugees, but soon declared that the boatlift had reached crisis proportions and created an immigration committee to address the dilemma (Alden 1995: 181).

Furthermore, despite the ideological preference inherent in U.S. refugee policy, the Carter Administration was keenly aware of the problematic refugee status question as

applied to the Cubans. “Technically and legally, the Cubans were simply undocumented aliens seeking asylum, not refugees” (Hughes 1999: 56). In a forthright admission, the Carter Administration cast doubt on the likelihood that the Mariel Cubans were, as a group, genuine refugees: “In general, their fear of persecution was derived from their own act of leaving Cuba, not necessarily that they had been persecuted by the government before leaving; refugee status would reward illegal entry and set dangerous precedents for future migration; the Cubans were no more deserving of refugee status than the Haitians” (Copeland 1981 in Masud-Piloto 1996: 86) Thus, while denying the classification of Cubans as refugees under the statutory definition of the Refugee Act, President Carter still treated the Mariel Cubans as de facto refugees by paroling them into the country, as in the same way nearly all previous Cubans entering after Castro’s rise to power (Loescher and Scanlan 1986: 185).

Ironically, the use of the parole power to admit the Cubans effectively made the Cubans’ political asylum claims irrelevant, as they were not necessary upon the issuance of parole. In fact, while parole remained the principal mechanism for admitting Cuban refugees without the need for an asylum hearing and a demonstration of a well-founded fear of persecution, the adjudication of an asylum claim was essentially reserved for use when the INS wanted to deport or prevent a particular Cuban from entering (Alienkoff 1984 in Preston 1986: n174). "The claims of most of the 125,000 Cubans who entered during the Mariel boatlift are not being adjudicated. The government was, however, adjudicating claims of persons it would like to return to Cuba, such as persons who have committed serious crimes in Cuba or in the United States"(Alienkoff 1984 in Preston 1986: n175). On the surface, President Carter’s use of parole to permit the 125,000

Cuban Mariel Cubans to enter the country appeared to suggest that the U.S. government response would be business as usual.

The actual policy determination on how to handle the arriving Cubans was delivered by President Carter amidst mounting pressure from all sides of the political spectrum. President Carter created the Cuban-Haitian entrant classification, whereby the U.S. government permitted new Cuban (and Haitian) arrivals to stay and apply for an adjustment of status to permanent resident after two years (Masud-Piloto 1996: 86). “Most important, the entrants would be eligible for medical services, supplemental income, and emergency assistance benefits and state and local governments would be reimbursed for 75 percent of the program’s costs” (Masud-Piloto 1996: 86). The Cuban-Haitian entrant classification addressed the issue of whether and how to justify the acceptance of the incoming refugees; however, the problem of what to do with the vast number of Cubans upon their arrival remained unresolved.

More pressing than the initial classification of the Cubans upon admission was the logistic problem of processing and resettling of the arrivals. When President Carter declared a state of emergency in Florida, thousands of Cuban arrivals were sent to tent cities located in football stadiums and military bases and other locations in various states (Masud-Piloto 1996: 85). Many detained Cubans were to be held until they were claimed by relatives or other sponsors. Others were effectively detained indefinitely, determined to be “excludable” and thereby ineligible for release due to criminal records or mental incapacity (Masud-Piloto 1996: 85). The tent cities sparked anger among the detainees, leading in some cases to riots. “They had come to the United States in the ‘freedom

flotilla,' but thousands were detained for months, and some were imprisoned for years for crimes committed in Cuba against Castro's government" (Masud-Piloto 1996: 86).

Although the Mariel boatlift ended in October 1980, the issue of what to do with the "excludables" who remained in detention remained unresolved until 1984, when the U.S. and Cuban governments entered into an agreement to return approximately 2,700 Cubans determined ineligible for admission in the United States (Pingeton 1999: 330). Pursuant to the U.S.-Cuba agreement, the United States would issue visas to 3,000 political prisoners and their families, and then to approximately 20,000 other Cubans per year (Masud-Piloto 1996: 102). In February 1985, the deportation of the detained Mariel excludables began, as a group of twenty-three Cubans determined ineligible for political asylum were returned to Cuba (Masud-Piloto 1996: 103). "For the first time since 1945, the United States agreed to return people to a Communist country, a fact all the more remarkable in the context of U.S.-Cuban relations since 1959" (Masud-Piloto 1996: 103).

The deportations were stymied, however, after Cuba suspended the agreement as relations between the two countries soured after the Reagan Administration's sponsorship of Radio Marti (Masud-Piloto 1996: 104). The U.S. government's collaboration with the Cuban-American National Foundation in the development of the "Exodus" program further disrupted any potential for a stable immigration accord between the two countries (Masud-Piloto 1996: 104). Under the "Exodus" program, public and private funds provided medical and employment assistance to over 9,500 Cubans who were arriving from third countries between 1988 and 1993 (Masud-Piloto 1996: 133).

In 1987, negotiations between the U.S. and Cuban governments resulted in a reactivation of the agreement for deportation of the excludables to Cuba and the issuance

of 20,000 visas per year to Cubans (Masud-Piloto 1996: 134). Despite the optimism for bilateral cooperation regarding the immigration question, it rapidly became apparent that the 1984/1987 agreements were bound to fail. “Despite the crisis the Mariel boatlift created for the Carter administration and the State of Florida, the United States government continued treating Cuban immigration on a crisis-to-crisis basis- as part of a political strategy designed to overthrow the Revolution, instead of a rational and humane immigration policy” (Masud-Piloto 1996: 132). By the early 1990s, as the Cold War receded in all aspects of U.S. foreign affairs except Cuban-U.S. relations, the failure of the 1984/1987 immigration accords and an economic crisis in Cuba led to fears of another Mariel type exodus.

#### **U.S. Government Policy toward Cuban Refugees from 1990-2004**

“Cubans must know that the only way to come to the United States is by applying in Cuba.... They [those who arrive in the U.S. illegally] will be placed in exclusion proceedings, and treated as are all illegal migrants from other countries.” (U.S. Attorney General Janet Reno, May 2, 1995 in Masud-Piloto 1996: 128)

In the early 1990s, as the Cuban economy was faltering and political repression was on the rise, signs indicated that a new mass exodus was brewing in Cuba (Zucker and Zucker 1996: 120). Although the number of Cuban arrivals increased rapidly between 1990 and 1994, the U.S. government was initially hesitant to alter its long-held policy of preference to Cuban refugees. “U.S. policy makers, bound by a foreign policy of anti-Castro communism and supported in their myopia by Cuban-American pressure groups, were heedless of the portent of rising numbers of *balseros*, escapees on makeshift boats and rafts” (Zucker and Zucker 1996: 121). By 1994, the threat of another mass influx of Cubans, possibly exceeding that of the Mariel boatlift motivated the U.S. government to adopt a radical change in policy toward Cuban arrivals.

In the early months of 1994, as incidents of riots and boat highjackings in Cuba led to violence, the U.S. cautiously continued to admit Cubans leaving illegally. In blaming the United States for the riots and illegal departures, Castro issued an ultimatum: “Either they [the United States] take serious measures to guard their coasts, or we will stop putting obstacles in the way of people who want to leave the country” (Castro in Masud-Piloto 1996: 138). On August 19, 1994, President Clinton announced a dramatic shift in U.S. refugee policy toward Cubans, initiating what would become known as the “wet-foot dry-foot” policy. “Today I have ordered that illegal refugees from Cuba will not be allowed to enter the United States. Refugees rescued from Cuba will be taken to our naval base at Guantanamo while we explore the possibility of other safe havens within the region.... The United States will detain, investigate and, if necessary, prosecute Americans who take to the sea to pick up Cubans” (President Clinton in Zucker and Zucker 1996: 127). With this statement, the thirty-five year old policy of welcoming Cubans from Castro’s repressive government was reversed. “The Clinton administration’s decision to stop granting Cuban migrants automatic political asylum in the United States marked the end of an era of unrestricted admission and preferential treatment of Cubans based strictly on political considerations” (Masud-Piloto 1996: 128). In its place, Cubans were detained at Guantanamo and denied any opportunity for entry into the United States other than by legal channels upon return to Cuba (GAO 1995).

In spite of the clear statement of intent to end the open door policy for Cubans by the Clinton Administration, “Cubans refused to believe they would be denied entry to the United States and continued to leave the island” (Zucker and Zucker 1996: 126). In the days after Clinton’s announcement, the U.S. Coast Guard picked up record numbers of

rafters, with nearly 32,000 being detained in Guantanamo by September of that year (Zucker and Zucker 1996: 126). In addition to the non entry policy, Clinton announced various other measures intended to exert political and economic pressure on the Cuban government, including the suspension of sending money remittances to families in Cuba, cancellation of charter flights, and a tightening of the issuance of licenses for travel to the island (Zucker and Zucker 1996: 126). Unsatisfied that these policy changes would be sufficient to end the exodus, the Clinton Administration looked to the Cuban government for cooperation.

“On September 9th, 1994, the U.S. and Cuban governments agreed that the United States would allow at least 20,000 Cubans to enter annually in exchange for Cuba’s pledge to prevent further unlawful departures by rafters” (GAO 1995: 1) The combination of the threat of detention by the United States, and the promise of a peaceful return to Cuba without the threat of retaliation was successful in deterring further mass departures from Cuba (Masud-Piloto 1996: 141). While the immediate influx of Cubans had been halted, the U.S. government became the recipient of sharp criticism from the Cuban-American community, human-rights groups, some Latin American governments, as well as violent rioting by the detained rafters (Masud-Piloto 1996). Not only was the new policy controversial, it was also a huge financial burden to the United States, with the costs estimated at around \$365 million per year (Masud-Piloto 1996: 143). In October 1994, the U.S. government revised the new policy, allowing the elderly, sick, pregnant, and minors accompanied by their parents to enter the United States (Masud-Piloto 1996: 142). This policy revision relieved some of the pressure of the detainees in Guantanamo, but critics of the new policy were far from appeased.

Opponents of repatriation, whether voluntary or involuntary, of Guantanamo detainees to Cuba, brought a class action suit in federal court. In *Cuban American Bar Association (CABA) v. Christopher*, the plaintiffs alleged that the U.S. policy violated the detainees' entitlement to due process as well as international principles of non-refoulement (43F. 3d 1412, 11th Cir. 1995 in *Zucker and Zucker* 1996 128). However, the court held that the Guantanamo base, and other similar safe havens, are not United States territory, and thus the detainees do not have a constitutional right to due process or equal protection, nor are they entitled to protection against forced repatriation under the UN Refugee Convention or the Immigration and Nationalization Act (43F. 3d 1412, 11th Cir. 1995 in *Zucker and Zucker* 1996 128). Despite the U.S. government's court victory, the Clinton Administration soon modified the detention policy.

On May 2, 1995, the Clinton Administration announced an agreement reached in secret negotiations with the Cuban government. To the great relief of the detained rafters, as well as many in the Cuban-American community, all remaining eligible detainees at Guantanamo would be paroled into to the United States by March 1996 (GAO 1995). Those ineligible, for reasons of criminal history, or physical and mental problems would be returned to Cuba (GAO 1995). The new policy held that the U.S. government would not take Cubans interdicted at sea to Guantanamo or another safe haven (GAO 1995). Instead, Cubans interdicted at sea would be afforded an interview onboard a Coast Guard cutter; those failing to demonstrate a credible asylum claim would be taken directly back to Cuba as opposed to the Guantanamo naval base where they could still hope for entry in the United States (GAO 1995). Once returned to Cuba, the interdicted Cubans could apply for entry through legal channels at the United States

Interests Section in Havana (GAO 1995). In this significant reversal of policy, the United States had officially abandoned its promotion of the freedom of voluntary exit from Cuba and deliberately subverted its historic practice of support for Cuban refugees in exchange for assurances against future mass arrivals. While the new policy proved effective at stopping the influx of Cubans, many believed that the United States had gone too far. “It is almost as if the West has asked Erich Honecker to stop Germans from crossing over the Berlin Wall” (Zucker and Zucker 1996: 127).

### **Summary**

Three factors have affected U.S. policy toward Cuban refugees, from the 1950s to the present. First, in the arena of U.S. governmental relations, the Cold War revealed an unmistakable record of open hostility between the United States and Cuba. The end of the Cold War has brought important changes in international relations, however, as of 2004, the pattern of unfriendly U.S. relations with Cuba has remained essentially the same. Second, a look at the particular demographic make-up of the Cuban refugee populations since 1959 revealed other important factors. The overall flow among the Cuban refugee population has followed a noticeable socioeconomic trend- initial arrivals consisting of members from the upper classes, followed by groups more representative of Cuban society in general. Since 1980, the percentage of nonwhite Cuban refugees arriving in the United States has increased, however, nonwhite Cubans have remained a minority among the Cuban refugee population. Overall, the demographic make-up of Cuban refugees has contributed to their ability to adjust and assimilate to life in the United States. Third, Cuban refugees were assisted greatly by the cohesive émigré community, a strong level of U.S.-based domestic support, and a relatively slight degree of resentment within the U.S. public at large. However, there is evidence that the degree

of domestic support for Cuban refugees in the post-Cold War period might not be as strong as during the Cold War.

Throughout the duration of the Cold War, the U.S. government pursued two very different policies toward Cuban and Haitian refugee populations. From the triumph of the Cuban Revolution until the end of the Cold War, the U.S. maintained an open door policy toward Cuban refugees. While foreign policy was the chief factor guiding U.S. refugee policy during the Cold War, its influence has not been as clear in the post-Cold War period. Although since 1990, the U.S. has continued its preferential treatment for Cuban refugees, the change in the Cuban refugee policy in 1994 indicated that there are limits to the foreign policy bias toward refugees fleeing communism.

This chapter reviewed the history of U.S. governmental relations with Cuba and the particular characteristics of the Cuban refugee population during the various major phases of flight. Similarly, this chapter discussed the U.S.-based support for Cuban refugees. Finally, this chapter detailed the political strategies employed by the U.S. government to either admit or deny the Cuban refugees legal entrance into the country, as well as the different forms of assistance from the government and private sources for resettlement. Chapter 4 will provide a similar same examination of Haitian refugees and their reception and treatment by the U.S. government.

CHAPTER 4  
CHARACTERISTICS OF HAITIAN REFUGEES AND THEIR RECEPTION AND  
TREATMENT IN THE UNITED STATES

**Introduction**

Despite the codification of refugee law and the neutral humanitarian standards for affording political asylum in the United States, the evidence demonstrated that the application of refugee policy has been extremely susceptible to external influences. During the Cold War, the predominant influence on both Cuban and Haitian refugees was ideological preferences inherent in U.S. foreign policy. Refugees whose admission furthered the Cold War foreign policy objectives of the United States were openly welcomed, while those whose flight maligned regimes with friendly relations to the United States were largely excluded. No two groups demonstrated this influence of the foreign policy influence in U.S. refugee policy more clearly than Cuban and Haitian refugees.

Chapter 4 discusses the various factors which have contributed to the pattern of differential treatment afforded to Haitian refugees by the U.S. government, when compared to Cuban refugees. The nature of U.S.-Haitian governmental relations is addressed first, with attention to the long pattern of tolerance by the U.S. government of human-rights violations in Haiti. Second, this chapter documents the major waves of migration from Haiti to the United States, noting the particular characteristics of the arriving refugees. Third, this chapter details the deficit of U.S.-based support for the Haitian refugee community. Finally, this chapter documents the reception and treatment

of Haitian refugees since 1957 by the U.S. government. Chapters 5 will compare and analyze the respective treatment of Cuban and Haitian refugees presented in Chapters 3 and 4.

### **United States Relations with Haiti**

In 1957, Francois “Papa Doc” Duvalier took the reins of power during a military coup and declared himself president for life, initiating one of the most brutal dictatorships Haiti has ever known (Lennox 1993). During the fourteen-year rule of Papa Doc, Haiti sunk even further into poverty, earning the ignoble distinction of being the poorest country in the western hemisphere (Ferguson 1987: 58). “Those who resisted Duvalier’s tyranny were systematically silenced, and tens of thousands of Haitians fled for their personal safety” (Loescher and Scanlan 1986: 78). While this reign of ruthlessness did not go unnoticed in Washington, the U.S. government showed remarkable tolerance of the human-rights violations in Haiti, so long as Papa Doc was an ally against communism.

Despite U.S. ideals of democratic governance, the U.S. government made it clear that the Haitian dictator could be an exception to the rule. Papa Doc seduced the U.S. government with the pledge to raise Haiti out of the ranks of the Third World and his promise to be a bulwark against the threat of communist incursions into Haiti (Ferguson 1987: 43). With the Cold War heating up, and the threat of communism lurking just forty miles across with Windward Passage in Cuba, Papa Doc’s value as a political chip in the containment of communism was great (Ferguson 1987: 43). “The U.S. dilemma was obvious: to support an unsavory regime which would remain anti-Communist if paid to do so, or withdraw aid and run the risk of ‘losing’ another formerly dependable fiefdom” (Ferguson 1987: 43). The quid pro quo between the two countries was fairly simple:

Haitian regimes joined in the U.S. efforts to isolate and contain the communist influence from Cuba, while the U.S. government simultaneously provided military and financial assistance to Haiti and disregarded evidence of egregious human-rights violations (Zucker and Zucker 1996: 34).

While relations between the United States and the Haitian dictator cooled toward the end of the Kennedy Administration, Papa Doc was able to stave off serious challenges to his authority by exploiting his strategic importance as an ally against the spread of communism in the Caribbean (Loescher and Scanlan 1986: 80-81). The U.S. policy of tolerance for the Haitian dictatorship's excesses and brutality continued beyond Papa Doc's fourteen year rule when, in 1971, Papa Doc passed the reigns of power onto his son, Jean-Claude "Baby Doc" Duvalier, who carried on the dictator's legacy of violence (Ferguson 1987). Although the U.S. government endorsed his claim to power, restored formal ties and reinstated financial assistance with Haiti, Baby Doc's track record on human rights and repression quickly began to resemble that of his father's (Lennox 1993). A virtually uninterrupted flow of Haitians asylum-seekers during the transition of power to Baby Doc indicated that the new Duvalier dictator exhibited the same repression of civil society as his father (Loescher and Scanlan 1986).

During years of Duvalier totalitarian rule, citizens of Haiti regularly suffered severe forms of political and economic repression (Loescher and Scanlan 1986: 78). While the Haitian refugees' fleeing the oppressive conditions were frequently disregarded by the United States, the totalitarian regimes fueling their flight enjoyed largely favorable support from the United States (Harris 1993: 280).

As the Cold War ended, prospects for a new era of stability and democracy in Haiti were as promising as they had ever been. On December 16, 1990, Haitians celebrated their first experience with a free and fair democratic election by choosing Jean-Bertrand Aristide by a clear margin of victory (sixty-seven percent over the other eleven candidates) (Zimmerman 1993: 391). Within months of his monumental election, Aristide's future as the President of Haiti took a drastic turn. In September 1991, Aristide was overthrown and forced to leave the country in a coup headed by the Commander-in-Chief of the Haitian army, Raoul Cedras (Zimmerman 1993: 392).

In the United States, domestic pressure for a change in the policy toward the Haitian stalemate raised the stakes for the Clinton Administration (Zucker and Zucker 1996: 117). Domestic support for Haitian asylum seekers was a consistent source of pressure on the Clinton Administration while there was an adamant rejection of the prospect of another mass influx of Haitians among the American public. "By the summer of 1994, when the threat of another Mariel loomed, domestic fears had become predominant. Indeed, it could be argued that our invasion and occupation of Haiti—foreign policy decisions—were essentially motivated by the fears of the American public of large numbers of Haitian asylum seekers" (Zucker and Zucker 1996: 6). The Clinton Administration was caught in a delicate situation. While not wanting to be criticized as having a racist refugee policy from pro-Haitian supports, the Clinton Administration was equally fearful that any significant acceptance and accommodation of Haitian asylum seekers would open the floodgates for others and would incense domestic opposition to a new influx of Haitian refugees (Newland 1995: 201). "It became increasingly clear that, for the refugee flow, the only cure was prevention, and the only acceptable form of

prevention was the restoration of elected government in Haiti. This became the focus of US policy” (Newland 1995: 201).

As the migration crisis intensified and the coup leaders in Haiti persisted in their recalcitrance, the Clinton Administration, with UN authorization, decided to employ military intervention, “to use all necessary means to facilitate the departure from Haiti of the military leadership” (Zucker and Zucker 1996: 118). In September 1994, as a U.S.-led military intervention was poised to advance on Haiti, the coup leaders agreed to step down in exchange for a general amnesty granted by the Haitian parliament and the lifting of international sanctions (Zucker and Zucker 1996: 119). While a forceful military intervention was avoided, and order was restored along with the Aristide government, problems remained for Haiti’s nascent democracy and unsteady relations with the United States.

In spite of two successive free elections in Haiti, first in 1995 with the election of Rene Preval, followed by the re-election of Aristide in 2000, political and economic conditions in the country remained volatile (Human Rights Watch 2001). Allegations of fraudulent legislative elections in 2000 resulted in a political stalemate, which led to violence, political instability, and has had severe economic consequences. Opposition groups, refusing to recognize the legitimacy of the government, engaged in violent protests and were met with equally violent reprisals from the Haitian government. The international community suspended most financial assistance to the government as a result of the election irregularities, amounting to over \$500 million by 2003 (CIA World Fact Book 2003).

By 2004, the political conflict reached crisis proportions. In February 2004, armed supporters of the government clashed with opposition groups who had taken over various cities in Haiti and were advancing toward the capital Port Au Prince. Opposition forces had rejected international efforts to reach a political compromise to the conflict and by March 1, 2004 occupied Port Au Prince. President Aristide, under U.S. escort, fled to Africa, as rebel leaders declared victory (Wines 2004).

### **Characteristics of the Major Phases of Flight of Haitian Refugees**

Unlike the highly visible and thoroughly recorded pattern of the flight of Cubans from the start of the revolution, there is a distinct paucity of documentation regarding the early episodes of Haitians fleeing to the United States. Since the beginning of the Duvalier dynasty in 1957, Haitians have been arriving in the United States in large numbers. While some of these Haitian migrants have met the stringent eligibility requirements to gain legal entry, the vast majority, estimated at as many as 300,000, have entered the United States illegally (Loescher and Scanlan 1984). For various economic, political, geographic and social reasons the majority of Haitians have chosen the United States over other countries as their destination point (Miller 1984: 37).

Haitian arrivals have covered the spectrum of demographics and social strata, ranging from elite businessmen and professionals, to the desperately impoverished unskilled and uneducated. However, despite the wide range of personal backgrounds and individual motivations, be they direct political persecution or indirect victimization of repressive governmental policies, most Haitian arrivals over the last half century share one thing in common: their departure from Haiti took the form of escape rather than a normal exit.

### **Arrival of Haitian Refugees from 1957 to 1971**

Although there is little documentation of the arrival of Haitians fleeing their homeland before 1971, it is generally understood that Haitians began to escape Haiti upon the inauguration of the Duvalier regime in 1957 (Loescher and Scanlan 1993: 100). Upon his ascendancy to the Presidency of Haiti, opposition groups who dared challenge his legitimacy, namely political opponents, student leaders, and trade unionists, came under severe repression (McCalla 1991:3). “Those who resisted Duvalier’s tyranny were systematically silenced, and tens of thousands of Haitians fled for their personal safety” (Loescher and Scanlan 1986: 79).

The first arrivals were mostly businessmen, professionals and other middle to upper class Haitians who were generally highly skilled and educated, with the ability to adjust and assimilate into a new environment relatively successfully (McCalla 1991: 3). These first refugees were required to pay for a passport, exit visa, exit taxes, and compulsory travel insurance (Loescher and Scanlan 1984: 319). Other than these requirements, the Haitian government did little to prevent or dissuade their exit, as the departure of potential dissidents helped to further solidify the Duvalier regime (Loescher and Scanlan 1984: 319). These Haitians mostly headed to the United States by air and arrived with some type of nonimmigrant visa, which they would overstay once it had successfully secured their arrival (Loescher and Scanlan 1984: 319).

Larger groups from the middle to lower class followed this first wave of Haitians escaping the Duvalier regime (McCalla 1991). “As economic and political conditions deteriorated during the 1960s, poorer, less educated Haitians joined the migrant stream” (Zucker and Zucker 1996: 35). With the spread of terror and violence at the hands of the Tonton Macoutes and the self-declaration of “President for Life” by Papa Doc, conditions

in Haiti spiraled downward, leading to an increasing number of Haitians from all social backgrounds who perceived escape as the only option (McCalla 1991). “What began as a trickle in the beginning of the 1960s began to look like a small flood by the end of the decade” (Loescher and Scanlan 1984: 319). It should be noted that since commercial travel was the predominant avenue for flight to the United States during this phase of the Haitian exodus, many poor and less educated Haitians had to flee to the Bahamas and other more easily reachable destinations (Loescher and Scanlan 1984: 319).

### **Arrival of Haitian Refugees from 1971-1980**

The generous tolerance afforded by the U.S. government toward Haitian arrivals ended with the transfer of power to Baby Doc in 1971. Upon the installation of Baby Doc at the helm of Haiti’s government, Haitians began arriving in south Florida on makeshift boats in large numbers. The INS does not have a comprehensive record of the number of Haitians applying for asylum before 1980, making it impossible to determine precisely how many Haitians were approved or denied. However, while estimates vary greatly, it is approximated that from 1972 to 1980, between 30,000 and 50,000 Haitians fled to the United States seeking asylum; and that only 25 to 50 of these asylum applicants were granted political asylum (Loescher and Scanlan 1986: 80).

The make-up of those Haitians fleeing in 1972 differed from the previous wave (Loescher and Scanlan 1986: 80). They fled for various reasons: dire poverty, lack of political freedom, or legal protection, governmental corruption, and the “avarice and brutality of the state” (Loescher and Scanlan 1986: 80). “The new Haitian refugees were very different from the professional and skilled workers who had migrated to the United States and Canada during the 1960s: they were uneducated, unskilled, overwhelmingly black, and speakers of Creole... These were the poor of the poorest nation in the Western

Hemisphere” (Masud-Piloto 1996: 115). In contrast with middle and upper classes Haitians who arrived before 1971, assimilating into life in the United States was a more difficult task for the poorly educated and unskilled among this new wave of Haitian refugees (McCalla 1991: 3).

This next wave of Haitians also differed in the manner in which they fled. In contrast to the arrival by air of the previous group of Haitians, this new group was forced to travel in an infinitely more treacherous sea journey on unsound, unreliable vessels (McCalla 1991: 5). “A Haitian national did not leave his country, he escaped from it secretly, at great cost, and at greater risk” (Zucker and Zucker 1996: 181). Added to the Haitians’ dire predicament of fleeing an oppressive regime at great risk to their health and safety was the growing resentment in the United States, both in the public opinion and in the development of new government tactics to prevent their arrival.

Before 1978, the INS listed 1,926 Haitians who had reached the United States who were regarded as excludable or deportable (Miller 1984: xii). In the next two years, the number of Haitian cases pending before the INS increased almost twofold with 1,905 arriving in 1978 and 3,859 in 1979 (Miller 1984: xii). According to Masud-Piloto, “an estimated 60,000 had entered during the area [Florida] illegally since 1972” (1996: 111). With fears of a “black tide” of Haitians rising, the U.S. government worked to prevent the granting of Haitian asylum seekers via a program of accelerated deportation (Loescher and Scanlan 1986: 175).

In 1980, the mass influx of Cubans fleeing Mariel Harbor overshadowed a smaller yet significant flow of Haitian refugees to the Florida shores. “By 1980 more than 1,000 [Haitians] a month were braving the rough 800-mile voyage to south Florida in leaky

wooden sailboats” (Masud-Piloto 1996: 115). Although the INS had proven capable of coping with the challenges of 175,000 Indochinese and 125,000 Cuban refugees, an estimated 25,000 Haitian boat people who reached Florida in 1980 were seen as infinitely more problematic (Stepick 1982: 12). In response to the lingering threat of a mass influx of Haitians, the Reagan Administration instituted an interdiction program that was extremely successful in plugging the passage for fleeing Haitians, slowing the entry dramatically. “The migration of Haitian boat people to the United States, which had approached 12,000 during President Carter’s last year in office, slowed to a trickle. Those who did reach the United States were either deported or ‘detained’ in guarded camps” (Loescher and Scanlan 1986: 188). According to U.S. Coast Guard statistics, from 1982 to the beginning of 1991, approximately 22,712, Haitians were interdicted en route to the United States (Coast Guard 2004).

### **Arrival of Haitian Refugees in the Post-Cold War Period**

Upon the ascendance of Aristide to the Presidency of Haiti in February of 1991, the number of Haitians fleeing the island decreased substantially, highlighted by a several month period when the Coast Guard did not encounter any Haitians attempting to arrive by sea (Zucker and Zucker 1996: 109). However, this lull in the flow of Haitians seeking refuge proved to be only a fleeting interval in the nearly fifty year pattern of Haitian flight. Following the ousting of Aristide from power by a coup in September 1991, repression resumed in Haiti, leading once again to mass flight from the island. “The next coup created a large-scale exodus from the country; in fact, the United States Coast Guard rescued a total of 41,342 Haitians from 1991 to 1992, more than the combined number of rescued refugees from the previous ten years” (Swindells 1997: 907). As the conditions in Haiti deteriorated under the control of the military coup, Haitians continued

to flee in large numbers, most of whom were interdicted and forcibly repatriated by the U.S. Coast Guard (Jones 1993: 87).

Over the next several years, the United States and the international community strove to establish stability in Haiti and a resumption of the Aristide government to power while Haitians continued to flee. From 1991 until 1995, most of which time Aristide was in exile, U.S. Coast Guard records indicated that approximately 68,998 Haitians were interdicted at sea en route to the United States (U.S. Coast Guard 2004). The flow of Haitians did not subside until September 1994 when the United States was finally successful in restoring Aristide to the Presidency. However, despite the ostensible resolution to the migration crisis, the arrival of Haitian refugees on the shores of Florida did not end. According to statistics from the U.S. Coast Guard, from 1995 until 2004 approximately 11,887 Haitians were interdicted at sea, only 1,766 Haitians of which were granted political asylum (U.S. Coast Guard 2004). In 2004, Haitians continued fleeing for their safety, only to discover that they will most likely be deported or detained upon arrival in the United States.

### **U.S.-Based Domestic Support for Haitian Refugees**

In sharp contrast to the power wielded by the Cuban-American community, there has been a conspicuous absence of domestic support for the plight of Haitian refugees. The U.S. foreign policy bias creating a preference for refugees fleeing communism during the Cold War had the inverse effect of blocking recognition of those fleeing regimes friendly to the United States. With this foreign policy factor stacked against them, the only hope for Haitian asylum seekers in the United States was a substantial domestic support campaign. “Unlike the Cubans, who received full governmental support until they settled, Haitians were left on their own and had to depend on charitable

organizations, churches, and Miami's black community" (Masud-Piloto 1996: 115). Unfortunately for the thousands of Haitians who arrived during the Cold War, U.S. based domestic support for their plight was insufficient to make any significant effect on U.S. refugee policy formulation.

During the Cold War, "domestic pressures carried little weight. The Haitian communities in the United States were economically and politically insignificant. The churches and civil rights groups that defended the Haitians were politically unimportant" (Zucker and Zucker 1996: 34). Haitian exile leaders failed both in their attempts to launch a campaign to overthrow the Duvalier regimes, and to develop a cohesive opposition group similar to Miami based Cuban-American resistance to Castro (Loescher and Scanlan 1984: 320). The first wave of educated and professional Haitians who arrived in the 1960s, were not as fervently supportive of the uneducated and unskilled Haitian refugees following in their footsteps (Masud-Piloto 1996: 115; Miller 1984).

In contrast with the powerful Cuban-American community, Haitian refugees did not have the benefit of a financially and politically powerful U.S. based émigré community to lobby for their admission and subsequent resettlement (Zucker and Zucker 1996). "Unfortunately, unlike many other foreigners who have come to the United States, the Haitian boat people have not found kinsmen here who are well established and able to help them bear their burdens. Instead, the Haitian newcomers have found thousands of other undocumented Haitians, who also exist in a state of limbo" (Miller 1984: 172). Various organizations were founded, including the Haitian-American Community Association of Dade County, Haitian Refugee Project of America, Inc., American Haitian Humanitarian Foundation, and the Haitian Refugee Project. (Miller

1984: 172-177). However, these organizations, which were primarily aimed at providing human services, community education, and influencing U.S. policy decisions, were largely ineffective.

Ironically, while the fears over jobs and other costs fueled many among the African-American community to resent the Haitian arrivals, African-American organizations were among the most important supporters of Haitian asylum seekers (Miller 1984: 177). The Congressional Black Caucus and the National Association for the Advancement of Colored People (NAACP) have both been extremely sympathetic to the plight of the Haitian asylum seekers (Miller 1984: 176). “Proclaiming its solidarity with the Haitian refugees, the caucus insisted that the United States must pursue a refugee policy that is not ‘tainted by racial ideological or class prejudices’” (Miller 1984: 176). In addition to backing from segments of the African-American community, Haitian asylum seekers were also supported by legal advocacy groups.

For most of the Cold War, the major challenge to the U.S. policy toward Haitian asylum seekers came on the legal front. Legal advocates, namely the Haitian Refugee Center, brought various class action suits challenging the constitutionality of numerous U.S. strategies to interdict, deport and detain Haitian asylum seekers. While several legal challenges to U.S. refugee policy were successful in court, resulting in temporary injunctions or invalidations of U.S. refugee policies, none were ultimately able to force the government into making any comprehensive changes to its policy of rejecting Haitian asylum seekers.

The most successful lobbying effort in support of Haitian asylum seekers came during the Mariel boatlift, when charges of discrimination were strong enough to provoke

a change of U.S. refugee policy. In 1980, with the Cuban-Haitian entrant classification, President Carter agreed to allow Haitian arrivals to benefit from the same parole status as their Cuban counterparts. For most of the Cold War, however, domestic groups advocating on behalf of Haitian asylum seekers were rarely able to do anything other than draw attention to the double standard inherent in U.S. refugee policy.

### **Public Resentment and Racism toward Haitian Refugees**

In addition to lacking the financial and political means to exert significant influence on U.S. policy-makers, the Haitian émigré community has not been welcomed by the American public. Initially, the American public exhibited uncertainty over how to react to the arriving Haitians. “Some were struck by the desperation and courage motivating a 700-mile sea journey in overcrowded, barely seaworthy boats. Others believed that the Haitians were a disruptive force, destroying the community and draining public resources” (Stepick 1982: 11). As opposed to the public perception of Cuban refugees as members of the middle and upper class, Haitians were depicted as much less desirable guests (Masud-Piloto 1996: 115). “The race, class, language, and culture of the Haitians, as well as the popular belief that many had the HIV virus, unquestionably contributed to the domestic resistance to their admission” (Johnson 1998: 1144). Due to the human services that the Haitians required, resettlement costs were perceived to far exceed that of the Cuban refugees (Zucker and Zucker 1996: 34). “While Miami’s economy may have been rejuvenated by Cubans, the black Haitians without skills or capital were viewed as an unwanted burden” (Stepick 1982: 11).

While racial prejudice clearly played a part in the resentment directed at the Haitians from the white segments of the general public, it is important to note that many among the African-American community also felt threatened by competition for jobs and

other needs from the admission of the Haitians for the same reasons they were resistant to the admission of Cubans. “Many black Americans... have developed a general antiforeigner attitude—considering all newcomers to be threats, economically—and because Haitian boat people are considered competitors with black Americans for many low-paying jobs, the former are not highly regarded” (Miller 1984: 177). By all accounts, the lack of domestic support for, and the general public resentment toward, Haitian refugees during the Cold War made their case for admission into the United States infinitely more problematic, especially when compared to the experience of Cuban refugees during the same period.

### **Early Success for Haitian Refugee Advocates in the Post-Cold War Period**

While there have only been a few instances where Haitian refugee advocacy groups mounted a domestic campaign significant enough to alter refugee policy, these instances were important. Principal among these was the successful lobbying effort for reversal of the U.S. interdiction program against Haitian asylum seekers in 1994. In the face of anti-immigration opposition, and with the threat of a massive influx of Haitians looming, the Black Congressional Caucus and other civil rights groups pressured the Clinton Administration into modifying the U.S. policy toward Haitians, namely eliminating the summary return of Haitians interdicted at sea (Zucker and Zucker 1996). Prominent African-American civil rights activist, Randall Robinson, carried out a well publicized hunger strike in protest of the interdiction policy (Helton 2002: 92). The Black Congressional Caucus introduced bills to the House of Representatives and Senate aimed at tightening the embargo, terminating commercial flights to Haiti, blocking Haitian financial assets held in the United States, and stopping the automatic refoulement of Haitian asylum-seekers interdicted at sea (Zucker and Zucker 1996: 117). While the bill

was never voted on, the Clinton Administration, realizing that a resolution to the Haitian political crisis was essential, ultimately yielded to nearly all of its proposals (Newland 1995: 201). For the first time, the collective force of domestic pressure groups advocating on behalf of Haitian asylum seekers had succeeded in directing U.S. policy.

In 1998, supporters for Haitian refugees scored a second victory with the successful lobbying effort for the Haitian Refugee Immigration Fairness Act, HRIFA (8 C.F.R. 254.15). After Congress passed laws granting Cubans and Nicaraguan refugees permanent legal residence, advocates for Haitian refugees lobbied Congress for equal treatment for similarly situated Haitians. The legislation waived certain requirements for applying for legal permanent residency in the United States for Haitian asylum seekers who had applied for asylum before December 31, 1995, or those who had been paroled into the country and remained on a temporary status. While the legislation was portrayed as a success for Haitian asylum seekers, various restrictions in the HRIFA have made limited the number of Haitians able to benefit from the legislation (8 C.F.R. 254.15).

Advocates for Haitian asylum seekers have continued to exert pressure on the George W. Bush Administration to reform the detention and interdiction policies affecting Haitian asylum seekers. Similarly, as the prospects of a renewed refugee crisis increase with the political crisis in Haiti, supporters of Haitian asylum seekers are lobbying for an executive order granting Haitians arrivals the same protections afforded to citizens of other countries troubled by violent internal conflicts and environmental disasters.

### **Human-rights Violations in Haiti**

Haiti's past is a story of unending political violence, economic inequality, and social strife. The Haitian government's long history of rule by predatory dictators has left

a legacy of human-rights violations and political repression. During the Duvalier regimes, political opponents were subjected to imprisonment, torture and exile; while other civil and political freedoms were routinely denied to Haitians in general (Zimmerman 1993: 389). The State became an instrument of terror, maintaining its grip on power through extreme brutality, fear and repression of civil society (Loescher and Scanlan 1984).

Unlike Cuba, where Castro's government was viewed as the direct antagonist, the Haitian government was not the only source of violence. "Haiti was in many ways a police state, not a tightly controlled police state with central lines of authority, such as existed in communist countries, but a state maintained by petty thieves and mercenaries" (Zucker and Zucker 1996: 35). As the principal instrument of violence, the Haitian government relied on the Tonton Macoutes to carry out its harsh rule. "They ruled not by law, but by absolute terror, wringing tribute from the impoverished populace and enforcing their demands with arbitrary arrests, torture, and killings" (Zucker and Zucker 1996: 36). In 1973, an Amnesty International investigation alleged serious human-rights violations, stating:

"Amnesty International remains seriously concerned with the continued repression of dissent in Haiti and the denial of human and legal rights.... The variety of torture to which the detainee is subjected is incredible... prisons are death traps... [and] find a parallel with the Nazi concentration camps of the past but have no present-day equivalent" (Amnesty International Report 1973 in Loescher and Scanlan 1986: 249).

A report by the U.S. State Department in 2002 showed that the political crisis in Haiti has ensured that this record of human-rights violations has persisted into (U.S. State Department website 2002). On January 15, 2004, Amnesty International reported that, "The threats to human rights in Haiti, whether from police who use brutality in repressing

demonstrations or from political activists who use violence against their perceived opponents, are the most serious that we have seen since the 1994 return to democratic order" (Amnesty International 2004).

### **U.S. Government Policy toward Haitian Refugees**

#### **U.S. Government Economic Justification for Excluding Haitians**

“One hundred percent’ [of Haitian refugees] came for economic reasons: ‘They want material wealth, whatever that may be to them- a house, a car, a pig.’”  
Former INS General Counsel Maurice Inman (Bruck 1982 in Lennox 1993: 704)

The U.S. government has consistently depicted Haitian asylum applicants as savvy economic migrants seeking a short-cut to legal residency (Hull 1985). Defined as such, Haitians were prejudged by the INS as facially ineligible by the very definition of refugee status (Hull 1985: 129). With eighty percent of Haitians living in abject poverty, rampant unemployment, and a life expectancy of fifty-one years (CIA World Fact Book 2003), the prospect of migrating to a land of promise and plenty is certainly a strong lure for many poor Haitians. Undoubtedly, thousands of Haitians decided to emigrate to the United States primarily for the purpose of enhancing their economic livelihood. However, many scholars assert that the conclusion by the U.S. government that all Haitian arrivals were purely in search of better economic prospects than exist in Haiti, despite well documented accounts of political persecution, was both erroneous and duplicitous.

During a mass exodus of people from a country, it is often extremely difficult to ascertain the motives of an individual seeking asylum (Forsythe 1990). “Distinctions between economic and political migrants are scarcely tenable from either a logical or moral perspective, and America’s persistence in honoring this distinction may even be unwarranted from a legal point of view” (Hull 139). In Haiti, economic conditions were often inseparable from oppressive political factors, as poverty can be a direct result of

political repression when the military apparatus of the state is used to protect the ruling elite who have a near monopoly on the country's resources (Loescher and Scanlan 1986). "There is no way of determining who is an 'economic migrant,' who is a 'political refugee' without carefully interviewing each applicant, testing credibility and evaluating each story for consistency with known facts" (Loescher and Scanlan 1986: 190).

The correlation between a major wave of migrants from the island and pivotal political transitions in Haiti puts into doubt the validity of the blanket classification of all Haitians as economic refugees (Lennox 1993: 704). The sharp and sudden rise of Haitians after the coup that ousted freely elected President Aristide in 1991, and then the commensurate reduction of Haitian arrivals upon his reinstatement in 1994 are further examples of the pattern of refugee influxes corresponding to periods of political instability and violence (Lennox 1993: 704). Haiti, perhaps more than any other nation, exemplifies this tenuous connection between political and economic motivations for flight.

### **U.S. Government Policy toward Haitian Refugees before 1970**

The first of what would become an unrelenting stream of Haitians fleeing their homeland in search of refuge began with the establishment of Francois Duvalier's reign as dictator in Haiti in the late 1950s. Although the first to leave suffered unknown persecution at the hands of the Duvalier regime, they were fortunate in comparison with those who would follow in their footsteps when considering their reception upon arrival in the United States (Zucker and Zucker 1996: 34). "Although never the beneficiaries of the strong rhetorical support which the Cubans received, the Haitians who arrived in the United States between 1957 and 1971 were generally tolerated" (Zucker and Zucker

1996: 34). Initially, the INS chose not to aggressively prevent the Haitians from arriving, nor did they frequently pursue or deport them (Zucker and Zucker 1996: 34).

With the INS authorities essentially looking the other way, the first Haitian arrivals received virtual refugee status without having to prove their claims of persecution (Zucker and Zucker 1996: 34). While this early display of leniency on the part of the INS enabled many of the first Haitian arrivals the opportunity to escape repression at the hands of the Duvalier regime, their treatment in the United States was not on par with their Cuban counterparts. “None were ever officially categorized as refugees, and the formal steps to relax immigration rules for Cubans, including the practice of waiving the visa requirement altogether, and the passage of legislation to grant earlier arrivals permanent resident status were not taken for the Haitians” (Loescher and Scanlan 1986: 79). The United States made it abundantly clear that the Haitians were not “voting with their feet” as were the Cubans fleeing Castro and thus contributed to the concealment of the repression and brutality occurring in Haiti (Loescher and Scanlan 1986: 79). “In contrast with the Cubans, for whom a special federal program was created during the last months of the Eisenhower Administration, the Haitians received no U.S. federal or state assistance, and little aid was given by private organizations” (Loescher and Scanlan 1984: 320). While the initial Haitian arrivals experienced a generally permissive attitude from the INS, subsequent Haitian arrivals would encounter a sharply different treatment at the hands of the U.S. government.

### **U.S. Government Policy toward Haitian Refugees from 1970-1980**

After being initially “paroled in” along with Cuban refugees, the Haitians found their temporary refuge in the United States to be short-lived. Despite the favorable treatment afforded to most of the Cuban refugees, a growing number of humanitarian

organizations joining forces to champion the Haitians' cause, and an increasing recognition of human-rights violations in Haiti, Haitians fleeing in the aftermath of Jean Claude Duvalier's assumption of power found that they were no longer welcome. "Between 1972 and 1980, approximately 50,000 Haitians attempted to gain asylum in the United States; as few as twenty-five succeeded. As the number of Haitian asylum seekers rose, the United States began to deport refugees waiting for asylum while preventing other Haitians from entering the country" (Lennox 1993: 700). The Haitians received treatment at the hands of the INS that was blatantly inferior to that provided to their Cuban counterparts, and contradictory to the principles articulated in international refugee law (Loescher and Scanlan 1986: 80). This record of nearly automatic exclusion was the direct product of new preventive tactics by the INS designed in accordance with the foreign policy agenda of the U.S. government.

In response to the new influx in the 1970s, the INS changed its policy toward the Haitian arrivals and initiated a highly effective strategy of denying Haitians asylum. Under the previous policy, upon the claim for asylum by an alien, deportation hearings were suspended until the asylum request was resolved (Lennox 1993: 700). In contrast with the policy of the previous decade, in the 1970s the U.S. government implemented the policy of accelerated deportation, otherwise known as the "Haitian Program," which brought about the cancellation of certain procedural requirements in the processing of asylum claims (Lennox 1993). In effect, the INS skipped the trappings of objective review and proceeded with the processing of Haitians who were presupposed to be inadmissible.

With the aim of expediting the processing of asylum claims, the INS deliberately cut back on the various regulations, making it virtually impossible for a Haitian asylum seeker to get a fair hearing (Loescher and Scanlan 1986: 82). As a result of the INS mandate to accelerate the process, immigration judges' case loads were increased from an average of one hearing per day to around fifty-five per day; the time allotted for asylum interviews was reduced from an hour and a half to fifteen minutes; and immigration attorneys were given schedules that were impossible to fulfill (Lennox 1993). Not surprisingly, these measures were extremely successful in preventing Haitians from gaining asylum, as demonstrated by the fact that by 1978 the INS had permitted the accumulation of upwards of 7,000 Haitian deportation claims and that not one Haitian out of 4,000 processed during the Haitian Program was granted asylum (Lennox 1993).

The Haitian Program was so efficient in excluding Haitians from obtaining asylum that it began to reveal an unmistakable double standard between the treatment of Haitians and other groups, especially Cubans (Loescher and Scanlan 1986: 82). "The fact that Cubans and Haitians both came to Miami, and that the former were welcomed unreservedly while the latter were imprisoned and then deported, revealed the contrast too starkly" (Loescher and Scanlan 1986: 82). As criticism from churches, legal advocacy groups, and some Congressmen mounted, Haitian asylum seekers took their plight to the court system. By 1975, twenty-one lawsuits, representing over 500 Haitians, had been brought to the federal court system; all of them were unsuccessful (Loescher and Scanlan 1986: 84). While these first attempts to gain legal redress could not stop the measures imposed by the Haitian Program, litigation brought by the Haitian Refugee Center at the end of the 1970s, on behalf of 4,000 Haitian asylum seekers, presented the

U.S. government with its first serious challenge to its refugee policies (*Haitian Refugee Ctr. v. Civiletti*, 503 F. Supp. 442, 497 (S.D. Fla. 1980), *aff'd sub nom. Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023 (5th Cir. 1982).

In 1979, the Haitian Refugee Center brought a complaint to federal court alleging that the INS Haitian Program's acceleration of asylum procedures constituted a violation of the due process clause of the Constitution (*Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023 (5th Cir. 1982). The plaintiffs asserted that, "the program aimed to 'achieve expedited mass deportation of Haitian nationals without regard to the validity of their individual asylum claims'" (*Haitian Refugee Ctr. v. Smith*, 676 F.2d 1026 (5th Cir. 1982) in *Zink* 1998: 571). Federal District Judge James Lawrence King ordered a temporary injunction halting the deportation of Haitians. In his final opinion, Judge King issued sharp criticism of the U.S. treatment of Haitians:

Those Haitians who came to the United States seeking freedom and justice did not find it. Instead, they were confronted with and Immigration and Naturalization Service determined to deport them. The decision was made among high INS officials to expel Haitians, despite whatever claims to asylum individual Haitians might have. A Program was set up to accomplish this goal. The Program resulted in wholesale violations of due process and only Haitians were affected.

This Program, in its planning and executing, is offensive to every notion of constitutional due process and equal protection. The Haitians whose claims for asylum were rejected during the program shall not be deported until they are given a fair chance to present their claims for political asylum. (*Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023 (5th Cir. 1982).

The court's opinion was particularly critical of the U.S. government's portrayal of all Haitians as economic migrants. Judge King refuted the government's position, stating that "much of Haiti's poverty is a result of Duvalier's efforts to maintain power.... Indeed, it could be said that Duvalier has made his country weak so that he could be strong.... the Haitians' economic situation is a political condition" (*Haitian Refugee Ctr.*

v. Smith, 676 F.2d 1023 (5th Cir. 1982). Judge King further emphasized the double standard present in U.S. asylum policy:

The plaintiffs are part of the first substantial flight of black refugees from a repressive regime to this country. All the plaintiffs are black. Prior to the most recent Cuban exodus all of the Cubans who sought political asylum... were granted asylum routinely. None of the over 4000 Haitians processed during the INS program at issue in the lawsuit were granted asylum. No greater disparity can be imagined (Haitian Refugee Ctr. v. Smith, 676 F.2d 1023 (5th Cir. 1982).

The court concluded that the U.S. government infringed on aliens' rights to petition for asylum, which "violated the Constitution, immigration statutes, and international agreements, INS regulations and INS operating procedures" (Haitian Refugee Ctr. v. Smith, 676 F.2d 1039 (5th Cir. 1982) in Zink 1998:571). Specifically, the court held that "the government violates the fundamental fairness which is the essence of due process when it creates a right to petition and then makes the exercise of that right utterly impossible" (Haitian Refugee Ctr. v. Smith, 676 F.2d 1039 (5th Cir. 1982). Although the court instructed the INS to implement measures which would satisfy Haitians' rights to petition for asylum, the court neglected to propose which procedures would be constitutionally sufficient Haitian Refugee Ctr. v. Smith, 676 F.2d 1039 (5th Cir. 1982). The case was the first in a succession of litigation brought on behalf of Haitian asylum seekers to challenge discriminatory administrative measures by the U.S. government. While these court interventions were an important aspect in the advocacy of Haitian asylum seekers, discriminatory practices employed by the U.S. government were regularly employed (Loescher and Scanlan 1986: 177.)

### **U.S. Government Policy toward Haitian Refugees Arriving during the Mariel Boatlift of 1980**

At the beginning of the 1980s, several key events had a tremendous effect on the formation of U.S. refugee policy. In spite of the Judge King's order in the Civiletti case

for the implementation of measures to safeguard Haitians' right to petition for asylum, and the promising legislative reform of the Refugee Act, the 1980s would prove to be even harder on aspirant Haitian asylum seekers than the previous decade (Loescher and Scanlan 1986: 172).

The arrival of thousands of more than 3,000 Haitian refugees in 1980 presented a serious problem for the Carter Administration. Caught between the domestic backlash condemning the reception and resettlement of mass numbers of arrivals, and advocacy groups' calls for a humanitarian response, the Carter Administration's refugee policy was paralyzed (Loescher and Scanlan 1986: 186). "It sought to placate public opinion while not antagonizing the Cuban-American bloc or black Americans who were concerned that the government not treat Cubans better than black Haitians" (Loescher and Scanlan 1986: 186). Reporter Paul Lehman's commentary summarizes this contradictory treatment well, "[the Carter Administration was] caught between the Cubans, whom it did not wish to refuse, and the Haitians, whom it did not wish to admit" (1980: 532). On June 20, 1980, President Carter announced the "Cuban-Haitian" entrant classification in an attempt to find a temporary solution to the crisis (Masud-Piloto 1996: 86).

This new classification permitted both Cubans and Haitians who had arrived before June, 1980 to remain in the United States and apply for an adjustment of status to "permanent resident alien" after a two year period (Masud-Piloto 1996: 86). Further, "the entrants would be eligible for medical services, supplemental income, and emergency assistance benefits, and state and local governments would be reimbursed for 75 percent of the program's costs" (Masud-Piloto 1996: 86). President Carter had effectively issued a grant of mass parole to the Cubans and Haitians equally (Loescher

and Scanlan 1986: 186). While this legal maneuver went a long way to manage the refugee crisis, and was a rare instance of equal treatment afforded to Cubans and Haitians, the entry status was a temporary measure and was soon replaced with strict preventative procedures calculated to keep Haitians out.

### **U.S. Government Policy toward Haitian Refugees from 1981-1990**

In 1981, the Reagan Administration announced the beginning of a new phase in U.S. refugee policy toward Haitians, a policy in which interdiction and detention would become the methods of deterring Haitian arrivals. In contrast with the earlier policy of releasing Haitian refugees into the community while the asylum application process was pending, the INS declared a new policy whereby Haitian asylum seekers would be detained in guarded camps (Masud-Piloto 1996: 116). Enraged over the new policy, Haitian advocacy groups charged that the government's intent was to place Haitians "in a completely alien environment, separate from lawyers, with the idea of getting them voluntarily to return to Haiti, circumventing the legal process" (Masud-Piloto 1996: 117 quoting Ira Kurzban).

Within a year, the Haitian Refugee Center bought a class action suit, *Louis v. Nelson*, 544 F. Supp. 973 (S.D. Fla. 1982), questioning the legitimacy of the incarceration of an alien during a petition for asylum. Presiding over the United States 11th District Circuit Court of Appeals, Judge Eugene P. Spellman declared that the detention policy was in violation of administrative rules, and ordered the 1,771 Haitians currently detained to be released (*Louis v. Nelson*, 544 F. Supp. 973 (S.D. Fla. 1982) in Miranda 1995: 683). This ruling was not the end of the issue, however, as the Justice Department ultimately succeeded in its appeal of the case and secured a final holding that, "detention of excludable aliens fell within the government's authority to control its borders... that

illegal aliens captured at the border had no constitutional rights and could be detained indefinitely” (Louis v. Nelson, 544 F. Supp. 973 (S.D. Fla. 1982).

The second component of the Reagan Administration’s new policy toward Haitian refugees was the interdiction program. In 1981, the Reagan Administration announced a joint U.S.-Haiti agreement authorizing the interception of vessels containing undocumented Haitians attempting to reach U.S. territory (Masud-Piloto 1996: 116). Pursuant to the agreement, intercepted Haitians who were determined to not have a plausible asylum claim, after an asylum interview on board the Coast Guard cutters, would be forcibly repatriated to Haiti (Miranda 1995: 693). In return for Baby Doc’s assurance that the government of Haiti would not punish or prosecute repatriated Haitians for their flight, the U.S. government augmented aid to Haiti by 11.5 million dollars (Lennox 1993: 703). While the U.S. government pledged that Haitian refugees would not be forcibly returned to Haiti without their consent, the results of the program revealed this claim to be highly questionable (Miranda 1995: 694).

Due primarily to greatly insufficient asylum screening procedures on board the Coast Guard cutters, as well as the enduring generalization that all arriving Haitians were economic migrants, the interdiction program was highly effective in preventing Haitians to reach U.S. shores. “From 1981 to 1991, about 24,600 Haitians were intercepted at sea pursuant to the interdiction program. Of those, the Coast Guard found that only twenty-eight had credible asylum claims and brought them to the United States for asylum hearings” (Miranda 1998:573).

#### **U.S. Government Policy toward Haitian Refugees from 1990-2004**

With the President Aristide forced into exile in September 1991, and political feuds reaching a boiling point, repression and violence returned to Haiti. The military and

other political forces systematically targeted civil society organizations established in the early post-Duvalier period (Miranda 1995: 677). In plain view of the United States and the international community, political violence and repression ensued, sending many Haitians to their deaths and many more fleeing for safety in other countries. “The coup created a large-scale exodus from the country; in fact, the United States Coast Guard rescued a total of 41,342 Haitians from 1991 to 1992, more than the combined number of rescued refugees from the previous ten years” (Swindells 1997: 907). Hundreds of Haitians were arrested, tortured and killed in the aftermath of the coup, and an estimated 3000 were killed in the three years that followed (Swindells 1997: 907).

In the early 1990s, President George Bush, with the issuance of the Kennebunkport Declaration, added another layer to the thick barricade against Haitian asylum seekers. “In May, 1992, with the numbers of Haitians in Guantanamo mounting steadily and the screening procedures under court challenge, President Bush issued an Executive Order to halt the screening and summarily repatriate all the Haitian boat people intercepted at sea” (Newland 1995: 199). The Coast Guard was thus permitted to board and search vessels potentially carrying undocumented aliens, and to have the vessel and its passengers immediately returned to the country from which it arrived in the event that it is in violation of immigration or other laws (Villiers 1993: 878). With this executive order, the asylum screening process on board Coast Guard cutters was eliminated for Haitian asylum seekers, who were now faced with instant repatriation, without even the bare minimum of procedures to establish a well-founded fear of persecution (Zucker and Zucker 1996: 111). Importantly, the Kennebunkport order was specific to Haiti, and did not require automatic forced repatriation for refugees of other nationalities (Alden 1995).

This new twist to U.S. interdiction of Haitian asylum seekers was highly effective, with approximately 18,095 Haitians interdicted between the date of Aristide's overthrow in September, 1991, and April 7, 1992 (Zink 1998: 575).

The Kennebunkport intensification of the interdiction program brought sharp criticism from refugee advocacy groups. In addition, while campaigning for President, Governor Bill Clinton called the policy callous, stating that he was “appalled by the decision of the Bush Administration to pick up fleeing Haitians on the high seas and forcibly return them to Haiti before considering their claim of political asylum.... If I were president, I would—in the absence of clear and compelling evidence that they weren't political refugees—give them temporary asylum here until we restored the elected government of Haiti” (Zucker and Zucker 1996: 111). While Governor Clinton declared his criticism of the interdiction policy, media reports circulated suggesting that preparations were underway in Haiti for the departure of 200,000 to 500,000 Haitians once Clinton assumed the Presidency (Helton 2002: 91). Upon his inauguration, President Clinton promptly reversed his position and announced the interdiction policy would be continued under his administration (Helton 2002: 91). For President Clinton's first year in office, the interdiction policy remained unchanged. During this time, however, domestic opposition to the interdiction policy mounted, while at the same time the political crisis surrounding the overthrow of Aristide intensified in Haiti.

During the Cold War, instances of domestic support of Haitian asylum seekers, significant enough to influence federal policy, were extremely rare. However, by 1994, the combined efforts of various humanitarian and civil rights groups and the Black Congressional Caucus exerted an unprecedented amount of pressure on U.S. policy-

makers concerning the summary repatriation of Haitian asylum seekers (Helton 2002: 92). Domestic critics of the interdiction policy were aided by external pressure on the Clinton Administration to respond effectively to the intensifying political crisis in Haiti. Exiled Haitian President Aristide unilaterally canceled the original 1981 interdiction agreement, alleging that the United States was violating international law by forcing asylum seekers back into the hands of the military junta in Haiti (Newland 1995)

The combination of internal and external pressure culminated in the rescission of the forcible return policy imposed by the Kennebunkport order. In May 1994, President Clinton declared that procedures would be implemented to assure that Haitian asylum seekers interdicted at sea would be provided with the opportunity to establish a plausible claim for asylum (Helton 2002: 92). As an immediate short term policy replacing forced repatriation, the United States extended temporary safe haven at Guantanamo naval base to any Haitians claiming persecution if returned to Haiti (Newland 1995: 202). Ultimately, around 20,000 Haitians were held at Guantanamo until the Aristide government was restored to power in Haiti (Helton 2002: 92). Upon Aristide's homecoming, and the return of democracy to Haiti, thousands of Haitians at Guantanamo Bay accepted the U.S. offer of 75 dollars and entry into a job program if they voluntarily returned to Haiti (Alden 1995: 198). The remaining 4,000 Haitians, who insisted that they would be subjected to persecution upon return to Haiti, were forcibly repatriated in January 1995 (Alden 1995: 198). While the number of Haitians fleeing initially decreased with the restoration of the Aristide government, the return of political violence in recent years has led to rising numbers of Haitians seeking protection in the United States.

In 2001 and 2002, as the political stalemate over the legitimacy of President Aristide's reelection deepened, the United States, under the second Bush Administration, once again initiated various steps to prevent and deter Haitian asylum seekers. This new policy included:

- Interdiction of Haitian boats on the high seas and within the territorial waters of the United States;
- Summary return of those individuals who are interdicted with no screening of their asylum claims unless a person explicitly expresses a fear of return, a procedure that offers significantly less protection than those used to identify interdicted Cubans and Chinese in need of protection;
- Resettlement to third countries rather than to the United States of the few interdicted individuals who are provided with offshore refugee status determinations;
- Prolonged and arbitrary detention of those Haitians who are able to make it to the United States;
- Denial of bond to Haitians under a precedent decision by Attorney General John Ashcroft in the case of a teenage Haitian asylum seeker, despite a grant of bond from both the immigration judge and the Board of Immigration Appeals;
- Extension of expedited removal procedures to those individuals who arrive by sea but who are apprehended within the interior of the United States, a measure never before taken until the arrival of a group of Haitian boat people in October 2002;
- Application of expedited hearing procedures that have resulted in many Haitians having to present their asylum claims without benefit of legal counsel (Lawyers Committee For Human Rights 2003)

Not surprisingly, Haitian refugee advocates continued to object vociferously to what they declared to be a blatantly discriminatory policy. In March of 2002, Haitian refugee advocates brought a lawsuit alleging that the detention policy was discriminatory as applied to Haitians and in violation of both U.S. and international law (Miami Herald 2002). However, these attempts to end the U.S. detention policy were ultimately ineffective. The 2002 lawsuit was dismissed by District Court Judge Joan Lenard, who

stated that politicians and not the courts had the authority to determine the appropriate procedures (Miami Herald 2002).

In addition to stating that the policy of detaining Haitian asylum seekers pending the asylum process was necessary as a deterrent to other Haitians who were considering making the perilous journey from Haiti, in April 2003, the U.S. government added the issue of national security to its justification of the policy. In 2001, the U.S. Patriot Act, bestowed upon the Attorney General the power to override the authority of immigration courts if, in the Attorney General's judgment, the issue of national security was raised in a particular case. Citing limited resources and the threat of terrorists using Haiti as a staging point for entry in the United States, Attorney General John Ashcroft stated that the release of Haitian asylum seekers from detention would raise national security concerns. Ashcroft directed immigration authorities ruling over bond proceedings to take national security interests into consideration (Lawyers Committee for Human Rights, Media Alert 2003). "In so doing, the Attorney General sent a clear signal that he expects the immigration judges and the Board [of Immigration Appeals] to refuse to release Haitian asylum seekers as well as other non citizens based on U.S. government assertions of broad national security concerns – even when there is no reason to believe the individual at issue himself presents a risk of harm to the United States" (Lawyers Committee for Human Rights, Media Alert 2003)

### **Summary**

The analysis of Haitian refugee populations since the 1950s reveals several key similarities and differences to other refugee populations. In the arena of U.S. governmental relations, the Cold War revealed a clear tolerance on the part of the U.S. government toward the excesses of the Duvalier dictatorships. After the initial wave of

refugees in the early 1960s, Haitian refugees, who were predominantly black, arrived with little education and few job skills, all of which complicated their ability to adjust and assimilate to life in the United States. Moreover, Haitian refugees were not the beneficiaries of a supportive and strong émigré community, and were the target of high levels of resentment within the U.S. public. However, in the post-Cold War period, Haitian advocates have achieved several important lobbying successes on behalf of Haitian asylum seekers.

Throughout the duration of the Cold War, the U.S. government pursued two very different policies toward Cuban and Haitian refugee populations. Beginning in 1970, the U.S. was unwavering in its policy of excluding Haitian refugees from entering or gaining political asylum in the United States. With only a few exceptions, the U.S. government has maintained its policy of interdicting and returning Haitians picked up en route to the United States. Despite the potential for the strengthening of domestic support for Haitian asylum seekers, the threat of a new refugee crisis as a result of current political violence and instability in Haiti will most likely derail any chances for the U.S. government to relax its long pattern of summary exclusion toward Haitians.

This chapter reviewed the history of U.S. governmental relations with Haiti and the particular characteristics of the Haitian refugee population during the various major phases of flight. Similarly, this chapter discussed the lack of U.S.-based domestic support for Haitian refugees. Finally, this chapter detailed the political strategies employed by the U.S. government to either admit or deny the Haitian refugees legal entrance into the country.

## CHAPTER 5 CONCLUSION

The purpose of this study was to investigate the apparent pattern of differential treatment afforded to Cuban and Haitian refugees by the United States, and the reasons for the continuation of this differential treatment beyond the Cold War years. The comparison of the experiences of Cuban and Haitian refugees seeking asylum in the United States is a complex issue involving various political, social and economic factors. Scholars have addressed certain aspects of the experiences of Cuban and Haitian refugees; however, no single study has examined the treatment of these two refugee populations in depth. This study has compared the historic experiences of Cuban and Haitian refugees, and provided a lens through which current refugee crises, from either or both of these countries, can be better understood.

### **Main Findings**

#### **Continuing Differentiation in the Application of U.S. Refugee Policy**

Over the last fifty years, Cuban and Haitian refugees have fled to the United States, arriving at the same time from geographically proximate small islands, relatively similar in their distance to the United States. It would be logical to predict that U.S. refugee policy toward these two refugee populations would be markedly similar, if not virtually identical. However, the evidence accumulated in the current study indicates that such a hypothesis is completely untenable. A major finding of this study was that U.S. refugee policy toward Cubans and Haitians has been, and continues to be, developed and implemented in radically different ways.

The similarity of the records of human-rights conditions in Haiti and Cuba is important to the comparative analysis of U.S. refugee policy toward Haitian and Cuban refugees. Reports by nongovernmental organizations, such as Amnesty International, America's Watch, and the Lawyers Committee for Human Rights, have provided important data on the prevalence of political persecution and human-rights violations in both Cuba and Haiti. Political persecution and the incidence of human-rights violations in both Haiti and Cuba have been thoroughly documented and a solid argument can be made that both refugee groups are equally eligible for protection under refugee law. While the Haitian and Cuban refugee populations arriving in the United States for the past fifty years have shared certain characteristics and suffered similar repression, this study has illustrated that key differences exist between the groups that can explain their differential treatment upon arrival in the United States.

The history of U.S. relations with Cuba and Haiti prior to the 1950s was very similar, however, for the duration of the Cold War, the United States foreign policies toward the Haitian and Cuban governments diverged sharply. While the U.S. government provided substantial aid and legitimacy to the Haitian government, its policy toward Cuba was one of outright hostility and contempt. This divergence in U.S. governmental relations with Cuba and Haiti translated directly into differential treatment of the refugees fleeing these countries. Surprisingly, despite the tremendous rearrangement in international relations in the aftermath of the Cold War, U.S.-Cuban relations remained bitter. At the same time, U.S.-Haitian relations in the post-Cold War remained open, in spite of recurring problems concerning the political stability and overthrow of President Aristide's government in March 2004.

The various major periods of refugee flows from both Haiti and Cuba were similar in some respects. Several of the largest episodes of the flight of Haitian and Cuban refugees occurred either concurrently or close in time. Similarly, both groups frequently relied on the same methods of transportation, primarily arriving via makeshift sea vessels, or less commonly via commercial transportation. However, in contrast with the Haitians whose options were limited to the above mentioned routes, thousands of Cubans benefited from the U.S. government sponsored boat or airlifts. The evidence indicated that both the early arrivals from both countries were generally from the higher classes who were dislocated from the elite positions in their societies. Similarly, both refugee populations increasingly reflected the basic demographic make up of their respective societies.

The Haitian and Cuban refugee populations were also different in other respects. The two principal differences between the two groups were their race and the level of domestic support and resistance to their resettlement. There was a higher education level among Cuban refugees, occupational skills and the ability to assimilate and adjust to life in the United States. Importantly, while only a minority of Cuban arrivals were black or mulatto, the overwhelming majority of Haitians were black, a key racial distinction influencing their reception by the U.S. populace in general. However, an increasing trend in the arrival of nonwhite Cubans will add credence to the positions of some scholars on the influence of race in U.S. refugee policy.

While most commentators asserted that Haiti's geopolitical importance in the struggle against communism was the primary factor in the policy of denying Haitian asylum claims (Koehn 1990), others concluded that the subtext of U.S. policy of

excluding Haitian asylum seekers stems from the fundamental issue of race (Villiers 1995: 907). According to the National Council of Churches, U.S. refugee policy toward Haitians was guided by a fear of a black tide, “racial overtones of the treatment of Haitians suggested, through implications, that we are saying that our doors are open only to those who are white, skilled and fleeing from socialist government” (House Comm. On Int’l Relations 94th Cong., 1st Sess., Human Rights in Haiti 79, 1976, in Miller 1984: 93). Prominent immigration law professor, Steve Legomsky, went so far as to assert that the American public would not have tolerated the treatment directed toward Haitians if they had been European (Harney, in Johnson 1998: 1144).

### **Development of Refugee Law**

While both international and U.S. refugee law have developed into complex legal systems that espouse humanitarian principles, many obstacles persist in achieving a fair, consistent and unbiased application. In the aftermath of WWII, the international refugee regime emerged with the 1951 Convention. Controversially overt geographical and ideological biases in this early international codification of refugee law led to the reforms of the 1967 Protocol which has endured as the principal instrument in international refugee law.

The development of U.S. refugee law was slow to emerge and, until 1980, lacking in any comprehensive legislation. Before the Refugee Act of 1980, consecutive presidents managed refugee crises on an ad hoc basis, relying on the executive parole power to admit particular groups without close application of refugee determination procedures. With the Refugee Act, the United States brought U.S. law into compliance with international principles and ended the overt political biases in refugee admissions. However, as evidenced by the vulnerability of the application process to State

Department considerations, the potential for foreign policy, economic and social preferences to improperly prejudice the admission of asylum seekers remained a serious concern.

The formulation of U.S. refugee policy has been a complicated process, inevitably influenced by factors beyond the formulaic legal scheme. International law clearly prohibited the use of ideological and political considerations in the application of refugee law. Similarly, while the U.S. government explicitly conceded that an alien's eligibility as a refugee should not be influenced by ideological factors, the influence of foreign policy on the shaping of U.S. refugee policy has affected the policy decisions of every president since the Eisenhower Administration. "For decades, foreign policy determined the status of entrants: If applicants came from Communist countries, they were almost always determined to be refugees [or welcomed as such under a different legal scheme]; if they came from non-Communist countries, they were usually categorized as economic migrants" (Zucker and Zucker 1996: 5). Thus, as applied to Cuban and Haitian refugees, there has been an enduring divergence between the principles and standards set out in international and U.S. refugee law and the actual policies followed by consecutive presidential administrations.

### **Foreign Policy as a Determinant in U.S. Refugee Policy**

In many instances, an asylum seeker's eligibility as a refugee was determined by the status of the foreign relations between their home country and the United States (Preston 1986: 95). "During the Cold War, refugees were often adjuncts to ideological confrontation. Repatriation from the West was tantamount to endorsing the totalitarian system that had emerged in the Soviet Union, and the option of refugee return became unthinkable" (Helton 2002: 9). In the context of the Cold War, the U.S. State

Department had a distinct interest in using the symbolic value of granting asylum to persons fleeing communist countries to vilify their governments, while not wanting to disparage those friendly governments as human rights abusers (Preston 1986: 95). The humanitarian principles at the heart of both international and U.S. refugee law were lauded when the arriving refugees were of geopolitical importance, yet repeatedly ignored when the refugees nationality was that of a country with whom the U.S. government had positive relations. This pattern of foreign policy influence in the formation of U.S. refugee policy was at its peak in the Cold War context, when the ideological confrontation between the West and the Soviet Union was at its peak. While the dominance of the foreign policy bias has receded to an extent in the post-Cold War period, its influence continues to be a major factor in the formation of refugee policy.

### **Domestic Factors as Determinants in U.S. Refugee Policy**

While foreign policy considerations were the dominant interest in refugee policy, they were not the sole factor. Domestic considerations, including the relative size and political clout of U.S.-based émigré communities, demographic characteristics of the particular refugee population (including but not limited to race, education, wealth), and the general public opinion all influenced the shaping of refugee policy. While the Cuban American community succeeded early in establishing a highly influential political lobby and support network in the United States, the domestic organization and support system for the Haitian refugee community was noticeably less significant. Moreover, while the Cuban refugee population was no stranger to local resentment in the United States, the Haitians were perceived as much more of a burden.

Some scholars have contended that, in the post-Cold War era, the importance of these previously secondary factors will become equal to or possibly surpass the historic

dominance of foreign policy in the formation of U.S. refugee policy. “The entire basis for our refugee policy had shifted from foreign policy, a fixation on the overthrow of communism—to domestic policy, pressures from the voters to curtail the numbers of ‘illegal aliens’ and to reduce the cost of government” (Zucker and Zucker 1996: 6).

Refugee populations lacking a U.S.-based advocacy network are at a distinct disadvantage to other well-supported groups, regardless of the legitimacy of their claims for refugee status. Moreover, the real and perceived costs of resettlement for refugee groups are closely associated with the varying level of domestic support or resentment. While it is still unclear as to what extent the influence of foreign policy has been supplanted by domestic interests, the shaping of U.S. refugee policy since the end of the Cold War has been unmistakably affected by a general fear of massive refugee arrivals and countervailing pressure from refugee advocacy groups.

### **U.S. Refugee Policy during the Cold War Period**

While both Cuban and Haitian refugees were fleeing similar forms of persecution and human-rights violations at the hands of repressive authoritarian regimes, their reception and treatment by the U.S. government was extremely different. Throughout the Cold War, Cuban refugees were the beneficiaries of an open door policy. The vast majority of the arriving Cubans were paroled into the United States without even being required to demonstrate a well-founded fear of persecution during via the asylum process. In addition to admitting the Cuban refugees into the country, the U.S. government passed legislation that both facilitated the adjustment of Cuban refugees’ immigrant status and provided large amounts of financial assistance for their resettlement.

In sharp contrast, the Haitian arrivals during the Cold War were the targets of a systematic policy of summary exclusion, interdiction and forced repatriation. Apart from

an initial period of lenient admission on the part of the U.S. government for those Haitians arriving between 1957 and 1971, Haitians arriving in the United States were uniformly painted as economic migrants who, as a group, were ineligible for asylum. Consecutive presidential administrations implemented a series of programs designed to prevent Haitian arrivals or to expedite their deportation upon entry. Those Haitians arriving during the Mariel refugee crisis were grouped together with Cuban refugees in the Cuban-Haitian entrant classification, avoiding deportation. However, after this temporary episode of acceptance, the U.S. government quickly reverted back to its policy of exclusion.

### **U.S. Refugee Policy during the Post-Cold War Period**

The end of the Cold War brought with it certain important developments to U.S. refugee policy. In 1994, the threat of a massive refugee crisis from both Cuba and Haiti resulted in a significant change of course in the historic pattern of U.S. refugee policy. With regard to Cuba, the long held policy of providing an open door to Cubans escaping Castro's regime was compromised. In its place, the United States in August, 1994, initiated a policy whereby those Cubans who reached U.S. territory would be permitted to stay and apply for adjustment of status, while those interdicted at sea, en route, would be returned to Cuba. While the near automatic admission of Cubans upon reaching U.S. territory revealed the continuation of preferential treatment toward this refugee group, the decision to return interdicted Cubans back to Cuba marked a momentous shift in U.S. refugee policy.

At the same time that the 1994 Cuban refugee crisis destabilized U.S. refugee policy, the mass arrival of Haitians refugees triggered a significant response in the United States. Domestic pressure, both in support of and in resistance to the arriving Haitian

refugees played a considerable role in influencing the Clinton Administration to take major steps toward resolving the refugee crisis through direct intervention to restore stability in Haiti. Moreover, domestic advocacy groups were successful in lobbying Congress to provide the same relief afforded to Cuban and Nicaraguan refugees with the passage of the 1998 Haitian Refugee Immigration Fairness Act.

The George W. Bush Administration made it clear that the wet-foot dry-foot policy for Cubans will remain in place. Similarly, President George W. Bush has declared that his administration will continue the policies of detention, interdiction and repatriation for Haitians fleeing the current outbreak of political violence and the mounting opposition to President Aristide's grip on power. However, current events in both Cuba and Haiti, and the specter of a renewed mass refugee crisis, virtually guarantees that the status quo is untenable and that the U.S. government will be forced to contemplate a more effective and comprehensive refugee policy.

The post-Cold War developments in U.S. refugee policy, the wet-foot dry-foot policy and the recent successes of the Haitian advocacy community, are of tremendous significance for this study. While the current U.S. refugee policy toward Cuban and Haitian refugees continues to exhibit a veritable double standard and differential treatment, there has been a distinct convergence in their reception in the United States. The fact that the current U.S. policy calls for equal treatment (interdiction and repatriation) of Cubans and Haitians picked up en route to the United States demonstrates that the historic pattern of the anti-communist U.S. foreign policy driving U.S. refugee policy has limits. The question then turns to what other factors will have the greatest influence on the formation of future U.S. refugee policy. Of particular significance will

be the increasing percentage of nonwhite Cuban arrivals and, thus, to what extent the factor of anti-black racial prejudices might equalize the treatment of Cuban and Haitian refugees. Similarly, the measure of domestic advocacy and degree of public support for the Cuban and Haitian refugee groups will be an important factor.

### **Future Research and Recommendations for Policy-Makers**

The conclusion of this study indicates that the problem of the mass arrival of refugees from Cuba and Haiti, and the perpetuation of a pattern of differential treatment at the hands of U.S. government, remains an immediate dilemma for both Federal and State policy-makers, as well as for the U.S. public at large. Further research and consideration on this issue must address in greater depth the following: (1) the role of race in the development and implementation of U.S. refugee policy; (2) the practical strategies for managing the reception and resettlement of refugees during an inevitable episode of mass flight; (3) prospects for international efforts between the United States and other potential refugee receiving nations for the design of a realistic cooperation aimed at relieving the pressure on the United States in its burden as the primary refugee receiving nation; finally, (4) the manner and extent to which domestic advocacy and resistance groups will continue to influence U.S. refugee policy.

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Evan George received his Bachelor of Arts in Anthropology and International Studies at Guilford College in 1998. While at Guilford College, he studied abroad in Tokyo, Japan; Guadalajara and Merida, Mexico; and Guatemala and Honduras. After graduating from Guilford, he organized a 4,500 mile bicycle trek across the United States. In graduate school at the University of Florida, he received his J.D. degree at the Levin College of Law, while completing the requirements for his master's degree with the Center for Latin American Studies. During his time at the University of Florida, he worked as a Public Interest Fellow with the Florida Bar Foundation; and conducted a training course at the Western Hemisphere Institute for Security Cooperation on Refugee Law for high-ranking military officials from six different countries in Latin America. After receiving his master's degree in May 2004, he plans to pursue a career in refugee law.