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*HUMAN RIGHTS, U.S. FOREIGN POLICY,
AND HAITIAN REFUGEES*

Haitians have been migrating to the United States in significant numbers since the rise to power of Francois Duvalier over a quarter century ago. A few who have been able to meet the strict eligibility criteria of U. S. immigration law have entered as legal immigrants. Perhaps as many as 300,000 others have entered illegally, or have overstayed the terms of their temporary visas. A diverse population composed of professionals and businessmen, students and shopkeepers, journalists, small land holders, and illiterate peasants, it is impossible to capture their individual reasons for leaving Haiti and coming to the United States in a single all-inclusive phrase.

Haiti is the poorest country in this hemisphere. Nearly all who leave to come to the United States are aware that they are trading malnutrition, negligible educational opportunities, and a subsistence standard of living for the greater opportunities afforded by life in America. Haiti is also a country with a tradition of violence and political repression that is unparalleled in the Caribbean. The violence is less extreme today than it was in the darkest days of Francois Duvalier's rule, yet the national security forces continue to carry on personal vendettas in the countryside,

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and political repression has not abated significantly. Opponents of the regime of Jean-Claude Duvalier are denied the right to organize, union activity and political expression are closely monitored; prison, torture, and exile are used to suppress dissent (Organization of American States [OAS], 1983; Amnesty, 1983). Thus many who have left Haiti in the last quarter century—or in the last five years—well may be “economic migrants,” as the State Department has consistently claimed. Yet others, whose flight was motivated by personal fear, clearly meet the present American, and long-standing international, definitions of “refugee.”

The importance of distinguishing between “economic migrants” and political “refugees” has become clearer since 1980, though such a distinction has in fact been relevant to Haitian migrants since the early 1970s. In 1980, growing resistance to Indochinese refugee flow, concerns about illegal Mexican migration, and the boat lift of some 125,000 Cubans from Mariel harbor demonstrated that not every alien would be welcomed. Yet in that year, Congress enacted a new refugee law that, for the first time, unequivocally guaranteed asylum to any migrant from any country arriving in United States and able to demonstrate a personal, “well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.”

The present asylum rights of Haitians are more generous than they have ever been in the past. Yet Haitians have in fact been claiming asylum or its equivalent in significant numbers since the early 1970s, and have been especially discriminated against. Long-standing prejudice and restrictionist fears cannot be ignored as contributing factors. Yet it is the contention of this article that the principal reason for the special immigration animus against Haitians, particularly as it has displayed itself in the handling of political asylum claims, has been the close political relationship between the United States and the Duvaliers *pere* and *fils*. We argue that shared anticommunist objectives have taken priority over human rights concerns since the late 1950s, and that individual asylum applicants, and the integrity of the asylum determination process, have been the primary victims of

that policy. Thus, we intend to show that the denial of virtually every Haitian claim between 1972 and 1980 reflected conscious policy choices. More importantly, we will argue that similar choices continue to affect the processing of Haitian asylum claims today, despite the provisions of the new refugee act.

Haiti under Francois Duvalier

Haitian migration is not a new phenomenon. Since the late nineteenth century, Haitians have been working as migrant labor in agriculture throughout the Caribbean. During the U. S. occupation of Haiti between 1915 and 1934, hundreds of thousands of unskilled Haitian laborers were encouraged to migrate to both Cuba and the Dominican Republic to work in sugar mills and plantations (Lundahl, 1979: 623-627; Boswell, 1982: 18). These flows were temporarily halted in the 1930s due to worldwide economic depression and a massacre of Haitians ordered by the Dominican dictator Rafael Trujillo.

Another wave of mass emigration from Haiti was initiated in the mid 1950s. Economic stagnation and political turmoil, followed by the consolidation of power by Duvalier, caused thousands of Haitians to flee to the United States, Canada, France, Africa, the Bahamas, Puerto Rico, and elsewhere in the Caribbean Basin. From the ouster of the former President Paul E. Magloire in December 1956, to Duvalier's accession to power, six provisional regimes had attempted to gain power in Haiti. Finally, in July 1957, a military junta headed by General Kebreau took control and set elections for September of that year. Dr. Duvalier was the favored candidate of the junta and every effort (including disqualifying candidates and strict censoring of the media prior to the election) was made to ensure his victory.

Duvalier assumed power in September 1957 in one of the poorest countries of the world. The country was in dire economic straits despite attempts by both the IMF and United States to stabilize the country through special assistance programs (New York Times, 1957a; 1957b). Conditions worsened during his

administration and have not improved significantly during the administration of his son. Haiti has the highest infant mortality rate, the lowest nutrition standards, and the highest illiteracy rate in the Western Hemisphere (Inter-American Development Bank, 1958-1980; World Bank, 1981; Lundahl, 1979). A recent World Bank survey determined that three out of four Haitians live at or below the absolute poverty level and that per capita income in many rural areas is less than \$100 (1981).

The causes of poverty in Haiti are deep rooted. Most Haitians live in the countryside and rely on the agricultural sector for their livelihood. Unfortunately, two-thirds of Haiti consists of steep, largely eroded mountains that are unsuitable for cultivation. Demographic concentration in the countryside and a very uneven land tenure situation have, over time, reduced Haitian agriculture to a vicious circle of poverty. In addition, Haiti has virtually no natural resources and possesses only the most rudimentary infrastructure.

Haitian poverty, however, results not from demographic pressures, soil erosion, and natural scarcity alone. It also derives from deliberately maintained patterns of economic inequality and abuses of political power (Lundahl, 1979: 623-647; Roberts, 1978; Lichtenberg, 1982). According to one scholarly study of the Haitian economy:

In spite of the compelling fact that agriculture has always constituted the very backbone of the Haitian economy, the Haitian governments have traditionally done next to nothing to improve the lot of the peasants. The gulf between the peasant and his government is abysmally wide.... Economic development has never been a political goal in Haiti. Instead, a never-ending stream of kleptocracies who could think of little else than filling their pockets have squandered the available funds in their attempts to gain or retain the presidency [Lundahl, 1979: 636; U. S. AID, 1977: 143].¹

The presidencies of Francois and Jean Claude Duvalier have proven to be no exception to this historical pattern of rule. The Haitian government continues to control tightly every aspect of

the collection of revenues and expenditures, and there have been continual reports of government corruption and mismanagement of funds. Thus, a 1979 World Bank report revealed that in 1977 almost 40% of all expenditures and revenues were channeled through special checking accounts held at the National Bank, making it virtually impossible to determine their source or eventual disposition (World Bank, 1981). In 1978, the Congressional Research Service estimated that 50% of Haiti's income was in unbudgeted accounts that were presumed to end up in private hands (Roberts, 1978). In its 1979 report on human rights in Haiti, the U. S. State Department concluded: "Corruption is traditional at all levels of society, and significant amounts of domestic revenues usable for development continue to be diverted to personal enrichment (U. S. State Department, 1980: 344)." Even the money that Haiti does devote to legitimate government expenditures has little effect on easing economic and social inequalities. The Haitian government devotes less domestic revenue per capita than any other country in the hemisphere to such social necessities as public education, public health, or agricultural extension services (Lundahl, 1979: 641).

Once in power, Francois Duvalier ruthlessly purged the country of all real and suspected opposition. He systematically reduced the political role of the army, dismissed successive commanders-in-chief and a large number of professional officers of all ranks, and closed the military academy (Heinl and Heinl, 1978). Duvalier, in turn, created a paramilitary force, called the *tonton macoutes*, later combined into the *Service Volontaire Militaire*, who were directly responsible to the president and would obey his orders without question or scruple. The majority of *tonton macoutes* have been unpaid and therefore have had to earn their livelihood by extorting money and property with threats of violence against their fellow Haitians.

The political opposition to Duvalier was dealt with through these personal instruments of state terror. In probably the first widespread use of "disappearances" in the Western Hemisphere, Duvalier's paramilitary forces wielded wide discretionary power to arrest, imprison, torture, and put to death any Haitian citizen

without even an order in writing. Opponents of the regime or those merely under suspicion disappeared without trace (International Commission of Jurists, 1963: 19-25; 1966: 1-5; 1967: 28-33; Heintz, and Heintz, 1978; Rotberg, 1971; Deiderich and Burt, 1969; Manigat, 1964). The disappeared came from all ranks, including labor union representatives, professors and students, lawyers who defended critics of the regime, peasants suspected of harboring "subversives," and people abducted out of personal caprice of the *tonton macoutes*. Duvalier's agents directed their terror not only against their perceived enemies, but against the relatives of their enemies as well. Sometimes whole families were exterminated in political reprisals. The victims were completely without access to lawyers and Duvalier rejected proposals by the Inter-American Human Rights Commission and the International Commission of Jurists to make on-site visits.

All other potential opposition was likewise crushed. The National Union of Haitian Workers, which was the largest association of labor unions, was disbanded. The government used coercion to enforce press censorship. The Catholic church was silenced as a political force through expulsion of its leadership. The legislative and judicial branches delegated all their effective authority to the president who ruled the country for most of his tenure under a state of emergency. The government deliberately ignored individual freedoms, and hundreds of political prisoners were taken and held at Fort Dimanche, the notorious "death prison." Numerous organizations protested human rights violations there (New York Times, 1958h; 1958g; 1958f; 1958e; 1958d; 1958a; 1959a) and the International Commission of Jurists termed Haiti a country in which every single article and paragraph of the Universal Declaration of Human Rights was being systematically violated (International Commission of Jurists, 1967: 28).

The Flight of Refugees

Under such circumstances, the flow of persons fleeing Haiti to ensure their personal safety increased dramatically, and the

United States was the preferred choice for most Haitian emigrants. The first wave consisted principally of former government officials and politicians, professionals, businessmen, and other urban or middle-class persons, many of whom were either fleeing the tyranny of Duvalier or had no economic mobility in the new political order. Those wishing to leave Haiti were required to purchase a passport and exit visa, compulsory travel insurance, and to pay exit and other taxes. Most lower-class Haitians who could not afford the cost of exit documents and airfare to the U.S. left Haiti illegally and sailed to the Bahamas where immigration laws were not strictly enforced against them.

The Haitian government made little effort to curb this outflow, as the export of large numbers of potential dissidents and disaffected persons contributed to the maintenance of the Duvalier regime. Moreover, the property of dissidents was seized by Duvalier's security forces, and emigrant remittances became an important source of revenue, particularly as Haiti became increasingly isolated from the international community in the 1960s (Segal, 1975: 197-204).

Almost all Haitians who entered the U.S. arrived by air with some type of visa. The majority of those with nonimmigrant visas simply overstayed and remained illegally. Perhaps because these Haitians were generally well-educated and reasonably well-to-do, the U.S. Immigration Service (INS) took a *laissez-faire* attitude toward them, did not actively pursue those who remained illegally, and rarely deported them. If Haitians claimed political refugee status, the INS ordinarily placed them under "docket control," in effect failing to enforce orders of deportation while granting work authorization, yet denying all opportunity to obtain "permanent residence" status (Dominguez, 1975: 31). This treatment was similar to that initially afforded hundreds of Cubans who arrived in the United States without visas during the first years of the Castro regime. However, subsequent steps to relax immigration rules for Cubans, including the practice of waiving the visa requirement altogether, and the passage of Public Law 762, in 1966 to grant earlier arrivals "permanent resident" status were not taken for the Haitians.

Most Haitians settled in New York City where industrial and service employment was readily available, with lesser numbers going to Boston, Philadelphia, Washington, D.C., and Miami. In contrast with the Cubans, for whom a special federal program was created during the last months of the Eisenhower administration (Moore, 1980),² the Haitians received no U.S. federal or state assistance, and little aid was given by private organizations.

The major exile leaders sought unsuccessfully to organize politically and to raise funds for arms in order to overthrow Duvalier by invasion and intrigue from without. Despite the formation of umbrella organizations among rival exile groups, the opposition forces outside Haiti remained small and divided. Exile leaders were scattered throughout the Western Hemisphere in New York, Miami, Montreal, San Juan, Santo Domingo, and Havana—and were basically antagonistic to one other.

U.S. Foreign Policy Interests

Although the Eisenhower administration was willing to allow Haitians to remain in the U.S. outside of regular immigration procedures, it was clearly unwilling to maintain anything but a distant relationship with the exile leaders. Unlike the Cuban exiles whom the U.S. government utilized in fomenting aggression against Castro, the U.S. was not interested in surreptitiously sponsoring an armed incursion by exiled Haitians. Francois Duvalier quickly gained U.S. support after his accession to power in 1957 and the Eisenhower administration remained closely aligned to him in succeeding years. Responding to an unsuccessful Florida-based exile attempt to overthrow Duvalier on July 29, 1958, Acting Secretary of State Christian Herter advised President Eisenhower:

I recommend that you agree to receive the Foreign Minister of Haiti, Dr. Louis Mars, . . . so that he may deliver a message to you from Haitian President Francois Duvalier. The message request United States military assistance to help Haiti defend itself from armed attacks it fears will be made on it in the near future. . . .

Since the principal opponents of the Haitian Government are now in exile in the United States and because a recent revolutionary

attempt was apparently launched from United States soil, I believe that it is highly desirable that you receive the Foreign Minister in order to dispel any impression that we countenance the organization of revolutionary expeditions in the United States against Dr. Duvalier's government [Herter, 1958].

Throughout the Eisenhower administration, the U.S. ignored Duvalier's elimination of his rivals and the violation of human rights in Haiti. The *New York Times* (1958c; 1958b), acknowledging that his methods were brutal, gave Duvalier its support, calling him "a man of principle with a desire to pacify his country."

Strategically situated between the Atlantic Ocean and Caribbean Sea, Haiti has long been regarded as within the sphere of American influence. Prior to World War II, influence was exerted through direct military intervention (Schmidt, 1971). After the war, it was exerted through economic and, as time progressed, direct military aid. Economic aid began in 1946, and the U.S. provided about \$120 million in economic assistance between 1946 and 1972 (Weil, 1973: 124, 145-146). Under the 1951 Military Security Act, the U.S. extended Haiti \$4.5 million in military aid from 1950 to 1963, after which the program was discontinued until 1970 (Weil, 1973). Bilateral military assistance agreements were first entered into in 1955. In return, Haiti supported American positions in the United Nations and the OAS.

With the triumph of Fidel Castro in Cuba in January 1959, Cuba became the site of the first Marxist-Leninist revolution in the Americas and a source of chronic concern in the U.S. The U.S. was particularly concerned that Cuba, in its general desire to export revolution in the region, might use Haitian exiles to organize and support a movement to overthrow the Duvalier regime (U.S. Department of State, 1960: 340-341). Indeed the most active exile activity at the time originated in Cuba, where Castro made available to Haitian exiles a radio station and logistical support for invasions of Haiti, which proved abortive.

Charging that the communist menace emanating from Cuba threatened the security of his country, Duvalier took a firm anticommunist posture in foreign affairs and stressed his loyalty to the U.S. Duvalier also made repeated offers of military cooperation, including a naval base in Haiti, sites suitable for

amphibious training of U.S. forces, sites for U.S. missile installations and for U.S. missile tracking stations (Duvalier, 1959).³ By early 1959, the U.S. officially announced its decision to shore up the Haitian government with a major new economic aid program. It was the view of the State Department then that Duvalier “had given more stability to Haiti than any exile coalition would” and his overthrow might plunge Haiti into chaos (New York Times, 1959b).

Duvalier used the American military presence, in particular, as a way to buttress his own regime and to immobilize effectively the activities of anti-Duvalier opposition outside Haiti. The frequent port calls of the U.S. fleet at Port-au-Prince, and the arrival in early 1959 of a U.S. Marine Mission to train the Haitian army, were visible demonstrations of American support. In addition, the U.S. began supplying equipment for the modernization of Haiti’s military establishment and underwrote a major portion of the budget deficit, including \$11 million in 1960 and \$13.5 million in 1961, slightly less than half of Haiti’s public expenditures for the year (Rotberg, 1971: 236). According to a State Department official in 1961, the U.S. had “no other alternative (than Duvalier) and ought to try to elevate the standard of living for the people and raise their level of civilization” (Hispanic American Report, 1961: 607).

The Kennedy Administration and the Isolation of Duvalier

The inauguration of President John F. Kennedy brought about a shift of emphasis in U.S. policy toward Latin America. American policy, in the aftermath of the Bay of Pigs, sought to improve the economic and social welfare of the people in the Western Hemisphere and to defend democratic institutions against the Cuban threat (Martin, 1963: 711). Human rights conditions inside Haiti grew so horrendous and Duvalier’s attitude toward other states became so antagonistic that Kennedy

no longer wanted to be identified with him. The watershed event in U.S.-Haitian relations was the fraudulent reelection in May 1961, of Francois Duvalier as President, by the margin of 1,320,780 to 0, before his term of office had expired and in open breach of the 1957 constitution, for a further six-year term beginning on May 15, 1963. Thereafter, U.S.-Haitian relations deteriorated rapidly. U.S. Ambassador Robert Newbegin was recalled to Washington and purposely absented himself when Duvalier was inaugurated as president for his second term of office (Heinl, and Heinl, 1978).⁴ When Newbegin returned to Haiti, U.S. relations were conducted on a "cool but correct" basis.

Although the U.S. publicly maintained that there continued to be no viable alternative to Duvalier, the Kennedy administration tried to develop that alternative by channelling financial assistance to Haitian opposition figures such as Magloire. Such aid was meant to convey the message to Duvalier that there were limits to American tolerance of his regime. While Kennedy wished to remove Duvalier or bring about radical improvements in his methods of rule, he feared creating a "second Cuba" in the Western hemisphere. Hoping to ensure a stable, friendly government as a successor to Duvalier, the Kennedy administration, in the words of Secretary of State Dean Rusk, "used persuasion, aid, pressure and almost all techniques short of the landing of outside forces" to bring about changes in Haiti (Heinl, and Heinl, 1978: 622).

Haitian exiles willing to undertake military action were not in the vanguard of American policy toward Haiti, but they did play a role. After the abortive CIA-sponsored Bay of Pigs invasion in April 1961, the U.S. was reluctant to support any large-scale military enterprises in the hemisphere; yet the CIA extended its efforts beyond Cuba to support covert activities in other nations of the Latin American periphery. Not surprisingly, the CIA and the Special Operations Branch of the State Department continued to have an interest in Haitian affairs into the 1980s. Included were several attempts to arm and support exile invasions of Haiti to overthrow Duvalier. Haitian groups received secret U.S. government funds and there were ties between U.S. intelligence agencies

and the exile groups that invaded Haiti in 1963 (New York Times, 1975a; 1975b).⁵

The U.S. also threatened to cut off economic aid, but Duvalier successfully used his leverage at the Organization of American States to delay and frustrate the employment of economic sanctions. At the OAS's Eighth Meeting of Consultation of Foreign Ministers at Punta del Este, in January 1962, Haiti found itself in the position of casting the decisive vote on the expulsion of Cuba from the OAS, and it used this vote to gain additional U.S. economic aid to build a jet airport and a hospital (Schlesinger, 1965: 782-783). Some \$10 million in additional Agency for International Development (AID) funds were also pledged. Most American aid was suspended again in July 1962, because of growing concern over Haitian governmental corruption, rapidly accumulating human rights violations, and the total official indifference to the plight of Haitian citizenry. Again political maneuvering, rather than improvement in conditions, blunted the force of U.S. disapproval. During the Cuban Missile Crisis of October 1962, Duvalier placed Haiti's harbors and air fields at the disposal of U.S. forces carrying out the military quarantine of Cuba. Subsequently some aid was restored, in particular U.S. support in the construction of the jet airport, one of Duvalier's pet projects.

Nevertheless, the Kennedy administration's relationship with Haiti grew progressively worse. The deterioration in relations climaxed in 1963, when Haiti's forcible entry and occupation of the Dominican Embassy in Port-au-Prince precipitated a major regional crisis. Maximum pressure, short of military intervention, was employed to prevent Duvalier from continuing. At the height of the crisis, Under-Secretary of State George Ball described the Duvalier regime as "falling apart and in a kind of progressive disintegration" (New York Times, 1963). When Duvalier resisted American pressure to step down at the end of this original six-year term in May 1963, the Kennedy administration cut off economic aid, suspended diplomatic relations for a month in protest, and evacuated all American citizens from Haiti. Military

assistance was suspended as well, and the mission chief and military missions were expelled from Haiti. In August 1963, a force of Haitian exiles under General Leon Cantave invaded Haiti, but the invasion failed and was defeated. Despite considerable anti-Duvalier propaganda, a show of military force, manipulation of grants-in-aid, and diplomatic pressure, the Haitian regime maintained itself in power.

*The Johnson Administration and the
Near Normalization of U.S.-Haitian Relations*

U.S. ostracism of Haiti was short lived. With the accession to power of President Lyndon Johnson, the policy of economic and diplomatic sanctions against Haiti was moderated and the U.S. developed a less critical stance toward Duvalier. A new U.S. ambassador was appointed, and the U.S. representative to the Inter-American Development Bank, reversing an earlier veto, approved a \$2.4 million loan to Haiti. Despite a blistering critique of human rights conditions in Haiti by the International Commission of Jurists and Haitian plans to revise their constitution to proclaim Duvalier "president for life," Ambassador Benson Timmons attended celebrations marking the second anniversary of Duvalier's self-appointed presidency, thus officially linking the U.S. with the ruling regime.

The rationale for this shift in policy was clear. The U. S. continued to find Haiti's support at the OAS extremely useful. In July 1964, Haiti voted along with the U. S. to impose OAS sanctions against Cuba. With the advent of the Dominican crisis in April 1965, Haiti's vote in the OAS was again crucial for U. S. interests. Despite considerable opposition among Latin American states to creating an Inter-American Peace Force to legitimize American intervention in the Dominican Republic, Haiti contributed to the bare two-thirds majority vote needed to pass the OAS resolution. There was also a sense among policymakers that, although Haiti was perhaps the most repressive nation in Latin America, it was also the poorest. Therefore, efforts to

promote respect for human rights were perceived to be fruitless and counter-productive, at least until development had progressed significantly.

By 1966 the U. S. was once again giving Haiti considerable indirect support and encouraging the resumption of private investment and tourism. Haiti successfully solicited further loans from the Inter-American Development Bank (with U. S. acquiescence) and received aid from the Food and Agriculture Organization (FAO) and voluntary agencies that distributed AID funds quietly. The U.S. Navy resumed making port calls in Haiti, and there were reports of aircraft and other arms being smuggled from the U.S. to Haiti without benefit of U.S. export licenses (Hispanic American Report, 1964a: 804-805).

Of perhaps greater importance to Duvalier, the U. S. adopted measures to prevent U. S. territory from being used as a base by Haitian exiles. Radio jamming equipment was provided to Haiti to counter the broadcasts of anti-Duvalier exiles, and a vigorous law enforcement effort was initiated to stop exile activities—organization, training, fundraising, or launching attacks—based in the U. S. and aimed at Haiti. On several occasions in 1967, 1968, and 1969, American officials arrested groups of Haitian exiles training in Florida, seized large arms caches, and indicted their leaders for planning to invade Haiti and to export arms illegally (New York Times, 1967; 1968a; 1968b; 1969a; 1969b; 1970). In contrast, although CIA on-the-record financing of Cuban exile activities was terminated in May 1963, circumstantial evidence suggests that radical anti-Castro Cubans continued to receive secret U. S. government aid for at least another decade or more (Scanlan and Loescher, 1983: 116-137).

The New Haitian Exodus

These actions served to consolidate Duvalier's hold on Haiti, which by the mid-1960s had become one of the most repressive countries in the world (International Commission of Jurists, 1963). More and more Haitians joined the large number of exiles abroad. However, unlike the earlier groups, this new flow

included urban skilled and semiskilled workers and even a few peasants who had borrowed, or whose relatives provided, the cost of a visa and a ticket. Composed in part of migrants with less hope of returning to Haiti, and containing more individuals whose grievances were based on the general misery of life in Haiti, rather than on a coherent program of opposition to the Duvalier regime or on personal histories of persecution, not all of the new arrivals would have qualified as "refugees" under prevailing standards of international law. Nevertheless, their motives for departure were at least as political as their Cuban counterparts, who entered the country by the thousands in the U. S. sponsored "freedom flights" that began in 1965 and continued into 1973. No similar departure program was ever established for the Haitians. Those who could not afford the cost of exit documents and air fare to New York or who had to flee quickly continued to cross the border illegally to the Dominican Republic (Hispanic American Report 1964b: 1061)⁶ or to sail to the Bahamas where they would stay without legal admittance or work permits. Although many found work in the Bahamas, Haitian emigrants lived in constant fear of being discovered by the police and being thrown into prison before being deported back to Haiti (Boswell, 1982: 18-19).

In the early 1970s, a major new stream of Haitians—the boat people—began arriving in the United States. The first known boat load of Haitians landed on Florida's coast in 1963. They requested political asylum, were denied it by the INS, and were returned to Haiti. Beginning in late 1972, a virtually continuous flow of boats with Haitians seeking political asylum began to land in South Florida. In contrast to previous flows to the U. S. greater numbers of those arriving were poor, uneducated, and of rural origin (Boswell, 1983: 61-62). There were several reasons for this shift in the character of flow. Among them were a crackdown on the Haitians in the Bahamas; more restrictive policies governing the grant of nonimmigrant visas, coupled with vigorous INS enforcement of immigration laws; and an interest by Haitian local authorities in financial gains in continued illegal emigration.

Haiti was also feeling the effect of a decade of international isolation and political turmoil and violence. The flight out of Haiti by professionals and technicians during the 1960s had had a

catastrophic effect on the economy. In addition, the countryside suffered from years of governmental neglect and corruption. One major result was the start-up of an out-migration of large numbers of the rural sector of the Haitian population, particularly those from northern Haiti, the poorest region of the country. Moreover, under Jean-Claude Duvalier, the security forces expanded their activities in rural areas and expropriated large areas of scarce fertile land. This pattern of corruption affected the country's rural population particularly harshly (Maguire, 1981: 9).⁷ Also in the mid 1970s, the INS began to curtail its granting of legal entry to Haitians in Port-au-Prince who wanted to visit the U. S. temporarily. Haitians were required to demonstrate ties that would ensure a return to Haiti such as bank accounts, ownership of land, a job, and a round-trip air ticket. The effect of this enforcement was to reduce immigration by air to the U.S. and to increase illegal immigration by boat to Florida. In addition, a large-scale smuggling industry developed with official connivance. By the late 1970s, Haitians were transported in large numbers aboard freighters to Florida while others continued to come via small boats.

For these reasons, larger numbers of Haitians began arriving on the Florida coast in late 1972. An estimated 3,500 Haitians arrived between 1972 and 1977 (Lawyers Committee, 1978: 3). Many of them were able to find work and remain undetected. In the meantime, to the consternation of U. S. officials, a migration network was quickly being established. As more Haitians relocated in Florida and communicated their success back home, larger numbers of Haitians were encouraged to depart for Miami.

U. S.-Haitian Relations Under The Nixon Administration

Along with this flow of new Haitians to the U. S. there occurred an important shift in American foreign policy toward Duvalier under the Nixon administration. Governor Nelson Rockefeller, as special envoy for President Nixon, visited Port-au-Prince in July 1969. while in Haiti, Rockefeller delivered a personal letter

from Nixon to Duvalier, and members of his party publicly expressed hope for the resumption of direct U. S. aid to Haiti (New York Times, 1969c). Shortly thereafter U. S. Ambassador Clinton Knox recommended the renewal of aid. Spurred on by U. S. interest, the Inter-American Development Bank loaned over \$5 million to improve the water system of Port-au-Prince and the International Monetary Fund (IMF) approved a new stand-by credit. In 1970, the Nixon administration lifted the ban imposed by President Kennedy on the sale of arms to Haiti, and the Department of State authorized over \$1 million in private arms sales in 1971.

These activities picked up after the accession to power of Jean-Claude Duvalier in April 1971. In a visible demonstration of American support for the regime, the U. S. fleet was sent to ply Haitian waters to prevent any attempted landing by Haitian exiles. A private arms company based in Miami was engaged to train the Leopards, an elite counter-insurgency force that served as a personal bodyguard to the new president. In March of 1972, a Haitian delegation visited the Departments of State and Defense in Washington, D. C., and in July a U. S. survey team travelled to Haiti to assess that country's request for military assistance. An economic assistance program was established by year's end, after nearly a ten-year absence.

These actions were consistent with the broad views of Nixon and Kissinger, who believed that the importance of protecting the transit of shipping through the Windward Passage, the fear of a Castro-type government coming to power in Haiti, an on-going campaign to keep allies in the OAS who would maintain opposition to normalized relations with Cuba, and the U. S. interest in safeguarding its commercial and Political interests in the neighboring Dominican Republic all overrode American concerns about human rights violations in Haiti.

Human Rights Under Jean-Claude Duvalier

Accompanying this shift in official relations was a concerted effort on the part of the U. S. and Haiti to portray the

administration of "Baby Doc" as being significantly less repressive and more benign than had been the rule of "Papa Doc." It was the opinion of several major human rights organizations, however, that while the most flagrant forms of repression were toned down under the new regime, widespread human rights violations continued. A report in 1973 by Amnesty International noted:

Haiti's prisons are still filled with people who have spent many years in detention without ever being charged or brought to trial. 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: clubbing to death, maiming of the genitals, food deprivation to the point of starvation, and the insertion of red-hot poker into the back passage. . . . In fact, these prisons are death traps. . . [and] find a parallel with the Nazi concentration camps of the past but have no present-day equivalent.

Senator Edward Brooke, in a report to the Senate Appropriations Committee in 1974, concluded that although "the grim visible terror of Francois Duvalier's regime may have subsided, it seems that autocratic rule characterized by an unflinching willingness to suppress people has not" (U.S. Congress, Senate Appropriations, 1974). The (OAS) condemned the "very serious violation of the right to liberty and personal security" by the Haitian government (OAS, 1973). The *AFL-CIO News* reported the testimony of its legislative representative, Howard McGaigan, before the Senate Appropriations Committee: "The AFL-CIO witness stressed that the dictatorship in Haiti has not become significantly less oppressive with Jean-Claude Duvalier. Midnight arrests, secret police and absolute suppression of all freedoms still are the tools of Haiti's rulers" (*AFL-CIO News*, 1974). By 1975, Amnesty International saw little or no improvement in the Haitian government's treatment of its citizens: "Arrests are carried out without warrants and often take the form of disappearances of kidnapping. . . . Prisoners are not allowed lawyers, nor contact with their families on arrest nor—with few

exceptions—are they charged or brought to trial” (Amnesty, 1975-1976).

Thus, during the Nixon and Ford administrations, Haitians continued to flee a regime that was not only impoverished, but remained extremely repressive. The numbers of those entering the U. S. remained fairly constant; yet from 1973 on, an increasing percentage came by boat and eventually sought political asylum.

The Denial of Asylum

The U.S. response to these boat people—with one notable exception—was predictable and negative. That exception occurred in 1970, when a boat load of Haitian Coastguardsmen who had shelled the Presidential Palace in Port-au-Prince were granted asylum. By 1973, however, a policy of denying refugee status to all Haitian applicants was firmly in place. The denial of asylum to arriving Haitians was buttressed by a series of reinforcing practices—detention, and the requirement of bond, and the denial of work authorization and due process (Zucker, 1983: 151-162). The standard operating practice at that time was to detain apprehended Haitians in state and local penal institutions pending voluntary return to Haiti. They could be released provided a \$500 bond was posted, but they were denied work authorizations. The Miami District Director of the INS explained, “We feel that any relaxation of the rules could produce a flood of economic refugees from all over the Carribean” (New York Times, 1976).

Thus, it was the INS position that the Haitians, mostly rural in origin, illiterate, and only semiskilled, were simply illegal migrants from an underdeveloped country and not definitionally refugees. The INS position was summarized by the following statement of then INS Commissioner Leonard Chapman: “Unlike other large alien nationality groups which have fled sudden and intolerable political changes in their respective countries—for example, Hungary, Cuba, and Vietnam—almost all of the Haitian claimants seek to enter the United States or to remain here for the purpose of obtaining employment” (U. S. Congress,

1976: 1). Absent from Commissioner Chapman's statement were two necessary qualifications. First, many of the Cubans and other immigrants who had been admitted to the United States as refugees had not in fact fled "sudden and intolerable political changes." For example, the 270,000 Cubans who arrived in Florida between 1965 and 1973 on daily "Freedom Flights" were not fleeing a sudden political emergency, but in fact were admitted under a program designed to promote family reunification. The sharp distinction between immigrants and refugees that the Commissioner used to justify Haitian exclusion thus was not nearly as precise as he claimed. Second, however plausible the argument that most Haitians entering the United States were apolitical and motivated exclusively by economic concerns, that argument was essentially circular since ultimately reference to it depended for proof, not on a close examination of particular cases, but on statistics generated by an administrative process that had been designed to ignore allegations of human rights abuse and to prove that no Haitians taking advantage of it were worthy of asylum.

The full dimensions of the abuse of the asylum system as it has been applied to Haitians did become apparent until the question was extensively litigated in the late 1970s. Yet civil rights groups and churches challenged the treatment afforded Haitians during the Nixon and Ford administrations, and Congressional hearings held in response during 1975 and 1976 (U. S. House Subcomm. On International Organizations, 1976) revealed a consistent pattern of conduct on the part of both the INS and the Department of State designed to defeat most Haitian claims. Unlike the occasional Cubans who continued to arrive by boat during this period and were seldom, if ever, threatened with return, arriving Haitians were immediately processed for exclusion or deportation. In order to avoid being returned to Haiti, they were required to demonstrate that they were in fact refugees as that term is defined in the 1951 Convention Relating to the Status for Refugees, that is, persons with "a well-founded fear of persecution" by reason of race, religion, political affiliation, or membership in a persecuted group (Convention, 1951). Such a showing was required under the 1975 Code of Federal Regula-

tions, although prior to 1980, even those who proved probable persecution were not always entitled to asylum. Under both U. S. and international legal standards, the burden of demonstrating refugee status lay then (as it does now) on the refugee. International authorities recognized, however, that an asylum applicant arriving frightened and without documents often has a difficult case to make. They therefore recommended administrative procedures designed to evaluate carefully an applicant's story for credibility and to give the applicant "the benefit of the doubt" when his or her story seemed credible. U. S. procedures were tailored to produce neither careful evaluations nor any favorable reaction to troublesome claims. Instead the hearings showed that incoming Haitians were given only, on average, a twenty-minute interview by the INS, of which five-minutes were spent on political issues, to prove their case through an interpreter. Because of the language barrier and the cursory nature of the initial INS interviews, many Haitian advocates contended that Haitians were not given any real opportunity to present their legitimate claims for political asylum. Adding to the difficulties posed by assembly-line processing and a severe language barrier was the fact that the INS agents processing Haitians' claims had received no training of any kind either in asylum law or with respect to human rights conditions in Haiti. Rather than attempting to overcome these procedural deficiencies, the INS intensified them by effectively denying almost all Haitian applicants a legal counsel, and sometimes by moving them hundreds of miles from their place of apprehension before granting them unpublicized and speedily arranged asylum interviews.

These hearings also revealed the primary role of the Department of State in the asylum decision process. Although it has always been entrusted with the duty of evaluating individual asylum claims, prior to 1980 the INS was required to seek an "advisory opinion" from the State Department on doubtful cases and on those that the INS considered to be without substance (U.S. Congress, House, 1976: 3). Because the State Department has access to considerable information about human rights conditions abroad, they have at least a general knowledge of patterns of persecution in particular countries. Yet, as these hearings

revealed, the INS often sent only a summary of the initial interview to the Office of Refugee and Migration Affairs (ORM) at the State Department where political asylum claims were supposed to be reviewed individually by asylum officers. An ORM study of a claim was based on the applicant's file, and the applicants themselves were never personally examined by the ORM. The asylum officers had no standardized guidelines for applying the definition of refugee to particular claims. In general, the applicant for asylum was required to demonstrate that, because of activities or organizational affiliations and due to political conditions inside Haiti, persecution would likely result if he or she were returned home. Before issuing an advisory opinion to the INS, the applicant's claim was passed through ORM to the Haitian desk officer for review. In practically every case, the decision of the desk officer was then—and still remains—crucial. The determinations themselves were often based on the assumption that Haitian asylum claims were not valid. Testifying before the House Subcommittee on International Organizations, William Luers, Deputy Assistant Secretary of State for Inter-American Affairs stated:

The great majority of Haitians who are illegally in the United States say, when first apprehended, that they have come to the United States to seek employment. In very few instances are they able to demonstrate that they have been or will be persecuted by their government. Frequently they claim that they will be punished on return to Haiti simply because they left their country without permission; but the evidence available to us does not support such claims. In cases such as these, it is not possible under present laws and regulations to conclude that they are other than illegal immigrants, subject to exclusion or deportation proceedings like similar illegal immigrants from nations throughout the world [U.S. Congress House, 1975: 4].

In very few instances were cases ever referred to the U. S. Embassy in Port-au-Prince for further verification or investigation, nor was much effort expended to monitor returnees. Indeed a report by a House Subcommittee confirmed that the Embassy had no guidelines for review of such asylum claims and did not

have enough personnel to carry through this kind of effort (U. S. Congress, House, 1976). Furthermore, in making broad recommendations based on conditions in particular countries, the Department of State tended to emphasize its primary commitment to furthering American foreign policy objectives and maintaining good relations with allies, thus minimizing humanitarian concerns. The decisions actually reached by the Department of State almost always reflected Cold War priorities and reluctance to pass judgement on the internal conditions of any allied country. This attitude had already displayed itself in the State Department decision not to admit any of the thousands of Chileans who fled the widespread repression in their country after the military coup of September 1973 (U. S. Congress, Senate, 1974; Hanson, 1978: 107-141). In the case of Haitians, denial of asylum was generally recommended in blanket fashion and without any meaningful review of individual applications.

The National Council of Churches challenged INSs procedures and policies and sued on behalf of the Haitians. The 1977 suit, *Gannon v. United States*, asked that the INS end its practice of denying hearings to Haitians under order of exclusion while granting hearings for those facing deportation. It also asked that the Haitians be released from detention without bond and be given work authorization. In July 1976, while legal actions were still underway, the House Subcommittee on Immigration, Citizenship, and International Law supported the position of the National Council of Churches, and recommended that the INS develop uniform procedures for exclusion and deportation proceedings, and that it work closely with voluntary agencies to supervise the release of detained Haitians. It also recommended that State Department advisory opinions be more detailed and respond to specific allegations of individual claimants rather than make broad recommendations based on general conditions in Haiti. In particular, the Committee report encouraged that every effort be made to check on questionable cases and to monitor those persons who had been denied asylum and returned to Haiti (U.S. Congress, House, 1976: 13-15)

The Carter Administration and Human Rights

When the Carter administration came to power, it attempted to incorporate human rights concerns into American foreign policy-making. The new administration did play an important role in furthering human rights in Latin America, (Schoultz, 1981) and took a number of human rights initiatives in regard to Haiti. As part of an overall reduction of military aid to the region, Haiti was dropped from the list of Foreign Military Sales recipients but kept its International Military Education and Training program. On a visit to Haiti in August 1977, Andrew Young, the U. S. Ambassador to the United Nations, expressed the Carter administration's desire to end support for regimes that violated human rights and favored the exploitation of the poor by the rich. Arguing that improvement in the human rights situation would have a direct effect on the aid and cooperation Haiti received from the U.S., Young said, "When people understand the way the winds are blowing and if they want to go with those winds, they trim their sails accordingly" (Washington Post, 1977: A1, A12).

In an attempt to placate the Carter administration, the Haitian government took a series of steps to improve its human rights image in the U. S. These included the hiring of the American law firm of Peabody, Rivlin, Lambert, and Meyers to influence U. S. policymakers in the Department of State, AID, the Overseas Private Investment Corporation, the House Committee on International Relations, and the Senate Committee on Foreign Relations; contracting the public relations firm of Edelman International to reform its image in the U. S. (Schoultz, 1981: 64); the partial relaxation of official repression during 1977 and 1978; the largest general amnesty of political prisoners in decades; and the invitation to the Inter-American Human Rights Commission (IAHRC) to visit Haiti in July 1978.

Although human rights conditions in Haiti improved somewhat during 1977 and 1978, structural barriers to human rights protection continued to exist (U. S. Senate Comm. on Appropriations, 1977). According to the Department of State, brutality

“verging on torture” had been employed “both as punishment for minor criminal infractions, to extract confessions, and to impose discipline in prison” (U.S. State Department 1978: 172-176). The Inter-American Commission on Human Rights, which visited Haiti in August 1978, and published its findings in 1980, concluded that there continued to be a breakdown in the rule of law; there was no effective or independent judiciary; few legal safeguards existed to protect people who fell out of favor with the government (IAHRC, 1980). Practically nothing was done to develop institutional structures through which these basic violations could be ended.

The Carter Administration and The Admission of Haitians

Despite the Carter administration’s specific emphasis on human rights, it did not develop an immigration policy toward Haiti that was free from contradiction. By the mid 1970s, the flow of Haitians to the U. S. was seen to be less “manageable” than earlier flows and there was a growing fear among American policymakers and the public that instability and oppression in the Third World would give rise to a sustained, and possibly increased, flow of poor and relatively unskilled people who were less assimilable into the domestic labor market. In addition, there were no strong foreign policy reasons to accept large numbers of Haitians as refugees. It was feared that offers of easy asylum would send mixed messages to Haiti and could be interpreted as an unfriendly act and support for a Haitian exile movement, and would only encourage an out-migration from Haiti. On September 6, 1977, the State Department announced that it had returned to Haiti 97 refugees who had sailed into the U. S. naval base at Guantanamo Bay, Cuba, a month earlier. According to a State Department representative: “To grant them political asylum. . . poses a problem of relations between the United States and the Haitian government, and to admit them as refugees from deteriorating economic conditions might encourage still more to flee” (New York Times, 1977).

In November 1977, after a long legal action that reached the Supreme Court and after numerous protests and a broad public campaign, INS Commissioner Leonel F. Castillo acceded to the demands of the National Council of Churches to release imprisoned Haitians without bond, to authorize their employment, and to change INS regulations so as to allow "excludable" Haitians a hearing on their asylum claim before an immigration judge. The INS, however, did not adopt uniform procedures for exclusion and deportation proceedings until 1978, and since no Haitians who had been released in 1977 could be called in for hearings for more than a year, a backlog of 5000 cases developed. In the meantime, the INS regional office in Florida mistakenly broadcast the message that all Haitians, rather than just those in the asylum process, were entitled to work authorizations. As a consequence, 3000 additional Haitians suddenly appeared and registered, thus identifying themselves for the first time to INS officials.

This backlog was exacerbated by several additional developments that directly affected the flow of Haitians to the U.S. In 1978, the government of the Bahamas began to arrest and deport the Haitians illegally living in the country. Rather than risk deportation back to Haiti, Haitians began to flock in large numbers to Florida. In addition, the brief liberalized policies of the INS, and especially the availability of work authorizations, acted as a magnet for further migration. In addition, Caribbean smugglers with the aid of local Haitian officials had stepped up their activities and were transporting large boat loads of Haitians to the U. S. Finally, the concentration of Haitians in a few counties in southern Florida strained local social and health care service resources. This impact, when combined with resentment to the granting of work authorizations for Haitians, caused some backlash in Florida (Copeland and Fagen, 1982).

The INS responded to the dramatic increase in the number of Haitians arriving in south Florida and the backlog of asylum cases by cancelling the work authorizations, resuming the detention of Haitian males and expediting deportation hearings. The number of hearings increased from an average of 5 to 15 per

day in early 1978 to 100 to 150 a day by September 1978, with no more than 5 immigration judges hearing them. The few lawyers representing the Haitians often were scheduled to represent several clients whose hearings occurred simultaneously. Attorneys were not allowed to speak on behalf of their clients, but Haitians who attempted to speak for themselves were often provided with inadequate translations or none at all. Following the initiation of the expedited procedure, the percentage of asylum claims denials and the numbers of Haitians being deported increased substantially (Lawyers Committee, 1978; Copeland and Fagen, 1982).

Resort to the Courts

Advocates of refugee rights maintained that INS practices undermined due process guarantees and sanctioned a pattern of discriminatory treatment toward asylum seekers from Haiti. Lawyers for the Haitians also insisted that Haitians, if returned home, would be subject to persecution.

Several lawsuits were filed on behalf of the Haitians during 1979, temporarily blocking INS deportation proceedings. In *National Council of Churches v. INS*, the plaintiffs asked for the names of all Haitians who had been returned to Haiti in order to be able to follow up on these names and possibly prove individual persecution. Partly in response to this lawsuit, the State Department sent a study team to Haiti in May 1979 to investigate charges that Haitian refugees were being persecuted upon their return. The study team reported that it had found no evidence of such persecution (U. S. State Department, 1979; Hooper, 1980). In *Haitian Refugee Center v. Civiletti*, a class action suit, some 4000 Haitians challenged the INS mass deportation policies, and in *National Council of Churches v. Egan* the plaintiffs charged that the INS, in revoking work authorizations for the Haitians as part of its expedited processing, was not following the Administrative Procedures Act (Copeland and Fagen, 1982; Zucker, 1983).

In nearly every instance, the courts found for the plaintiffs. The most significant case was the *Haitian Refugee Center v. Civiletti*

in 1980. Although his decision was based on narrower legal grounds, Judge James Lawrence King used his opinion to refute the government's argument that all Haitians were economic migrants. He found that "much of Haiti's poverty is a result of Duvalier's efforts to maintain power." "The Haitians' economic situation," King argued, "is a political condition." He also discounted the report of the State Department Study Team on Haitian Returnees (1979) as inadequate proof for the official contention that Haitians were not persecuted upon return.

Most importantly, however, Judge King found that, under the accelerated process, Haitian applicants were not given sufficient time to prepare their asylum applications, to obtain adequate assistance of counsel, or to state their case before an INS hearing office. The federal court decision in the the case of *Haitian Refugee Center v. Civiletti* concluded:

Those Haitians who came to the United States seeking freedom and justice did not find it. Instead, they were confronted with an 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 fo 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.

Mass Asylum and Human Rights

Judge King's decision was handed down in July 1980, in the midst of a mass first asylum crisis for the U. S. during which some 125,000 Cubans and over 11,000 Haitians arrived on American shores. The flow of Haitians had increased dramatically in mid 1979, reaching its highest level in March and April 1980, just as

10,000 Cuban asylum-seekers arrived in the Peruvian Embassy in Havana. INS officials attributed this increase to the court order that prevented further deportation of Haitians (U.S. Congress, Select Commission, 1980: 18). This may well have been a factor. Yet it was hardly the only one. Simultaneous with this increased flow of Haitians to the U.S. was a rapid deterioration in the human rights situation in Haiti. Following the February 1979 elections for the National Assembly, arbitrary detentions, torture, and harassment by the police and the *tonton macoutes* increased. The two political parties founded in 1979 by Sylvio Claude and Gregoire Eugene were both forced to suspend their activities and their leaders were arrested. A meeting of the Haitian Human Rights League was broken up by men armed with clubs, and its president and some 200 visitors, including a representative from the U.S. Embassy, sustained injuries (Hooper, 1980: 29-32; Amnesty, 1980; U.S. State Department, 1980a: 77-78; Stepick, 1982).⁸ The militia, a successor to Francois Duvalier's notorious *tonton macoutes*, assumed a more prominent role, and a new cabinet, installed in November 1979, contained a number of individuals identified as hard liners and formerly associated with Francois Duvalier. A report on human rights in Haiti by the State Department released on February 5, 1980, stated: "There were no institutional changes favoring political liberalization, however, and if anything, the ability of Haitian citizens to express political views declined in 1979" (U.S. State Department, 1980b: 344). Between October and December 1980, a new wave of arrests took place. Virtually all Haitian human rights activists, most independent journalists and many lawyers active in the defense of political detainees and opposition leaders, were arrested or expelled from the country, putting an end to the already limited rights to freedom of assembly and expression (Lawyers Committee, 1983).

Despite this rapid deterioration of human rights in Haiti, the INS and State Department continued to regard Haitians exclusively as economic migrants, rather than as individuals threatened with persecution. They did so even though the

adoption of a new Refugee Act of 1980 clearly committed the United States to adhere to international legal standards and made asylum (or its statutory equivalent) available as a matter of right rather than discretion to any individual demonstrating that he or she was in fact a refugee. According to the INS Deputy District Director in Miami:

What we're up against from our viewpoint is people who are fleeing an economic situation—poverty, low pay and lack of employment—coming here trying to better their way of life.

Along the way their cause has been championed by attorneys, realizing that a claim to political asylum can delay things indeterminately.

We depend on the State Department to advise us if political persecution is going on. From what we have received from the State Department, there is no political persecution in Haiti [Leapman, 1980].

The State Department view, according to the report of the U.S. Coordinator of Refugee Affairs to Congress in April 1980, was that *all* Haitians entering the United States came as economic migrants rather than political refugees (Congressional Record, 1980b; 53961). This view was further elaborated and modified somewhat by Stephen E. Palmer, Deputy Assistant Secretary for Human Rights and Humanitarian Affairs;

Determination of a particular asylum claim . . . is not a general referendum of human rights in the home country Instead, we must apply a narrow and clearly focused standard established by treaty and by US statutes. The question in passing on an asylum application is this: Does *this particular individual* have a "well-founded fear of persecution" based on race, religion, nationality, membership in a particular social group or political opinion if he or she were to return to the home country? [U.S. Congress, House, 1980: 207; Rivera, 1980: 300]

Thus,

Most of the applications we receive from Haitian nationals base the asylum claim solely on the fact that the applicants have

departed from Haiti illegally. They assert that mere departure and the seeking of refuge in the United States will be treated as a political act by the Government of Haiti and that that government will persecute them if they are returned. Most applications contain no allegation that the applicants or their families suffered persecution before they left or that other factors in their background would make them suspect politically in Haiti. We do not believe that such applications support a finding of a well-founded fear of persecution, and in such cases we recommend denial of the application [U.S. Congress, House, 1980: 210].

Despite the official U.S. view of arriving Haitians, events transpired in the spring of 1980 to force a new Haitian admissions policy. The combined impact of the Cuban boat lift from Mariel harbor, peaking in May and June, and the increased flow of Haitians during the spring of 1980 created a difficult situation nationally and especially in Florida. A number of interest groups humanitarian organizations, including the Congressional Black Caucus, complained bitterly about a system that rendered the asylum process for Cubans a mere formality, while using it as a barrier to exclude virtually every Haitian. The passage of the new refugee act in March, by removing all reference to Communism from the refugee definition law, destroyed the legal argument for preferring the former group from the latter. The Cuban-Haitian comparison sharpened political pressure and gave added force to a campaign, underway for months, calling for executive action to allow all Haitian asylum applicants then present in the U.S. to remain.

President Carter for political reasons chose not to classify the Haitians and new Cuban arrivals as statutory refugees (Congressional Record, 1980a: 56436-56437).⁹ However, in the face of rising national public resentment against both Cubans and Haitians and a local crisis situation in Florida that required an immediate federal response, the Carter administration felt compelled to come up with a politically acceptable solution to the 1980 mass asylum crisis. On June 20, 1980, President Carter issued a declaration establishing the new status of "Cuban-Haitian entrant" that effectively paroled into the U.S. the Haitians and Cubans involved in INS proceedings prior to June

19, 1980 (later extended to October 10, 1980). This new classification allowed the entrants to remain in the U.S. Initially, the government reimbursed the states for only 75% of certain social service and medical expenses and refused to fund the usual range of benefits made available to refugees in the U.S. In response to what was perceived as neglect of local impact on the part of the federal government, the Florida congressional delegation pressed through the Fascell-Stone Amendment to the Refugee Education Assistance Act which forced the federal government to grant entrant benefits equal to those of a refugee and to provide 100% reimbursement of state and local costs.

The Reagan Administration and the Politics of Restriction

A shift in domestic political concerns and the intensification of Cold War politics in the entire Caribbean Basin after the 1980 election marked the end of the reluctant liberalization of Haitian admissions policy that accompanied the Mariel boat lift. Responding to rising domestic unemployment, burgeoning budget deficits, and the local impact of the more than 400,000 refugees streaming into the U.S. during 1980, Congress became increasingly restrictive and began to push for new immigration legislation. Nevertheless, the influx of Haitians into the U.S. continued, and those who arrived after the October 10, 1980, cutoff date for Cuban-Haitian entrant status, were subject to exclusion. Since December 1980, the INS has been permitted to resume exclusion hearings for Haitians.

Thus, the Reagan administration has intensified measures designed to curb refugee admissions. While continuing to admit a significant—although decreasing—number of refugees making application from Indochina and Eastern Europe, it is taking concerted steps to discourage asylum-seekers from Latin America and the Caribbean from entering the U.S. The Haitians, along with Salvadorans, have borne the brunt of the new restrictive attitude and have been subjected to especially harsh treatment. In

FY1981, for example, 503 Haitians applied for asylum and 5 were granted it. During the same year, only 2 Salvadorans out of 5,570 applicants were granted political asylum in the U.S. Haitians have again been subjected to mass exclusion hearings and were the first group of asylum-seekers to be detained. Furthermore, the Haitians have been the only group interdicted at sea and returned home.

By mid 1981, most aspects of the Haitian program were set in place. In May, the Reagan administration began detaining without the possibility of bond all Haitians subject to exclusion. In June, the INS resumed mass exclusion hearings, often in closed-door courtrooms from which attorneys were barred, and all Haitians applying for work authorizations were arrested by the INS (Zucker, 1983). When protests from the Congressional Black Caucus and others brought these practices to a halt, the INS adopted a policy of routinely detaining all arriving Haitians in substandard facilities, sending some to the coldest or the most remote parts of the United States and others to Puerto Rico (Hooper and Murphy, 1983).¹⁰ In these camps, Haitians were often denied access to legal counsel, were subjected to harassment, and rushed through *pro forma* asylum hearings.

In September 1981, the U.S. initiated a program that sought to circumvent the courts altogether. President Reagan signed an Executive Order authorizing the U.S. Coast Guard to intercept vessels believed to be transporting Haitians who intended to enter the U.S. illegally and to return them to Port-au-Prince (U.S. GAO Report, 1983). A Haitian Navy liaison officer was assigned to the Coast Guard cutter on station, and the U.S. promised to help train and provide the Haitian Navy and Army with the means to patrol their coastline in order to prevent their countrymen from leaving. At the same time, Congress adopted legislation, the Fascell-Mica-Chiles Amendment (Section 721) to the International Security and Development Cooperation Act of 1981, linking Haitian cooperation in stopping illegal emigration, implementing development programs, and respecting its citizens' human rights to the release of U.S. foreign assistance funds to Haiti. By October 1981, the first Coast Guard cutter was plying

Haitian waters. Aboard was an INS officer who, in proceedings termed "walrus courts" by *The New York Times*, (New York Times, 1981) heard the claims of Haitians who alleged political persecution and returned them to Haitian authorities.

The second major aspect of the Reagan program to deal with the Haitians involved the submission to Congress of the Administration's 1981 *Omnibus Immigration Control Act*. This legislative package proposed, among other things, greater autonomy for the INS in determining when an applicant's fear of persecution is justified, and would have deprived the federal courts of any oversight over that determination. In addition to limiting judicial review, the Reagan proposals provided for detention, the restriction of the role of counsel, and authorization in law of interdiction of foreign vessels on the high seas suspected of smuggling aliens, even in the absence of consent from their country of origin. Although Congress submitted its own immigration proposal in the form of the Simpson-Mazzoli Bill, the thrust of U.S. remains—to prevent asylum-seekers from reaching the borders of the United States, to detain under miserable conditions those who do manage to reach those borders, and to expedite the latter group's return.

Undoubtedly, the policy to discourage the granting of asylum has been predicated primarily on a broader commitment to immigration control, and to fears that large numbers of Caribbean Basin nationals will continue to enter the United States illegally, using the asylum process to avoid exclusion or deportation. Yet, Cubans continue to receive favorable treatment. In February 1984, the White House was reported to be offering permanent residence status to the 125,000 Mariel Cubans but not to the 7,200 Haitians who also arrived in 1980, and corrective legislation needed to be introduced by Peter Rodino, Chairman of the House Judiciary Committee (New York Times, 1984a).

Current refugee and asylum policy is also the result of ideological priorities of the Reagan administration. It is not a coincidence that Poles but not Haitians have been granted extended voluntary departure status. Administration officials have asserted that it is in the national interest to support

authoritarian allies in order to contain totalitarian adversaries. In June 1982, Elliot Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs, relied implicitly on the authoritarian/totalitarian distinction to explain why Cubans are refugees and should continue to be welcome in the United States while Haitians should be turned away at the border or interdicted at sea (Abrams, 1982: 43-45).

Root Causes and Haitian Emigration

An asylum policy that proceeds from preconceived ideological biases and seeks to control immigration flow without looking into underlying causes is shortsighted. In the long run the only effective way of reducing the flow of Haitians to the U.S. is to address concretely the conditions that create refugees (Scanlan and Loescher, 1982: 39-56). During the Reagan administration, violations of human rights under Jean-Claude Duvalier have continued unabated and have been documented by numerous human rights organizations (Gastil, 1982; OAS, 1983; Amnesty, 1981; and 1982; Lawyers Committee, 1983). In fact, the human rights record of Haiti is regarded by Freedom House in New York as even worse than Fidel Castro's regime in Cuba (Gastil, 1982: 282, 299).

Despite Haiti's abysmal record, the prospects for a forceful human rights policy under the Reagan administration seem rather poor. Toward Latin America and the Caribbean, Reagan is motivated by his intention to defend the security interests of the U.S. and by expression of concern about the Marxist threat in Nicaragua and El Salvador, and, in particular, by Cuba's efforts to export revolution in the region. This has resulted, among other things, in the U.S. resuming a policy of nearly unrestricted arms sales to governments in the area regardless of their human rights violations. In order to carry out this policy, the U.S. State Department has had to underplay the extent of human rights violations among its aid recipients (Hooper, 1981; Americas Watch, 1982; 1983).¹¹ In regard to Haiti, human rights reporting

has played down human rights abuses in order to certify Haiti for more U.S. aid and to justify the State Department/INS position that hardly any Haitians are worthy of political asylum (U.S. Department of State, 1982; New York Times, 1984b).¹²

U.S. policy toward Haiti under Reagan is based on the maintenance of friendly relations with the noncommunist Duvalier government. To this end, the U.S. has encouraged increases in foreign economic aid from multilateral and bilateral sources. The U.S. has, for example, intervened on behalf of Haiti with the international financial institutions and with other bilateral donors to obtain further economic assistance for Haiti. International assistance has been granted by the World Bank, the United Nations Development Program, the Inter-American Development Bank, the Organization of American States, and the International Monetary Fund. U.S. bilateral assistance to Haiti, totalled \$34 million in FY1981, \$37 million in FY1982, and is programmed for \$38.8 million for FY1983 (McPherson, 1982). Most of the PL 480 food grants and some development projects are channeled through private voluntary agencies, including CARE, Catholic Relief Services, and Church World Service. The personnel of most major aid programs, including those administered by the voluntary agencies, complain of governmental corruption and significant diversion of aid.

A major purpose of the recent increases in the U.S. aid program is to bring the problem of Haitian emigration under control. Based on the assumption that most Haitians emigrate to find jobs, AID and other external donors have argued that the Haitian economy has to provide more employment and make life more bearable in the rural areas in order to reduce the pressures to emigrate. According to McPherson:

The pressure to migrate will continue as long as the countryside lacks employment opportunities and even the most rudimentary services in health, education and public services. Job creation, therefore, must continue to be one of the economy's prime aims [McPherson, 1982].

The success of this or any other development program in Haiti, however, is dependent on the ability of the U.S. in concert with

other bilateral and multilateral donors and the Haitian government, to come to grips with the problems of incompetence, self-interest, and corruption currently rife in Haitian society. To date, development efforts in Haiti have been singularly unsuccessful due to pervasive governmental corruption and insensitivity to the plight of the average Haitian (Lundahl, 1979; Miami Herald, 1982). According to a 1982 report of the General Accounting Office, the AID program objectives of strengthening the Haitian government's commitment to equitable economic and social development programs have had only "limited ability to impact on Haiti's dire poverty, and many projects have had less than satisfactory results" (U.S. GAO Report, 1982: 6)¹³ The report further states that "AID's current program will not likely result in a fundamental turnaround to Haiti's dire economic condition, nor will it substantially alter the economic factors encouraging emigration" (U.S. GAO Report, 1982).

Rather, the continued neglect of the rural areas suggests that pressures for the displacement of peasants from the countryside will intensify and that large-scale rural-urban migration may be the result. These pressures will, in turn, be exacerbated by the Reagan administration's temporarily successful efforts to curb illegal Haitian emigration to the U.S. The danger is that the closing of Haiti's traditional "safety valve" of out-migration may well result in increased immigration to Port-au-Prince, which is already overcrowded and cannot respond to a massive influx of more people. Thus, the probability of internal political unrest, persecution, and more out-migration in spite of enforcement efforts is great, and the U.S. should be prepared for a possible mass asylum crisis involving Haitians in the future.

To date, U.S. admissions practices toward asylum applicants from Haiti have been influenced by political conditions having much to do with foreign relations and fears of uncontrolled illegal immigration and little to do with probable persecution, considerations of humanity, and due process. Haiti is still regarded as a defender of U.S. interests in the region. Yet political support for repressive and unpopular regimes is bad foreign policy, since such regimes are inherently less stable and inevitably produce large numbers of refugees. There are no easy solutions to the problems

plaguing Haiti. Nor are there easy solutions to economic pressures driving people from every country in the region toward the U.S. Yet a government less corrupt than the present Haitian regime, and one that addressed the roots of rural poverty and respected human rights, would be better able to curb the massive outflow of Haitians to the U.S. The U.S. is in a position to exert leverage on the Duvalier regime for considerable improvement in its human rights practices and financial accountability for aid. Haiti is in a desperate economic situation and will continue to rely on large infusions of external aid for the foreseeable future. It is essential that aid be directed to basic needs and focus on the peasants, which is not the case at present.

At the same time, in confronting the myriad problems posed by mass asylum, the United States should not lose sight of the fact that political asylum was created for humanitarian reasons to help carefully defined groups. It may be that a substantial number of Haitians are not refugees under the international standard set out in the Refugee Act of 1980. Many of the Haitians, however, will be *bona fide* refugees. If the United States is serious about human rights in Haiti, it must be willing to offer the hope of protection for those Haitians with the courage to begin the democratization process there. The U.S. must not let its legitimate concern for controlling its borders interfere with its obligation to let those who are refugees into the country. The means should be developed to make the U.S. asylum system more efficient within the context of international and constitutional obligations and American humanitarian ideals, and to ensure that it does not prevent or circumvent the process altogether for political reasons.

NOTES

1. U.S. AID describes the role of the Haitian government as follows:

Throughout much of Haiti's history, "government" has been a prize to capture, with the victor gaining the spoils in terms of appointing friends and relatives to the payroll and using government positions for private profit . . . Haiti does not have a tradition of government as a servant of the people.

2. The background on the legal status and programs for Cubans is given in Moore (1980).

3. In a letter to President Eisenhower on October 8, 1959, Duvalier concluded:

Last week, I was advised by the Charge d'Affaires ad Interim that "although the United States has concluded there is no present or anticipated requirement for a permanent military installation in Haiti, it would be useful to have access to sites suitable for amphibious training."

I can say without reservation that any sites required by the United States for amphibious training will be made available immediately. Also, if United States military survey teams will be sent to Haiti for determining the locations for such sites, they will have placed at their disposal all of the information, facilities and assistance that they may require.

In view of the continual worsening of conditions throughout the world, my offer to the United States of America concerning the availability of sites for military or missile installations, as well as for missile tracking stations remains unchanged.

Mr. President, you have my best wishes for continued success in your enormous task of maintaining world peace. I wish to assure you again that, in the United Nations, the Republic of Haiti will continue to vote with and support the policies of the United States of America.

4. The chiefs of the U.S. military missions in Haiti were present at the inauguration ceremonies, however, and sitting in Port-au-Prince harbor was a U.S. ship bearing arms for the Haitian army.

5. It was reported in the New York Times that the CIA (Central Intelligence Agency) "collaborated with Haitian leaders of a group of at least 200 rebels" who tried unsuccessfully to overthrow Duvalier in 1963 (1975b).

6. The International Rescue Committee reported that although diplomatic relations between Haiti and the Dominican Republic had been severed in April 1963 about 5000 persons had escaped from Haiti to the Dominican Republic between May and December 1983.

7. According to one authority, "This fact of security also affects the peasant freehold farmers who rarely have clear title. There are substantiated reports of land grabs, of judges bribed to issue competing land titles, and of extortion by locally powerful quasi-governmental authorities. Facing the very real possibility of appropriation of their land by *gross neg* (big shots), farmers are also discouraged from investing in their land and encouraged to overwork it" (Maguire, 1981).

8. Apparently the Haitian government has never conducted an inquiry into this incident, and no one has been charged with any crimes in connection with the violent actions of these security forces.

9. Such a course had been recommended by Senator Edward Kennedy, Carter's principal opponent for the 1980 Democratic nomination, in a 20 May, 1980 letter to President Carter.

10. Although federal efforts to establish illegal alien detention centers at Fort Drum, New York, and Glasgow, Montana, were deferred under widespread criticism, as of March 1982 over 250 Haitians were detained at northern sites run by the Bureau of Prisons

in Otisville and Raybrook, New York, and 778 were at Fort Allen, Puerto Rico (U.S. INS Statistical Report, 1982).

11. This report concluded that the State Department distorted its human rights reporting for foreign policy reasons. It reads, in part:

Though most of the work in compiling the *Country Reports* has been carried on responsibly and effectively by the Department of State, political biases are evident in some of the reports. There is no general overstatement of human rights abuses in countries with which United States relations are not friendly. Nor is there any general understatement of abuses in countries friendly to the United States. Rather, distortions in the reporting seem to reflect efforts to further political ends relating to the particular countries.

Among the most serious distortions we noted are contained in the reports of El Salvador and Haiti.

In the case of El Salvador, . . . (in) an apparent effort to make certain that the *Country Reports* do not undermine the Reagan administration's program of providing military aid to El Salvador . . . the *Country Reports* systematically attempts to absolve the government of El Salvador and the high command of the military of responsibility for abuses of human rights committed by the security forces.

In the case of Haiti, the report . . . grossly understates the seriousness of human rights abuses, apparently in an effort to undercut claims for asylum by Haitian refugees in the United States.

12. The State Department has been required by Section 721 of the International Security and Development Cooperation Act of 1981 to report on human rights conditions in Haiti on an annual basis. Since 1982, it has reported that the Haitian Government is not engaged in a consistent pattern of gross violations of internationally recognized human rights.

13. The most obvious examples of the Haitian government's insensitivity to the fate of its own citizens has been the uncooperative response it gave to two recent AID (Agency for International Development) programs targeted for human rights and basic needs. According to the GAO (U.S. Government Accounting Office) report (1982):

The project for legal assistance to the poor was to begin in 1979. The primary purpose was to assist the Port-au-Prince Bar Association in establishing a system for free legal services to indigent Haitians accused of crimes. A secondary purpose was to strengthen the Bar Association by supporting its role as a trainer of new lawyers. Haitian support for this project never materialized. AID deobligated this project before the end of the fiscal year 1981. The project for agricultural research was to begin in 1978. The purpose of this project was to establish in the Ministry of Agriculture the institutional ability to conduct agricultural research and statistics surveys to support the Haitian small farmer agricultural/rural development program. As of October 1981 the project still had not begun. The Haiti AID Mission Director is now reprogramming the project with the Ministry and expects to initiate activities by June 1982. If progress is not satisfactory by then, he plans to deobligate the project before the end of fiscal year 1982.

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