

"Structural Determinants of the Haitian
Refugee Movement: Different Inter-
pretations"

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Introduction

On November 9, 1980 officials of the Bahamian government arrived at Cayo Lobos, a small uninhabited key close to Cuba, to return to Haiti 106 Haitians who had been stranded there for over 30 days without food or water. Despite being in a desperate state of starvation the Haitians, armed only with sticks and clubs, drove the Bahamian officials back into the sea saying that they would rather starve to death than return to Haiti. Two days later the group was forcibly returned at gunpoint to Haiti, but others continue to flee to the Bahamas and the U.S., becoming part of a flow that has continued for years. There are now an estimated 35,000 such boat people in southern Florida and another 300,000 Haitians in New York, most of whom have arrived by more normal means.

For the past nine years, the U.S. government has resolutely persecuted, virtually without respite, the Haitian boat people in southern Florida. Claiming that the Haitians are simply economic refugees equivalent to the Mexicans in the Southwestern U.S., the government has detained with unreasonable bonds, beaten, illegally denied work authorizations to, deported as many as possible, and strenuously fought Haitian advocates politically and in the courts. Yet, Haitian boat people continue to flow into southern Florida, about 1,000 a month currently, and no Haitians have been deported for three years.

By borrowing and adapting theoretical frameworks from the structural approach to migration and the dialectical view of legal repression, this paper attempts to explain why the Haitians

have been so singularly persecuted and, secondly, why the government's efforts to expel the Haitians have failed.

Presently, this paper is no more than an exploratory analysis of work in progress that requires more theoretical development and empirical verification. It has its roots in my personal involvement in the Haitian boat people's political and legal struggle for justice in the U.S. I first became involved with the Haitian boat people while I was the American Anthropology Association's 1979-80 Congressional Fellow and worked in the office of Congressman Mickey Leland, a black Democrat from Houston, Texas. The Congressional Black Caucus had already taken a position in favor of refugee status for the boat people and, as an "expert" in Latin American affairs, I was assigned to follow the issue.

I soon obtained an intimate knowledge of the principal Haitian advocates and a working relationship with the government officials most directly concerned with the issue. As my involvement deepened, I became increasingly impressed with the seeming paradox of overwhelming evidence that the boat people deserved asylum/refugee status under U.S. law and the adamant and apparently sincere position of government authorities that the boat people were no more than illegal aliens fleeing poverty.

After the completion of Congressional Fellowship, I began formal interviews of many present and former government officials who formulated and implemented the Haitian policy including the Ambassador for Refugee Affairs, the Commissioner and Deputy Commissioners of the Immigration and Naturalization Service, the Senior Policy Program Officer for Latin American Refugees in the

State Department, and members of Miami's political elite. This paper utilizes data from those interviews, my personal experiences, and secondary sources for information on the structural conditions in Haiti and southern Florida.

Theoretical Framework

This paper borrows from and to a certain extent attempts to merge two theoretical frameworks: (1) the structural approach to migration is used to explain the U.S. federal government's executive branch's efforts to expel the Haitian boat people from southern Florida and to deter others from entering; and (2) the dialectical approach to repression is adapted to explain why, in spite of the U.S. government's efforts, the flow continues unabated and no Haitians have been deported from the U.S. in three years.

The structural approach to migration depicts population movements as structural forces fundamentally determined by economic cycles.^{2/} Furthermore, within this framework the fate of migrants is intimately tied to their mode of incorporation into the receiving economy. Following Portes (1980) the possibilities of incorporation are: the primary sector which includes mainly legal immigrants; the secondary sector including primarily illegals in low wage, low skill jobs; and an enclave sector based on ethnic group's concentration which is large enough to contain its own market and has individuals with sufficient capital to start their own enterprises.

On the one hand, Cubans in south Florida have rather successfully produced and integrated themselves into an enclave economy, notwithstanding considerable anti-Cuban backlash in the wake of the Mariel boatlift.

In the ghetto riots of the 1960s there was a "conflict between the immediate interest in ending the violence and the long-run interest in maximizing legitimacy and thereby limiting revolutionary potential... . legitimacy in the liberal state resides in the rule of law as an autonomous body of norm and procedures to which even the sovereign is subject, a legitimacy principle not easily reconciled with short-run interest in ending the violence as quickly as possible"(Balbus 1973: 3). In the case of the ghetto riots, the state maintained the semblance of formal rationality by resorting to administrative procedures in which the police and the defendants agreed to minor criminal charges and the courts assigned abnormally light sentences. The defense community mounted no sustained effort demanding amnesty or even precise application of the principle of due process. Implicitly, all shared the goal of re-establishing order and removing the potentially revolutionary threat of ghetto violence.

The executive branch also views the problem of Haitian boat people as one of a threat to order with potentially grave implications. However, the defense community of Haitian advocates has not cooperated in sanctioning administrative procedures with only a semblance of formal rationality, nor has the court system condoned them. In this case, the balance between order and legitimacy based on formal rationality has yet to be struck.

Haitian Migration

Haitian migration is but one part of a much larger flow of Caribbean peoples. In an earlier era, European industrial capital, short of cheap labor for the mines and plantations in the Caribbean colonies, imported millions of slaves and indentured workers to fill the need. Today, the capital that is short of cheap labor is not in the Caribbean, but in North America and Europe, while the Caribbean constitutes a labor surplus. In 1980 there were in the U.S. an estimated 50,000 Barbadians, close to half a million Jamicans and some 150,000 Trinidadians, with over half of all these in the New York metropolitan area (Dominguez and Dominguez 1981).

In the case of Haiti, there is a long history of migration and temporary sojourns to other countries. Working class Haitians have served through most of this century as contract laborers in the Dominican Republic cutting sugarcane at harvest time. Some Haitians became agricultural workers in the eastern provinces of Cuba in the 1930s, while sons of the small middle and upper classes of Haiti have traditionally attended schools in France.

When Francois, Papa Doc, Duvalier assumed power in 1958 in Haiti, Haitian emigration took an unprecedented turn. While political opponents of a new Haitian president have always seen the wisdom of leaving Haiti, the past 23 years has seen all levels of Haitian society successively feel the need to leave.

First to leave were the upper elite who stood as direct threats to Papa Doc's regime. Then came the black middle class (around 1963) who found the brutality of the Duvalier regime and the lack of personal and economic security unacceptable. Next many of the urban proletariat departed (Glick 1975; Laraqe 1978; Laguerre 1978). The primary U.S. destination of these groups has been New York City where it is estimated there are presently between 200 and 300 thousand Haitians (Dominguez 1976; Ficklin 1980). They form a most heterogeneous group reflecting all strata of Haitian society. While many are legal migrants others are here illegally. Nevertheless, they are seldom pursued by the Immigration and Naturalization Service (INS) authorities in New York (Dominguez, personal communication).

But all these flows are different from that of the Haitian boat people, those individuals who cram themselves 20-30 at a time into 25 foot, barely seaworthy boats for a perilous 700 mile trip to southern Florida, sometimes with stops in Cuba and the Bahamas. There are now an estimated 25-35 thousand such boat people in Florida, primarily in the Miami area. In contrast to the previous flows, the boat people are capital poor. They do not have sufficient resources to purchase an exit visa and regular passage. Instead, they usually borrow from neighbors and relatives enough to pay a smuggler as little as \$15 to clandestinely carry them from Haiti. They are also far less heterogeneous than those in New York; most are poor, illiterate, creole speaking peasants (HACAD 1979).

Haiti's Political Economy

The forces pushing the boat people from Haiti are well known and require only the briefest summary. According to World Bank statistics, Haiti is the 27th poorest country in the world with a per capita income of less than \$200/year. It has 20-25% open unemployment, over 50% underemployment, and the lowest wages in the Western hemisphere. The World Bank estimates that over 90% of the incomes are lower than the minimum necessary. Furthermore, it has one of the world's most inequitable distributions of income and wealth with .8% of the population possessing 44.8% of the wealth.

Papa Doc's brutal, sweeping terror produced a flight not only of the middle and upper classes, but also of capital producing a declining GNP throughout his reign (IDB 1979). Baby Doc's succession in 1971 was hailed as marking an end to terror and a beginning of liberalization. Baby Doc himself has claimed that he is ushering an economic revolution which will transform Haiti into a peaceful, stable society progressing toward democratic, human rights and material prosperity. /

In fact, manufacturing activity has greatly increased under Baby Doc's rule, especially in the assembly sector. With the Western hemisphere's lowest wages and close proximity to the U.S., Haiti offers an unparalleled opportunity for investors. Profits are extraordinarily high -- 30 to 50% on equity -- and capital per worker very low --- \$700 to 3,500 (IDB 1978). }

Yet, the trickledown effects have been negligible. Between 1960-79 GDP per capita growth was .9% annually. Income disparities between rural regions (which contain 75-90% of the population depending upon the definition) and urban areas are increasing.

While these economic conditions are deplorable, one must recognize that in Haiti -- perhaps more than anywhere else in the non-socialist world -- the term political economy is most appropriate. It is estimated that nearly 50% of the state's income ends up in private hands. Duvalier controls a vast state monopoly, Regie de Tabac, which has exclusive control over distribution of necessities such as fish, cotton, all types of milk and milk products; plus wine, champagne, whisky, rum, perfumes, dental products, soap, bandages, air conditioning, autos, airplanes, and most electrical appliances. In 1977, Regie de Tabac was estimated to have collected about one million dollars, but only 580 thousand reached the public treasury (Adrien 1978).

Even without corruption, the government's policies seem ill-designed for the nation's problems. While 90% of the population is rural, 83% of government expenditures are in Port-au-Prince, the nation's capital, and Agricultural expenditures never exceed 7-10% of the budget. The tax structure is highly regressive ignoring luxury imports and targeting the basic commodities produced and consumed by peasants.

Furthermore, arbitrary repression and persecution have been the hallmarks of the Duvalier regimes. In 1973, Amnesty International stated: "Haiti's prisons are still filled with people who have spent years in detention without ever being charged or brought to trial...The variety of torture is incredible:

clubbing to death, maiming the genitals, food deprivation to the point of starvation, and 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." Recently under oath in a U.S. Federal District Court, a former State Department desk officer for Haiti described the regime as the "most oppressive in the world." In 1979 Baby Doc allowed the formation of political parties and then promptly arrested the leaders of one. The government imposed censorship on the theater in order to close down a creole language play that was critical of the government. In October 1979 a press law was passed that made it illegal to insult the President for life, his mother, or other government officials. Last November, police swept more than 100 of Haiti's leading independent journalists, human rights activists and opposition party leaders into jail.

But all of this obvious repression, ignores the terror and lawlessness characterizing the countryside where government officials frequently live solely by extortion. It is this latter, less formal and less visible repression that led one observer to characterize the Haitian government as a "kleptocracy, a government by thieves" from the highest to the lowest levels (Lundhal 1976). It is also this latter form that is most likely to immediately impel the boat people to leave. Finally, it is this latter form that is most likely to be disbelieved and dismissed by U.S. government authorities as not really being political persecution.

Haitian Integration in South Florida

The pull factors in south Florida pale in comparison to the push factors from Haiti or the pull factors of other migratory flows in the U.S. While it is trite to observe that wages and working conditions are higher in southern Florida than Haiti, it must also be noted that the specific conditions in the Miami area are not as attractive for unskilled, low wage labor as in New York or the Southwest which have much larger secondary labor markets.

The east coast migratory stream has incorporated some of the boat people, but 25-35 thousand remain in Miami. While Miami's economy may have been rejuvenated by Cubans, the 1980 riots reveal the frustration of American blacks. By being willing to work at lower wages for longer hours and to tolerate worse working conditions, Haitians may be taking away some of the local secondary labor market opportunities from American blacks; nevertheless, the lack of local opportunities led Dade County health authorities to claim that the primary health problems among Haitians were malnutrition and starvation.

The extreme conditions pushing the boat people from Haiti and the relative absence of opportunities in south Florida has produced tension and contradictory tendencies at both the local and national levels. In contrast to the ten times as many Haitians in New York or other "illegal aliens," throughout the U.S., the Haitians in Florida have suffered through consistent, determined efforts by the U.S. government to expel them.

Anti-Haitian Forces

Since 1972, national political authorities with an impetus from local political elites have attempted to deter the flow and deport those Haitians already in Florida. Members of south Florida's political elite, including Democratic party members, elected officials, and some Cubans, believed that the boat people were a disruptive force destroying the community and draining public resources. They appealed to their local congressmen who apparently pressured the INS into a response. The Immigration and Naturalization Service (INS) proceeded to expend far greater effort against the Haitians than nearly any other group.^{5/}

Stability and control were the central themes articulated by the anti-Haitian forces. Local elites felt their community was disrupted, while federal authorities in the executive branch saw it as a part of the larger problem of "out of control" immigration.^{6/}

In response to this persecution most of the Haitians have claimed political asylum, but the INS with the support of the State Department has rejected these claims contending that the Haitians are simply economic refugees equivalent to the Mexican undocumented aliens. The government's argument cleanly cleaves the economic from the political (far more cleanly than is actually the case in Haiti) as revealed in informal statements by State Department officials: Haitians are poor peasants, and peasants are not political...Underdevelopment may have political underpinnings but its decades and decades; we can't handle that

problem through immigration because Haiti is no different from any other developing country; we would be overwhelmed with immigrants.

Some officials further elaborate by resurrecting the 1950s dichotomy between authoritarian and totalitarian governments. They claim totalitarian governments have no freedoms.^{7/} In contrast, according to this argument, authoritarian governments have some freedoms. For example, in the House subcommittee on immigration hearing on Haitian refugees in 1980, Chairwoman Holtzman asked the State Department's human rights officer on Haiti what he could say positively about human rights conditions in Haiti. After stammering uncomfortably for awhile, he finally mumbled that Haiti has religious freedom.

By implication, all individuals fleeing totalitarian governments are ipso facto fleeing persecution; and they and countries friendly to us (i.e. opposing totalitarianism) deserve our help.

In contrast authoritarian countries only persecute individuals who are "politically involved," i.e. participants in organized, institutionalized activities such as political parties. Any others fleeing authoritarian governments can only be fleeing dire economic conditions. Individuals who may be attempting to avoid extortion by local officials are not fleeing persecution, but personal disputes.

Thus, admitting Haitians as refugees would set a precedent "opening the floodgates" to immigrants from other authoritarian regimes. The strategy of the executive branch is, therefore,

substantively to deny the Haitians access to the economic opportunities they are seeking and ideologically to screen out evidence that blurs the political/economic cleavage or which contends that Haitian boat people have been or would directly be subject to persecution in Haiti.

Haitian Advocates

At the same time that the government has attempted to expel the Haitian boat people, a constellation of Congressional and nongovernmental groups at the local and national levels has diligently worked to obtain a permanent legal status for the Haitians. At the Miami level the most visible supporters of the Haitians have been the media, especially second generation Cuban-Americans, who have been joined by the small liberal branch of the Democratic party in Florida, the churches and the established legal Haitian community. Organized support from local Miami American blacks has been notably absent, although this may be more a result of a lack of local black political organization rather than a lack of sympathy.

At the national level, church groups, particularly the National Council of Churches, were the first to become involved followed by public interest lawyers, national black groups (particularly the Congressional Black Caucus), and more loosely other civil rights organizations, unions, and eventually state and local officials who have a fiscal interest in legalizing the Haitians' status.

The advocates believe that the INS has prejudged the Haitians' claims for political asylum and has subjected them to discriminatory treatment based on race and ideology. In short, the Haitians have been denied due process and equal protection in their claims for asylum. Furthermore, the conditions in Haiti are such that most, if not all, of the Haitian boat people have

justifiable claims to political asylum. The strategy of the advocates has been twofold: First, to build networks of support by disseminating information on political and economic conditions in Haiti and the U.S. government's mistreatment of the boat people; secondly, the Haitian advocates have used the legal system to press their claims of denial of due process and discriminatory treatment.

The Courts and the Law

Although the tenor of the Supreme Court regarding a Fourteenth Amendment-Equal Protection concern for aliens is increasingly conservative,^{8/} in numerous cases the courts have decided in favor of aliens including the rights of alien children to public education.^{9/}

Previous to 1980, U.S. immigration law clearly discriminated in favor of refugees from communist countries (and particular nations in the middle east). In those cases, the law offered a blanket presumption of persecution and automatic eligibility for asylum-refugee status. Other aliens had to first prove individual political persecution through an INS asylum hearing. If the INS agent ruled against the applicant, the decision could be appealed first to the INS district director, then an immigration judge of the Board of Immigration Appeals, and finally through the hierarchy of Federal courts. In fact, the vast majority of individuals in the U.S. who have been accorded refugee status have been those fleeing communist regimes.

Congress designed the Refugee Act of 1980 with the explicit intent of eliminating the previous law's discrimination and inequality. The new standard was adopted from the 1967 UN Protocol for Refugees: an individual who has a "well founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

Thus, to obtain refugee status under the new law, Indochinese, Cubans, El Salvadoreans, and Haitians, for example, all would need to establish a well founded fear of persecution. Under the previous law, INS had a legal basis for requiring "proof of persecution" from Haitian boat people or El Salvadoreans requesting asylum, but could avoid this administrative requirement for the others.

The Dialectic

Other than a small group from the Haitian Coast Guard who had fled after firing on the Presidential Palace in 1971, virtually all Haitian claims for political asylum have been denied by INS. In 1972, the National Council of Churches and public interest lawyers employed by them first challenged INS processing of Haitian asylum claims. The flow of boat people at that time was only about 1,000 a year, but the flow was sufficiently ample and the appeal process sufficiently cumbersome, that an unmanageable backlog of asylum cases accumulated. Some Haitians were deported, but not nearly at the same rate that they arrived. In an effort to discourage further Haitians from coming, the U.S. government made it as difficult as possible for the Haitians to work. Most were detained, in some cases as far away as El Paso, Texas, with bonds set at a minimum of \$500. For those who were released on bond, INS denied them work authorizations.

Soon south Florida's prisons were overcrowded with Haitians living in conditions appalling even to the INS authorities responsible for placing them there. In November 1977, INS Commissioner, Leonel Castillo, and the National Council of Churches entered into an agreement to release Haitians without bond and to issue them work authorization permits. Although the agreement stipulated issuance of work authorizations only to Haitians "known to INS," INS publicly announced through the media that any Haitian could come to INS, identify him or herself, and receive a work authorization. About 5 thousand Haitians

received work authorizations, many of whom were not previously known to INS.

While this policy may have been humanitarian for the Haitians, it produced a backlash on Capitol Hill. In the Spring of 1978 in the Senate hearings for the Department of Justice authorization for fiscal year 1979, the Chairman of the Committee on the Judiciary suggested that the wholesale issuance of work authorizations was indiscriminate and unlawful. Instead the chairman felt that Haitian work authorizations should have been granted on the more limited statutory basis of need only for those individuals appealing asylum claims. Soon thereafter, INS reversed its new humanitarian policy.

In July of 1978, INS began implementing the "Haitian Program," a streamlined administrative procedure designed to eliminate the asylum backlog as quickly as possible. All Haitians who had identified themselves in November and received work authorizations now received notice of deportation hearings. Previous to the "Haitian Program," there were 10 hearings a day for all nationalities in the Miami INS district office. In July of 1978 it was upped to 60 just for Haitians and by September Haitian deportation hearings had reached 150 a day. INS had prepared presigned forms of asylum denial which were presented to every Haitian after his hearing.

The Haitian advocates quickly resorted to the courts claiming denial of due process and an unlawful revocation of work authorization. Last July Federal District Court Judge King ordered INS to revamp their asylum procedures for Haitians. In his decision, Judge King found "a pattern of discrimination (against the Haitians).

The Haitian boat people, however, possess neither the human nor financial capital for creation of and integration into either an enclave or the primary sector. Their only alternative is south Florida's relatively underdeveloped secondary labor market.

When migrants cannot find an appropriate mode of integration into the receiving economy, they become an unwanted, redundant labor pool. During such times, we may expect official policies to halt incoming flows and repatriate those already present (Portes 1977; Bustamante 1978).

However, in some cases, these repressive tendencies may be constrained by contradictory tendencies within the advanced capitalist state. In a study of the black ghetto riots of the 1960s, Balbus (1973) describes the dialectical relationship between the state's substantive need to maintain order and the concurrent requirement to maintain legitimacy through a formally rational system based upon the principles of due process and equal protection. Policies in the liberal capitalist state are judged as much by the modes of action they embody as by their results. Repression by the state, even if in the substantive interests of both elites and other classes, cannot ignore the principles of equal protection and due process with impunity.

The evolution of an independent legal system founded on the principles of due process and equal justice was propelled by the bourgeoisie to eliminate the arbitrary intervention of the state in its profit making activities. The rights to property on which capitalistic enterprise is founded were accorded legal security through a formally rational system which ensured equal protection

and due process regardless of ascriptive status. Structurally, this requirement was expressed in the evolution of a judicial sphere formally autonomous from the political executive and maximally immunized against governmental and other pressure.

The importance of the principles of due process and equal treatment has evolved within contemporary U.S. society to the point of producing groups, such as the ACLU and other public interest law firms, whose sole purpose is advancement of these principles of formal rationality.

Under normal circumstances, political elites attempt to harmonize the substantive goals of protecting and advancing capital accumulation with those of formal rationality, but there are times when the two conflict and a balance must be struck that favors one over another. When there is a perceived threat to societal order, the sine qua non of political responsibility, political elites are especially likely to abrogate the norms of formal rationality in favor of the substantive goal of order. In such cases, the effort to maintain "law and order" may rapidly degenerate into sacrificing an interest in law to the pressing exigencies of establishing order. When large numbers advance political claims contrary to the elites interests or established order, the legal system's requirement of due process and equality in each individual case becomes a frustrating impediment to the state and the temptation to resort to administrative procedures abrogating formal rationality is frequently irresistible.

Over the past 17 years, Haitian claims for asylum and refuge have been systematically denied, while all others have been granted. The recent Haitian Program is but the largest scale, most dramatic example of that pattern."

While strongly condemning both the U.S. and Haitian governments, the ruling stopped short of extending a permanent legal status to the Haitians. It did, however, provide findings of fact which clearly suggested that the Haitians had a "well founded fear of persecution." For example, it quoted testimony of former Haitian government officials describing Haitian government policy of persecution of expatriates returned to Haiti. Nevertheless, it refrained from directly granting a permanent legal status for Haitians in the U.S. Instead it returned that function to the executive branch, particularly INS, with orders that it follow the principles of due process and equal protection.

Some individuals within the executive branch argued that the ruling should be accepted and reprocessing commence as expeditiously as possible. However, others, particularly those in the State Department, felt that by delving into evaluations of the Haitian government and the treatment of Haitian nationals by the U.S. government, the court has established a dangerous precedent for interference in the formulation of U.S. foreign policy. A few individuals in the executive branch were convinced by the court case that at least some Haitians had a "well founded fear of persecution," but virtually everyone in State, Justice, and the White House believed that persecution in Haiti is comparable to other non-communist, developing country regimes

and extending refugee status to the Haitians would open the floodgates overwhelming us with "economic refugees" from the developing world.

Judge King's decision came in the midst of the Cuban boatlift from Mariel. Within a few weeks, President Carter signed the Refugee Act of 1980 which was supposed to rationalize U.S. refugee policy, an uncontrollable flow of Cubans poured into Key West, and Judge King found the U.S. treatment of Haitians prejudicial in the extreme. The ironies in the juxtaposition of these events were not ignored by the media or the Haitian advocates.

The vacillations and chaos in the Carter Administration's handling of the Cuban crisis received by far the media's major attention, but the local Miami media and some of the national media noted the blatant inconsistencies between treatment of the Cubans and the Haitians. The contrasts were especially dramatic when arriving Cubans stated that their primary motivation for leaving Cuba was economic betterment. Clearly the U.S. government could not welcome Cubans who were self proclaimed economic refugees while rejecting Haitians for allegedly being no more than economic refugees. Accepting Cubans while rejecting Haitians would be at once racist and ideologically biased. Haitian advocates were quick to advance charges of discriminatory treatment. The Congressional Black Caucus organized letters of protest signed by the members of the Black Caucus, plus numerous other members of Congress, civil rights leaders, and union officials. Senator Kennedy, who was then still competing for the Democratic Presidential nomination and Chairman of the Senate Judiciary Committee, held hearings on the Cuban-Haitian crisis and grilled

Victor Palmieri, Carter's Ambassador for Refugee Affairs, on the Administration's double standard.

At the same time, Florida state and local officials were consumed by the influx and were pleading for federal assistance. Since the Cubans and Haitians were both technically illegal aliens, there were only limited funds available. However, if the aliens were classified as refugees they would become eligible for a wide-range of federally subsidized reimbursements and special programs. Florida's state and local officials were soon pressing for refugee status for both Cubans and Haitians. The Cuban crisis catapulted the Haitians into the national scene. Previously the boat people were a local Miami and INS problem. Now the White House became intimately involved.

In May and then again in June, President Carter announced and detailed the Administration's new Cuban-Haitian policy. In brief, he promised equal treatment and a temporary legal status for both Cubans and Haitians, but refugee status for neither. Instead he suggested a singular status, Cuban-Haitian Entrant,^{10/} to be created by special Congressional legislation. To appease state and local authorities, Entrants would be eligible for most of the programs available to refugees; to satisfy the public's demand for decreased federal spending, they would not be eligible for the full range of federal programs. The administration justified this ad hoc approach by deploring the past discriminatory treatment, and explicitly stating that refugee

status for either group would undermine the meaning and intent of the Refugee Act of 1980. Off the record, everyone admitted that political realities demanded the acceptance of the Cubans. While Congress deliberated on the special legislation, the Attorney General granted the Cubans and Haitians who arrived before October 10, 1980 a 6 month renewable parole. Meanwhile two Florida legislators, Congressman Fascell and Senator Stone, introduced and engineered the passage of an amendment that provided interim federal funding for state and local authorities and resettlement of the entrants.

The special legislation died in the last session of Congress and although re-introduced this session, as Congress waits for Reagan's lead on the issue hearings have still not been held. Meanwhile, at a national level, the crisis has abated. The Cuban influx has stopped and Haitians continue to arrive at the somewhat manageable rate of about 1,000 a month. In late April INS began efforts to deport the post October 10 Haitian arrivals. Most recently, the Reagan Administration is considering plans to interdict the flow of the Haitians by intercepting their boats on the high seas and forcing a return to Haiti. Furthermore, while there have been public promises that the entrant status parole will be renewed if legislation is not passed, there have been internal memoranda from INS and the Department of Labor indicating that Haitians will not be eligible for work authorizations after July 1981. The Cuban-Haitian Entrant Program therefore, provided but a brief respite from the resolute policy of the U.S. government to reject the Haitian boat people from southern Florida.

Meanwhile Judge King's decision requiring revamped INS processing of Haitian asylum claims has been granted an expedited hearing in the Fifth Circuit Court of Appeals. The case will undoubtedly be appealed to the Supreme Court. Finally, the Haitian advocates are busily preparing a political campaign and court cases to stop the executive branch's efforts to deport the post October 10 Haitian arrivals.

Conclusions

The structural approach to migration is appropriate for explaining the source and nature of anti-Haitian forces. Although further documentation is needed on the Haitians incorporation into the local Miami economy, it appears as if the lack of opportunities in the secondary sector have led to the perception on the part of local political elites that the Haitians are a disruptive force threatening local order and stability, and are a drain on public resources. Spurred by local pressure, the federal executive branch, specifically INS, has attempted to use immigration law and INS procedures to exclude the Haitian boat people. National authorities, too, view the Haitians as a threat to stability, although this time the threat is not simply to local stability but national and international stability as well. Granting legal status to the Haitians, particularly refugee status, would allegedly set a precedent for easy access of individuals from developing countries. As a result, the U.S. would be over-run with uncontrollable numbers of immigrants and the sending societies simultaneously destabilized by the United States' acknowledgement of repression by friendly governments.

In spite of the internal consistency of the anti-Haitian ideology and the resolute efforts of INS to deport the boat people, the flow of boat people still stands at over 1,000 a month and no Haitians have been deported from the U.S. in three years.

Haitian advocates have used the Cuban crisis, political organization, INS rules and regulations, and the courts to render ineffective the executive branch's anti-Haitian policy. On a

couple of occasions, under pressure from the Haitian advocates the executive branch has moderated their policy towards the Haitians. First, in 1977 when it curtailed detention of Haitians and issued work permits to all interested Haitians, and secondly when Carter announced and implemented the Cuban-Haitian Entrant Program. But in both cases, the policies of moderation were soon followed by renewed persecution.

The Haitian advocates have based their position on the principles of due process and equal protection. The executive branch's classification of Haitians as "economic" refugees has been countered by contrasting the Haitians with Cubans and other groups who have equal or less claim to persecution yet have been accorded refugee status. Moreover, the INS administrative procedures to eliminate the backlog in Haitian asylum claims have been fought with court suits alleging denial of due process.

In contrast to the cooperation between the executive, judiciary, and the defendant community which Balbus (1973) found in the resolution of the ghetto riots, the Haitian advocates have consistently pressed for the full application of the principles of due process and equal treatment; and the court, to this point, has sided with the Haitian advocates. The executive branch meanwhile has consistently pressed for a reversal of the court's decisions. One of their primary arguments has been that the courts have no jurisdiction in matters dealing with foreign policy. In short, the executive branch is attempting to maintain both order and the legitimacy of the system of formal rationality, by removing this issue from the legal system's purview.

The case of the Haitian boat people confirms Balbus (1973)

observation of a tension between the state's need for the order and its foundation of legitimacy on the principles of due process and equal protection. However, a balance between order and formal rationality is not always easily struck, nor does it always degenerate into choosing order over law. In this case, different branch's of the state, besides different sectors of society, seek different balances. The executive branch seeks to exclude the boat people and maintain order, whereas the judicial branch favors upholding the principles of due process and equal protection. Meanwhile the Congress has failed to act decisively with some sectors strongly supporting the Haitians and Florida legislators vacillating by seeking to maintain order and federal fiscal involvement. The highest levels of the executive branch have remained aloof from the issue except during the Cuban crisis, when the threat to order was most imminent. Then a limited resolution was sought which by its limited applicability avoided further disruption of order but also failed to ultimately solve the problem. The dialectic is likely to continue until the state can establish within itself which principle, order or formal rationality, should take precedence in this particular case.

FOOTNOTES

1. Work for this paper has been supported by the American Anthropology Association's Congressional Fellowship Program, an NIMH postdoctoral fellowship in Duke University's program in Comparative Studies in Immigration and Ethnicity, the Ford Foundation, Minority Group Rights, and the Alien Rights Law Project of the Washington Lawyers' Committee for Civil Rights Under Law.
2. The literature in this field is rapidly expanding, including most of the papers presented at this conference. Other principal works include: Bach 1978; Barrera 1976; Bustamante 1975, 1978; Cardenas and Flores 1977; Castells 1975; Castles and Kosack 1973; Freeman 1978, 1979; Gorz 1970; Markovits and Kazarinov 1978; Nickolinakos 1975; Pessar and Grasmuck 1979; Piore 1973, 1976, 1979; Portes 1977, 1978a, 1978b, 1979.
3. Portes and his associates have produced a number of articles on Cubans in Miami (Portes; Portes 1980; Portes and Bach 1978; Haug and Portes 1980; Wilson and Portes 1980). Also, Light (1972) has demonstrated this phenomenon for Korean, Japanese and Chinese immigrants for late 19th and early 20th century Jews in the Midwest and Eastern U.S.
4. This presently is no more than a hypothesis for which I am currently collecting data.
5. Recently the only comparable cases are Iranians and El Salvadoreans.
6. The recently completed report of the Select Commission on Immigration and Refugee Policy implicitly makes the same assumption and Senator Simpson (R-WY), chairman of the Senate Immigration subcommittee explicitly stated the same point in a letter to the Washington Post (April 30, 1981).
7. A few further explain that totalitarian governments are out to defeat capitalist systems, an argument which links to the first concern with stability.
8. cf. *Ambach v. Norwick*, 441 U.S. 68 (1979) and *Foley v. Connolie*, 435 U.S. 291 (1978).
9. See especially *Doe v. Plier* which is still under appeal.
10. Within the bureaucracy the program was ironically referred to as CHE.

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