THE OVERSEAS REFUGEE PROGRAM:
FOREIGN POLICY, PUBLIC OPINION, AND REFUGEE POLICY

By

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Refugee. A person who is outside his/her country and is unable or unwilling to return to that country because of a well-founded fear that she/he will be persecuted because of race, religion, nationality, political opinion, or membership in a particular social group.¹

¹ 1951 Convention Relating to the Status of Refugees, 189 U.N.T.S. 137; 8 U.S.C. § 1101(a)(42) (1988). This definition excludes persons displaced by natural disasters or persons commonly known as “economic migrants,” whose primary reason for flight has been a desire for personal betterment rather than persecution per se.
# TABLE OF CONTENTS

**INTRODUCTION**.................................................................................................................. 3

**I. HISTORY OF THE OVERSEAS REFUGEE PROGRAM**.......................................................... 7

**II. AN OVERVIEW OF THE OVERSEAS REFUGEE PROGRAM**............................................. 15

A. Qualification ......................................................................................................................... 15

B. Resettlement.......................................................................................................................... 19

C. A Case Study: The Rafah Refugee Program...................................................................... 22

**III. KEY INFLUENCES ON U.S. IMMIGRATION AND REFUGEE POLICY**......................... 24

A. Humanitarian Concerns ....................................................................................................... 25

B. Domestic Concerns............................................................................................................... 26

1. Special Interest Groups ......................................................................................................... 27

2. Public Opinion ...................................................................................................................... 28

C. Foreign Policy ..................................................................................................................... 32

**IV. IMPACT OF THESE INFLUENCES ON THE CURRENT SYSTEM**............................... 35

**V. PROPOSED SOLUTIONS**.................................................................................................. 39

**CONCLUSION** ....................................................................................................................... 42
INTRODUCTION

Since World War II, more refugees found permanent homes in the United States than in any other country.\(^2\) More than 1.7 million have been admitted since 1980.\(^3\) The current estimated world refugee population is 14 million, with millions of others internally displaced within their own countries by war, famine, and civil unrest.\(^4\) As the media focuses more on international unrest and the numbers of refugees increase, Americans are more aware of the problem.\(^5\) Immigration issues are frequently at the forefront of public debate, and politicians are taking note.\(^6\) Immigration law in general as well as statutory provisions governing the admissions of refugees into the United States reflect this awareness.

Usually refugees are thought of as among the world’s most unfortunate. In addition to being a victim of persecution, a refugee has also been uprooted, forced to leave familiar territory because of his or her oppression. However, under modern international law, to be a “recognized” refugee is also to assume a position of privilege. Refugees unlike millions of other deprived people throughout the world benefit from distinctive programs for relief and assistance, and often from resettlement in other


\(^3\) *Id.*

\(^4\) *Id.* The United Nations High Commissioner for Refugees estimated that the number of refugees worldwide in 1997 exceeded 16 million individuals. This estimate may be low because the estimate was already 14 million in 1988. U.S. Committee for Refugees, *World Refugee Survey: 1988 in Review* 32-33 (1989). More exact numbers are unknown because of inadequate global registration procedures, and because persons living outside of actual refugee camps or centers are not officially considered refugees for statistical purposes. 8 U.S.C. § 1101(a)(42).


\(^6\) California laws regarding bilingual education and status of undocumented children in schools, for example.
countries. Paradoxically this “privileged” position makes the designation of refugee a sought after designation which comes with political implications.

Many people who fear persecution seek entry as refugees into the United States. They flee their homes in times of trauma, often in fear for their lives, when home countries cannot or will not provide protection. An alien’s successful claim that he/she is subject to persecution may lead to permanent residence in the United States through two very different paths. Each path has its own distinctive set of procedures, constraints, and legal and policy dilemmas.

A path taken by some is to apply for political asylum at a port of entry, such as an airport, seaport, or border or to enter the United States, legally or illegally, and then seek asylum. People entering the United States in these situations are called asylees if asylum is granted.

Others flee across international borders into countries other than the United States. When these countries of first refuge are unwilling or unable to provide permanent help, a third country must step forward to provide assistance or possible resettlement. The United States established a system to oversee the recognition, admission, and permanent resettlement in the United States of some overseas refugees. This system is referred to as the Overseas Refugee Program, which is the focus of this paper.

The legal basis of the United States refugee admissions program is the Refugee

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9 This is done in one of two ways. Some affirmatively seek asylum within one year of entry.INA § 208(a)(2)(B), 8 U.S.C.A. § 1158 (1998). Others seek asylum defensively; they apply for asylum after removal proceedings have begun. Aleinikoff, supra note 7, at 765 (citing 8 C.F.R. § 208.2(b) (1998)).
10 This type of asylum is discretionary on the part of the Attorney General of the United States. INA § 208(b)(1), 8 U.S.C.A. § 1158.
Act of 1980. Prior to the passage of this act, the United States admitted refugees on a case-by-case basis through the political process. The Refugee Act was meant to remove the political and ideological basis for determining refugee status and to make the process neutral, thereby conforming to international law, i.e., Art. I, 1951 Convention relating to the Status of Refugees, I.N.A. § 208(a), 8 U.S.C. § 1101(a)(42) (1988).13

In spite of this effort, consecutive administrations have used refugee policy primarily as a foreign policy tool to discredit foreign policy adversaries. This practice often causes political migrations, or “refugee flows,” which impact American communities and influence public opinion regarding the continued admission of refugees into the United States.14 Ultimately, these factors become embodied into policy.15

In seeking lasting solutions for refugees, the United States and the United Nations High Commissioner for Refugees give highest priority to the safe, voluntary return of refugees to their homelands. If asylum in the country of first refuge is not feasible, resettlement in third countries – including the United States – is considered for refugees in urgent need of protection. The United States considers for refugee admission persons coming from areas designated by the executive branch as areas of “special humanitarian concern” who can establish persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social

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12 Id.
14 Congress passed laws explicitly linking refugee status with political ideology. Since World War II, the United States has been an active participant in the effort to assist refugees fleeing persecution, however, the appeals that are most frequently heeded are those that advance American political objectives. Granting refugee status for the purpose of discrediting adversarial governments was standard practice during the Cold War, however, politically motivated refugee movements have a more far-reaching effect than simply discrediting adversary governments.
group, or political opinion.

Crucial to the operation of both the overseas refugee programs and the political asylum adjudication system is the statutory definition of refugee. Section 101(a)(42)(A) of the INA defines a "refugee" as:

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . .

Although many may qualify as refugees under the Refugee Act's definition, further distinctions are necessary in order to have a manageable number that can be resettled in the United States. However, the criteria for these distinctions are often based on political decisions which may preclude those who might meet the statutory definition of "refugee" in INA § 101(a)(42) from being eligible to migrate to the United States.

Allowing foreign policy goals to supercede humanitarian concerns in the refugee admission process encourages arbitrary results. Furthermore, it violates the spirit of neutrality set forth in the United Nations Protocol. In addition, it has severe consequences for those who would otherwise gain admittance to the United States. The conflict between humanitarian and political goals has resulted in a discriminatory refugee policy in which political interests define and supercede human rights.

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16 8 U.S.C. § 1101(a)(42) (in addition to the U.N. definition, refugees must come from areas of the world designated of "special humanitarian concern" as determined by the president on an annual basis.
17 Tyson, supra note 15, at 921.
18 Aleinikoff, supra note 7, at 739.
20 Tyson, supra note 15, at 921.
21 Id.
This paper first examines the history of American refugee policy and the origins of the Overseas Refugee Program. An overview of the structure of the program follows, with an example of how it was applied to Iraqi refugees after the Gulf War. Then, I will present the key influences affecting the United States refugee policy: humanitarian concerns, domestic concerns including special interest groups and public opinion, and foreign policy. Next I will present a critique of the current politically motivated system. Finally, I propose suggested reforms including the establishment of an independent board to make annual determinations regarding refugee admissions; or giving federal courts the authority to determine grant refugee status based on the general condition of the originating country and the particular circumstances of the refugee, or allowing the executive to maintain its authority to determine refugee policy, but to rely less on foreign policy criteria to make its determinations and more on humanitarian concerns.

I. HISTORY OF THE OVERSEAS REFUGEE PROGRAM

Historically, the United States admitted refugees through an ad-hoc decision making process which reflected more interest in politics than humanitarian concerns. Only with the end of World War II was there much attention in the United States to refugee programs. Many gave preference to refugees from communist countries. Early statutes were explicit in this regard. For example, after World War II President Truman ordered priority use of regular immigration quota numbers for the admission of some of the millions of displaced person left stranded in Europe. Congress then passed the first significant refugee legislation in American history in order to address the same problem.
The Displaced Persons Act of 1948 was aimed at Eastern Europeans. This Act provided a temporary program for the admission of 400,000 people primarily from communist or communist-dominated regions. The Act also incorporated cut-off dates which required those who applied for visas to show that they entered Allied zones on or before December 22, 1945. This arbitrary cut-off date had the effect of denying the benefit of the Act to a great number of Jews who had fled the Soviet Union or Poland.

Four years later, the 1952 Immigration and Nationality Act recognized only those refugees who, because of “persecution or fear of persecution on account of race, religion or political opinion … have fled from any Communist-dominated country or area, or from any country within the general area of the Middle East … or persons uprooted by catastrophic natural calamity as defined by the President.” Refugees under the Act were admitted on a conditional basis. This meant that refugees remained constructively at the border and were subject to exclusion rather than deportation proceedings if the government chose to do so. This procedure was almost identical to parole.

No comprehensive legislation promulgated in the 1940’s and 1950’s provided general authority to admit refugees. It became increasingly common for the Attorneys General to use their powers under INA § 212(d)(5) to “parole” groups of refugees based on political concerns instead of individuals. Examples include Hungarians who fled

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22 One third of the admissions under the Act were Polish. *Western Hemisphere Immigration and United States Foreign Policy* 196 (Christopher Mitchell ed. 1991) (citation omitted).


24 *Id.*


26 8 U.S.C.A. § 1182. Legomsky, *supra* note 5, at 830. Parole power was initially intended as a mechanism to provide temporary relief to individuals, or to provided a means whereby persons unable to fit...
their country after the Soviet Union crushed the 1956 revolution and Cubans who left
their country after Castro seized power in 1959. However, from the executive branch’s
standpoint parole power was exceedingly convenient because it allowed for a flexible
response to developing crises, without the need for new legislation. However, from the
standpoint of the refugee, no meaningful qualification criteria existed, and there was
virtually no procedural protection when a request for parole was turned down. In
addition, once admitted into the United States, there was no direct way for refugees to
adjust status, even though the intention of the Hungarian and Cuban programs were to
bring refugees to the United States on a permanent basis. From Congress’s point of
view, the practice of mass parole precluded legislative input into national policy
decisions that had sweeping domestic and international effects.

The 1965 Amendments to the Immigration and Nationality Act marked a dramatic
transition in U.S. refugee policy. Congress revamped the entire system of quotas and
preferences, equalizing immigration opportunities for people of every nation. The
Amendments gave priority to family members of U.S. residents and immigrants with
needed skills. The new legislation codified the geopolitical definition of refugee which
had emerged in response to the Cold War and contained a clear ideological bias.
Congress gave special status to those fleeing communist-dominated countries.

the narrow refugee definition could be admitted temporarily. However, it ultimately became a numerically
significant component of the nation’s legal immigration system.

27 Id.
29 Legomsky, supra note 5, at 830.
30 Congress eventually cured this problem by special statutes authorizing adjustment of status for
Hungarians and Cubans. Aleinikoff, supra note 7, at 737.
31 Id.
32 Bockley, supra note 23, at 270.
33 Id.
34 Id.
35 Id.
However, the most important change was the creation of a "seventh preference" for aliens who feared persecution and were fleeing either a "Communist dominated" country or a country "within the general area of the Middle East." 

This seventh preference provision was often called "conditional entry," because its beneficiaries did not come in as immigrants, but were classified as "conditional entrants." However, the 1965 law provided for fairly routine adjustment out of conditional entrant status to permanent resident status two years after initial arrival.

The 1965 Amendments were seen as an attempt to limit parole power, but they were largely unsuccessful. Parole authority continued to be used by the executive branch to supplement existing channels of admission. With increased refugee flows in the 1960's and 1970's, the 1965 solution proved inadequate. The ceilings on numbers of refugees allowed into the United States were unrealistically low relative to the increasing number of refugees. Of particular concern were the huge numbers of refugees from Indochina during the 1970's. Despite public outcry and congressional concern, the executive branch continued to use parole power to admit large groups of refugees. Parole authority became increasingly controversial, reinforcing the sense that an orderly

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36 In 1952, the McCarran-Walter bill passed into law as the Immigration and Nationality Act over the veto of President Truman. The Act consolidated previous immigration laws into one statute, but preserved the national origins quota system. The Act also established a system of preferences for skilled workers and relatives of U.S. citizens and permanent resident aliens. It also tightened security and screening procedures. The Act established a 150,000 numerical limitation on immigration from the Eastern Hemisphere; most Western hemisphere immigration remained unrestricted, although it established a sub-quota for immigrants born in the colonies or dependent areas of the Western Hemisphere. Finally the Act repealed Japanese exclusion and established a small quota for the Asia-Pacific Triangle under which Orientals would be charged. See Aleinikoff, supra note 7, at 55.


38 Aleinikoff, supra note 7, at 738

39 Id.

40 Bockley, supra note 23, at 271.

41 Id.

42 Due to events in Ethiopia, the Indian-Pakistani War of 1971, expulsion of thousands of Asians by President Idi Amin in Uganda and Soviet Jews receiving exit permits in large numbers.
admissions process was needed.

Shocked by the realization that the Indochinese parole admission amounted to almost two hundred thousand, Congress began a series of hearings on the admission of refugees into the United States. Representative Joshua Eilberg, Chairman of the House Subcommittee on Immigration, Citizenship, and International Law of the Committee on the Judiciary, pointed out that the vast majority of refugees who entered the United States did so at the discretion of the executive branch and not through regular refugee provisions, i.e. the seventh preference provision of the Immigration and Nationality Act of 1965. Eilberg subsequently submitted a bill that limited parole power, but it never reached the House floor. However, Congress became even more committed to establishing consistent refugee policy. In March 1979, the Carter administration submitted a bill, which was introduced in the Senate by Senator Edward M. Kennedy and in the House of Representatives by Peter Rodino and Elizabeth Holtzman. A year later, President Carter signed the Refugee Act of 1980.

While the U.S. government struggled with domestic legislation in regard to the refugee issue, the United Nations established the Office of the United Nations High Commissioner for Refugees (UNHCR) in 1949. In 1951, the United Nations adopted the Convention relating to the status of Refugees to deal specifically with the plight of millions of refugees exiled within Europe after World War II. This document limited refugee status to those persons displaced during World War II and focused on a more

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43 Legomsky, supra note 5, at 831.
45 Id.
46 Id. Eilberg had lost his congressional seat following a scandal.
humanitarian approach to the assistance of refugees.\textsuperscript{49} According to this document a refugee is:

A person who is outside his/her country and is unable or unwilling to return to that country because of a well-founded fear that she/he will be persecuted because of race, religion, nationality, political opinion, or membership in a particular social group.\textsuperscript{50}

Another important provision of the 1951 Convention was non-refoulement – a technical term deriving from Article 33 of the Convention which provides that receiving states cannot expel or return “a refugee in any manner whatsoever to the frontier territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.”\textsuperscript{51} However, as comprehensive as this protection may seem, it is limited and country-specific. The receiving country is free to send a refugee on to other countries, rather than granting asylum on its soil.\textsuperscript{52} Ironically, the United States was not a signatory to this document. In its 1967 Protocol relating to the Status of Refugees, the international community (UNHCR) expanded the definition of refugee to include those suffering from persecution unrelated to the Second World War.\textsuperscript{53} However, the basic requirement of a well-founded fear of persecution remained at the core of the definition.\textsuperscript{54}

In 1968, responding to international pressure, the United States signed and ratified the United Nations Protocol Relating to the status of Refugees, thereby binding itself to

\textsuperscript{49} Bockley, \textit{supra} note 23, at 260.
\textsuperscript{50} 1951 Convention Relating to the Status of Refugees, art. 1, 189 U.N.T.S. 137; 8 U.S.C. § 1101(a)(42). This definition excludes persons displaced by natural disasters or persons commonly known as “economic migrants,” whose primary reason for flight has been a desire for personal betterment rather than persecution per se.
\textsuperscript{51} Cort., \textit{supra} note 47, at 313.
\textsuperscript{52} Aleinikoff, \textit{supra} note 7, at 732.
\textsuperscript{53} Bockley, \textit{supra} note 23, at 260.
the substantive provisions of the 1951 Convention. The President and Congress believed that this ratification, combined with domestic legislation, prepared the United States to carry out its Protocol obligations.

The Refugee Act of 1980 provided a new approach to refugee policy, giving both Congress and the executive branch some control over the admissions process. The executive branch needed flexibility to conduct foreign policy, while Congress (in theory, at least) regained control over refugee policy and numerical limits. The Act created a new definition of "refugee" to reflect a changed admissions policy. It also afforded a new admission system that allowed for both flexibility and usable standards through systematic consultations between Congress and the executive branch.

The intent of Refugee Act of 1980 was to repeal the ideological and geographic definition of refugee and bring the focus more in line with humanitarian concerns. The Act also repealed the old, numerically limited, seventh preference. It had become apparent that a single fixed ceiling, applicable every year, simply would not fit the fluctuating needs created by the ebb and flow of refugees. When drafting the Refugee Act, Congress did not want to leave refugee admissions totally numerically unregulated nor did it want to treat refugee admissions in the same way as immediate relatives and special immigrants, which are governed only by qualitative and not numerical criteria.

The Refugee Act therefore established a third broad admission structure that is governed

55 Bockley, supra note 23, at 279.
56 Id.
57 Tyson, supra note 15, at 924.
58 Id. at 923. The United States now defines a refugee as "any person who is outside of any country of such person's nationality ... and who is unwilling or unable to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." Pub. L. No. 96-212, amending INA § 207, 8 U.S.C.A. § 1157.
59 Id. See Tyson, supra note 15, at 923.
by a system different from both quota immigration and the numerically unlimited system for immediate relatives.  

The passage of the 1980 Refugee Act and the adoption of the new definition of a refugee went a long way to de-politicize asylum, but it would be almost impossible to completely remove political implications from the Overseas Refugee Program. First, recognizing that a refugee’s home country has treated, or is likely to treat, its own citizens in an unfair and improper manner is an explicit political value judgement. However, perhaps a distinction can be made between this inherent political side of refugee admissions and a policy which explicitly limits refugee admissions to those fleeing the Eastern Bloc. Secondly, even if foreign policy considerations were de-emphasized because of present international conditions, foreign policy decision-makers would probably be reluctant to accept any reduction in their ability to influence refugee policy.

Due to a natural reluctance to relinquish power or influence once gained, policy makers have a vested interest in maintaining a certain degree of relevance for foreign policy consideration. Moreover, executive agencies have gained an expanded role by the ability to respond more quickly than Congress to formulate policy in politically sensitive refugee “crises” such as the Mariel boatlift and the Haitian influx. Thus, the question is how can the process be changed in order to make foreign policy considerations secondary to humanitarian concerns. In spite of the Congress’s attempt to answer this question, the Overseas Refugee Program is primarily driven by foreign policy objectives.

60 Aleinikoff, supra note 7, at 738.
61 Id. 739.
62 Cooper, supra note 25, at 945.
63 Id.
II. AN OVERVIEW OF THE OVERSEAS REFUGEE PROGRAM

A. Qualification

The process by which the executive branch and Congress make determinations regarding the admission of refugees from outside the United States is set forth in INA § 207, 8 U.S.C. § 1157. Under this statute, the President, after consulting with Congress, sets the maximum number of refugees who may be admitted to the United States during each fiscal year. The President also allocates the total among various countries or world regions. Ceilings are set within each region, for those who are of special humanitarian concern or whose admission is in the national interest.64

Decisions on qualifying countries and regional numerical ceiling are largely shaped by recommendations from the State Department which are greatly influenced by political considerations.65 For example some groups may be refused based on a judgment, that conditions may soon settle down in the home country allowing voluntary repatriation, or that local settlement in the first asylum country is preferable to distant resettlement, or that this group has sufficient opportunities to resettle in distant lands other than the United States, even though they meet the definition of a refugee as set out in INA § 101(a)(42).66

Within the Department of State, the Bureau of Population, Refugees and Migration prepares an annual consultation document containing specific proposals for the upcoming fiscal year – ceilings for each region, national groups of special concern, processing categories for each national group – plus a justification for each aspect of the

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64 INA §§ 101(a)(42), 207(a)(3).
65 Cooper, supra note 25, at 945.
overall U.S. refugee program. The President then reviews the document and consults with congressional committees. The executive branch administers the finalized program. Throughout this process, an administration is relatively free to insert its foreign policy goals into refugee policy.67

Ceilings are important, because the number accepted for resettlement usually falls short of the ceiling figure and there is no carry-over of numbers from one year to the next.68 Independent of these ceilings, the President may admit additional refugees on an "emergency basis."69 Before making this determination, however, the President must engage in "appropriate consultation," which must include personal discussion between members of congressional committees and Cabinet-level representatives.70 As a result of the allocations, not all are to be considered equally eligible to migrate to the United States. More precise criteria for selection and priorities are included in the annual consultation documents submitted to Congress, and in guidelines issued to field officers.71

Under current guidelines, the first priority is reserved for those in immediate danger of loss of life and certain others such as political prisoners or dissidents. However, this provision is extremely narrow and is applied in exceptional individual cases only.72 Only a tiny fraction of annual admissions fall within this category.73 Almost all refugees

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66 Aleinikoff, supra note 7, at 739.
67 Id. at 197.
68 Peter H. Koehn, Refugees from Revolution: U.S. Policy and Third-World Migration 206 (1991). Between 1980 and 1982, the INS approved the resettlement of 424,000 refugees. Id. After this initial influx, annual refugee admission averaged around 65,000 per year. Id. For fiscal year 1998, the President authorized a ceiling of 83,000 refugees admitted for permanent resettlement in the United States. Bureau of Population, supra note 2.
70 Id.
71 Aleinikoff, supra note 7, at 739.
72 Id.
73 Tyson, supra note 15, at 927.
admitted into the United States fall into other preference categories based primarily on family ties and previous political ties to the United States.\textsuperscript{74} The next four priority groups all require some kind of earlier tie to the United States, by family, education, or employment. The final priority, known as P-6, potentially covers all others found to meet the refugee definition. In most regions of the world, P-6 processing is unavailable; only the first five priorities (sometimes only the first four) are considered to be eligible for the U.S. refugee program.\textsuperscript{75}

Within the executive branch, the Department of State makes nearly all of the important decisions on refugee admissions.\textsuperscript{76} It should be noted, however, that to qualify as a refugee is not to qualify for admission to the United States as a refugee. From among the millions of refugees worldwide, the Refugee Act requires the executive branch, in consultation with Congress, to designate groups "of special humanitarian concern to the United States"\textsuperscript{77} or whose admissions as refugees is in the U.S. national interest.\textsuperscript{78} Once a region of the world receives one of these designations, individuals within that region must first establish a well-founded fear of persecution.\textsuperscript{79} Next, they must fit into a preference category.\textsuperscript{80} Thus, refugee designations continue to be made for political reasons.

\textsuperscript{74} Tyson, supra note 15, at 927.
\textsuperscript{75} Id.
\textsuperscript{76} Western Hemisphere Immigration and United States Foreign Policy, supra note 22, at 196.
\textsuperscript{77} Iraqi refugees received this designation in 1991.
\textsuperscript{78} Nuclear scientists are one example. Supporters of democracy fleeing totalitarian governments, such as China, are another.
\textsuperscript{79} \$ 8 U.S.C. § 1101(a)(42).
\textsuperscript{80} Assignment of an individual to a particular processing priority does not reflect any judgement as to whether that individual ultimately will qualify for admission to the U.S. as a refugee, although it reflects an assessment of the urgency of the need for resettlement. Office of Admissions, Bureau of Population, Refugees, and Migration, U.S. Refugee Admissions Program for Fiscal Year 1998 (April 1998) <http://www.state.gov/www/global/prm/rpt_9804_refugee_adm.html>. Just as qualifying for refugee status does not confer a right to resettlement in the United States, assignment to a particular preference category does not entitle a person to admission to the United States as a refugee. Id.
On site, at the processing offices or at U.S. embassies around the world, eligibility for refugee status is decided on a case-by-case basis. Immigration and Naturalization Service Officers conduct personal interviews of all applicants.

Under the 1980 Refugee Act, U.S. law defines a “refugee” in a manner conforming to the United Nations definition. Yet the U.S. definition does not distinguish refugees from asylees. Legal challenges and political pressure forced the INS to adopt different standards in admitting refugees from overseas than it did when ruling on asylum petitions submitted by persons already in the United States. People applying for refugee status through the Overseas Refugee Program are not required to meet the same stringent evidence and documentation requirements as asylum applicants. Officers conducting overseas interviews frequently apply standardized group profiles; they do not expect concrete documentation of personal persecution or insist upon corroborative evidence because it would be considered “unfair” to do so. Generally, if the applicant’s own statements are credible and consistent with the interviewer’s knowledge of conditions in the sending country, such statements are usually accepted as

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82 Id.  
84 Practically, refugees are of course, different from other immigrants in important ways. By definition, they face higher than usual risks of serious harm. They are unable to turn to their own governments for protection. And they are more likely to have been emotionally traumatized.  
85 Koehn, supra note 67, at 214. Unlike a refugee, who is simply “outside his or her country of nationality,” an asylee is an alien “in the United States or at a port of entry” and like a refugee, unable or unwilling to return because of a well-founded fear of persecution. Asylees are a special class of refugees—individuals who have already reached the U.S. border. Applicants for asylum must meet the same requirements as refugees but there is no numerical ceiling on the admissions of asylees, and asylees need not fit into the “of special humanitarian concern to the United States” classification. All an asylee must do is present himself or herself to immigration authorities in the United States or at an U.S. port of entry and request asylum. Of course this means that an asylee my enter the United States either legally or illegally and claim asylum. Id.  
86 Id.
sufficient proof of persecution. If this standard is met, refugee status is granted. The refugee prepares for resettlement in the United States.

B. Resettlement

The present resettlement system developed from the Corporate Affidavit Program of 1946. The Displaced Persons Act of 1948 continued to use the same system, which was expanded during the Hungarian Refugee Program. The Cuban and Indochinese Refugee Programs firmly established the current system. This system has two phases: 1) preparation for resettlement while in the country of first asylum; and 2) adjustment within the United States.

Before refugees actually enter the United States, they receive preparation in a variety of areas. The official position of the State Department on preparation for resettlement is to “ensure that refugees who are accepted for admission to the United States are prepared for the significant changes they will experience during resettlement.” Voluntary Agencies and the Bureau for Population, Refugees and Migration provide pre-departure language classes, cultural orientation training and provides each refugee with a copy of Welcome to the United States, a resettlement handbook written by refugee resettlement workers and resettled refugees in conjunction with federal and state government officials. This book is produced in a number of

87 Id. The Commission of Immigration and Refugee Policy found that “a person who belongs to a group qualified for refugee status is accorded a strong presumption of eligibility ..., and is primarily examined to ensure only the he/she is not excludable from the United States.” Zucker, supra note 43, at 153.
88 Id. at 103.
89 Id.
90 Id.
languages and is supposed to give refugees access to basic information about resettlement before they arrive.°3 Refugees also receive medical examinations, attend problem-solving workshops, and otherwise prepare for departure to the United States.°4

Typically those who gain admission through the Overseas Refugee Program are located in a refugee camp in a foreign country at the time of their selection, but with increasing frequency they are selected and processed while still within their countries of origin.°5

In resettlement, the top priority of the United States government is to promote economic self-sufficiency as quickly as possible, limiting the need for public assistance.°6 To facilitate this goal, each refugee case is assigned to an American private voluntary agency.°7 While a refugee is still overseas, information that has been gathered about him/her is sent to New York City, where the American Council for Voluntary International Action, an umbrella organization of the voluntary agencies, uses State Department funding to run a Refugee Data Center. At the Data Center, the refugee is assigned to a voluntary agency sponsor. This agency decides where to locate the refugee. Initial placement is determined by a number of factors: location of family, co-sponsorships, housing, or job availability.°8

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°3 While the book contains good information about American culture, it may be inadequate for a modern urban existence. For example under “Finding a Job,” the book advises “[e]ven if you speak little or no English, a smiling face and eagerness to work will help a great deal.” Id. at 39.
°4 Bureau of Population, Refugees, and Migration, supra note 79. These “other” preparations include the purchase of travel documents. Transportation arrangements to the United States are usually made through the International Organization for Migration. Bureau of Population, supra note 2. Each refugee signs a note, promising repayment of the cost of airfare. Id.
°5 Orderly Departure Program established in 1979 allowed processing of cases while the applicants remain in their home countries. Applicants from Cuba, former Soviet Union and Vietnam may apply from their country of origin. This program can be established only in special circumstances when the home country agrees.
°6 Bureau of Population, Refugees, and Migration, supra note 79.
°7 Id.
°8 Zucker, supra note 43, at 111.
The Voluntary Agencies work under a cooperative agreement with Department of State, provide sponsorship and initial resettlement assistance, including housing, essential furnishings, food and other basic needs, clothing, and additional cultural and community orientation. Voluntary Agencies are central to resettlement. Their services range from governmental and quasi-governmental functions to purely private aid activities. It links the refugee to the various public and private bureaucracies.

In addition to programs sponsored and administered by the voluntary agencies the refugee also has access to programs funded by the Department of Health and Human Services and administered by each State. These programs provide money, medical assistance, training programs, and other support services to assist refugees to make the adjustment to life in the United States.

After one year in the United States, a refugee is eligible to adjust status to "lawful permanent resident." After five years of residency, refugees are eligible to apply for U.S. citizenship.

Newly arriving refugees are admitted by the INS at a U.S. port of entry and given authorization for employment. They are also immediately eligible for special resettlement and adjustment assistance in addition to all normal public assistance benefits. Statistics show that during the first year of admission, about 75 percent of refugees are on public assistance; after their second year in the United States, more than half are still on public assistance, and even after

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99 Id.
100 Zucker, supra note 43, at 121.
101 Id. Voluntary agencies actually go beyond being the refugee's sponsor, they are also play a part in formulating refugee policy.
three years in the United States, roughly one third collect welfare.\textsuperscript{106} In California, the state with the highest welfare benefits, these percentages are even higher. Eighty-five percent of refugees in California who had been in the United States for less than three years were on public assistance.\textsuperscript{107} However, the good news is that once refugees stabilize, they do climb the ladder of economic progress. In states such as California which hosts a large refugee population, a drain may be created on resources. If properly administered, there is no doubt that domestic refugee resettlement has a price attendant to it.\textsuperscript{108}

The services needed to make refugees fully participative in society include the ability to take an arrival situation of a refugee that normally has ... limited education, usually in a language other than our own, and the acquisition of employment skills that do not fit in our market.

Services for language, employability, and acculturation for a long enough duration to give the refugees a reasonable chance to participate are key to a resettlement effort.

We don’t believe that the realities of refugee resettlement have grown simpler since the Refugee Act of 1990 [sic]. If anything, they are more complex, particularly given the economy nationally and in California. Self-sufficiency is no easier to accomplish than it was then, been long lost since 1980.\textsuperscript{109}

C. A Case Study: The Rafah Refugee Program

A recent example of a refugee group resettled using the Overseas Refugee Program (ORP) is the Rafah Refugee Program. This involved the permanent resettlement

\textsuperscript{106} Id.
\textsuperscript{107} Id. This statistic is for 1984.
\textsuperscript{108} Zucker, supra note 43, at 130.
of Iraqi refugees who participated in the uprising against Saddam Hussein at the end of the Gulf War, and who were interred in Rafha Camp in Saudi Arabia.


Nearly two million Iraqis fled the fighting during the Gulf War. Although most returned at the end of the war, significant numbers remained in countries of first asylum, fearing persecution in Iraq. Approximately 39,000 people—including military deserters, ethnic and religious minorities, and those who participated in the uprising against the Iraqi regime—remained in refugee camps in Saudi Arabia from 1991 to 1997. The United States participated in a multi-country resettlement effort led by the UNHCR for Iraqi refugees in the Rafha camp in Saudi Arabia. The effort resulted in third-country resettlement of 24,260 refugees; 12,200 came to the United States.

How refugees are received in their country of first asylum depends on that country’s current policy toward refugees. In the case of the Iraqis, Saudi Arabia is not a signatory to either the 1951 UN Convention Relating to the Status of Refugees or the 1967 Protocol. It has maintained a policy of keeping the Rafha camp “closed” and travel

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11 Id.
13 Id.
14 Id.
outside its boundaries is forbidden for the refugees. A curfew of 24:00 is strictly enforced. As refugees are resettled and houses are vacated within the camp, the Saudi camp authorities have promoted consolidation of camp housing and the demolition of vacant structures and unused areas of the camp. Large areas of housing are razed and occupants are continuously moved into other areas. Services to the camp are under control of the Saudi Military authorities. Food provisions and distribution is controlled by the Saudi military through local contractors.\textsuperscript{117} The Saudis have repeatedly\textsuperscript{118} voiced their unwillingness to allow immigrants or refugees to resettle in their country, but have agreed to keep the camp open for as long as necessary.

Fortunately, for the refugees who remain in the Rafha Camp, Saudi Arabia and Iraq continue to be designated as areas of “humanitarian concern”. Even though the resettlement program has officially ended, some of these refugees still have the possibility to enter the United States on refugee status. This is not true for many others around the world who are not so fortunate to be in areas so designated. Unfortunately, until U.S. immigration and refugee policy and the influences attendant to it are refocused many desperate pleas may go unheeded.

\textbf{III. KEY INFLUENCES ON U.S. IMMIGRATION AND REFUGEE POLICY}

United States refugee policy is the product of compromise between competing factors: humanitarian concerns, domestic concerns including special interest groups and

\textsuperscript{116} Zucker, \textit{supra} note 43, at 98.
\textsuperscript{117} Kingdom of Saudi Arabia, \textit{supra} note 109, at appendix.
\textsuperscript{118} \textit{Id}
public opinion, and foreign policy. Each factor has its own influence, and varies in
strength and dominance over time, but they all interact to shape refugee policy.

In the public mind, United States refugee policy is often associated with altruism
and compassion. The common assumption is that the refugee program is meant to
alleviate the suffering of fellow human beings that have been forced from their
homelands as well as upholding human rights. However, neither a humanitarian model
nor a human rights model adequately explains how refugee policy is actually developed.
Often, domestic concerns and foreign policy goals shift the focus away from
humanitarian principles.

A. Humanitarian Concerns

Logically, it seems that humanitarian concerns should be the highest priority
when developing refugee policy if the goal of the Refugee Act of 1980 is to be
accomplished and the integrity of international law is to be maintained. However, this
logic is not often used. Of the various concerns that the Act addresses, intent to ensure
the humanitarian approach has the weakest support. Foreign policy and domestic
concerns have most often taken precedence over humanitarian goals. Maybe the question
should be asked as to whether the United States has a moral obligation to put
humanitarian concerns at the highest priority considering it is a nation built by refugees.
There is also a question as to whether Congress has a compelling reason to insure that
this goal is met.

When Congress drafted the Refugee Act of 1980, it provided that a person must

119 Tyson, supra note 15, at 929.
120 Id.
121 Id.
122 Id.
meet the refugee definition and come from a region or country of “special humanitarian concern” as requirement for resettlement to the United States. However, Congress provided no definition of “humanitarian.” Nevertheless, even without a statutory definition, Congress insisted that the concept of humanitarian concern be an essential element of the new refugee policy. Congress’s humanitarian intent is implicit in the choice of language to describe the standard for determining admissions allocations. Based on legislative history and in order to insure against unwarranted executive discretion to apply politically motivated selection criteria, Congress persisted with the “special humanitarian concern” language.

In spite of congressional intent, conflicting interpretations of a political situation illustrates how humanitarian goals can conflict with politics. For instance, the President consults the State Department regarding global refugee status before he submits his Determination on the Annual Refugee Admission Program. Approaching the same refugee situation, the State Department may base its evaluation of the refugee status on the political aspect of the particular situation. Whereas, Amnesty International may stress the pattern of human rights violations in the country of origin and the plight of the refugees. However, the State Department is the major source of decision-making authority for refugee policy, thereby defeating the humanitarian intent of the statute.

B. Domestic Concerns

The domestic policy considerations that motivated proposals for numerical limits continue to be significant. For most of the 1980’s, immigration policy in general has

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123 Id.
124 Id. at 926.
125 Id.
been marked by an increasing emphasis on stemming illegal entry. Additional domestic political pressure against new entrants has come as a reaction to the various waves of asylum and refuge seekers, and the public perception of "borders out of control," and the trend to shift the cost of resettlement from the federal government to the states. At the same time, congressional demands for much greater admissions of particular groups have resulted in an overall increase in refugee admissions since 1986.  

1. Special Interest Groups

In addition to the annual Presidential Determination, some "privately funded admissions" may be approved. This approach was first used in the Determination for 1987, as a partial response to the federal budget squeeze. It enables private groups to secure admission for certain individuals by pledging to provide the services usually provided by the federal government.

Special interest group exploitation of the refugee program has exacerbated an already existing domestic resistance to newcomers. Such resistance hurts mostly those refugees who are of humanitarian concern but have no political or family ties. Inevitably, they will be the first ones to be denied admission in order to satisfy the desire for numerical limits, while those with more influence continue to be admitted. Lobbying by private interest groups recently pushed legislators for increased admissions of specific religious and ethnic groups. Soviet ethnic and religious groups protested the loss of presumptive eligibility for refugee status because they were unsatisfied with parole status,

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126 Id. at 925.
127 Id. at 926.
which lacks resettlement benefits and other privileges. As a result of their efforts, President Bush signed the Lautenberg Amendment which made it easier for certain groups from the former Soviet Union and Indochina to enter the United States. The standard of proof of refugee status for these groups is only to assert a fear of persecution and show a “credible basis for concern about the possibility of such persecution.”\textsuperscript{130} Some groups have the ability because of political influence to obtain a special interest admission category beyond yearly ceilings which would entitle them to resettlement funds. This could be characterized as preferential and unfair.\textsuperscript{131}

This use of parole is not only significant as a failure to fulfill the Act’s mandate to create an orderly, systematic program for the admission of refugees, but may also be a cause of negative domestic reaction against the refugee program.

2. Public Opinion

Public opinion is another important influence on refugee policy. Immigration policy frequently becomes a matter of public controversy and often takes center stage in United States political debates. Cultural biases occur when refugees are not adequately prepared to enter American society. Whereas in the past, refugees from Eastern Europe were similar to Americans in appearance and culture, the recent influx of refugees from Asia, the Middle East and Africa presents a more complex problem. More must be done to promote the “confluence in cultures” so as not to create a “clash of cultures.”\textsuperscript{132} These

\textsuperscript{129} Tyson, supra note 15, at 928 (particularly Soviet Jews and Evangelicals, Czechs, and Poles). In 1989 the INS dropped its longstanding presumption of eligibility for refugee status for all Soviet and certain Vietnamese applicants.
\textsuperscript{130} Id. at 930.
\textsuperscript{131} Id. at 936.
\textsuperscript{132} Id. at 248.
clashes have occurred across the country.\textsuperscript{133} As refugees compete for community aid services, low-income housing, jobs and scarce resources, they are pitted against long-resident Americans, particularly those who are economically marginal and/or socially disadvantaged.\textsuperscript{134} This competition sometimes creates public backlash against refugees and immigrants.\textsuperscript{135} As Wayne Cornelius suggested in 1977, “[s]omething quite predictable happens in the U.S. every time the economy goes through difficulty: illegal workers are rediscovered.” Politicians, journalists, organized labor and the American public rush to blame them for all the possible or imaginary problems that may exist in American society.\textsuperscript{136} This attitude extends to refugees as well as illegal or undocumented immigrants. The American public does not differentiate between immigrants, undocumented aliens and refugees.\textsuperscript{137}

Throughout history the United States was seen by the public as a nation that selects its refugees carefully. The United States was rarely a place of first refuge.\textsuperscript{138} However, in recent years, the situation has changed. The increasing numbers of refugees coming directly to the United States has created the perception in the general public that the United States has lost control of its borders.\textsuperscript{139}

The most visible proof of this fact was seen in the 1980 Mariel Boat Lift. More than 130,000 Cuban refugees arrived in the United States within a five-month period.

\textsuperscript{133} Zucker, supra note 43, at 113 (refugees have been accused of everything from taking over fishing rights to stealing and eating pets, poaching in public parks, living in such numbers as to create health hazards, receiving favorable treatment at the expense of local residents and undercutting labor markets).
\textsuperscript{134} Id.
\textsuperscript{135} Western Hemisphere Immigration and United States Foreign Policy, supra note 22, at 248.
\textsuperscript{136} Id. (quoting Wayne A. Cornelius, Undocumented Immigration: A Critique of the Carter Administration Policy Proposals, Migration Today 5:4 (October 1977)).
\textsuperscript{137} Zucker, supra note 43, at 113.
\textsuperscript{138} Id.
\textsuperscript{139} The population of illegal aliens is growing by as much as 500,000 each year. Giuliani, The Immigration program of the Reagan Administration, 36 U. Miami L. Rev. 807 (1981-82).
shattering the illusion that the United States could control its borders.\textsuperscript{140} Negative publicity concerning the large number of refugees, the rumors that Castro had opened his jail and insane asylums in order to foist unwanted Cubans onto the United States, and lurid accounts of criminal conduct in the detention centers in the United States soured the American public’s attitude toward future immigration and refugee policy.\textsuperscript{141}

Another example is the Vietnamese refugees who were seen as taking jobs from American workers and education resources from American children.\textsuperscript{142} In 1975, reports indicated that the majority of Americans were opposed to the admission of Vietnamese refugees. The Vietnamese refugees were perceived as potential competitors for jobs and federal aid programs.\textsuperscript{143}

A third and more recent example is where Iraqi refugees were seen as enemies of the State. In 1993, 100 congressional Representatives, prompted by their constituents, calling to stop the resettlement of Iraqi refugees from Saudi Arabia sent a letter to President Clinton. The question was whether the military deserters among the refugees at Rafha had actively participated in aggression against United States soldiers during the Gulf War.\textsuperscript{144} Congress and the American people were assured that no one is resettled in the United States without demonstrating a well-founded fear of persecution and that the Iraqi deserters actively opposed the regime and had fought to overthrow Saddam in March of 1991.\textsuperscript{145} The letter suggested that the refugees in the Rafha camp were actually...
prisoners of war and that the resettlement program should be stopped.\textsuperscript{146}

Haitians and Salvadorans were seen as economic migrants and possible wards of the State. The Haitian refugee crisis of 1982 demonstrates that despite professed sponsorship of international human rights norms, nations react to strong internal pressures in the forms of domestic politics, interest and lobby groups, and budgetary considerations. Each of these internal pressures frequently operates to the detriment of humanitarian principles.\textsuperscript{147}

"Compassion Fatigue" is a notion put forward by Senator Simpson.\textsuperscript{148} His notion assumes that the primary obligation of the Refugee Act is to serve a narrowly conceived "national interest and that compassion must be bridled, otherwise the American people will eventually become unwilling to extend compassionate refuge."\textsuperscript{149} So called "compassion fatigue" of many nations toward refugees has been contagious, causing other nations to change their immigration policies along more restrictionist lines.\textsuperscript{150}

For example in 1992, the Bundesrat amended the German Constitution to reiterate the right of refugees to asylum in Germany, but the amendment further specified the right did not apply to individuals arriving from countries that did not engage in political persecution. Since most asylum-seekers were travelling through supposedly "safe" countries, they could not meet the definition as interpreted by the new amendment.\textsuperscript{151} Canada recently incorporated almost identical changes in its Immigration Act which provides that immigration from "prescribed" countries involves a presumption of

\textsuperscript{146} Id.
\textsuperscript{147} Cort, supra note 47, at 323.
\textsuperscript{148} Zucker, supra note 43, at 174 (Senator Alan K. Simpson was co-sponsor of the Simpson-Mazzoli Bill, which sought to eliminate due process rights for aliens.)
\textsuperscript{149} Tyson, supra note 15, at 931.
\textsuperscript{150} Cort, supra note 47, at 325.
\textsuperscript{151} Id. at 324.
freedom from persecution.\textsuperscript{152} England and France have also passed legislation restricting the ability of asylum seekers to enter their countries. Thus, the "compassion fatigue" of the 1990s, which was probably brought about by the economic and social burden of refugee maintenance in receiving nations, has caused many countries to enact domestic legal restrictions on the humanitarian-based international refugee norms.\textsuperscript{153} This resurgence of restrictionist policy is a pessimistic sign for the future of refugee protection.\textsuperscript{154}

C. Foreign Policy

The 1980 Refugee Act changed the U.S. government’s officially recognized definition of a refugee by removing the reference in earlier legislation to flight from “any Communist or Communist-dominated country or area” and replacing it with the internationally accepted standard of “persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”\textsuperscript{155} In spite of this change, the humanitarian focus remains subordinate to ideological and foreign-policy calculations.\textsuperscript{156} Since 1980, the Executive Branch has often proposed or carried out refugee policy designed to embarrass or weaken governments seen as hostile to the United States, to stabilize those seen as not politically radical but dangerously weak, and to bolster regimes aligned with U.S. foreign policy.\textsuperscript{157} For the most part, this tactic has been directed at Communist governments.\textsuperscript{158} However,

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\begin{itemize}
\item \textsuperscript{152} Id. at 324.
\item \textsuperscript{153} Id.
\item \textsuperscript{154} Id. at 325.
\item \textsuperscript{155} 8 U.S.C. § 1101(a)(42). See Koehn, supra note 67, at 207.
\item \textsuperscript{156} Id.
\item \textsuperscript{157} Western Hemisphere Immigration and United States Foreign Policy, supra note 22, at 23.
\item \textsuperscript{158} The Union of Soviet Socialist Republic and Cuba, for example.
\end{itemize}
the end of the Cold War has not necessarily ended the practice. Refugees continue to be used as political tools to achieve policy objectives.

As a result, individuals with equally convincing or more compelling cases for resettlement who are fleeing from non-communist countries and from repressive regimes that the State Department considers friendly to the United States have not secured equitable access to the refugee-admission program. Examples of this disparity include persons who have fled persecution in Chile during General Pinochet’s rule, South Africa, South Korea, El Salvador, Haiti, and the Philippines under Ferdinand Marcos. In addition, the Reagan and Bush administrations have consistently set disproportionately low admission ceilings for refugees from Africa and Latin America. For example, in 1997, African refugees comprised approximately 35 per cent of the world’s refugee population and only 9 per cent of total refugee admissions in fiscal year 1997 and for 8 percent of authorized fiscal year 1998 admissions.

Over the past decade, allocation numbers have favored refugees from Indochina, the Soviet Union, and Eastern Europe. These areas supplied 80 percent of all refugees admitted in FY 1997. As a consequence, bona fide refugees from other regions of the world are precluded from consideration under the resettlement program. In addition, emigrants from the Soviet Union, Eastern Europe, and Vietnam who do not satisfy the definition of a refugee continue to be admitted under the attorney general’s parole

159 Tyson, supra note 15, at 932.
160 Koehn, supra note 67, at 207.
161 Id.
162 Id.
164 Id.
165 Id.
authority or under special legislation passed by Congress.\textsuperscript{166} Deciding on the privileged few to admit as refugees remains an intensely political matter in the United States.

History has shown that the manipulation of refugee and immigration policy does not work well as a foreign policy instrument for the United States.\textsuperscript{167} It does not really undermine regimes Washington opposes, nor does it reliably bolster governments the United States wishes to stabilize. Ironically, the use of immigration and refugee policy may even hamper policy goals by placing impediments in the way of later bilateral relations between the United States and sending nations.\textsuperscript{168} Because of these drawbacks, using refugee policy as political armament against adversarial governments is a poor tradeoff.\textsuperscript{169} While refugee admissions implicitly discredit adversary governments as persecutors, many other means are available to disparage adversary governments. What this really means is that for the dispossessed refugee who is not of political importance or who is without a constituency in a third country, there is no alternative to compassionate refuge extended by the United States or some other government.\textsuperscript{170}

Instead of considering only how refugee policy serves short-term foreign policy goals, the Administration should also consider the possibility of how foreign policy decisions create "refugee flows." The domestic implications of such flows include illegal immigration, resettlement costs and political backlash against immigration and refugees. International implications include instability in regions that will become long-term foreign policy problems for the United States. Thus, policy decision-makers should address the interrelationship between refugee policy and foreign policy with long-term

\textsuperscript{166} In 1980 the Bush administration proposed legislation that would accord parolees the same privileges as other permanent residents of the United States
\textsuperscript{167} Western Hemisphere Immigration and United States Foreign Policy, supra note 22, at 293.
\textsuperscript{168} Id.
effects in mind. In addition the use of immigration policy as a tool for foreign policy quite often comes at a high price for individual migrants and for the United States as a moral community. These tactics treat population flows as little more than political pawns which offends elementary notions of fairness.

IV. IMPACT OF THESE INFLUENCES ON THE CURRENT SYSTEM

More than any other area of law, our immigration policies define who we are as a people and what qualities we admire and disdain in others. Consequently, the formulation of immigration policy requires value judgments about the optimal size of our population, the composition of our society, and our general economic direction.

The Refugee Act of 1980 established an overseas refugee admissions program based on systematic consultation between Congress and the executive branch. This policy, however, is subject to other competing influences; humanitarian concerns, domestic concerns including special interest groups and public opinion, and foreign policy concerns. Although many would argue that humanitarian concerns should be the primary basis for United States refugee policy, it is often subsumed by the other competing influences. This conflict has resulted in a discriminatory refugee policy in which political interests define and supersede humanitarian concerns. United States refugee policy should ensure that special interest and foreign policy concerns do not swallow up humanitarian concern for the plight of refugees. Not even the best efforts of

169 Id.
170 Tyson, supra note 15, at 933.
171 Id. at 932.
172 Western Hemisphere Immigration and United States Foreign Policy, supra note 22, at 293.
173 Id.
174 Legomsky, supra note 5.
175 Id.
the United Nations and private international relief organizations can remedy the plight of
the millions of global refugees when recipient nations close their borders or base admission policy on political goals.\textsuperscript{176}

There is an inherent tension that runs through all political and legal decision-making on refugee questions in the United States. The notion of refugee may initially evoke public sympathy, but the possibility of resulting privileges, especially the potential right to resettle indefinitely evokes suspicion that the unworthy are trying to claim that status.\textsuperscript{177} This suspicion is compounded by the inherent vagueness and confusion that results from competing interests that ultimately decide just who is a “refugee.”

When privately funded groups are allowed to secure admission for certain individuals, it allows wealthy groups to distort what should be public decisions on refugee admission priorities and further slants admission in favor of groups with important domestic constituencies and away from those having the greatest need.

In addition, U.S. foreign-policy actions rank among the most powerful “root causes” of Third World refugee flows.\textsuperscript{178} Foreign policy interventions create new domestic immigration and political pressures. Two examples of these are Vietnam and Cuba. In these instances, the United States Government proved unable or unwilling to halt immigration due to the “inability to control the flow at its source.”\textsuperscript{179}

In 1959, Fidel Castro established a communist government in Cuba. As a result between 1959 and 1961, approximately 125,000 Cubans arrived in the United States. This support for Cuban refugees was based largely on Cold War politics. The Kennedy

\textsuperscript{176} Id.
\textsuperscript{177} Aleinikoff, \textit{supra} note 7, at 718.
\textsuperscript{178} Koehn, \textit{supra} note 67, at 392.
\textsuperscript{179} Id.
Administration used parole authority to admit hundreds of thousands of Cuban refugees. The United States pursued a generously passive policy with respect to processing of Cuban claims for asylum, and as U.S. Cuban relations worsened the United States consular office disregarded routine criminal checks for those applying for visas. The U.S. government also provided more financial assistance programs to help establish Cubans in the United States than it had to any other group of refugees. 180

In contrast, to the Cubans who were entering the United States at roughly the same time, Haitian refugees seeking asylum in the United States worked against a powerful presumption that they were NOT victims of persecution. 181 Of the estimated thirty thousand refugees who entered the United States before 1980, it is estimated that only 25 – 50 were granted asylum. 182 This resulted from the United States policy toward the Duvalier government. The staggering difference in the numbers of Haitians and Cubans admitted before 1980 dramatically reveals the impact of foreign policy on immigration decisions. 183

Around 1964, in response to the brutality of the Duvalier regime, the black middle class began to leave Haiti. 184 In the next wave, many of the urban lower classes departed. 185 These migrants were poor and unskilled, they arrived when the United States had shifted toward immigration restrictionism and they sought to settle in a local area that had a history of racism and little need for low-wage, unskilled workers. Domestic forces impelled a distinct policy toward these new immigrants. The local elite goaded the federal authorities into an unparalleled policy of rejection of Haitians. Their

180 Zucker, supra note 43, at ix.
181 Id.
182 Id.
183 Id.
justification was a need to control U.S. borders, but in effect the public felt that if the Haitians were allowed to stay a precedent would be set that all poor, third world peoples could claim a right to come and remain in the United States. 186

The United States’ response to the refugee crisis created in Vietnam following the fall of Saigon was far more generous than its Haitian counterpart. Like others before them the Vietnamese were also victims of global rivalries. President Ford inherited the Vietnam War from Richard Nixon and the United States was unprepared for the events which quickly occurred after the disintegration of the Saigon government. 187 Following the collapse of the non-communist Nguyen Van Theu regime in 1975, the United States government became dedicated to a program to rescue its Vietnamese allies. The evacuees were to be admitted into the United States under the parole provisions of the Indochinese Refugee Act, and their numbers were set at a maximum of two-hundred thousand. Guidelines limited evacuation to United States employees and other Vietnamese whose lives would be endangered by the Communist takeover. However, these guidelines were not adhered to. 188 To facilitate their expedient evacuation, the Vietnamese refugee crisis was characterized as a rescue operation. Almost 130,000 Vietnamese refugees were airlifted out of Saigon prior to the Communist take over in April 1975.

When a humanitarian approach is not used to address refugee policy, not only do we defeat the intent of the Refugee Act of 1980, we also disregard international law. Ultimately, focusing on foreign policy may even create new refugees.

184 Western Hemisphere Immigration and United States Foreign Policy, supra note 22, at 129.
185 Id.
186 Id.
187 Zucker, supra note 43, at 43.
V. PROPOSED SOLUTIONS

Stephen Legomsky argues that an independent board for overseas refugee processing may be more neutral. He envisions that this board would make annual determinations of how many overseas refugees the United States is to admit and which classes of refugees will comprise the pool, in essence, transfer the responsibility now held by the Executive Branch to an independent body.

Under current law the President has the authority to make annual determinations of how many refugees the United States will admit and the countries from which they are to come. The main job of Legomsky’s proposed Board would be to announce the total annual refugee admission levels and choose among competing applicants based on statutory guidelines provided by Congress. Legomsky further suggests that the Board could specify geographic areas from which the refugees are to be drawn; it could prohibit the use of geographic criteria altogether, or it could have the discretion whether to employ geographic criteria. Under Legomsky’s plan the Board would be accountable to Congress and Congress should state explicitly “the principal goals are to ease the suffering of refugees and to promote observance of human rights.” Legomsky’s plan would preserve the existing presidential power to admit additional refugees in the event of an unforeseen emergency and should require the Board to make recommendations to the president concerning the exercise of that power.

The main advantage of the proposed Board over the existing system of presidential refugee selection is that an independent Board whose members enjoy fixed

184 Id. at 434.
189 Legomsky, supra note 5, at 676.
190 Id. at 708.
terms would be at least relatively removed from partisan and pressure group influences. 192

The most forceful criticism of Legomsky's proposed Board is the lack of political accountability. If the people did not elect the members, the members would not be removable except by the president in extreme cases. 193

Davalene Cooper suggests that federal courts, which would determine the degree, and kind of harm a foreign government inflicts upon its citizens, should make overseas refugee determinations. 194 Under this process judges would determine the kind of harm that is illegitimate. One possible standard of a legitimate government action is an exercise of power in the interest of its citizens and not in the interest of its leaders or a small group of citizens. Judges would make the decisions based on the general condition of the country and on the particular circumstances of the refugee. 195 This approach could accomplish the goals of the Refugee Act of 1980 and would lessen the role of the Executive Branch in the refugee process.

It is conceivable, however, that both humanitarian and foreign policy goals could be accommodated using the present system. If the executive branch would focus on humanitarian principles when deciding refugee policy the humanitarian intent expressed through the Refugee Act could be realized. To accomplish this policy-makers should consider within the consultation process the impact of foreign policy decisions on refugee flows. 196 This proposal simply expands the current requirement that decision-makers assess the impact of refugee policy on foreign policy goals, to include an assessment of

191 Id. at 710.
192 Id. at 711.
193 Id.
194 Cooper, supra note 25, at 945.
the impact of foreign policy decisions on refugee policy. If the executive branch considers such information too sensitive to be made public, there are at least two options: (1) create a liaison between the national Security Council and the congressional committees on refugee policy; or (2) form a special committee composed of executive agency experts on foreign policy and national security issues and members of Congress who sit on refugee policy committees. These reforms would integrate the decision-making bodies in a way that would allow careful consideration of refugee consequences.

In addition, perhaps the State Department should not be the only source of information on international human rights and world refugee conditions submitted to Congress as part of the consultation process. If considered at all they should be considered in the context of their United States foreign policy perspective. Such information should come from independent agencies with expertise in those areas, such as Amnesty International, the Lawyers Committee for Human Rights, voluntary agencies that work in refugee camps, the Human Rights Watch Committees and the United Nations High Commissioner for Refugees.

The executive branch may not be the best decision-maker regarding United States refugee policy. The present system of entrusting refugee policy largely to the President has a down side in regard to refugee determinations. In the first place there is an inherent probability that a President will make foreign policy his first priority, which is what the

195 Id. at 946.
196 Tyson, supra note 15, at 934.
197 Id. at 934.
198 Id.
199 Id.
200 Id. at 937.
American public expects.201

In addition the State Department, which is instrumental in making refugee policy decisions, has a central mission of effecting foreign policy.202 This approach inevitably influences presidential refugee determinations on the basis of foreign policy. Ironically, this approach not only excludes those in need of assistance, but can actually give rise to refugee flows.203

In spite of these obvious drawbacks, leaving the current system in place and shifting the focus toward humanitarian criteria for refugee selection is most likely the most appropriate solution. The current system, created and endorsed by the democratic process, provides flexibility and the ability to respond to refugee crises that other solutions may lack.

CONCLUSION

The above analysis indicates that in spite of U.S. efforts to conform with international law and act with it best humanitarian intentions, it often acts in its own self-interest with regard to its refugee policy. This approach has not replaced the former ad-hoc parole admissions system, but has more or less encouraged the continued use of executive branch group parole power.

The Refugee Act of 1980 cannot be legitimate unless it is based primarily upon a compassionate humanitarian concern for the plight of refugees. Yet foreign policy and domestic opinion continue to undermine the capacity of humanitarian concerns to influence refugee policy. In the future, if not addressed, domestic intolerance may threaten refugee admissions. To preserve the goals of the 1980 Refugee Act reforms

201 Id.
202 Id.

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must prevent the effects of foreign policy or public opinion to overwhelm the humanitarian goal of the Act. A balance must be struck between the need to achieve foreign policy goals and a continued commitment to help those who flee persecution.

If the United States wants to assume its international responsibility along with other developed western nations in addressing the current refugee crisis political agendas must be de-emphasized and humanitarian principles should be the primary focus.

If the executive is to maintain a central role in determining refugee admissions policy, the focus of selection must shift away from achievement of foreign policy goals toward fulfillment of humanitarian aspirations. Perhaps Congressional committees with a more neutral agenda should take a more active role in the determination process. In addition criteria for refugee designation should focus on humanitarian needs and less on foreign policy goals. Input from experts in field of human rights and humanitarian aid should have an active role in the refugee selection process.

203 Legomsky, supra note 5.