

HAITIAN BOAT PEOPLE AND THE CLINTON PRESIDENCY

Katharine Betts

Only one aspect of immigration was an issue in the 1992 presidential election. This was the case of boat people from Haiti trying to reach the United States who were all potential claimants for political asylum. The Bush administration's initial response was to instruct the Coast Guard to continue the policy established in 1981 which meant that boats should be intercepted at sea, claimants should be interviewed on board the Coast Guard vessels to check their asylum claims, and those judged not to have a plausible case should be sent back to Haiti. (The vast majority have fallen into this category.) Though this policy met serious legal obstacles, it represented the Bush administration's objectives. But, during the long election campaign, Clinton promised to modify

Bush's practice saying that all would-be refugees from Haiti should 'get a chance to make their case' for U.S. asylum. In May 1992 he also said that those who were not victims of political persecution, and therefore not refugees, should nonetheless be given temporary asylum 'until we restore the elected government of Haiti'.

Throughout the 1980s Europe and North America experienced a growing tide of claims for political asylum from people either from the Third World or from the former communist countries, a tide which shows no real sign of abating today. Australia has not been unaffected; asylum seekers, arriving by sea in small boats or at airports with tourists visas, make their way here too, but their numbers are still relatively small. There were 1,913 asylum claims made in the United States in 1973. This figure

rose to a peak of 101,679 in 1989 (though the figure for 1990 was, at 73,637, rather lower). In contrast in Australia there were 170 claims in 1982, 13,954 in 1990/91 and 9,793 in 1991/92.

Because of the numbers involved, and the potential for these numbers to grow, asylum claims present liberal democracies with a sharp dilemma. Political leaders and policy-makers want to uphold the principle of human rights, rights which form the basis of citizenship within their own borders. This means that claimants should be given a fair, individual hearing and that, if the history of persecution that they tell has any credibility, they should be offered protection. If 'fairness' is not to be a bureaucratic sham, it means the right to appeal against adverse decisions, and the right for claimants to have some form of social support while their case is under review. This is expensive. The legal system may need to devote considerable resources to asylum cases if justice is to be done. But governments also fear that the growing influx of asylum-seekers may weaken the very institutions that set liberal democracies apart from other kinds of nation states. Large numbers of self-selected aliens, with or without histories of persecution, can spark resentment and conflict with local populations, which may result in threats to civil and political rights. At the same time pressure on welfare systems may mean that social rights are also put at risk.

This dilemma is clearly illustrated in the situation of the Haitian boat people and the United States. Clinton's promise that all Haitians seeking refuge should get a fair hearing did not create a new problem; it only heightened one that already had a

twenty-year history. The story of refugees to the United States from the Caribbean is dominated by the Cubans. Its most dramatic moment was the Mariel boat lift of 1980, when some 123,000 Cubans made the journey to Florida. But from 1972 small numbers of people had been attempting the crossing from Haiti as well and during the Mariel exodus 6000 Haitians also reached the U.S. coast. But the Haitians always met with a different reception. Cubans who reached the coast were virtually guaranteed asylum and permanent residence. If Haitians arrived in the U.S. they could ask for asylum but, if they were unsuccessful, they were labelled illegal immigrants and sent back to Haiti just as they were when they were intercepted at sea (except for many who simply disappeared into the U.S. population while their claims were being processed). Between 1981 and early 1991 only eight Haitians were granted political asylum. Both Haitians and Cubans came from dictatorial regimes and the differential treatment they have received has often been interpreted as racism, but it has a legal basis in the Cuban Adjustment Act of 1966 which gives almost automatic asylum to all Cubans who are able to make the crossing. (Many Haitians, however, are accepted as legal immigrants, about 14,000 a year in 1987 and 1988, and Haiti ranks fourteenth in the top fifteen nations that send migrants to the United States.)

The present crisis with Haiti dates from September 1991 when the first freely elected President, the Rev. Jean Bertrand Aristide, was deposed in a military coup after only eight months in office. Within a month boats packed with Haitians were fleeing the

island. By December 6000 people had been picked up by the Coast Guard. Of these, 200 were found to have a claim to apply for asylum. But, on the 19th of November, the Haitian Refugee Center in the U.S. obtained an injunction from a district court in Miami that stopped any further returns. Since the Coast Guard vessels (13 of them) were hopelessly overcrowded, the Haitians were held at the American military base at Guantanamo Bay in Cuba. By January 1992 the base held some 12,000 people, only 1400 of whom were found to have any plausible claim for asylum.

On the 17th of December 1991 the Miami district court order was struck down by the 11th Circuit Court of Appeals. The Court of Appeals held that, as the Haitians had been intercepted outside of U.S. territorial waters, they were outside U.S. territory and therefore had no right to bring any claim in the U.S. courts. It ruled that the Haitians' treatment was a question of foreign policy and Congress and the Executive had the authority to determine this.

The base at Guantanamo Bay was at full capacity. But, though the district court order had been struck down, the government was reluctant to return new arrivals directly to Haiti and tried hard to find third countries in the region where applicants could be interviewed. This attempt was unsuccessful so, on the 24th of May 1992, the Bush administration issued an edict which was a revised version of its initial policy. Government spokesmen maintained that most of the Haitians were fleeing poverty, not political repression; all Haitians intercepted at sea would be immediately returned without an interview. But, in support

of the principle of political asylum, the American embassy in Port-au-Prince in Haiti was directed to begin accepting and processing applications within the country and the Immigration and Naturalisation Service set up an office there to implement this policy.

This edict reduced the exodus; nevertheless, between May 1992 and January 1993 more than 5000 Haitian boat people were picked up and returned. But the executive order was also challenged in the courts and several Supreme Court hearings are scheduled to take place between the 2nd and 14th of March 1993, if the edict is still in effect. Whether it is or not will depend on how Clinton responds to the problem now that he is in power. (If he rescinds the edict, the challenges would probably be withdrawn at the request of one or both parties. If he does not rescind it, observers will watch the position that his new Solicitor General takes before the Supreme Court with considerable interest.)

Clinton did not give any details during the election campaign of the particular policy changes that he had in mind, saying 'I'm not in a position now to tell you exactly how we're going to do it or what the specifics will be, but I can tell you I'm going to change the policy'. Bush administration officials and refugee experts predicted that, if Clinton were to make any changes to the Haitian policy, hundreds of thousands of boat people would embark for the U.S. from Haiti after his inauguration, creating an immediate crisis for the new administration. In November 1992, aerial photographs taken by the Coast Guard showed 610 boats ready to sail and another 107 under construction, most

of them capable of carrying at least 100 people. (The island is almost deforested and in north western Haiti residents were observed dismantling houses to obtain materials for still more boats.)

If people in Haiti respond to the opportunities that Clinton's election promises appear to offer, the 1989 figure for asylum seekers in the U.S. will be quickly surpassed. This prospect seemed to cause Clinton to have second thoughts during the campaign and to have prompted him to break his pledge not to intervene in foreign policy before taking office. Late in 1992 his foreign policy team worked with the Bush administration to draft a policy aimed at persuading the Haitians to stay where they were. It proposes that an enlarged system to process asylum cases be set up at a number of points inside Haiti, and at Guantanamo Bay, and in third countries in the region. The proposal emphasised that asylum would only be granted to people fleeing political persecution. In the words of one official, the 'main goal' of the draft policy was 'to keep Haitians in Haiti'. Over the long term a Clinton Administration would support efforts by the United Nations and the Organisation of American States to resolve the political crisis.

It is not clear that Clinton's promise that all Haitian emigrés should 'get a chance to make their case' for U.S. asylum means that they should all be allowed to make this case on U.S. soil, where their legal rights of appeal are strong and, of course, where the chance of absconding is high. He may rather have meant that they should get this chance in some safe third country. (Clearly the option of making a claim at the embassy in Port-au-Prince is a dangerous one for people who are really at risk of persecution.) Most likely, even in the heat of the campaign, Clinton was keeping his options open about what his words should really mean. In mid-January, just before his inauguration, he was accused of going back on campaign promise. He denied this saying 'I still believe just exactly what I said, that everybody is entitled to a hearing who seeks to become a refugee in this country, and I want to give it to them'. But he added that, while Bush's policy should be changed, 'I don't think we can do it on a dime on January 20' without risking many people losing their lives at sea.

Sources

Based on material provided by the Center for Immigration Studies in Washington, and Vernon Briggs, *Mass Immigration and the National Interest*, M.E. Sharp, New York, 1992.