

Seeking Asylum, Finding Chaos: The Refugee Act and the Crisis of 1980

“Yes, the Haitians are poor. But they have always been poor and that’s simply not why they are risking their lives to come here now... The most impressive piece of evidence to date is the eight-hundred-mile boat trip escapees take from their conflict-ridden land to the United States. One need only witness the emaciated, bedraggled survivors to convince oneself that rational people would not venture into those shark-infested waters on overcrowded vessels that are barely seaworthy merely to escape poverty and hunger when all they would probably encounter here is more of the same.”¹

In the summer of 1980, under a staggering heat wave, thousands of people flooded into the United States seeking asylum as refugees. Between April and October, more than 125,000 Cubans arrived in the “Mariel boatlift.”² At the same time, thousands of Haitians crowded on rickety boats arrived, joining some 40,000 Haitians who had fled to the United States in recent years.³ Many thousands risked their lives to escape persecution in their homelands that summer. They arrived and found an American refugee system overwhelmed, inadequately prepared, and unevenly applied.

The flush of new arrivals shocked the federal government, including the Immigration and Naturalization Service (INS). As the Cubans and Haitians who arrived in Miami waited for a clear declaration of U.S. admission policy and INS processing, they found themselves confined to overcrowded refugee camps and detention facilities. Pictures of these “boat people” appeared in newspapers around the country. Although just months earlier, Congress had passed landmark legislation, the Refugee Act of 1980, designed to streamline and order refugee admissions, that summer Americans and refugees alike saw a system visibly overwhelmed. The United States’ “traditional humanitarian concern for the plight of refugees” as Senator Ted Kennedy characterized it, was under fire.⁴

¹ Lois Colbert, “Haitian Aliens - A People in Limbo,” *The Crisis*, September 1980, 235.

² Associated Press, “Illegal Flow of Haitian Immigrants into Florida is Reported to Increase,” *New York Times* (New York, October 30, 1980).

³ Ibid.

⁴ Edward M. Kennedy, “Refugee Act of 1980,” *International Migration Review* 15, no. 1/2 Refugees Today (Spring - Summer 1981): 142.

In this paper I examine the Jimmy Carter administration's shifting reactions to the refugee influx during the spring and summer of 1980. President Carter had called human rights "the soul of our sense of nationhood." Yet the events of the summer of 1980 challenged the premise that the United States should provide haven to the persecuted.⁵ Politics rather than human rights principles drove the Carter administration's inconsistent reactions to the mounting refugee crises. The administration's responses undermined consensus about refugee admissions and pushed refugee issues into larger debates about immigration. I argue that more than simply challenging the new law, the crises of the summer shaped the implementation of the Refugee Act of 1980 and public perceptions of refugees.

Members of Congress and refugee advocates hoped that the Refugee Act of 1980 would usher in a new and improved era in refugee policy. Since the end of World War II, the United States had used *ad hoc* refugee admissions as a "handmaiden of foreign policy."⁶ Prior to 1980, the United States generally granted refugee status to specific persecuted groups and individuals who fled communist states, a practice that had foreign policy value for successive administrations.⁷ By the late 1970s, a loose coalition of policymakers and refugee advocates supported crafting a comprehensive refugee policy based on human rights principles rather than Cold War politics. Proponents of refugee admissions wanted the United States to act in accordance with international law; critics who wished to limit refugee admissions concurred that the system in place was no system at all, and supported legislative reform.

The Refugee Act formally redefined "refugee" in U.S. law, bringing U.S. policy in line with its obligations under international law. The Act defined a refugee as a person outside his or her country, unable or unwilling to return to that country because of persecution or a

⁵ Quoted in Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 152.

⁶ Kathleen Newland, "The Impact of U.S. Refugee Policies on U.S. Foreign Policy: A Case of the Tail Wagging the Dog," in *Threatened Peoples, Threatened Borders*, First. (New York: W.W. Norton & Co., 1995), 190.

⁷ The Immigration Act of 1965 defined seventh preference immigrants as "aliens who... because of persecution or fear of persecution on account of race, religion, or political opinion have fled... from any Communist or Communist-dominated country or area, or... from any country within the general area of the Middle East... or are persons uprooted by catastrophic natural calamities as defined by the President who are unable to return to their usual place of abode." Section 1153(a)(7), Title 8, United States Code (repealed by the Refugee Act of 1980.)

well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁸ Under the new law, those fleeing persecution from right-wing regimes would be eligible for admission as refugees, and those fleeing communist states would be subject to the same scrutiny of their claims.⁹

The Refugee Act also quietly created a new avenue for admission to the United States by establishing a formal procedure of asylum. Instead of awaiting approval for resettlement while abroad, a person fleeing or fearing persecution in his or her country that could get to the United States could submit an asylum claim. Asylum-seekers must be physically present in the United States when making their claims. The law set aside an annual number of 5,000 slots for asylum seekers, a number that Doris Meissner, former Executive Associate Commissioner of INS, said seemed “generous and highly unlikely to be needed” because at the time fewer than 2,000 applicants sought asylum annually.¹⁰ The Refugee Act nevertheless threatened to open the floodgates to asylum seekers: within six months of passage of the Act, an astonishing 100,000 individuals claimed asylum.¹¹

INS and the Carter administration were unprepared for the deluge. As Cubans and Haitians came ashore in Miami, the Carter administration’s responses shifted in the political winds, shaped by the drama of the situation. It appeared unsure of how to respond, and was unprepared to implement the Refugee Act. It chose not to process the arriving “boat people” as individual asylum seekers, and it was unclear if they would qualify as refugees under the new definition. Instead, the U.S. government appeared to make decisions designed to satisfy certain constituencies, exacerbated by election-year politics. By the end of the summer, President Carter’s decisions regarding the boat people contributed to a growing sense that U.S. immigration and refugee admissions were out of control.

⁸ This language is based on the U.N. Protocol on the Status of Refugees, which the United States ratified in 1968. Refugee Act of 1980 (P.L. 96-212; 94 Stat. 102) amended the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42), (1980).

⁹ Two key texts on the history of U.S. refugee policies are Carl Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War* (Princeton: Princeton University Press, 2008) and Gil Loescher and John Scanlan, *Calculated Kindness: Refugees and America’s Half-Open Door, 1945 to the Present* (New York; London: Free Press; Collier Macmillan, 1986).

¹⁰ Doris Meissner, “Reflections on the U.S. Refugee Act of 1980,” in *The New Asylum Seekers: Refugee Law in the 1980s* (Dordrecht; Boston; Norwell, MA USA: M. Nijhoff; Sold and distributed in the USA and Canada by Kluwer Academic Publishers, 1988), 60.

¹¹ *Ibid.*, 61.

Part I: Refugee Act of 1980

Since WWII, the United States has resettled over 4 million refugees. The historian Carl Bon Tempo has argued persuasively that Cold War concerns shaped U.S. refugee policies, including the resettlement of over 35,000 Hungarians who fled their country after the Soviet invasion in 1956.¹² The Eisenhower administration seized the opportunity both to enhance the United States' image abroad and condemn the repressiveness of communist states. In domestic politics, the government emphasized the key feature of refugees: they were avowed anticommunists fleeing persecution by communist states, and they would make good Americans as a result.¹³ The administration admitted the Hungarian refugees using a clause in the Immigration and Nationality Act (INA) known as "parole," which allowed the attorney general to admit an alien into the United States outside the normal immigration system.¹⁴ Rather than channeling refugees through normal immigration channels, the executive branch in the 1950s and 1960s used its parole authority to confer refugee status upon other groups fleeing communist states; following the resettlement of Hungarians after 1956, the executive branch paroled subsequent groups of refugees, including Cubans in the 1960s and Indochinese in the 1970s.

For the first time in 1965, Congress amended the INA to codify the definition of refugee as it had been used in practice since 1948, and provided a quota for the entry of refugees (the "seventh preference" category for admission.)¹⁵ Under the 1965 definition, a refugee was a person that fit into explicit geographic and ideological bounds; he or she must have fled a communist-dominated country, or the Middle East based on persecution or fear of

¹² This is true from the outset of U.S. refugee admissions; in 1948, the Displaced Persons Act brought 400,000 refugees to the U.S. to help speed European reconstruction. Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 73.

¹³ *Ibid.*, 59.

¹⁴ *Ibid.*, 70.

¹⁵ Deborah Anker and Michael Posner, "The Forty Year Crisis: A Legislative History of the Refugee Act of 1980," *San Diego Law Review* 19, no. 1 (December 1981): 17. Refugees, defined by the Immigration and Nationality Act as amended as: aliens... "(A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode...." (Section 203(a) (7))

persecution.¹⁶ The executive branch continued to use its parole authority to admit refugees in excess of the numerical limits on immigration set by the 1965 law, according to its foreign policy goals. Between 1945 and early 1979, the U.S. accepted nearly 2 million refugees.¹⁷

Beginning in 1975, an enormous refugee crisis unfolded in Southeast Asia, and the United States undertook the largest refugee resettlement effort in its history.¹⁸ As the United States withdrew from Vietnam, many American policymakers argued that the country had an obligation to resettle Vietnamese that had supported U.S. efforts and now found themselves at risk of persecution by the Hanoi government. Some 360,000 refugees from Southeast Asia entered the United States between 1975 and mid-1980. They did not enter as seventh preference immigrants but through a series of parole authorizations by the president. The attorney general authorized or extended the Indochinese refugee parole programs ten times in four years.¹⁹ In June 1979, the rate of Indochinese refugee admissions under President Carter's parole authority doubled, and parole programs to admit other refugee groups fleeing communist states continued as well.²⁰ Refugees were consistently in the news. Media coverage was sympathetic to the plights of refugees, reinforcing the idea that the United States should be compassionate in its refugee admissions but increasingly projecting concerns about the impact of resettlement on the United States.²¹

¹⁶ The 1965 Amendment allowed for the conditional entry of 10,200 normal flow refugees. "The allocations have been filled each year, generally, by refugees from Eastern European countries, by Chinese refugees who managed to reach Hong Kong, and by a variety of persons, such as Kurds, Jews, and Arabs fleeing from Middle Eastern tensions." Julia Taft, David S. North, and David A. Ford, *Refugee Resettlement in the U.S.: Time for a New Focus* (Washington: New TransCentury Foundation, 1979), 9.

¹⁷ Congressional Research Service, *Review of U.S. Refugee Resettlement Programs and Policies: A Report Prepared at the Request of Senator Edward M. Kennedy* (Washington: Library of Congress, U.S. GPO, 1980), 131.

¹⁸ George Rupp, "1975: The Largest Refugee Resettlement Effort in American History [IRC at 75]," *The IRC Blog*, June 27, 2008, <http://www.rescue.org/blog/1975-largest-refugee-resettlement-effort-american-history-irc-75>. Accessed April 29, 2011.

¹⁹ Congressional Research Service, *Review of U.S. Refugee Resettlement Programs and Policies: A Report Prepared at the Request of Senator Edward M. Kennedy*, 13.

²⁰ Since 1962, over 690,000 Cubans entered the United States under the parole authority. And in April 1979, the administration authorized the parole of some 25,000 Soviet and other Eastern European refugees through September of that year. *Ibid.*, 13-14.

²¹ Leo Chavez, *Covering Immigration: Popular Images and the Politics of the Nation* (Berkeley: University of California Press, 2001), 84-87.

In the face of successive waves of paroled refugees, various groups in the United States advocated a change in U.S. policy. Some argued that the United States should revise its refugee admissions policy to reflect the U.N. definition of refugee, which makes no mention of communism.²² This would broaden admission to refugees fleeing non-communist states while also restricting entry to those who left communist states for a reason other than persecution. The United States had become a party to the U.N. Convention on Refugees when it signed the 1967 Protocol Relating to the Status of Refugees in 1968, United Nations' "International Year for Human Rights."²³ At the time, the United States did not alter its refugee policies to comply with the international convention.²⁴ Due to the surge in admissions of Vietnamese refugees, reformers stepped up and advocated a change in the law. They were joined by refugee resettlement organizations and members of Congress who supported reform for a more immediate reason. The use of parole seemed increasingly chaotic, and reformers believed that taking legislative action to curb executive power over refugee admissions would help the government control admissions and better plan for the costs of refugee resettlement.

Surging interest in human rights in the late 1970s also fed into reformers' desires to bring refugee admissions in line with international law and to base admissions on human rights principles.²⁵ President Carter invoked human rights as the guiding rationale of its

²² The U.N. defines a refugee as a person who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." U.N. Convention relating to the Status of Refugees, 1951, amended 1967.

²³ The 1967 Protocol amended the 1951 U.N. Convention relating to the Status of Refugees, to broaden the geographic and temporal limits of that initial document. Refugee crises had continued to occur long after the Second World War, and they occurred all over the world. In fact the number of refugees was on the rise; between 1960 and 1966 the world's refugee population more than doubled, to over three and a half million people. Source: Table: Total Refugee Population By Origin, 1960-2009, UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR).

<http://www.unhcr.org/pages/4a013eb06.html>. Accessed April 29, 2011.

²⁴ In general, however, the U.N. definition serves as the basis for signatories' refugee laws. As of 2011, 147 states are parties to the Protocol or Convention; in March 1980, 80 states were parties. Source: UNHCR, "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol", April 1, 2011, <http://www.unhcr.org/3b73b0d63.html>. Accessed April 29, 2011. See also Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 173.

²⁵ Refugee advocates increasingly justified the entry of refugees in terms of human rights principles. New prominent refugee flows, such as Soviet Jews and Chileans fleeing Pinochet, were increasingly framed in terms of human rights, which made the executive branch's ad hoc use of the attorney general's parole authority to

foreign policy; here was a chance to make human rights rhetoric central to refugee admissions.²⁶ Building on consensus around human rights, international law, and the need to better plan for the costs of refugee resettlement, Senator Ted Kennedy (D-MA), Representative Elizabeth Holtzman (D-NY) and Representative Peter Rodino (D-NJ) introduced the bills that would become the Refugee Act of 1980.²⁷

Dramatic refugee flows appeared prominently in the news as Congress held hearings to discuss the bills. On May 16, 1979, the front page of *Washington Post* announced: “Vietnam Offers to Let 10,000 Leave Monthly.”²⁸ President Carter increased the number of Vietnamese boat people to be paroled into the United States as a result. But, the article warned, Hanoi’s policy of releasing Vietnamese to be resettled as refugees could become a serious problem for resettlement countries, primarily the United States.²⁹ The story epitomized a number of challenges then facing the United States’ refugee policies, including tensions between the executive and legislative branches over whose authority should determine admissions, questions about U.S. capacity to accept and resettle refugees, and how to decide who was a valid refugee and who should be admitted.

As signed into law in March, the Refugee Act of 1980 appeared to be a triumph. The Refugee Act of 1980 adopted the U.N. definition of refugee, dropping any reference to communism. By conforming to the U.N. definition, the Act eliminated questions about the admissibility of refugees fleeing non-communist and non-Middle East states, and destroyed

admit refugees “increasingly awkward.” Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 133. In his book *The Last Utopia*, the historian Samuel Moyn shows that human rights achieved contemporary prominence in the 1970s, when the public relevance of human rights “skyrocketed.” Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge Mass.: Belknap Press of Harvard University Press, 2010), 4. See also, Barbara Keys, “Congress, Kissinger, and the Origins of Human Rights Diplomacy,” *Diplomatic History*, 34 (2010): 823–851, doi: 10.1111/j.1467-7709.2010.00897.x.

²⁶ Historians disagree about the human rights performance of President Carter’s administration, but for my purposes his rhetoric of human rights was key. As Samuel Moyn argues, “The symbolic novelty and resonance of the phrase in Carter’s policy is what mattered most of all, since he embedded it for the first time in popular consciousness and ordinary language.” Moyn, *The Last Utopia: Human Rights in History*, 155. Bon Tempo cites testimony from attorney general Griffin Bell explicitly making the point that the U.S. was in a unique position to promote human rights through refugee admissions in Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 175.

²⁷ Senate bill 643 and House bill 2816. For a close examination of the legislative history of the Refugee Act of 1980, see Anker and Posner, “The Forty Year Crisis: A Legislative History of the Refugee Act of 1980.”

²⁸ Richard M. Weintraub and Christopher Dickey, “Vietnam Offers to Let 10,000 Leave Monthly,” *Washington Post* (Washington, May 16, 1979), A1.

²⁹ *Ibid.*

the legal presumption that all who fled from communist states were refugees. The law created a mechanism through which refugee admissions were subject to some congressional scrutiny, by setting out an annual admissions cap of 50,000 refugees (“normal flow”). This figure was generous by the previous law’s standard; it technically tripled refugee admissions. It also created a provision whereby the president could add to the total so long as he or she consulted with Congress to do so. Finally, the law divorced refugee affairs from the rest of U.S. immigration policy. It ended the seventh preference provision of the 1965 INA, and made refugee admissions its own policy, separate from other immigration. Senator Ted Kennedy who sponsored the Senate bill, called the legislation “the single most significant reform of our Nation’s immigration statute in 15 years” and affirmed that it gave statutory meaning to “our national commitment to human rights and humanitarian concerns.” The resettlement of refugees was “a fundamental human rights issue.”³⁰ And U.S. human rights concerns were now enshrined in its refugee policy.

The Refugee Act of 1980 established a procedure for asylum. The only difference between a refugee and an asylum seeker is that an asylum seeker makes his or her claim from within the United States, while refugees make their claims outside the United States. They must otherwise meet the same requirement, demonstrating persecution or fear of persecution based on one of five grounds. The U.S. had been obligated by international law to hear asylum claims since 1968 when it signed onto the U.N. Protocol, but only a few thousand people applied for asylum in the 1970s. The Department of Justice and INS handled these cases using ill-defined administrative procedures, more often than not rejecting the claims.³¹ Were it not for the inclusion of a formal asylum provision in the 1980 Refugee Act, the United States might have continued to receive only a trickle of asylum seekers each year. Because there was now a formal procedure, however, any alien present in the United States and anybody that could travel to the United States could submit a claim for asylum, and the law compelled the U.S. to hear and process all asylum claims. In European nations, asylum had always been a component of states’ refugee programs. In the United States, physically distant from the major refugee crises of Europe, the Middle East,

³⁰ Ibid.

³¹ Ibid., Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 178-179.

and Asia, the overseas resettlement program had long accounted for the vast majority of U.S. refugees. That changed in 1980.

Asylum was uncontroversial, and Congress incorporated it into the Act “almost as an afterthought.”³² The law established a clearly defined asylum provision providing that up to 5,000 of the “normal flow” numbers could be used to grant asylum to persons within the United States, or to persons reaching its shores, who could claim to be refugees.³³ At the time 5,000 slots appeared generous because recent years had seen only around 2,000 annual claims for asylum. The other “normal flow” numbers would apply to overseas refugee claims. The Act created a new path to the United States; refugees no longer had to wait in third countries for processing by INS; if they could buy a plane ticket or otherwise cross the U.S. border, they would be entitled to consideration of their asylum claims.

Part II: Spring & Summer 1980

In April, 10,000 Cubans stormed the Peruvian embassy in Havana, setting off a refugee crisis. Fidel Castro called those hoping to escape “delinquents, homosexuals, gangsters, vagrants and parasites,” comments that were widely discounted in the United States at the time but which would be revisited as the summer pressed on.³⁴ The initial U.S. government response was quiet. Although in the past the U.S. had paroled large numbers of Cuban refugees into the United States, the Carter administration now proceeded with caution, offering admission only to those Cubans who, having traveled to Peru, wished to be resettled in the United States. The United States also sought international solutions to the problem, for example, with the help of Costa Rica.

Some bristled at the Carter administration’s response. In Miami, some in the Cuban exile community called for a “war of liberation” against the Castro regime, and others collected truckloads of food, supplies, and cash to help the newest Cuban refugees.³⁵ Some Cubans launched hunger strikes in support of the Cubans at the Peruvian embassy.³⁶ The

³² Meissner, “Reflections on the U.S. Refugee Act of 1980,” 60.

³³ Congressional Research Service, *Review of U.S. Refugee Resettlement Programs and Policies: A Report Prepared at the Request of Senator Edward M. Kennedy*, 85.

³⁴ Wall Street Journal Editorial, “Our Stake in Havana,” *Wall Street Journal* (New York, April 10, 1980), 24.

³⁵ Los Angeles Times Wire Service, “Cuba Calls Refugees in Peruvian Embassy ‘Vagrants, Bums,’ Says They Can Leave,” *Los Angeles Times* (Los Angeles, April 8, 1980), B5.

³⁶ Jo Thomas, “Miamians Rally to Back Cause of Castro Foes,” *New York Times*, April 15, 1980, A1.

Wall Street Journal, echoing attitudes that had governed U.S. refugee admissions in the past, emphasized that these Cubans were voting with their feet. Their decision to flee Cuba (and communism) signified that their lives on the island were desperate and miserable. Not missing a chance to generate buzz in an election year, the *Journal* decried the Carter administration's "embarrassing ambivalence" toward "peoples who seek to escape some foreign misery or tyranny."³⁷

The Cuban refugee crisis did not remain confined to the Peruvian embassy; by the fourth week of April, hundreds of Cubans were arriving in Miami in a massive boatlift. The U.S. government condemned the action, and warned American boat owners that they could be jailed or fined for bringing Cuban immigrants to the United States without proper documentation. But the Cuban community in Miami celebrated the exodus from Cuba and their reunions with family members and friends. Some exploited the opportunity to lob criticism at the Carter administration: "What do you expect of the U.S. government? They haven't done anything about their own hostages in Iran. We can't wait for them to take care of ours in Cuba."³⁸ The *Wall Street Journal* also criticized Carter's response as one of "downright hostility," and warned that such an attitude made the United States look weak. Instead of fining the boats bringing Cuban refugees ashore, President Carter should put together "a Johnson-style airlift, and go down to Key West to shake hands with the next group of refugees to come off the docks."³⁹ Commentators referred to the Cuban boatlift as a "freedom flotilla," a term which evoked the political rectitude of their plight.

The new Refugee Act put President Carter in an awkward position. The United States had been admitting Cubans as refugees since 1959, and in 1965 President Johnson had delivered a speech at the Statue of Liberty proclaiming America a land of freedom with room for all Cubans who might seek to enter.⁴⁰ Back then, the U.S. government viewed the departure of Cubans from Cuba as a demonstration of the economic and political repression

³⁷ Wall Street Journal Editorial, "Our Stake in Havana."

³⁸ William C. Rempel, "Boatlift of Cubans Grows in Face of Warning by U.S.," *Los Angeles Times* (Los Angeles, April 25, 1980), 1.

³⁹ Between December 1965 and 1973, some 268,000 Cuban refugees arrived in the U.S. on daily flights (deemed "Freedom Flights") agreed to by President Johnson and the Castro regime. Wall Street Journal Editorial, "Our Boat People," *Wall Street Journal* (New York, April 29, 1980), 22.

⁴⁰ Loescher and Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present*, 74.

of a communist regime; fleeing to America was a 'ballot for freedom'.⁴¹ By the mid-1970s, however, due to domestic economic concerns and the endurance of the Castro regime, the foreign policy benefits of accepting large numbers of Cubans were no longer clear. It was also unclear also if Cubans would meet the definition of refugee under the freshly enacted Refugee Act. Refugees now had to demonstrate that they were the victims of or feared persecution, not simply that they fled communism. Refusing to admit them if they did not meet the new definition, however, might have serious drawbacks for Carter – particularly in an election year. Would doing so make him look soft on fighting communism and antagonize the Cuban-American community?

At the same time, another crisis was brewing. April saw an uptick in the number of Haitians arriving by boat in Miami, reaching a record 700 arrivals in a single day.⁴² The *Los Angeles Times* explicitly drew a parallel between the Haitians and the boat people of Southeast Asia. Vietnamese and Cambodians were arriving in the United States as refugees with full work authorization and benefits, while the Haitians languished in detention centers as “economic refugees” – illegal aliens crashing the good life in the United States.

Since 1972 Haitians had been arriving in the United States claiming to be refugees. As Congress worked to streamline U.S. refugee policies, Haitian asylum seekers languished in legal limbo. Their requests for asylum had been rejected by the U.S. government, which maintained that they were economic migrants seeking a better life rather than victims of political persecution; before 1980, the U.S. government rejected nearly all asylum claims by people fleeing right-wing governments. Most Haitians faced deportation, although the judge in an ongoing court case, *Haitian Refugee Center vs. Civiletti*, had temporarily stopped those deportations in 1979. That court case and the new law governing refugee admissions invited a more careful look at Haitians' claims.

Haitian arrivals generated particular attention and heated debate in an election year. The *Los Angeles Times* called the Haitian “black boat people” a “test for Carter” and his

⁴¹ Ibid., 75.

⁴² New York Times, “Haitians Continue to Arrive in Miami,” *New York Times* (New York, April 16, 1980), A16; Colman McCarthy, “Escape from Nightmare Island: Haitians Flood U.S. but, Unlike Asia’s Boat People, Find They Are Unacceptable,” *Los Angeles Times* (Los Angeles, April 22, 1980), C5.

administration's credibility with black voters.⁴³ The 17-member Congressional Black Caucus vowed to fight the administration's position on the Haitians, arguing that the policy was racially discriminatory. Other refugee advocates saw the Haitians as legitimate refugees who were denied due process in the U.S. because they had been persecuted by a repressive right-wing regime that enjoyed U.S. support.⁴⁴ Even the *Wall Street Journal* editorialized that the administration's policy was inconsistent at best: "few people who have looked closely at Haiti would doubt that the regime there is oppressive and if the word refugee has any meaning, surely most of the people fleeing that regime can call themselves refugees.... the policy toward the Haitian boat people is inappropriate for an administration so professedly devoted to human rights."⁴⁵

May brought ever-larger numbers of Cubans and Haitians ashore in Miami, and with them, more complications.⁴⁶ The *Miami Herald* predicted "a potentially ugly backlash" building in what was becoming the refugee capital of the Americas. The new arrivals created considerable logistical challenges as local officials and volunteers struggled to provide adequate shelter, food, and medical services. The uncertain status of the newcomers made it unclear if costs would be covered by federal funds or absorbed locally. Images of the boat people appeared in newspapers around the country, bringing an unprecedented scene of refugee suffering on American shores to a national audience.

Responding to criticism of his policy to fine boats bringing Cubans ashore, Carter reversed his position and gave a speech offering "an open heart and open arms" to the Cubans.⁴⁷ Within a week, he had moved to shut down the illegal boatlift, and offered

⁴³ Calvin Zon, "'Black Boat People': A Test for Carter, Plight of 8,000 Refugees from Haiti Could Explode Presidential Campaign," *Los Angeles Times* (Los Angeles, February 27, 1980), D5.

⁴⁴ McCarthy, "Escape from Nightmare Island: Haitians Flood U.S. but, Unlike Asia's Boat People, Find They Are Unacceptable."

⁴⁵ Wall Street Journal Editorial, "The Other Refugees," *Wall Street Journal* (New York, April 22, 1980), 24. Note that fleeing from a regime that abuses human rights generally does not make an asylum-seeker's claim valid; she must demonstrate that she personally faced persecution or feared persecution based on one of the five grounds. While such claims often arise from rights-abusing regimes, simply coming from a country with an oppressive regime is generally insufficient grounds for a grant of asylum.

⁴⁶ Some 85,000 Cubans arrived in May alone. Loescher and Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present*, 184.

⁴⁷ Robert Pear, "U.S. Policy on Cuban Refugees: Background and Prospects," *New York Times* (New York, May 8, 1980), A12.

government transportation for Cubans coming to the U.S. to reunite with their families.⁴⁸ He declared a state of emergency in the state of Florida on May 6 in response to the Cuban influx, which meant that the Federal Emergency Management Agency took on some of the expenses incurred.⁴⁹ The Carter administration also designated four U.S. military facilities as processing and holding centers for some 64,000 Cubans who lacked sponsorship.⁵⁰ Americans around the country now had refugee neighbors.

Declaring an emergency relieved some of the pressure on local groups, but it did not constitute a refugee policy. “Our laws never contemplated and do not adequately provide for people coming to our shores directly for asylum the way Cubans and the Haitians have done recently,” President Carter said in a speech on May 14.⁵¹ The administration argued that Congress had not designed the new Refugee Act for this problem. “It was not written with this kind of exigency in mind: a massive, sudden flood of people coming in boats directly to the United States,” said John Klekas, a member of the federal Cuban Refugee Task Force, housed in the State Department. “We have the requirements of existing U.S. law on one hand, while the imperative of 100,000 people needing resettlement sits on the ground.”⁵² In the face of so many thousands of new arrivals, the Carter administration ignored the law. It did not process the arrivals’ individual asylum claims, and it did not consult with Congress to admit them as refugees in excess of the normal flow annual limit. The administration might have anticipated that subjecting the Cuban arrivals to individual asylum screenings would be not only a massive undertaking for INS, but also politically fraught. Subjecting Cubans to the new standard for refugee status would mean removing the welcome mat that had long existed for them. It would prove unpopular with the Cuban-American community, and others who believed that denying entry to Cubans would constitute a foreign policy win for Castro.

⁴⁸ Edward Walsh, “17 Americans Summoned Home,” *Washington Post* (Washington, May 15, 1980), A1.

⁴⁹ Charlotte Moore, *Refugees in the United States: The Cuban Emigration Crisis: Issue Brief Number IB80063* (Washington: Education and Public Welfare, Library of Congress, Congressional Research Service, December 5, 1980), 10.

⁵⁰ They were Eglin Air Force Base in Northwest Florida, Ft. Chaffee in Arkansas, and Indiantown Gap in Pennsylvania. By the end of the month a fourth site was added, Ft. McCoy in Wisconsin. *Ibid.*

⁵¹ American Bar Association, “Cuban Refugee Crisis: Quick Test for New Law,” *ABA Journal* 66 (July 1980): 826.

⁵² *Ibid.*

Complicating Carter's approach to the Cubans was the continuing influx of Haitians. It was becoming impossible to state U.S. policy on Miami's new Cubans without considering the Haitians. The president's "open arms" for Cubans provided a political opportunity for supporters of Haitian refugees. They could now point out a clear double standard in U.S. refugee policy. Cubans, they observed, were being resettled and granted at least a vague status with federal dollars for resettlement, while Haitians had been denied meaningful consideration of their asylum claims for years. It appeared that the Haitians were being denied because they fled a (non-communist) regime that enjoyed U.S. support. Members of Congress, church groups, and civil rights groups urged President Carter to welcome the Haitians as refugees. At his appearance in Philadelphia at Temple University, Carter confronted a demonstration demanding equal treatment for the Haitians.⁵³ In Miami, at least a thousand people held a march and rally to support Haitian asylum seekers, chanting "human rights for Haitians!" and "Asylum Yes! Deportation No!"⁵⁴ The comparison between the Cubans and the Haitians sharpened political pressure and gave added force to a campaign calling for executive action to allow Haitian asylum applicants to remain.⁵⁵

Yet, immigration officials repeated their long-held stance that Haitians were not refugees because they were economic migrants. One INS official said, "It's a simple issue as to whether they are being persecuted in Haiti as to race or politics. Clearly they are not. They are just poor people coming here to work – just like the Mexicans."⁵⁶ Haitian asylum seekers found themselves in legal limbo, ineligible for work permits, government aid, and other federal benefits afforded refugees during resettlement. As a result, they put considerable strain on local resources, which served to reinforce the government's message that they were economic (rather than political) migrants.⁵⁷ Miami's residents grew increasingly upset; one man wrote a letter to the editor at the *Miami Herald*, calling the Haitian arrival "one of the most impoverished, unhealthy, and unskilled waves of immigration ever to cross our shores."

⁵³ "A Presidential Town Meeting...," *Philadelphia Tribune* (Philadelphia, May 13, 1980), 9.

⁵⁴ Jet Magazine, "Hold Miami Demonstration to Help Haitian Refugees," *Jet Magazine*, May 8, 1980, 9.

⁵⁵ Loescher and Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present*, 179.

⁵⁶ Lee May, "Influx from Haiti Dilemma for U.S.: More Complex than Exodus from Cuba," *Los Angeles Times* (Los Angeles, May 5, 1980), B1.

⁵⁷ Anthony Ramirez, "In A Strained Miami, Cubans and Haitians Help the Boat People," *Wall Street Journal* (New York, May 2, 1980).

The worsening economy strained good will toward the new arrivals. As Cubans arrived in larger numbers, anti-Cuban sentiment rose among working-class whites, non-Cuban Hispanics, and African Americans in Miami. Floridian Cubans also took note of the faces of the incoming Cubans, who were poorer, less educated, and more likely to be black than the Cubans who had arrived in the United States in earlier waves.⁵⁸ Rumors that Cuba had expelled criminals and government agents along with the refugees caused further headaches and made finding hosts for the Cubans more difficult, which meant that many of them stayed longer in the military processing centers.⁵⁹ “The compassionate welcoming inscription on the Statue of Liberty,” one letter to *The Miami News* said, “does not give approval to breaking our immigration laws.”⁶⁰ The additional strain of some 40,000 Haitians in Florida who did not qualify for any federal assistance exacerbated these feelings. In May, the arrival of so many Cubans and Haitians exacerbated racial tensions in Miami, which exploded in three days of violent riots following the acquittal of several white police officers who were tried for the murder of an African American man.⁶¹ National sympathy for refugees ebbed.⁶²

Presidential campaign politics invited sharp scrutiny of the president’s response to the developing crises. In early May, Republican candidate Ronald Reagan spoke out in favor of a large rescue mission for the Cubans, such as an airlift.⁶³ Running against the incumbent Carter for the Democratic nomination, Senator Ted Kennedy spared little in his criticism of the Carter administration’s response to the Cuban crisis, criticizing the president for its brief punitive policies intercepting boats.⁶⁴ And in a letter from the Senator to Carter in late May, Kennedy deepened his critique: “The Congress passed the Refugee Act so as to avoid treating each new refugee situation on an ad hoc basis... It is precisely this flexibility which is missing in the current approach to handling the Cuban refugee problem. If we fail to use

⁵⁸ Anthony Ramirez, “Making It: Miami Cubans Prosper by Sticking Together, Aiding Later Refugees,” *Wall Street Journal* (New York, May 20, 1980), 1.

⁵⁹ Ramirez, “In A Strained Miami, Cubans and Haitians Help the Boat People,” 1.

⁶⁰ Andrew Karras, “Letter to the Editor,” *The Miami News* (Miami, June 9, 1980), 14A.

⁶¹ Susan Harrigan and Charles W. Stevens, “Roots of a Riot: Miami Blacks in a City of Little Industry, Feel Particularly Powerless,” *Wall Street Journal* (New York, May 22, 1980), 1.

⁶² Howell Raines, “Cuban Backlash Grows in Florida as Influx of Refugees Nears 30,000,” *New York Times* (New York, May 10, 1980).

⁶³ Pear, “U.S. Policy on Cuban Refugees: Background and Prospects.”

⁶⁴ *Ibid.*

the Refugee Act now, with the flexibility and scope for which it was intended, we will likely compromise its future use just as it has been signed into law.”⁶⁵ Representative Liz Holtzman (D-NY), who had helped craft the Refugee Act, said that the current response had been “developed entirely by White House officials,” indicating that the president had not clarified coordination among federal agencies or involved Congress. One member of Congress observed, “The administration, because it is an election year, has vacillated between enforcing the law and opening its arms and hearts for political expediency.” The one thing to which most observers could agree was that U.S. refugee policy remained “vague and ill-defined” just months after the landmark Refugee Act of 1980.⁶⁶

In June, the Carter administration announced its new policy for admitting Cubans and Haitians.⁶⁷ Rather than process the arrivals as individual asylum seekers, as the Refugee Act had prescribed, the Cubans and Haitians who had arrived that year (15,000 Haitians and at least 114,000 Cubans) would be admitted conditionally under a new special status “Cuban/Haitian entrant.” Essentially, President Carter used parole authority to admit the Cubans and Haitians on a temporary basis, leaving it to post-election Congress to decide their permanent status. It was an unsatisfying policy; entrant status provided little more than protection from deportation, while refugee status would have afforded the Cubans and Haitians with a path toward permanent residency and citizenship, and federal funds for resettlement.

This solution damaged the Carter administration’s reputation and added to the sense that U.S. refugee admissions were chaotic and unbound by law. The chaos of the spring and summer, in which people lived at military bases, in makeshift tent camps, and at the Orange Bowl contributed to public perceptions that the system was dysfunctional.⁶⁸ Articles in the springtime had proliferated on the generosity of the Cuban-American community, the need to resettle Cubans who would assimilate well to American life, and America’s commitment

⁶⁵ American Bar Association, “Cuban Refugee Crisis: Quick Test for New Law,” 826.

⁶⁶ Robert Pear, “Ill-Defined Refugee Policy: Despite Halt in Boatlift, Legal Status of Cubans Apparently Depends on Future Moves by Castro,” *New York Times* (New York, June 9, 1980), B14.

⁶⁷ June 20, 1980. Moore, *Refugees in the United States: The Cuban Emigration Crisis: Issue Brief Number IB80063*, 11.

⁶⁸ Jeff Prugh, “Trapped in Military Tent Camps: U.S. No Land of Dreams for Refugees,” *Los Angeles Times* (Los Angeles, June 25, 1980), B16.

to sheltering the world's persecuted. As the summer wore on, questions about the costs for resettlement became central, and the president's decision left local governments to absorb many costs associated with the arrivals.

Even after the president's announcement, African-American groups, human rights advocates and the Black Congressional Caucus, continued to highlight the uncertain status of Haitians. NAACP's magazine *The Crisis* published an article emphasizing the dehumanizing conditions of Haiti's "Baby Doc" Duvalier regime and its brutal secret police, the *Tonton Macoute*. The situation in Miami, the article argued, "is turning into a giant pressure cooker, which the INS seems determined to keep the lid upon as long as possible."⁶⁹ A *Los Angeles Times* article speculated that the president's indecisiveness regarding the Haitians would test his credibility with African American voters.⁷⁰

In the middle of the debate, a judge ruled in an important case regarding Haitian asylum seekers. Judge Lawrence King ordered INS to reprocess each of the more than 4,000 Haitian asylum claims it had dismissed. He said that INS had violated their rights.⁷¹ In 1978, INS officers unfamiliar with asylum laws or human rights conditions in Haiti had rapidly processed thousands of Haitian asylum claims. According to UNHCR, only 45% of the applicants had interviews before their claims were denied, and Michael Posner, executive director of the Lawyers' Committee for Human Rights, observed the proceedings, which he called "unprecedented" and "unbelievable." In 1979, federal court had temporarily halted thousands of deportations back to Haiti.⁷² Now a backlog of Haitians received a fresh chance to present their asylum claims.

Judge King's ruling exposed a view of the Haitian refugees that the U.S. government had denied existed. The court case demonstrated that Haitians had fled to the United States seeking freedom from an oppressive regime and they deserved serious consideration of their asylum claims. Among those who testified before him were political prisoners left to die in Haiti's notorious Ft. Dimanche prison, people who had been beaten nearly to death by

⁶⁹ Lois Colbert, "Haitian Aliens - A People in Limbo," *The Crisis*, September 1980, 237.

⁷⁰ Peter A. Schey, "'Black Boat People' Founder on the Shoals of U.S. Policy," *Los Angeles Times* (Los Angeles, June 29, 1980), E3.

⁷¹ "Claims Must Be Reviewed: Haitian Refugees Refused Asylum Due to Bias: Court," *Jet Magazine*, July 24, 1980, 9.

⁷² Schey, "'Black Boat People' Founder on the Shoals of U.S. Policy."

prison guards, and people who would certainly face death or beatings if returned to Haiti. Vivid testimony appeared in newspapers around the country. Readers read gruesome details about Haiti's treatment of its political prisoners, including that the bodies of dead political prisoners had been left out to be devoured by dogs. "The sinister barking of the dogs would take sleep away from all prisoners," one man testified. Another man reported that the *Tonton Macoute* had nearly beaten him to death: "When I regained consciousness, that is when they started beating me once more... They quit beating me when they saw I could not take any more at all, when they saw they were beating on a dead man."⁷³ The court's ruling and the news made the Carter administration's responses to refugees appear terribly flawed.

Part III: Immigration & Illegality

By the time Fidel Castro stopped the flow of refugees to the United States in September, a serious backlash had developed against the *Marielitos*. President Carter had faced criticism for not welcoming the *Marielitos* enthusiastically enough, and later for having let so many in. The demographics of the Mariel boatlift were a contemporary topic of conversation that has continued to play a role in collective memory of that event. The *Marielitos* differed from earlier waves of Cuban refugees: they were younger, more blue-collar, and 70% male. While most were white, a higher than earlier percentage were black or mixed race.⁷⁴ Much has been made of the "undesirable" element of the group, including prisoners, homosexuals, and the disabled. INS investigations later concluded that about 20 percent of the *Marielitos* had been in jail in Cuba, but that very few of them had been convicted of serious crimes.⁷⁵

Regardless of the truth of their content, these rumors gained favor over the course of the summer and became grounds for resentment, discontent, and anti-immigrant sentiment. The casting of the *Marielitos* as racially different from earlier waves of Cuban refugees and otherwise not suitable freedom-seeking refugees was one element of a more general trend. The *Wall Street Journal* wrote in an editorial that the *Marielitos* had become a "dramatic

⁷³ Jeff Prugh, "Judge Moved By Ordeal: Horrors of Haitians Echo in Miami Court," *Los Angeles Times* (Los Angeles, July 4, 1980), 1.

⁷⁴ Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 181.

⁷⁵ *Ibid.*

case in point for people arguing that we just cannot handle large immigrations any longer.”⁷⁶ Refugee admissions, which had once been the purview of foreign policy, had been dragged into the domestic political issue of the proper role of immigration in American society.⁷⁷

Because of the refugee crises of 1980, and the Carter administration’s chaotic responses to them, Americans were less likely to accept that the benefits of providing sanctuary to refugees were worth the costs. They now pictured refugee camps in Miami, boats arriving on their beaches, the increasingly non-white, poor and unskilled features of the new arrivals, and they developed a sense that these people were a part of a larger illegal immigration problem. The historian Mae Ngai, in a history of twentieth century immigration policy, highlighted the central role that illegal immigration has played in shaping U.S. attitudes. Illegal immigration, she wrote, “became perceived as the central and singularly intractable problem of immigration policy and became a lightning rod in domestic national politics generally.”⁷⁸ Refugees had generally been excluded from this thinking, because they represented a small percentage of newcomers to the United States and they had entered the country legally after being screened abroad. Now asylum seekers could enter the country illegally and make a legal claim to asylum. It seemed like a back door to U.S. entry for illegal aliens.

The poor performance of the agency in charge of immigration further undermined confidence in U.S. immigration policy. Although Cuban and Haitian entrants were the most visible refugee flow of the summer, INS faced additional challenges. Non-Cubans and non-Haitians took advantage of the Refugee Act’s new asylum procedure. Thousands of Iranians already in the United States, mostly on student visas, filed asylum claims arguing that they would be persecuted by Khomeini’s Islamic regime. Processing Iranian asylum claims drew INS attention away from border patrol and stretched its resources thin. Mexican, Guatemalan, and Salvadoran migrants risked the desert to cross the border in historically

⁷⁶ Wall Street Journal Editorial, “Feeding the Backlash,” *Wall Street Journal* (New York, October 7, 1980), 32.

⁷⁷ Matthew Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge UK ;;New York: Cambridge University Press, 2004), 155.

⁷⁸ Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton N.J.; Woodstock: Princeton University Press, 2005), 265.

large numbers.⁷⁹ Other groups were on INS's radar, among them some 10,000 Nicaraguans who had been granted a temporary status in the United States after the Somoza regime fell.⁸⁰ Judge King's ruling that INS must properly re-hear thousands of Haitian asylum cases added to the queue.

A *Wall Street Journal* article called the INS "undermanned, mismanaged and plagued by low morale and charges of brutality." The same agency that was failing to prevent illegal aliens from crossing the border was failing to process Cuban refugees quickly in Miami, and was incorrectly adjudicating Haitians' asylum claims en masse. The Carter administration's waffling on how to process Cuban and Haitian "entrants," and INS's lack of preparation for handling asylum claims fed into criticisms that the immigration system overall was "outdated" and "futile."⁸¹ Although the law differentiated between refugee admissions and other immigration, perceptions of the troubled system increasingly did not.

Illegal migration, particularly across the U.S.-Mexican border, had been increasing enormously since the late 1960s. This was, as Mae Ngai argues, "a direct result of the imposition of quotas on Western Hemisphere countries, especially Mexico."⁸² The Hart-Cellar Act of 1965 abolished national origins quotas on legal immigration to the United States that dated back to the 1920s. This garnered positive attention as a liberal corrective to a discriminatory system, which put all countries on equal footing based on skills and family relationships rather than race. Less noted were the ways the law restricted immigration. The law imposed quotas for the Western Hemisphere for the first time, seriously reducing legal Western Hemisphere immigration.⁸³ This constraint created a crisis of illegal immigration. When a 20,000 per country quota was imposed on Western Hemisphere immigration in 1976, INS deported 781,000 Mexicans, making the border the

⁷⁹ Herron, Wright, and Wycliff, "Instead of Safety, A Desert Inferno.,"; John M. Crewdson, "Number of Alien Arrests Falls as Border Patrol is Stretched Thin," *New York Times* (New York, July 7, 1980), A12.

⁸⁰ Charles R. Babcock, "Another Group Wants to Stay: Nicaraguans," *Washington Post* (Washington, June 27, 1980), A16.

⁸¹ Robert E. Taylor, "The Immigrants: U.S. Policy on Whom to Admit Draws Fire as Outdated and Futile," *Wall Street Journal* (New York, September 11, 1980), 1.

⁸² Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*, 265. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*, 265.

⁸³ *Ibid.*, 261.

theater for an enforcement crisis, and construing illegality in racial terms.⁸⁴ In 1980, the influx of asylum-seekers, particularly non-white aliens who were perceived to be “illegal,” contributed to the perception of a border control crisis.⁸⁵

Could the United States afford to be compassionate? Concerns about the failing job market and growing inflation loomed large in peoples’ minds as they considered questions about immigration and refugee admissions.⁸⁶ A news story in central Pennsylvania focused on the refugee problem and the recession: “At the unemployment office, the influx of Cuban refugees dominates the conversation. Although no Cubans have yet settled in Williamsport, their potential impact on the labor market is a source of consternation. ‘If I can’t get a decent job, there’s no room for them,’ declares Steve Condo, a recently laid-off railroad worker.”⁸⁷ A year-end review article on the year’s refugee “explosion” featured in the *New York Times* wondered, “has the quality of mercy been strained to the breaking point?” The well-connected columnist Tad Szulc suggested that anti-refugee sentiment contributed to Jimmy Carter’s loss of Florida’s 17 electoral votes, and perhaps would be reflected in 1981’s new more conservative Congress.⁸⁸ Governor Bill Clinton’s role in permitting President Carter to use Fort Chaffee to house Cuban entrants hurt him politically in Arkansas, and by some accounts cost him his reelection bid in 1980.⁸⁹

By creating a formal opportunity for refugees present in the United States to seek asylum, the Refugee Act of 1980 changed the way Americans thought about refugees. They seemed “illegal” for the first time. Faced with media images of masses of Cubans and Haitians washing up on American shores, the value of maintaining a special category of admissions based on human rights principles diminished. Election year politics stoked extreme sentiments, the worsening economy informed much of the debate, and fears of a border control crisis took hold. That the Carter administration did not make a strong case

⁸⁴ Ibid.

⁸⁵ Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, 155.

⁸⁶ Kathryn Christensen, “The Immigrants: Panel of Midwesterners Advocates Selectivity in Taking Newcomers,” *Wall Street Journal* (New York, October 14, 1980), 1.

⁸⁷ Kathryn Christensen, “Feeling the Sting: Recession Bears Down on Williamsport, PA Despite its Diversity: Factories Are Closed, Stores Vacant; Gloom Spreads as Joblessness Nears 12%,” *Wall Street Journal* (New York, August 7, 1980).

⁸⁸ Tad Szulc, “The Refugee Explosion,” *New York Times* (New York, November 23, 1980), SM34.

⁸⁹ Associated Press, “Around the Nation: Arkansans Protest Decision by President on Refugees,” *New York Times* (New York, August 3, 1980), 17.

for the human rights imperative to admit some refugees and cast most arriving asylum seekers as economic migrants reinforced the idea that they were not substantively different from economically-motivated illegal aliens.

The Carter administration also confronted another group of asylum seekers fleeing an increasingly deadly country whose government enjoyed U.S. support. The U.S. government insisted that Salvadorans were not political refugees, and instead were economic migrants seeking a better life, akin to Mexican undocumented workers. After the election, the U.S. coordinator for refugee affairs advocated a significant shift in U.S. refugee admissions. As the resettlement of refugees from Southeast Asia slowed, he argued, the U.S. should ramp up its efforts to resettle those fleeing persecution in Central America and the Caribbean. “There is a crisis right on our doorstep of persons fleeing for the lives from neighboring countries.” he said.⁹⁰

The Reagan administration eventually came under criticism for its treatment of Salvadoran refugees (and was compelled by the courts to change it), but it was the Carter administration’s actions in 1980 that set the stage for Reagan’s policies. Carter circumvented the Refugee Act and crafted its response to the refugee crises of the summer according to political calculations. Instead of insisting that arriving asylum seekers present their claims to be considered on their individual merits, Carter reverted to using parole to admit large numbers of refugees. He admitted Cubans because of precedent and because of U.S.-Cuban policy considerations. And he admitted Haitians, because significant political pressure to do so had flourished in the wake of the Cuban crisis and because of judicial intervention. But because there was no strong political campaign supporting Salvadorans’ claims at the time, the government did not adjudicate Salvadoran asylum claims fairly.

Asylum adjudication and refugee admissions are necessarily subjective. Since 1980, the world’s refugee population according to UNHCR has wavered between 9 and 18 million. The United States cannot accept everybody; it must make choices. Before the Refugee Act, the U.S. admitted mostly those who fled communist states. By 1980, a consensus had formed that the United States should rethink the basis of the choice; as a result, the United States

⁹⁰ Juan de Onis, “Policy Shift Urged by Refugee Official,” *New York Times* (New York, November 30, 1980), 25.

adopted the international refugee definition. The U.N. definition is hardly a catch-all for all the world's suffering. It asserts that there is a difference between those who suffer because their home countries abuse their human rights and those who are simply poor, as though these are clear-cut categories. But even so, the United States must limit who it accepts.

Admitting Cubans and Haitians as entrants for politically expedient reasons sent a message to the public and to the incoming president: the rule of law did not govern refugee admissions. It set the stage for the incoming Reagan administration to pursue an ideologically-driven refugee admissions program that echoed pre-1980 refugee admissions. In processing asylum claims, the U.S. government has leeway in how it makes its decisions. But the statistics show deeply engrained patterns reflecting an ideological project. For example, on the one hand statistics provided by the INS for fiscal year 1983 show that seventy-eight percent of the Russian, sixty-four percent of the Ethiopian, fifty-three percent of the Afghan, and forty-four percent of the Romanian cases received political asylum, all involving persons fleeing communist-dominated regimes. On the other hand, asylum was granted in less than eleven percent of the Philippine, twelve percent of the Pakistani, two percent of the Haitian, two percent of the Guatemalan, and three percent of the Salvadoran cases.⁹¹ The individual cases may have had different merits, but these figures suggest that the same standard was not applied evenly to nationals of different countries, as the Refugee Act intended. In a court case brought by numerous churches, organizations, and individuals on behalf of a nationwide class of more than 500,000 Guatemalan and Salvadoran asylum applicants, they alleged that the Justice and State Departments had systematically violated the law in processing their asylum applications. The final settlement provided all Salvadorans and Guatemalans in the country as of 1990 a substantive hearing of their asylum claims.⁹²

Conclusion

⁹¹ Arthur Helton, "Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise," *University of Michigan Journal of Law Reform* 17, no. 2 (Winter 1984): 253.

⁹² Trina Realmuto, *ABC v. Thornburgh: 20 Years Later* (National Immigration Project of the National Lawyers Guild, January 31, 2011), http://www.nationalimmigrationproject.org/legalresources/practice_advisories/cd_pa_ABC - 20 Years Later - amended.pdf. Accessed April 22, 2011.

"Everybody's had to fight to be free/You don't have to live like a refugee!" Tom Petty practically spat the words, as he toured the *Damn the Torpedoes* album in Florida in July 1980. "Refugee" served as the anthem that brought the show together and the crowds to their feet.⁹³ Although refugees had saturated the media in recent years (providing a hook for Petty's song) it wasn't until that summer that refugee camps became a feature of the American landscape, indeed a daily part of life for residents in Florida and around the country.

The Carter administration's decisions in the summer of 1980 contributed to a sense of panic that weakened the loose consensus of the late 1970s that human rights should drive U.S. refugee admissions and asylum. Instead, asylum seekers came to be seen in the same light as "illegal aliens." President Reagan would capitalize on this perception after assuming office, implementing an asylum policy that treated asylum seekers with "unprecedented harshness."⁹⁴ What's more, Reagan would turn the logic of refugee policy on its head by arguing that the United States should intervene with ever greater resources in support of Central America's right-wing governments, lest a "tidal wave of refugees" "swarm" into the country.⁹⁵

Carl Bon Tempo acknowledges that Carter's failure to use the 1980 law demonstrated the limits of the law and that his decision to admit the Cubans – precisely because they fled a Cold War enemy – resembled pre-1970s U.S. refugee policy.⁹⁶ Yet he finds a silver lining in the administration's treatment of the Haitians, who were allowed to stay: "With this action, American admissions of refugees in fact resembled the definition of 'refugee' contained in the 1980 law... Haitians were exactly the types of refugees that liberalizers like Kennedy and Holtzman believed the United States ought to aid."⁹⁷ For the Haitians who received asylum, U.S. refugee policy was humane and more generous than ever before. But for other

⁹³ Randy Miranda, "Tom Petty: Sunshine Rocker," *Daytona Beach Morning Journal* (Florida, July 26, 1980), <http://thepettyarchives.squareserve.org/newspaper/newspapers-1980/1980-07-26-daytonabeach/>. Accessed April 22, 2011.

⁹⁴ Loescher and Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present*, 187.

⁹⁵ Ronald Reagan, "Remarks at a Mississippi Republican Party Fundraiser in Jackson", June 20, 1983, <http://www.reagan.utexas.edu/archives/speeches/1983/62083b.htm>.

⁹⁶ Bon Tempo, *Americans at the Gate: The United States and Refugees During the Cold War*, 183.

⁹⁷ *Ibid.*, 184.

groups, who had not benefited from political advocacy and judicial intervention, such as the Salvadorans, the language of the Refugee Act was all but meaningless.

President Carter thought that the refugee question hurt his reelection campaign. “The refugee question,” he said, “has hurt us badly. It wasn’t just in Florida, but it was throughout the country. It was a burning issue. It made us look impotent.”⁹⁸ By making decisions based on political expediency, Carter made U.S. refugee policy look chaotic. The 1980 Act failed out of the gate, and the human rights-driven reform of U.S. refugee admissions suffered a serious regression in the years that followed. However, as the courts gradually clarified the requirements for fair adjudication of asylum claims, and as the Cold War ended and ceased to guide U.S. foreign policy, possibilities for reform opened. In the next years, refugees and their advocates would build on the language of the Refugee Act of 1980, and find in it the basis for a fairer and perhaps more humane asylum system.

⁹⁸ Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, 156.

BIBLIOGRAPHY

Media

The Crisis
Daytona Beach Morning Journal
Jet Magazine
Los Angeles Times
The Miami News
The Miami Herald
The New York Times
Philadelphia Tribune
Star Phoenix
Wall Street Journal
The Washington Post

Articles, Court Cases, Hearings, & Reports

American Bar Association. "Cuban Refugee Crisis: Quick Test for New Law." *ABA Journal* 66 (July 1980): 110.

Anker, Deborah, and Michael Posner. "The Forty Year Crisis: A Legislative History of the Refugee Act of 1980." *San Diego Law Review* 19, no. 1 (December 1981): 9-89.

Congressional Research Service. *Review of U.S. Refugee Resettlement Programs and Policies: A Report Prepared at the Request of Senator Edward M. Kennedy*. Washington: Library of Congress, U.S. GPO, 1980.

Hearing, Refugee Act of 1979: S. 643. Washington: U.S. Government Printing Office, 1979.

Hearings, Refugee Act of 1979: H.R. 2816, May. Washington: U.S. Government Printing Office, 1979.

Hearings, Refugee Act of 1979: H.R. 2816, September. Washington: U.S. Government Printing Office, 1979.

Helton, Arthur. "Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise." *University of Michigan Journal of Law Reform* 17, no. 2 (Winter 1984): 243-263.

Kennedy, Edward M. "Refugee Act of 1980." *International Migration Review* 15, no. 1/2 Refugees Today (Spring - Summer 1981): 141-156.

Martin, Daniel C. *Annual Flow Report, Refugees and Asylees: 2009*. Department of Homeland Security, Office of Immigration Statistics, April 2010.
http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2008.pdf.

Moore, Charlotte. *Refugees in the United States: The Cuban Emigration Crisis: Issue Brief Number IB80063*. Washington: Education and Public Welfare, Library of Congress, Congressional Research Service, December 5, 1980.

Reagan, Ronald. "Remarks at a Mississippi Republican Party Fundraiser in Jackson", June 20, 1983. <http://www.reagan.utexas.edu/archives/speeches/1983/62083b.htm>).

Realmuto, Trina. *ABC v. Thornburgh: 20 Years Later*. National Immigration Project of the National Lawyers Guild, January 31, 2011.
http://www.nationalimmigrationproject.org/legalresources/practice_advisories/cd_pa_ABC - 20 Years Later - amended.pdf.

- Rupp, George. "1975: The Largest Refugee Resettlement Effort in American History [IRC at 75]." *The IRC Blog*, June 27, 2008. <http://www.rescue.org/blog/1975-largest-refugee-resettlement-effort-american-history-irc-75>.
- Taft, Julia, David S. North, and David A. Ford. *Refugee Resettlement in the U.S.: Time for a New Focus*. Washington: New TransCentury Foundation, 1979.
- UNHCR. "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol", April 1, 2011. <http://www.unhcr.org/3b73b0d63.html>.

Secondary Literature

- Bon Tempo, Carl. *Americans at the Gate: The United States and Refugees During the Cold War*. Princeton: Princeton University Press, 2008.
- Chavez, Leo, *Covering Immigration: Popular Images and the Politics of the Nation* (Berkeley: University of California Press, 2001).
- Gibney, Matthew. *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*. Cambridge UK ; New York: Cambridge University Press, 2004.
- Keys, Barbara, "Congress, Kissinger, and the Origins of Human Rights Diplomacy," *Diplomatic History*, 34 (2010): 823–851, doi: 10.1111/j.1467-7709.2010.00897.x.
- Loescher, Gil, and John Scanlan. *Calculated Kindness: Refugees and America's Half-Open Door, 1945 to the Present*. New York; London: Free Press; Collier Macmillan, 1986.
- Meissner, Doris. "Reflections on the U.S. Refugee Act of 1980." In *The New Asylum Seekers: Refugee Law in the 1980s*. Dordrecht; Boston; Norwell, MA USA: M. Nijhoff; Sold and distributed in the USA and Canada by Kluwer Academic Publishers, 1988.
- Moyn, Samuel. *The Last Utopia: Human Rights in History*. Cambridge Mass.: Belknap Press of Harvard University Press, 2010.
- Newland, Kathleen. "The Impact of U.S. Refugee Policies on U.S. Foreign Policy: A Case of the Tail Wagging the Dog." In *Threatened Peoples, Threatened Borders*. New York: W.W. Norton & Co., 1995.
- Ngai, Mae. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton N.J.; Woodstock: Princeton University Press, 2005.