The President, the Courts and Ethnic Lobbies
Shape U.S. Immigration Policy:
The Path Dependent Legacy of the 1980 Mariel Cuban Boatlift

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INTRODUCTION

Shall we refuse the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our forefathers arriving in this land? Shall oppressed humanity find no asylum on this globe?¹

-Thomas Jefferson, December 8, 1801

Puzzle and Context

It seems counterintuitive to American notions of proper justice that the condition of indefinite detention for asylum seekers is a legal policy option actively chosen by the U.S. government. This thesis analyzes the Mariel boatlift crisis of 1980, a situation where this legal policy regarding asylum became precisely the favored option by the United States government. The humanitarian ethos articulated powerfully in the first presidential message to the Congress by Thomas Jefferson in the epigraph of this chapter, which has historically pervaded American ideology as a source of pride, was greatly challenged in the adventures and misadventures surrounding the institutions traced in this thesis.² The situation of indefinite detention of excludable aliens is not the only interesting and surprising aspect to the Mariel immigration crisis and thus its legacy is worthy of careful analysis.

To be sure, immigration is one of the most complex realms of U.S. policy and law. It is perceived to bear the most disparate and seemingly arbitrary applications extending to different groups and an authoritative dynamic constantly negotiated between the various branches of government, enterprising bureaucracies and the states that sometimes eagerly and sometimes reluctantly, assume the powers and burdens not explicitly vested in that federal capacity. But powers controlling immigration, through

² Emma Lazarus, “The New Colossus,” (1883). Inscribed on: The Statue of Liberty: “Mother of Exiles. From her beacon-hand … ’Give me your tired, your poor,/ Your huddled masses yearning to breathe free,/ The wretched refuse of your teeming shore./ Send these, the homeless, tempest-tost to me.”
history, are also importantly negotiated between nations. One episode after another has shown the inability of a unilateral quota or a simple regulating law in a single nation to predict or control the movement of people as well as the hubris of the policy-makers who think this to be the case. A failure to understand the dynamics and intricacies of the delicate and inexorable movement of people could lead to major crises, as it has in the past for the United States of America.

The Cuban regime’s export of those it deemed undesirable through the Mariel boatlift in 1980 bore a tremendous social, fiscal, and even philosophical burden on the United States that extended far beyond the summer of 1980 as more than 125,000 Cuban immigrants came to Florida within a few short months. Even the most comprehensive works chronicling the episode throughout the 1980s have had to end with a question mark on what, long after the event, remained of unresolved political and legal issues. This work will analyze the puzzling circumstances that characterized the United States at a moment of mass immigration crisis and the legal predicaments with which these circumstances were in dialogue.

In spite of the conventional intuition regarding the U.S. Constitution, there is a place in American law that favors entitlement rights over inherent rights. Further, despite Americans’ consolation in structural balances of power in national politics, there is an avenue of governance where the executive branch—and the bureaucratic agencies it oversees—exercise a disproportionate amount of discreitional power on the policies that they execute. Both of these anomalies appear in immigration policy. Crises test theories of governance in practice; the Mariel boatlift and the challenges it presented served as an intriguing case study on the interaction of variables in policy making, crisis management, and conflict resolution.

I will show that (1) Mariel Cubans who arrived in the so-called “Freedom Flotilla” were treated differently than previous groups of Cuban immigrants (besides not
receiving refugee status, part of the population was actually indefinitely imprisoned). (2)
The policies (which remained quite constant) of presidential administrations (which
varied greatly) over time often do not reflect the political or ideological inclinations of
those administrations. (3) The interest groups that should have been invested and
effective were only so to a certain extent. (4) The role of the judicial branch seems to be
of uncharacteristic significance throughout this crisis and its aftermath. Each of the
aspects of this greater dilemma is distinctly intertwined in the tensions and dynamics of
political decision making.

Overview of Argument

This work will use the concept of path dependence as a theoretical framework for
historical-institutionalism to explore the dramatic change in immigration policy toward
Cubans in the 1980s. It will also take a closer look at why there were still unresolved
legal and philosophical issues in U.S. policy toward the same group of Mariel Cuban
immigrants even 25 years after the boatlift crisis that brought them to U.S. shores. I will
investigate the explanations for why this was the state of affairs in 2005, 25 years after
the Mariel boatlift crisis, and will argue that a critical juncture occurred between 1980
and 1984 in a particular way which was highly consequential for the legacy of the policy
toward excludable Cuban immigrants.

Following its established analytical approach, this work traces the specific
mechanisms that reinforced new trajectories and outcomes in US immigration policy and
law toward Cubans. Arguments of political time and path dependence assert that certain
policy trajectories are punctuated by critical moments, that reshape political life. Such a
“watershed” (like the 1980 Mariel boatlift, which moved over 125,000 Cuban immigrants
across the Florida Straits over the course of just a few months) prompts a series of small
causal events which, in turn, produce contingent courses of action over time limiting the
ability of political actors to change policy from the new trajectory and putting institutions in a position to perpetuate potential path inefficiencies. Because of its ability to accommodate for the causal and often unpredictable nature of decision making over time, this analytical framework within historical institutionalism accounts for otherwise inexplicable or counterintuitive circumstances, such as the history analyzed in this thesis about a particular crisis. Since the sequence of events and timing is vital in historical institutional analysis, my work maintains that the “critical juncture” occurred in a specific way and this way was highly consequential. Correspondingly, the units of analysis are in nation years: $t, t+1, t+2...tn$. For a concise conceptualization of the argument the reader may choose to review Appendix A.

Roadmap

This is the organization of this thesis. In Chapter 1, I outline the analytical approach briefly mentioned above. In the Chapter 2, this work presents the antecedent conditions that constitute the baseline against which the policy change that occurs in the critical juncture will be measured. This section observes the particular nuances and rationales for a policy that largely characterized the period after the Cuban revolution between 1959 and 1980. In those years, the treatment of Cubans was markedly closer to what Jefferson seems to be alluding to in the quote at the start of this chapter. This policy welcomed Cubans to the United States for both strategic and ideological reasons.

In Chapter 3, the thesis moves to a discussion of the pivotal “critical juncture,” which is the watershed event that opens policy choices for political actors. In this section, the work will trace why officials choose to take one course of action, when it would have been plausible—even predictable—for them to have taken another. A new policy trajectory is observed to be crystallized by certain identifiable “mechanisms of production,” which sharply narrow the policy path and eventually limit choice.
In the historical narrative presented as a case study, Carter appeared initially to continue the previous policy to welcome Cubans with an “open heart and open arms.” As this invitation created more issues than anticipated, the humanitarian Carter abruptly shifted policy to a version of strict deterrence previously unobserved with regard to Cuban migrants. Carter forwent refugee designation for arriving Cubans and instead assigned a unique “Cuban/Haitian Status Pending” unresolved legal status. As Reagan was elected in 1980 and inherited this policy from his predecessor and political foe, he initially took little action to amend the policy, continuing the path of restrictive deterrence toward Cuban immigration. Eventually, Reagan proposed unsuccessfully that the Mariel Cubans be able to earn an earlier status of residency with still many fewer privileges than their predecessors. Congress did not ultimately grant this exception and Reagan instead reinstated the Cuban Adjustment Act of 1966 in favor of a class of certain Mariel immigrants in “good standing.” This action created a class of Mariel immigrants, those detained for committing crimes small and large and deemed excludable because of their previous parole status, who were now legally distinct from all other Cubans—including many of those who arrived with them during Mariel.

In Chapter 4, the thesis traces the mechanisms of reproduction, or events and decisions, which define and shape the legacy of the Mariel immigration crisis. Despite large exogenous shocks that seek to disrupt the policy path, negative externalities persist as a result of the policy, notwithstanding a marked absence of the original cause that produced the trajectory—thus, the restrictive deterrent policy formed during the critical juncture largely persists. This is the period between 1984 and 1987. During this time, the Reagan administration worked to instate a migration agreement whose negotiations initiated with President Carter. Finally approved in December of 1984, the agreement provided arriving Cubans with most pre-1980 privileges. It also forced the Cuban
government to agree to readmit 2,746 Cubans (listed specifically by name for the agreement) who were among those under the indefinite detention of the U.S. government.

During this period, the influence of the emerging Cuban-American interest group as a major force in politics was clear. Curiously, the actions and inactions of the Cuban-American community consistently undermined the intent of the Reagan administration who it considered a political ally. For example, the much-worked for migration agreement of 1984 was immediately suspended by the Cuban government when Fidel Castro learned that the Cuban-Americans had begun broadcasting a new “Voice of America” radio program, Radio Martí, toward Cuba. Interestingly, during this period, this group appeared to be surprisingly unconcerned with the plight of the great negative externality of the Mariel crisis: the indefinite detention of excludable immigrants and the legal denial of their due process rights. In 1987, absent any other recourse, and having heard that they might be returned to Cuba as a result of the reinstatement of the 1984 agreement, indefinitely detained Mariel immigrants rioted and took hostages in two prisons. Negotiations to end this domestic crisis which evidently resulted from complications in Mariel led to significant concessions from the Reagan administration, including promises for full review of each of the excludable Cubans’ cases.

In the final empirical chapter, Chapter 5 shifts to the period after the migration agreements and prison riots. During this phase, more mechanisms perpetuated the condition of the excludable immigrants that remained in prison without remedy. In this final phase, the policy established by Carter and refined by Reagan toward this population of Mariel Cubans persisted across the administrations of Bush and Clinton. Surprisingly, however, Clinton will face a migration crisis of his own in 1994, which at its start appeared similar to the Mariel immigration episode, if not worse. To a certain extent, Clinton’s response reflected lessons learned from previous episodes. But, the initial response of detaining nearly 30,000 immigrants at the military base bordering
Guantanamo Bay, Cuba, appeared as if it would again replicate the Carter experience of creating a new class of excludable immigrants who could not be sent back to Cuba. Clinton ultimately reversed course and, inverse to the Carter decision making experience, admitted the detained migrants as refugees to the United States of America. A final migration agreement with Cuba also made no action with regard to those from Mariel who were still in indefinite detention in the United States waiting to be returned to Cuba.

During and after this period, the courts became an interesting battleground for the many excludable Mariel Cubans. By both reinforcing and challenging the policy trajectory of Mariel, lower court rulings on due process rights for aliens and constitutionality of indefinite detention destabilized the policy path throughout this period. The notion of asymmetrical power, to be described later in this work, promises the prospect of a final resolution to the greatest remaining legal and philosophical challenge of Mariel. The Supreme Court eventually accepted a case that combined the rulings for two similar Cubans in a state of indefinite detention. In a conclusive 7-2 decision, the court unexpectedly ruled in favor of the Cubans and slowly effected the release of hundreds of indefinitely detained excludable immigrants who finished serving their sentence. The highest court proved to be a sufficient and rare corrective mechanism for this vexing issue which, as this work proves, remained as a result of early, contingent decision making in the Mariel critical juncture period.

After placing the historical institutional analytical lens on this particular historical narrative, the thesis ultimately contends that tremendous migration episode of over 125,000 Cubans brings to light a number of issues which still remain with regard to this extremely interesting aspect of immigration policy and the “unhappy fugitives” that it treats.³

³ “Unhappy fugitives,” alluding to Jefferson quote in epigraph.
CHAPTER 1: METHODOLOGY AND ANALYTICAL APPROACH

This chapter will discuss the primary analytical approach of this work: the application of qualitative methods in analyzing causal complexity. In particular, it focuses on how process-tracing through a case study can address explanations of those rare-but-important path-dependent historical circumstances. The first section gives an overview of the historical institutional framework. It will then unpack the concepts that surround critical junctures and path dependence, including its component elements of causal possibility, contingency, narrowing of alternatives and increasing returns. It argues that a rigorous adherence to the particular contours of these frameworks is vital to making meaningful explorations of important cases. It will describe why case studies are best suited to testing this theory in the context of an immigration crisis, like the Mariel boatlift crisis analyzed in this work, and will briefly explain how to map and prove this unique argument.

Political Time, Path Dependence, and the Historical Narrative:

The intrigue of the questions posed in the introduction lies in the fact that conventional explanatory models cannot effectively explain their outcome. For example, theories that emphasize ideological motivations for political leaders are insufficient to explain why the policies, which persist across politically diverse executive administrations, over time often do not reflect the political or ideological inclinations of those administrations. In addition, structural theories cannot accommodate for the

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4 “It is historical because it recognizes that political development must be understood as a process that unfolds over time. It is institutionalist because it stresses that many of the contemporary political implications of these temporal processes are embedded in institutions—whether formal rules, policy structures, or norms.” Paul Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” The American Political Science Review Vol. 94, No.2. (June 2000), pp. 264-65.

5 This is counterintuitive in light of the literature on the influence of ideology in agent-based decision making. See: Martin Hollis and Steve Smith, Explaining and Understanding
uncharacteristic significance of courts in an immigration policy issue or for the bureaucratic autonomy exhibited early in a crisis centrally controlled by the White House. The approach of this work helps to explain the dramatic policy change and perpetuation of what became a less than optimal immigration arrangement for the United States regarding Cuban immigrants. A restrictive and deterrent policy was born from the period of 1980-1984 and persisted for the next 25 years. This policy was one which lost governors their elections, burdened local domestic populations, provoked violent riots in prisons, brought the executive branch into a power struggle with its judicial counterpart, and violated the most hallowed rhetoric of the “most generous nation” by creating the conditions for practices of indefinite detention.

In contrast to standard regression systems and common exercises in comparative political science, which all attempt to explain large effects by invoking large single-causes, scholarship in historical institutionalism has sought logical and traceable inferences of merit by looking at events temporally in history. Institutional arguments label claims where institutions—man-made formal or informal organizations, rules, or norms—cause an actor to move in a particular way. Historical institutionalism has

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traditionally emphasized choices made early in political time to explain a complex question.\textsuperscript{10} While most political scientists agree that “history matters,” it is understood that history matters to historical intuitionalists mostly because choices made at time $t$ have the capacity to greatly constrain those choices made at time $t+1$ and thus early decisions may persist.\textsuperscript{11} Institutions, like those that govern particular immigration policies, cannot be easily changed even as the conditions around them change.\textsuperscript{12} Therefore, policies may become path dependent—persisting as initiated until a sufficient force can deflect them.\textsuperscript{13} Path dependent analyses need not imply that a policy path necessarily permanently locks in when it is moved to a self-reinforcing path.\textsuperscript{14} To be sure,


\textsuperscript{10} Depending on the scope of the study this may refer to the beginning of a crisis, the beginning of a polity, the beginning of a term of office, etc... Paul Pierson, \textit{Politics in Time: History, Institutions, and Social Analysis}. (Princeton University Press, Princeton, NJ. 2004).


\textsuperscript{14} This refutes a challenge made by Thelen in reference to path dependent analysis. Kathleen Thelen, “Historical Institutionalism in Comparative Politics.” \textit{Annual Review of Political Science}. (1999), 369-404.
change continues.\textsuperscript{15} But the change is bounded within limitations—that is, until something erodes the mechanisms of reproduction that generate continuity.\textsuperscript{16}

There are a couple primary features of a path dependent argument. First, since it is inherently based on a temporal logic of causation, any institutionalist claim of path dependence must be more than an historical snapshot.\textsuperscript{17} In the case at hand, I will be looking at a period of more than 25 years and the policies, attitudes, and behaviors that emerged as a result of the crisis in question. One can only determine the manner in which institutions shape outcomes if their effects are followed over time.\textsuperscript{18} Second, the greater the structural indeterminacy in the initial stages of the period analyzed the more credit institutional logic may claim in explaining outcomes.

For example, one important task in the first part of this paper is to demonstrate that for a number of reasons, including bureaucratic inefficiencies, lack of communication and lack of leadership, there was a wide range of possible outcomes and the path ahead was quite uncertain. If the path were already strictly constrained by known structures and inflexible institutions, policy and behavior would proceed in a predictable fixed path. The novelty of the circumstances surrounding the Mariel crisis is that the policy path, as we trace it in retrospect, indeed turned out to be incompatible with the structures and norms that previously controlled immigration outcomes. Policies and decisions led to institutions that were often counterintuitive and, at times, less than optimal.

\textsuperscript{15} Douglas North, \textit{Institutions, Institutional Change and Economic Performance}, 98-9. “At every step along the way there [are choices]—political and economic—that provide…real alternatives. Path dependence is a way to narrow conceptually, the choice set and link decision making through time. It is not a story of inevitability in which the past neatly predicts the future.”
\textsuperscript{16} Pierson, “Increasing Returns,” 265.
\textsuperscript{17} Parsons, \textit{How to Map Arguments}, 1.
As a major element of path-dependent processes, mechanisms of reproduction constitute the ongoing institutional processes which perpetuate the policy path and determine the relative stability of the policy legacy.\(^{19}\) The “mechanisms of reproduction” are temporally distinct from “mechanisms of production,” which are similar decisions and institutions but which occur as a series of intervening steps within the period of the critical juncture and initially shape the policy trajectory.\(^{20}\) Many works of political science that treat critical junctures neglect a thorough analysis of the mechanisms of reproduction—processes which occur following the juncture but remain causally connected to the prior period. By contrast, in path dependence arguments, strong empirical focus on the mechanisms of reproduction provides more interesting insights to the origin of institutional continuity and change.\(^{21}\) Such arguments move beyond the assertion that a period demonstrates a path dependent process, into the more fruitful observations of the mechanisms that are strong enough to perpetuate sub-optimal paths in spite of large exogenous shocks—as this chapter will illustrate.\(^{22}\) As identified in Collier and Collier’s *Shaping the Political Arena*, “[it] is precisely because political structures tenaciously resist change that we seek to better understand critical junctures and their [subsequent] impact.”\(^{23}\) Perhaps what is most interesting about path dependence, which may emerge from such junctures, is its ability to explain sub-optimal outcomes.\(^{24}\)

The path dependence argument posits that many important political puzzles cannot be accurately or sufficiently solved by common functionalist political science


\(^{20}\) Ibid.

\(^{21}\) “Thus, whether an institution becomes ‘locked-in’ and whether it is impervious or vulnerable to particular kinds of shocks depend on a whole constellation of mechanisms that support or undermine the institution and its alternatives, rather than just relying upon positive feedback regarding the institution itself.” Thelen, “Historical Institutionalism,” 387.

\(^{22}\) Thelen, “Historical Institutionalism,” 102.

\(^{23}\) Collier and Collier, *Shaping the Political Arena*, 36

explanations. Such conventional analyses, which attribute large effects to large causes and use statistical models for probabilistic causality, are not adequate to explain complex observations of political processes over time. Functionalist theories often overemphasize the capacity of rational actors to craft the best solutions, given their resources and constraints, to the problems that confront them. In doing so these analyses also cannot accommodate for timing and sequence as vital independent variables.

This work will use this model that has most recently been refined and elaborated by Paul Pierson, James Mahoney and Kathleen Thelen, and that was employed prior by Ruth Berins Collier and David Collier. The increasing precision of this particular path dependence argument is based on: (1) theory drawn from mathematics most famously explained by Brian Arthur’s polya-urn process which argues that small contingent causes at the beginning of a path can have long-term consequences on the choice of possible paths; (2) principles drawn from economics of increasing returns, which help explain an actor’s reticence or inability to change policy courses; and (3)

25 Pierson, “Increasing Returns,” 263-64. “Functionalist arguments take the following form: Outcome X (e.g., an institution, policy, or organization) exists because it serves the function Y...Thinking in functionalist terms about an institution, policy, or social organization may be a good way to derive causal hypotheses, but functional accounts are far from being the only plausible ones. Many alternatives to the outcome in question might have been possible, and a dynamic of increasing returns may have locked in a particular option even though it originated by accident, or the factors that gave it an original advantage may have long since passed away Thus, recognizing the possibility of path dependence necessarily draws social scientists to an investigation of history, if only to evaluate the validity of functionalist assertions.”
28 Ibid.
31 Collier and Collier. Shaping the Political Arena.
notions drawn from evolutionary biology of punctuated equilibria. Punctuated equilibria refer to moments opening the opportunity for dramatic change, as opposed to classic gradualist theories. This feature is represented in this analysis by a distinct critical juncture redefining an historical policy trajectory.

Critical Junctures:

Arguments of political time and path dependence claim that certain policy trajectories are punctuated by critical moments that reshape political life. Such a “watershed” when embedded in a backdrop of particularly contrasting antecedent conditions (like the 1980 Mariel boatlift that moved over 125,000 Cuban immigrants across the Florida Straits over the course of just a few months) prompts a series of small causal events. These events, in turn, produce contingent courses of action over time (without the recurrence of the original cause) creating and crystallizing institutions that perpetuate their newly vested interests, limit the ability of political actors to change policy from the new trajectory and put institutions in a position to perpetuate lock-in for


sub-optimal, or less than relatively efficient, paths.\textsuperscript{36} This process can be seen in the figure 1.1 below.

**Figure 1.1: Building Blocks of Historical-Institutional Analysis**

![Diagram showing the building blocks of historical-institutional analysis](image)

(Source: Collier and Collier 1991, p. 30.)

In the past, critical junctures have been employed to explain moments of political reform and policy change—much like the aim of this thesis.\textsuperscript{37} By definition, these moments open a window of opportunity for a variety of policy paths. The approach has


been developed in examining major shifts in American trade policy,\textsuperscript{38} examining the
preconditions for institutional reform in Switzerland,\textsuperscript{39} and illustrating windows of
opportunity for policy change, like post-election mandates.\textsuperscript{40} Because this concept is
criticized by some political scientists who claim that is too ill-defined and arbitrary to be
of use, it is important to maintain a rigorous criterion for what constitutes a critical
juncture explained at the beginning of this section.\textsuperscript{41} While the framework has explained
a variety of political circumstances, the nature of the particular historical moment that
constitutes a critical juncture must be the same. Each of these scholars has agreed that
there must be a generative crisis or cleavage that challenges political decision makers,
accompanied by a period of change in policy path that is significant, swift, and enduring
(as seen in Table 1.1).\textsuperscript{42} If these conditions are absent, then so is the critical juncture. The
critical juncture, as well as its path dependence counterpart (to be expounded upon
shortly), therefore provide historical-institutionalists with tools in exploring and
measuring change.\textsuperscript{43} But during these formative junctures, there are interesting political
processes that drive change and explain the perpetuation of particular policy paths.

\textsuperscript{38} Stephan Haggard, “The Institutional Foundations of Hegemony: Explaining the Reciprocal
\textsuperscript{39} Klaus Armingeon, Michelle Beyeler, and Harmen Binnema. “The Changing Politics of the
Welfare State: A Comparative Analysis of Social Security Expenditures in 22 OECD Countries
\textsuperscript{40} Geoffrey Garrett and Peter Lange, “Internationalization, Institutions, and Political Change,”
\textsuperscript{41} Liebowitz and Margolis, “Path Dependence, Lock-In,” 205-26.
\textsuperscript{42} John Hogan, “Testing for a Critical Juncture: Change in the ICTU's Influence over Public Policy
\textsuperscript{43} A path dependent process is defined by Paul David as “one whose asymptotic distribution
evolves as a consequence (function of) the process’s own history.” Paul David. “Evolution and
Path Dependence in Economic Ideas,” ed. Pierre Garrouste and Stavaros Iōannidēs. \textit{Evolution and
Table 1.1: The Critical Juncture Grid

<table>
<thead>
<tr>
<th>Generative Cleavage (Crisis)</th>
<th>Change (Significant, Swift, and Enduring)</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Crisis + Significant, Swift, and Enduring Change = Critical Juncture</td>
<td>Crisis + No Significant, Swift or Enduring Change = No Critical Juncture</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>No Crisis + Significant, Swift, and Enduring = No Critical Juncture</td>
<td>No Crisis + No Significant, Swift, or Enduring Change = No Critical Juncture</td>
<td></td>
</tr>
</tbody>
</table>

(Source: Adapted from Hogan, 2005, p.25.)

**Increasing Returns**

Just as the “critical juncture” element depends upon a strict definition to defend its integrity and utility, so does the other aspect of complete historical-institutional analysis: path dependence. “Path dependency” has become almost cliché in political science writing, referring to anything that remains fixed or inertial. However, for the purpose of post-critical juncture analysis, path dependence should be applied only to that path which results from processes of *increasing returns*. The work of Douglas North which famously won the Nobel Prize for economics placed a great deal of emphasis on increasing returns processes in his analysis of the development of modern capitalism.

However, in political science there are also many prominent examples of analysis of critical junctures that produced path dependence.

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45 This historical-institutional terminology of “inertia” may be misleading. Such terms suggest that policy “freezes.” The fact is that policy is in constant institutional flux and its state and trajectory is shaped by a distinct set of processes, or “mechanisms,” which exhibit positive and negative feedback or increasing returns. It appears inertial because its overall impact and intent may not change even despite challenges to it.


The concept of increasing returns features in path dependence analysis because, according to Margaret Levi, path dependence has to mean that once started down a particular track, the costs of reversal are high. She suggests that “perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches...the branch on which the climber begins is the one which she tends to follow.” Increasing returns processes that are linked to path dependence, have several intriguing characteristics that Arthur has outlined as follows:

1. **Unpredictability**: Because early events have a large effect, and are partly random, many outcomes may be possible. We cannot predict ahead of time which of these possible end-states will be reached.

2. **Inflexibility**: The farther into the process we are, the harder it becomes to shift from one path to another...Sufficient movement down a particular path may lock-in one solution.

3. **Nonergodicity**: Accidental events early in the sequence do not cancel out. They cannot be treated (which is to say, ignored) as “noise,” because they feed back into future choices. Small events are remembered.

4. **Potential path inefficiency**: In the long-run, the outcome that becomes locked in may generate lower pay-offs than a forgone alternative would have.

Each of these features which reinforce the understanding of institutional continuities and changes are important to the study at hand. Especially descriptive in political science analysis is the final concept of “path inefficiency.” Asking why a system operates in a less than optimal way and how it got to that point is vital. Yet, to be

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Ibid.


sure, it is far more difficult to measure the relative inefficiency of a policy choice in politics in comparison with economics, which was the starting point for path dependent analyses—politics is a “far, far murkier environment.”\textsuperscript{52} It is sometimes difficult to find a meter stick (like prices in economic analyses) for political decisions.\textsuperscript{53} It may also be difficult to observe the intricacies of political performance from all angles in such complex systems. There are elaborate procedures that negotiate collective choice and concurrently undermine transparency to the analyst.\textsuperscript{54} As Pierson writes, “The complexity of the goals of politics as well as the loose and diffuse links between actions and outcomes may render politics inherently ambiguous.”\textsuperscript{55} But, as with many tasks, the relative difficulty of obtaining the motivations for particular policies and the measures of their efficiency or effectiveness make the findings all the more worthwhile once they are obtained. And so, like many close historical-institutional case study analyses before this, this work will treat a promising case of counter-intuitive institutional development.

Pierson has described several features that make the political realm also especially fertile territory for path dependence analysis.\textsuperscript{56} These features, which have been shown to typically produce the kind of feedback that sustain and perpetuate institutions, include the common place of: (1) collective activity in politics, (2) the central role of formal, change-resistant institutions, (3) the possibilities for employing political authority to magnify power asymmetries, (4) and the great ambiguity of many political processes and outcomes.”\textsuperscript{57}


\textsuperscript{53} North, \textit{Institutions, Institutional Change and Economic Performance}.


\textsuperscript{56} Ibid, at 19.

\textsuperscript{57} Ibid.
In Brian Arthur’s work, there are four important features that engender increasing returns processes—the mechanisms that drive path dependence.\footnote{Arthur, Increasing Returns and Path Dependence in the Economy, 112.} Although originally tailored to explain technological or economic processes, many of these are identified in the variables systematically isolated and analyzed in the aforementioned canon of political science’s historical-institutionalism and its emerging literature.\footnote{Path dependence and critical junctures have been most famously employed in analysis of technological processes. The perseverance of the “QWERTY” typewriter keyboard is attributed to increasing returns where a particular technological configuration in a complex, knowledge-intensive sector, achieves a decisive advantage over its competitors although it may not have been the most efficient alternative in the long-run. Being the fastest out of the gate for the “QWERTY” keyboard, if only because of random historical accident, became decisive as positive feedback locked this technology in as the standard. In this process, with increasing returns, actors had strong incentive to continue down a particular path once initial steps were taken in that direction. Paul A. David, p.1. Jervis, System Effects: Complexity in Political and Social Life (Princeton, NJ: Princeton University Press. 1997), 158, 165.} Examples of these can also found throughout the case that this work will treat most closely.

1. \textit{Large set-up or fixed costs:} When set-up or fixed costs are high, individuals and organizations have a strong incentive to identify and stick with a single option.

2. \textit{Learning effects:} With repetition, individuals learn how to use products more effectively, and their experiences are likely to spur further innovations in…related activities.

3. \textit{Coordination effects:} The benefits an individual receives from a particular activity increase as others adopt the same option...positive network externalities.

4. \textit{Adaptive expectations:} When ‘picking the wrong horse’ may have very high costs, actors must constantly adjust their behavior in the light of how they expect others to act.\footnote{Pierson, “Increasing Returns, Path Dependence,” 254.}

\textbf{Conclusion}

This paper will feature one particular case study: the Mariel boatlift of 1980 and will follow the treatment of this population of immigrants. Since historical-institutionalist explanations are intended for rare and significant events, this historical-narrative-tracing framework helps to explain the causes and outcomes of some of the greatest political science puzzles. Further, variables that would have been omitted in broad, sweeping
stock explanations to these puzzles are more easily identified and analyzed because of the systematic and temporal nature of these studies. Contingent events, for example, cannot be as easily traced in historical snapshots. Therefore, this thesis will at once serve to test the features of critical juncture and path dependence theories and help elucidate and unravel the various puzzles involving the Mariel boatlift crisis and its interesting legacy.

Ultimately, in order to successfully support an institutionalist claim, an argument must consist of two important parts. (1) It must link institutional positions to action. (2) Then, it must also show that extra-institutional conditions do not appropriately explain the actions/outcomes—i.e. showing that at some point pre-existing institutions, structures, and ideational elements, or other prominent political science explanations, cannot clearly link patterns of action. This second step serves to establish the range of contingency so important to the historical-institutional argument. The result of this is an argument that shows what happens when rational decision makers unintentionally define their own future.

In sum, an historical circumstance that is explained best by historical-institutional and path dependent analysis must (1) be embedded in important antecedent conditions that serve as the baseline against which the change in the critical juncture will be measured and describe the policy before the shift. It must (2) demonstrate a watershed event that serves as a means of opening of choice and widens policy possibilities. Here, officials will choose to take one course of action when it would have been possible, even predictable, for them to take another. It (3) demonstrates that despite exogenous shocks, a new policy that initially formed in the critical juncture, quite different from the old one, proceeds despite the absence of the original cause. In this phase, political players will experience increasing returns from policy path and are constrained by these, while options become limited as time goes on and the new trajectory crystallizes. (4) The policy
path is concurrently reinforced by events that perpetuate and reproduce the trajectory formed during the original crisis.
CHAPTER 2: ANTECEDENT CONDITIONS

The antecedent conditions in this study represent a “base line” against which the critical juncture and the legacy will be evaluated for continuities and changes. In order to understand the scope of the shift which occurred in the period studied later in this work, it will be prudent to briefly expound on the circumstances surrounding U.S. refugee policy toward Cubans at t-1—that is before 1980. In general, since World War II the United States has followed a practice of defining refugees according to its own national self-interest—interests often tied to foreign policy or other overriding goals. In practice this created a policy favorable to those fleeing from a communist or totalitarian government. This bias has unraveled in the context of an international movement for developing a definition of “refugee” founded on universally acceptable humanitarian principles. While some tension arose from these conflicting policy definitions and rationales, the United States confidently pursued a policy that it thought had great ideological and strategic worth.

In order to see policy change later, it is important to know what the previous trajectory looked like. This is the primary merit of understanding the antecedent conditions in historical-institutional analysis. In this case, the antecedent conditions are quite interesting in the sense that the previous immigration policy (1959-1980) was extremely persistent.

Previous Immigration Policy Toward Cubans

Between January 1959 and April 1980, U.S. immigration policy toward Cubans bore a unique and inertial state that no legislation, including the historic Refugee Act of

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1980, could alter—and it appeared that it would continue this way. The “open arms,” inviting and generous policy that characterized the United States government’s relationship with Cuban immigrants was unique because it was never extended to Chileans fleeing Pinochet or Haitians fleeing Duvalier. It was inertial policy because it was reiterated and reinforced by every presidential administration through the period, even despite some major challenges. But the year 1980 presented a stark turning point in U.S. refugee policy, particularly toward the Cuban population.

Since Fidel Castro assumed power and began to unveil his increasingly autocratic agenda, the rhetoric of the United States’ federal government administrations has consistently been one of kindness to Cuban immigrants fleeing communism. Up until the summer of 1980, these public affirmations of generosity had indeed translated to a policy generally favorable to the acceptance of the refugee populations. The words of the United States’ presidents throughout this tumultuous period are a testament to that pervasive humanitarian ethos consistently showing the United States government’s commitment to a policy path that, at once, served strategic and ideological ends.

Strategically, especially in the early 1960’s, a favorable policy toward Cuban immigrants allowed the opportunity for Cubans to organize themselves in exile for anti-Castro activities. After all, this tactic seemed to be the history of Cuban power struggles. As an outside actor, the United States explicitly sought, through policy and

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63 Throughout the 1960’s and 1970’s, administration officials and members of Congress made continual reference to the U.S. tradition of asylum as a rationale for admitting Cubans. Interestingly, these “Statue of Liberty” ideals were not uniformly applied to all immigrant groups in need, including victims of Nazi persecution in the 1930’s and 1940’s, and others fleeing dictatorship in the Western Hemisphere, even in the time of the Cuban Refugee Program. David W. Engstrom, Presidential Decision Making Adrift: The Carter Administration and the Mariel Boatlift (Rowman and Littlefield Publishers, Inc. Lanham, 1997), 42. “Open arms” refers to Carter’s comment initially welcoming the Cuban immigrants with “an open heart and open arms” to be discussed shortly.

64 In 1849 General Narciso Lopez fled to the United States after his unsuccessful attempt to ignite a revolt against Spain. In the United States, he quickly procured support from Cuban exiles and sympathetic Americans and organized another revolutionary expedition a year later. Later, Cuban exile leaders organized in New York behind Jose Martí in 1898 in support of General Máximo...
public statements, to distinguish itself as an ideological polar opposite to the newly established and increasingly totalitarian Cuban regime.\(^6^5\) In the context of the Cold War polarization, Cuban immigrants to the United States served an important symbolic function, "voting with their feet" for the American system and its society's comparative moral supremacy. They were liberty-loving people just like their model Hungarian and Berliner immigrant counterparts.

Shortly after Fidel Castro assumed power, President Eisenhower affirmed, "We must not forget that we want to be dealing in such a way that the Cuban people, who are our friends, are treated justly and there is no action taken that in the long run would be detrimental to them."\(^6^6\) Eisenhower quickly created the "Cuban Refugee Emergency Center," initiating a comprehensive program for receiving, resettling, job-training, employment placing and social service for the Cuban immigrants.\(^6^7\) This was the first of such statements affirming the U.S. commitment to the Cuban refugees.

In 1961, President Kennedy clearly defined the perception he wanted to broadcast when he wrote in a note to his United States Secretary of Health, Education and Welfare:

> I want you to make concrete my concern and sympathy for those who have been forced from their homes in Cuba...we cannot be a peacemaker if we are not also

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\(^6^7\) Ibid.
the protector of those individuals as well as nations who cast with us their personal liberty and hopes for the future. Immediate action should be taken to assure no interruption in present services for the refugees. 68

With that, Kennedy continued the “Cuban Refugee Program” established under Eisenhower as the “Cuban Refugee Emergency Center” whereby Cuban migrants were provided services well above those given to any other migrant group.

In signing the Immigration Bill of 1965, President Johnson arranged suiting theatrics and chose to use the Statue of Liberty as the backdrop of his historic scene. Lady Liberty stood majestically in the background asking for: “your tired, your poor/Your huddled masses yearning to breathe free.” 69 Meanwhile, Johnson gave his dramatic monologue:

I declare this afternoon to the people of Cuba that those who seek refuge here in America will find it. The dedication of America to our traditions as an asylum for the oppressed is going to be upheld… it stamps the mark of failure on a regime when many of its citizens voluntarily choose to leave the land of their birth for a more hopeful home in America. The future holds little hope for any government where the present holds no hope for the people. And so we Americans will welcome these Cuban people. 70

Here, Johnson used this stage to reproduce the exact same policy rationales that had been previously employed. First, the classic sociological “pull” factor is invoked by an invitation to the persecuted Cubans by the executive. 71 Then, the appeal to the tale of

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71 Further evidence of favorable view of the Cuban refugees from members of Congress can be seen in the passage of An Act to Adjust the Status of Cuban Refugees to that of Lawful Permanent residents to the United States, Statutes at Large (1966), 80. This allowed Cubans who had entered the United States under parole status to adjust their status to permanent resident aliens without having to apply for that status at a U.S. consulate. Cubans could also claim up to “30 months in the U.S. without residence as a part of the five years required for citizenship.” Sylvia Pedraza-Bailey, Political and Economic Migrants in America: Cubans and Mexicans (University of Texas
America’s tradition of generous asylum for the needy was evoked by the symbolic scenic imagery on “Liberty Island.” Finally, the philosophical distinction between the U.S. and Cuba was marked by highlighting how embarrassing it is to the Cuban regime, for so many to want to leave their homeland and choose to come to the United States. All of the aforementioned idea were themes marking this policy path that were reproduced time and again throughout this “antecedent condition” period.

Yet even when this policy path was challenged it stood formidably and persevered. When some opposition arose in the U.S. Congress to the Cuban Airlift, which was a short-lived policy bringing family members of Cuban exiles to the United States and served an important family reunification role, the Nixon administration vigorously defended the traditional favorable stance toward the Cuban refugees. The Nixon administration and its Department of State went to great lengths to make it clear that Cubans who had registered through the airlift program suffered greatly under the Cuban regime because of their decision to leave.²²

The effect of these executive expressions was the arrival of almost 800,000 Cuban immigrants to the United States between 1959 and 1980, more than 9 percent of the Island’s population—all of whom were settled under a generous refugee program and for the most part experienced few political obstacles to acclimating in the U.S. The trend can be seen in Table 2.1 and Figure 2.1, where it is clear that at no point would there be nearly as great an influx of immigrants from Cuba as there would be in 1980. The United

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²² Howard H. Palmatier, Director of the Cuban Refugee Program. Cuba and the Caribbean, (Congressional Hearing, 1970), 43: “We understand for them [Cuban refugees] that, as soon as they did sign up to leave Cuba as a result of the Memorandum of understanding, their property was confiscated. In many instances—in most instances, as a matter of fact—they were taken out of a regular job, no matter what that might have been, and put out to work in cane fields. From that moment on they were officially referred to by the Cuban Government as worms and non-people, so to speak.”
States was not prepared, nor had they ever experienced a comparable ordeal with regard to this population.

Table 2.1

<table>
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<td>1968</td>
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Figure 2.1

(Cuban Immigration to the United States)


On March 17, 1980, President Carter signed the Refugee Act into law. It was the first major reform of immigration law in more than 30 years. The bill was the crowning achievement of a year and a half of intense congressional and executive effort and political maneuvering. The new Refugee Policy sought to systematize the arbitrary nature of immigration policy by providing a universal test of refugee status—asking individual immigrants to prove “fear, or well-founded fear of persecution.” The tensions mentioned earlier between the traditional practices of pursuing generally restrictive national self-interest immigration policies and much more favorable policy toward those from communist countries erupted soon after the United Nations definition was adopted as a part of this Refugee Act of 1980. The Refugee Act intended to constrain the Executive’s agency in immigration policy-making restricting the President and Attorney General’s parole authority in admitting large groups of migrants.

Interestingly, decision making on the Cuban issue would be linked to the Haitian immigration issue. In the context of an evolving refugee policy leading up to 1980, the U.S. government became extremely sensitive to their practice of favoring one group over another, Cubans over Haitians. But a similar boat crisis had been quietly occurring with Haiti between 1972 and 1980, when nearly 50,000 Haitians made their way illegally to Florida shores. Throughout the 1970’s newspapers ran stories of poor Haitian migrants sometimes arriving to U.S. shores and sometimes not making it at all. It was the first large national group to arrive to America in substantial numbers for whom no

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76 Public Law No. 96-212, Stat. 102 (1980), 94.
78 Kennedy, “Refugee Act,” 143.
79 Engstrom, Presidential Decision Making Adrift, 106.
administrative or legislative policy was made prior to arrival. Throughout this period, the United States considered most arriving Haitians as excludable “economic migrants” and denied them opportunity to present asylum claims, in court or otherwise, for individual evaluation. One of the principal reasons for no change in policy during this period was that—in the context of the Cold War—the United States had a strong political relationship and mutual anti-communist objectives with the kleptocratic Duvalier regime.

Major pressure began to build up against the policy treatment of the Haitian excludables. A number of groups took up the cause in courts, the media and the Congress. Among them were the Haitian Refugee Center, The AFL/CIO, the Haitian Refugee Committee, the United Conference of Mayors, the Council on Hemispheric Affairs, the Congressional Black Caucus, and the Mexican American Legal Defense and Education Fund. To be sure, few things pained the Carter administration as much as the accusation that the differentiated treatment of the Cubans and the Haitians was a result of utter “racism.” The complicated nature of the concurrent Cuban and Haitian refugee flows brought up major issues that challenged the current policy toward both groups. But even despite these challenges—and even with the ink still wet on the newly signed Refugee Act of 1980—Carter’s first reaction to the initial wave of Cuban immigrants would be to welcome them more favorably than other groups as administrations had consistently done for the previous two decades. In effect this tense undercurrent to the policy before the Mariel crisis—the rapid massive influx of over 125,000 previously unscreened immigrants—contributed to the unpredictability and possibility of multiple equilibria of the policy trajectory once the watershed crisis actually occurred.

81 Among them were the Haitian Refugee Center, The AFL/CIO, the Haitian Refugee Committee, the United Conference of Mayors, the Council on Hemispheric Affairs, the Congressional Black Caucus, and the Mexican American Legal Defense and Education Fund. Mario A. Rivera, Decision and Structure: U.S. Refugee Policy in the Mariel Crisis. (University Press of America, Lanham, New York, London 1991), 14.

According to Secretary of State Cyrus Vance, the new refugee policy was envisioned as “coherent and comprehensive,” rather than “reactive” and “ad hoc” as refugee policy was in the past.83 This statement made before the passage of the act underscored the irony of the law’s first test. It was replaced by a newly crafted brand of “parole authority” inherent in executive power. The parole authority allowed the executive branch discretion to give temporary permission for inadmissible aliens to stay in the United States while granting few-no rights. It was a legally ambiguous state of limbo. The predominant motives for the Refugee Act of 1980 were to eliminate the use of the parole provision, yet this is exactly what was employed. According to all major advocates of the new refugee policy, both Carter’s initial response to the refugee crisis and his subsequent amended approach (to be expounded upon later) discredited everything for which the Refugee Act stood.84 Further, the Refugee Act did not anticipate, and therefore could not accommodate for, an immigration crisis of the scope of Mariel.85

Peruvian Embassy Crisis

One of the most important moments on the eve of the Mariel boatlift was the Peruvian Embassy incident. The significance of this event was that it effectively precipitated the Mariel boatlift—the first moments of our critical juncture—which would follow soon after. More significant is the manner in which the Cuban regime responded to the crisis. Fidel Castro found a way to redirect what began as an international dispute between Peruvian Embassy practice and the Cuban Regime toward a challenge for his arch-enemy: the United States of America.

85 U.S. immigration policy in general was centered on the ability to process would-be immigrants in third countries.
The incident started when six Cubans took the desperate measure of commandeering and crashing a city bus through the gates of the Peruvian Embassy in order to gain political asylum. As they accelerated into the embassy, Cuban guards opened fire injuring two of the passengers. The bus found its way to sanctuary on the property of the Embassy, but a Cuban Ministry Guard, was found on the ground, mortally wounded from a ricocheted bullet during the crossfire. The response by the incensed Cuban regime came over their government Radio Havana broadcast, “In the face of the painful death of the guard at the Peruvian embassy and the tolerant attitude of the Peruvian Government toward the criminals, the revolutionary Cuban government has decided to withdraw guards from the embassy.” With the withdrawal of Cuban security forces from the embassy, 300 more Cubans entered the embassy before midnight on the evening of April 4, 1980. Removing the security deterring apparatus invited the island’s many disillusioned to follow the example of their desperate and enterprising, bus-commandeering compatriots.

Within 48 hours of this news, more than 10,000 people crowded onto the embassy grounds. The foreign press reported that the people braved conditions of emotional abuse, name-calling and egg-throwing by rioting agents of the Cuban state outside the compound who echoed the diction of the state newspaper calling the

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86 Four days earlier, another bus had crashed into the Embassy gates in a similar attempt with four Cubans. Department of State, “Havana City bus Crashes into Peruvian Embassy Grounds in Asylum Bid,” Telegram 2962, USINT, Havana to Secretary of State, Washington, D.C. March 28, 1980. USINT, Havana to Secretary of State, “Another Bus Crashes into Peruvian Embassy Compound in Asylum Bid,” Department of State, Telegram 3083, Washington, D.C. April 2, 1980.


89 David W. Engstrom, Presidential Decision Making Adrift: The Carter Administration and the Mariel Boatlift, 41.
prospective asylees “escoria” (scum) and “gusanos” (worms). These people also
reported dire conditions of thirst and hunger and horrid sanitary conditions. All of these
underscore the extent to which the emigrants desired to leave the island. The Peruvian
Embassy incident was a demonstration of the pent-up migratory pressures compounded
by deteriorating economic and social conditions in Cuba.

Between the embarrassment of the thousands who sought to depart from the
island and its increasingly antagonistic international confrontation with Latin American
countries with which it tried in the previous decade to build a good relationship, Cuba
began reverting back to the intransigent ideologue default that had characterized its early
revolutionary period. It damaged those friendly Latin-American relations without regard
and attempted to whip up patriotic fervor on the island to punish those whose behavior
was in counter-discourse with the revolution. On the part of the United States, the Carter
administration attempted to keep an arms-length distance from the incensed and irrational
Cuban regime. Its international response was to keep attention on Cuba who was
freefalling into a tragedy of errors on its own. The U.S., intelligently, sought to avoid
having the incident turn into a confrontation between itself and Cuba. This attempt,
however would turn out to be futile.

Costa Rica responded to the U.S. administration’s efforts as President Rodrigo
Carazo offered his country to serve as the processing point for all embassy Cubans. This
was the most attractive strategy to the U.S., Peru and any other nation who volunteered to
help resettle the Cubans. The U.S. Interest Section in Cuba reported, “safe haven in Cuba
should only, repeat only, be considered as [a] last resort. With Government of Cuba
whipping revolutionary faithful into frenzy against “anti-social scum”…atmosphere [is]

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such that safe haven here is not really feasible.” Having already stated that they would permit Cubans to leave if another country would take them, the Cuban regime felt obligated to permit the departure of the Embassy Cubans to Costa Rica.

When two planes carrying 236 Cubans arrived to San Jose, Costa Rica on April 16, greeted by international support, musical bands in revelry, scores of journalists and President Carazo, they reported that they had been harassed by crowds of Cubans stirred up by the Cuban regime. Stones were thrown at them as they made their way to the airport in Cuba. This juvenile and destructive behavior by the Cuban government to its own citizens when combined with the festivities greeting the persecuted Cubans upon their ultimate arrival in Costa Rica, created an embarrassing fiasco for Fidel Castro and the Cuban regime.

Just a few days after the air bridge from Havana to San Jose, the Cuban government unilaterally called the flights to a close. Upset from the beginning that the United States and the receiving countries in Latin America found a favorable and orderly way to process his “anti-social scum” and celebrate at the same time, Castro decided to retaliate against the United States by complicating their strategy. It is a running theme throughout U.S.-Cuban relations that, because of the antagonistic relationship between the two states and the nature of their polarized identities, both states are highly skeptical when the other seems amenable to cooperate. This was especially apparent during the crisis studied in this work and the period of its aftermath. Additionally, these polarized identities were crystallized over the period studied in this section as the “antecedent conditions.” When Cuba allowed the Embassy people to be processed by whatever

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93 “They can travel to any other country if the government of that country authorizes it.” Department of State, “Peruvian Embassy Situation—What the Cuban Press does not Say.” Telegram 3971, USINT, Havana to Secretary of State, Washington, D.C. April 24, 1980.
country would claim them, and the United States happily arranged for Costa Rica to voluntarily serve as the country of first arrival, Castro’s intended message of aggression was circumvented by their orderly plan. Already having damaged its international reputation and its relationship with several countries, the Cuban government had little to lose by ending the Costa Rica flights, redirecting the crisis, and calling a new media circus to amass on the other side of the Florida Straits.95

**Conclusion:**

The antecedent conditions presented in this chapter serve to highlight the nature of policy toward Cubans before 1980. The state of policy during this period is important to understand as it will later be compared to policy after dramatic change occurs. During the period of 1959-1980, the words of the United States’ presidents reflected a distinct humanitarian ethos. This committed the United States’ to a policy path that could be defended as serving a strategic and ideological ends. It was considered strategic as long as there was promise of the exile community undermining the power and discourse of the Cuban government. It was ideological in the sense that it gave humanitarian aid and refuge to those fleeing political systems that aspired to communism through totalitarian measures. There were a number of shocks which began to challenge this policy including the Refugee Act and concurrent influxes of Haitian immigrants, but neither would truly open the doors to vast policy change in practice. Ultimately, curious events began to occur in Cuba, which demonstrated evidence of intense pressure build-up and possible impending exodus.

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He who has no revolutionary genes, he who has no revolutionary blood, he who does not have a mind that adapts to the idea of a revolution, he who does not have a heart that can adapt to the effort of heroism required by a revolution: we do not want them; we do not need them.  

-Fidel Castro, April 1980.

The proud caudillo and autocrat, Fidel Castro, was personally humiliated by the more than 125,000 people, willing to sacrifice so much to depart from their homeland’s dystopia and pursue a life elsewhere. Reeling from the outpour of popular dissatisfaction, Castro decried those electing to leave Cuba as escoria, or scum, of society, casting them as lumpen and social undesirables as they cast themselves to the treacherous seas. It was this very instance of tragedy and crisis which this chapter will analyze more closely, identifying this stage as the pivotal “critical juncture.” This chapter will employ a systematic process-tracing analysis on the events surrounding the period of this critical juncture. As described in the first chapter of this work, the “critical juncture” is a unique and formative moment, a watershed for a policy trajectory. During the critical juncture, there is an immediate genesis of widened policy possibilities and decision makers find themselves in a unique position to make pivotal choices which may have a lasting legacy when the period closes. The factors and institutions that influence and implement these decisions constitute the “mechanisms of production” of the new path formed during this period.

Consistent with historical-institutionalism’s critical juncture model, in this section I argue: (1) the unheeded warnings of the impending crisis demonstrated the lack of preparedness by the United States Government and contributed to the haphazard nature

96 Fidel Castro, April 1980.
98 Collier and Collier, Shaping the Political Arena 31.
99 Ibid.
of policy-response at t0, serving to dramatically widen the range of policy possibilities with the onset of the Mariel crisis. (2) Having a new array of possible policy choices, the Carter administration’s decision to endeavor on one path and not pursue another was especially significant. (3) The Carter administration’s policy exhibits two phases: humanitarianism and deterrence. The shift from the first phase, characterized by humanitarianism, to the second phase, aimed at deterrence, demonstrates a remarkable change in priorities for the United States and represented a very significant personal sacrifice for President Carter. That sacrifice was not to be understated. It constituted the surmounting of an important start-up cost investing in the policy, and represented the beginning of a crystallization of the new policy trajectory over time. (4) Finally, the continuation and endurance of Carter’s policy of deterrence under Reagan reinforced the policy path. The critical juncture is ultimately brought to a close when Reagan decouples the Cubans from the Haitians in 1984.

Opening of Policy Choice

After illustrating the generous refugee policy trajectory that persisted from the time of the Cuban Revolution in 1959 up until 1980 in the previous chapter, it will shortly become clear how abruptly and drastically this policy changed. There are two primary reasons why suddenly the President had a new menu of options in reshaping U.S. immigration policy toward Cubans. (1) Despite warning signs, the United States government was not at all prepared for the immigration episode. The poor response compounds the complications brought by the crisis. (2) Relevant institutions and organizations were not coordinated as a result of poor leadership on behalf of the executive. The stakes were high during this “critical juncture.” It is clear that the President’s response to this particular population would have implications not only for
other Cubans who might seek to immigrate in the future, but for many classes of immigrants.

The Carter administration was wholly unprepared to address the extreme circumstances surrounding the Cuban boatlift from Mariel Harbor. This lack of preparedness contributed to the scope and implications of the crisis. It, therefore, forced the administration to reconsider its immigration policy in the context of what amounted to the foisting of more than 125,000 people on the United States that the hostile Castro regime deemed to be social undesirables. To some within the government, this extreme situation was the equivalent of an act of war by the Cuban regime. Before the crisis, the United States government clearly understood the potential for migration troubles. A memo composed by the Cuban Analytic Center of the U.S. Central Intelligence Agency dated January 31, 1980 read:

The Castro regime may again resort to large-scale emigration to reduce discontent caused by Cuba’s deteriorating economic condition…During the 1960’s Cuba resorted to large-scale immigration to rid itself of opponents of government policies…The revival of such a policy could reduce popular discontent.

But it was clear that the White House and the highest levels of the Carter administration were focused on other issues of international significance, including the aftermath of the failed Iran hostage rescue raid and the Soviet invasion of Afghanistan. It was not until several weeks after the start of the crisis, on May 14, that President Carter personally attended a meeting on the crisis. Further, no single federal agency was put in charge from the start. “Governments were fighting with each other – federal against state against county against city, and the decisions changed day by day,” recalled Sergio Piñon, who was a Florida Department of Law Enforcement investigator.

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In April 1980, Fidel Castro announced the opening of Mariel Harbor to any Cuban on the island who wanted to leave. Cuban-Americans in Florida immediately mobilized and chartered boats to Mariel harbor to pick-up relatives. It was a scene that was reminiscent of another boatlift that occurred in 1965-66 where Castro opened the port of Camarioca to those who wished to leave. In this situation, as in 1965 Cuban-Americans charted boats across the Florida straits to pick up their friends and relatives seeking exit. The difference between 1965 and 1980 was that in 1980 there were many more Cuban-Americans and as a result of their quick ascent in the American economy they had much more capital—and therefore the capacity to charter more boats. The Cuban state-run newspaper, *Granma*, sardonically reported, “On the morning of April 21, two Florida-based vessels left the port of Mariel with 48 anti-social elements aboard. Today, a total of 11 vessels, also from Florida, will be taking more than 300 of those elements to the United States. That’s a good pace!”

In a policy option paper composed four days after those first boats of Cubans arrived in Key West, Florida, Vice President Mondale outlined the possible strategies for coping with the crisis. The Vice President’s office seemed to be the first to take notice of the scale of the crisis.

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104 *Granma*, April 22, 1980. The exodus served to relieve a great deal of economic and social pressure from within Cuba as well. To the extent that unemployment rates in a command economy can help gauge the efficacy of the policy of exporting undesirables, Castro’s mass exodus was “successful.” After the Mariel boatlift of 1980, unemployment in Cuba was said to have decreased from 188,000 individuals to 146,000 individuals. Female unemployment fell from 12 percent to 7 percent and male unemployment fell to 2.5 percent—comparable to the early 1970’s, “before natural disasters, demographic changes, and military interventions in Africa. In: Mark S. Hamm, *The Abandoned Ones: The Imprisonment and Uprising of the Mariel Boat People*, (Northeastern University Press, Boston, 1995). See also: Brundenius, *Revolutionary Cuba: The Challenge of Economic Growth with Equity* (Westview Press, 1984), Carmelo Mesa-Lago, *The Economy of Socialist Cuba: A Two-Decade Appraisal*, University of New Mexico Press, 1981.

105 A. Denis Clift: “Memo on the Vice President’s meeting on Cuban refugees on 4/26/80 to address recommendations to the President. White House. Confidential, Issue Date: Apr 25, 1980.
of the gravity of the impending situation and the need to adopt a coherent policy to address it. At the time the note was written, 17 boats had already returned to the United States with over 1300 Cubans. The memo anticipated that at that point there were more than 1,000 boats en-route to or from Cuba. With the meeting that this memo accompanied, the White House would take over responsibilities of trying to control the crisis and put itself in a unique position to seize almost complete agency in shaping policy.

Interestingly, the strategies recommended by the Office of the Vice President to the Office of the President, illustrated in the figure below (3.1) and subsequently expounded upon, demonstrate a complete spectrum of policy possibilities from blanket refugee designation to military intervention and boatlift obstruction. Further, these policy choices represent vital “contingent events.”¹⁰⁶ For, the response to this particular immigrant population cannot operate in a situation-specific vacuum and thus necessarily shapes the trajectory of U.S. policy toward Cuban immigration as a whole. It was not entirely the President’s fault, however, that the response to the crisis was less than optimal. Once Carter’s decisions were made, implementation was constrained by organizational disarray and conflicting bureaucratic agendas.

One of the defining features of the crisis was the marked lack of synergy between the various organizations coordinated under the executive branch to handle the crisis. While bureaucratic politics is often cited as an explanation for the organizational disarray, its cause is less important than its effect in this work. The lack of agency coordination and consensus, when coupled with a dearth of consistent executive leadership and direction, contributed to the multiple possible contingencies that defined this critical juncture. Different organizations, even under the same administration and same policy directives, can have competing directions in executing policy. The friction between the organizations shows the difficulty in “coordination effects” of the new policy path. In path dependent explanations, coordination effects result as the benefits from a particular activity increase as others adopt the same option. These are especially significant when a technology has to be compatible with a linked infrastructure.\(^{107}\) The inverse is true as well—if a law is incompatible with the institutions designed to implement it major mismanagement is probable to result.

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\(^{107}\) Pierson, “Increasing Returns, Path Dependence,” 254.
Major bureaucratic inefficiencies at the start of the crisis evidences structural indeterminacy and unpredictability central to path dependence.\textsuperscript{108} For instance, though the path of deterrence was formally adopted by the Carter administration in mid-May of 1980, there was a clear lack of conviction in the policy. The absence of executive assuredness led different agencies to follow their own sense of organizational mission. While the policy change on May 14 was extremely abrupt, it was unclear how it would affect the activities of particular agencies. Even as Carter announced a policy to discourage boat trips to Cuba and to pursue, instead, a new hoped-for airlift agreement, he qualified the policy change, almost contradictorily reiterating: “Tens of thousands of Cubans are fleeing the repression of the Castro regime. [Therefore] the United States will welcome Cubans, seeking freedom, in accordance with our basic laws.”\textsuperscript{109}

One of the most important and obvious examples of this is in the case of the United States Coast Guard. In a hearing, the U.S. Coast Guard Rear Admiral, John Costello, testified that his operation was focused on “safety [which] has been the paramount issue in our minds out there. Law enforcement is a secondary issue in our mind.” As an entire agency, they decided that “trying to turn [boat people] and send them to Cuba” as the Carter administration would ask of them in the later weeks of May 1980, “…is impossible.” He added that, before May 14 “there was no effort made to shut off southbound.” Throughout the entire crisis, the Coast Guard refused to turn the boats carrying Cubans on the high seas back to Mariel, even though it was the policy of the U.S. government to do so, as was confirmed by Thomas Enders, Assistant Secretary of State for Inter-American Affairs.\textsuperscript{110} U.S. Attorney General Benjamin Civiletti told the Senate Judiciary Committee in a hearing on September 19, 1980: “The judgment of the

\textsuperscript{108} Ibid.
\textsuperscript{110} U.S. Department of State, American Foreign Policy: Current Documents, 1981.
Navy and the Coast Guard is that an attempt to return at sea a boat [does] great risk to their safety. It is not my judgment. It is the judgments of the experts who are out there.”\textsuperscript{111} Further, the Coast Guard demonstrated their keen satisfaction with the accomplishments of their division by awarding themselves with accolades for their “success” through the crisis in the form of promotions and unit honors.\textsuperscript{112} These awards emphasized the Coast Guard’s ability to keep people safe—their organizational mission. It was a success that, if measured by the standard of the policy which they were charged to enforce, would have been less than merit-worthy.

Another example is in the case of the major sources of U.S. intelligence. At the start, CIA and State Department differed on the likelihood of another Camarioca-like crisis. State Department was proud of its crafting the Refugee Act and thought Camarioca would not happen again because Cuba would be satisfied with procedures in the new act and they looked forward to executing it through the Office of the U.S. Coordinator for Refugee Affairs. The CIA, as the quote mentioned earlier from the Cuban Analytic Center from January 1980 demonstrates, was clear that such an exodus was very possible.

One of the biggest issues here is that because the boatlift affected so many areas of the U.S. government, and on both federal and local levels, officials and agencies who normally had nothing to do with each other, and little in common, were suddenly asked to develop working relationships. For example, Federal Emergency Management Agency (FEMA), created for natural disasters, had no experience with immigration crises and were deployed slowly by the government.\textsuperscript{113} In theory it is understood that leaders of organizations define and thereby assume jurisdiction over problems that are attractive in

\textsuperscript{113} Dominguez, “Cooperating with the Enemy,” 77.
that they are likely to enhance their reputation and status and expand their agency’s resources and domain. In his work, Alexander George suggests that the negative corollary of that statement is equally true.\textsuperscript{114} He writes, “Contrary to the stereotype of bureaucrats as ‘empire-builders,’ bureaucratic actors are not always eager to expand their domains. When their interests require it, they may avoid responsibility for an issue or narrow the range of their participation...”\textsuperscript{115} This was the case with bureaucratic agencies coping with the Mariel crisis.

\textit{Mechanisms of Production}

The decisions that President Carter made during the period of the critical juncture represent the “mechanisms of production” of the new policy trajectory as they shaped the new immigration policy legacy. One of the first options presented for President Carter in the aforementioned memo from the Vice President was for the Carter administration to welcome the Cubans. This path would turn the tables on Fidel Castro and make it clear as it was in 1965-66 that the United States welcomes all those seeking freedom. This would put the United States on “the right side of the human rights issue.”\textsuperscript{116} Carter had a strong affinity for this option and this was indeed closest to the approach that he initially undertook. The drawback was that the Cuban government would be dictating policy. The United States would have to take as many immigrants as Castro wanted to send. The budgetary implications were also enormous. It was estimated by the Health Education and Welfare Department (HEW)\textsuperscript{117} that it could cost close to $60 million to resettle and provide social service to 50,000 immigrants in the first year. This option also importantly

\textsuperscript{115} Ibid.
\textsuperscript{116} Office of the Vice President, \textit{U.S. Policy on Cuban Refugees}, April 26, 1980. E.O. 12356. Sec.3.4b, Secret, (National Archives, Maryland, declassified 12/10/ 1996).
\textsuperscript{117} Currently: “\textit{Health and Human Services}”
presented a difficult precedent for dealing with the Haitians as was discussed in Chapter 2. It would also undermine the Refugee Act of 1980, which was just passed, and might be found therefore to be against congressional intent.

Ultimately, Carter’s decision regarding the handling of the boatlift and the designation of the Cubans was contingent on the seemingly unrelated, but concurrent, influx of Haitian refugees. Carter’s response to the Mariel crisis can be described by two distinct and contrary phases. In the context of the path dependence argument this is immensely significant as his final resolution of the Cuban situation, while clouded by international relations and domestic concerns and bureaucratic disarray, could be wholly explained by none of these intuitive causes.

The first of these phases lasted about three weeks—between April 21 and May 14, 1980—and was an extremely ad hoc and reactive response to the crisis. The evidence which illustrated the first response to this crisis was not merely an amalgamation of random political rhetoric. It was a clear and deliberate approach implemented by President Carter to undermine and embarrass the Cuban government and assert the comparative moral superiority of the United States. Heralding the incident at

118 Roger B. Porter, Presidential Decision Making: The Economic Policy Board. (Cambridge University Press, 1982). Porter uses Adhocracy to describe the decision making process that characterizes presidential administrations which operate in reactive sequences, assembling teams to respond to crises. He explicitly uses Carter as an example for this organizational decision making method. In the appendix, Porter expounds on his models of Adhocracy, Centralized Management, and Multiple Advocacy. Traditional adhocracy is defined by Porter by three key characteristics. The first among these is that different advisers are often given competing assignments to develop an initiative or program and involves few regularized channels as it gives the image of the President personally in command. This can be seen by the number of individuals normally considered worthy of notification on classified documents—a number that can often be counted on one hand, each of them coping with the issues within their respective department. The second major characteristic is that the President often serves as a “multi-bilateralist” weighing different options and separate assignments. The third and final aspect of traditional adhocracy is that it may involve the President giving responsibility to an inter-agency group that is “ad hoc” in the sense that it is created for a specified duration and is limited to studying a single issue. Carter clearly responded in an “adhoc” way to Mariel by assembling the “Cuban/Haitian Task Force.” Porter, p. 236. The first major issue is that inherent in this system is a distinct lack of protocol for decision making that Porter describes as a lack of “systematic ways of receiving advice.” The second major issue associated with this approach is the frequency of jurisdictional battles. The next complication with adhocracy is its confusion of “issue interrelatedness.” Porter, 234.
Mariel Harbor, like the case of the Peruvian Embassy, as a rebellion of the Cuban people against communist repression, the United States government acted quickly to engage in counter-discourse with the information being propagated by the Cuban regime’s press. In this manner, it was a continuation of the old policy trajectory begun in the 1960’s. The humanitarian rhetoric which the executive branch reproduced from earlier Cuban immigration episodes made the decision not to grant refugee status to the immigrant Cubans an even more counterintuitive one.

The continued reaffirmation of the “immigration-accepting” policy trajectory that characterized the first phase of Carter’s response can be illustrated most vividly through the words of the President himself. As far back as the pressure-mounting-Peruvian Embassy crisis, in early April 1980, Carter seemed to echo his predecessor presidents, whose humanitarian, “open arms” rhetoric was mentioned in the antecedent conditions chapter of this work. For example, on April 9, 1980 he announced, “We see the hunger of many people on that island to escape political deprivation of freedom and also economic adversity. Our heart goes out to the almost 10,000 freedom-loving Cubans who entered [the Peruvian Embassy].” Further evidence of particular favor toward the emigrating Cubans, and reproduced rhetoric that represented a continuation in previous policy was demonstrated in the White House’s first public response to the boatlift. On April 27th Vice President Mondale said, “There is no better proof of the failure of Castro’s revolution than the dramatic exodus which is currently taking place.” Even on May 5, facing deep criticism for his inability to curb the increasing torrent of immigrants and being challenged for nomination within his own party in the upcoming Presidential election against the increasingly popular Ronald Reagan, Carter asserted:

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119 Public Papers of the Presidents of the United States: Jimmy Carter, 625-26, 780.
We will continue to provide an open heart and open arms to refugees seeking freedom from Communist domination and from economic deprivation, brought about primarily by Fidel Castro and his government...We are the most generous nation on Earth in receiving refugees and I feel very deeply that this commitment should be maintained.121

This initial welcoming stance made by President Carter is a vital component of the study at hand because it becomes extremely consequential later in this work when looking at the relative agency of the United States in inducing the exodus and exerting particular “pull factors” in for migration. It determined the legitimacy that the Cubans had in their bid to remain in the United States, a claim made all the more powerful if they were “invited,” as seemed to be the case. This particular facet of history came up many times in legal proceedings on excludable Cubans to be discussed later.

Pierson argues that one of the most important principles of path dependence is that small accidental events early in the sequence have a disproportional impact for the path trajectory as time goes on. This is shown by Brian Arthur in his Polya-urn demonstration discussed in Chapter 1. This phenomenon occurred in the instance of Carter’s “open heart and open arms” comment at a League of Women’s Voters meeting on May 5, before the policy path was defined or the scope of the crisis was clear. The answer which was the reflection of Carter’s personal values and seemingly reproduced from previous decades’ presidential rhetoric, was given because of the random prompt of an audience question. The magnitude of the statement was so immense because the press framed their headlines with this statement which thereafter graced the front pages of most news outlets.

But it was not just these significant instances of public rhetoric that characterized and reinforced the President’s position in the first phase of the crisis. On May 6, the President declared an emergency for the state of Florida and authorized $10 million which was appropriated from refugee emergency funds. This emergency declaration

121 Public Papers of the Presidents of the United States: Jimmy Carter, 625-26, 780.
under Public Law 93-288 authorizes funds for FEMA to respond to the crisis as they would to a refugee crisis. More importantly, the logical expectation from this action was that in invoking refugee powers and funds for refugee crises, the President would be apt to designate the arriving Cubans as refugees. This was not ultimately the case.

The first phase of Carter’s response, although it lasted only a few weeks, did define the nature of the Mariel boatlift in an important way. It initially opened American doors to an uncontrollable flood of new, “undesirable” immigrants in the midst of U.S. domestic economic difficulties. Reflecting on his election defeat, Carter said, “The refugee question has hurt us badly. It wasn’t just in Florida, but it was throughout the country. It was a burning issue. It made us look impotent when we received these refugees from Cuba.” His initial migration-accepting policy may have helped cost him the Presidential election in 1980, but in the midst of crisis, it was his first, knee jerk reaction and he simply thought it was morally right. The words that came from the President at this stage were consistent not only with his compassionate personality, but also his party platform’s more liberal approach to immigration affairs, not to mention his legacy of sympathetic humanitarianism. This would make his next decisions, the second phase to Carter’s response, all the more counterintuitive and unexpected.

In order to try to seize control of the migration flow, the Carter administration abruptly embarked on a policy turnabout. The strategic concern for reducing the incentives for migration and stopping the flow of Cubans forced one of the great humanitarian Presidents to adopt an extremely restrictive immigration policy toward the

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123 Public Papers of the Presidents: Jimmy Carter, November 5, 1980.
communism-fleeing Cubans for the first time in the history of U.S. relations with the totalitarian regime in Cuba. But, being that this thesis is especially concerned with an excludable population of these Cubans which will be described in more detail later, the legal designation which corresponded to this policy turnabout was also especially significant. While the policies designed to curb the flow of immigrants were strategically motivated, the legal designation was a result of Haitian linkage. The great personal sacrifice that Carter made for both decisions constituted an important mechanism of production solidifying the policy path in this thesis. As a new start-up cost, it was an extreme investment that, once made, could not be regained. Carter said, “I think of all the human problems that I’ve had since I’ve been in the White House, this has been the most severe for me personally…my parents and grandparents were immigrants.”

On May 14, President Carter announced his “Five-Point Program” intended to end the boatlift. This included plans for alternative transportation for those still in Mariel and the resolve to punish boaters who violated the order. On May 20, the White House first announced the arriving Cubans would not be treated as refugees under the Refugee Act of 1980 or the Cuban Adjustment Act of 1966 but rather as applicants for asylum. On June 20, the recently arrived Cubans were granted a unique parole status under the power of the Attorney General: “Cuban/Haitian: Status Pending.”

125 “Political actors develop investments, “specific assets,” in a particular arrangement—relationships, expectations, privileges, knowledge of procedures, all tied to the institution at work. Where investments in the specific institution are high, actors will find the cost of any institutional change that endangers these assets to be quite high; indeed, actors in this situation may be reluctant to run risks of any change at all…Investment of specific assets helps to explain institutional persistence. As actors in each society invest in a particular institutional arrangement, they have incentives to protect their investment by opposing change.” Peter A. Gourevitch, “The Governance Problem in International Relations,” in David Lake and Robert Powell, eds., Strategic Choice and Princeton University Press, 1999), pp.144-45.
127 “President Carter: Cubans Seek Asylum.” Current policy, Issues 101-250. (The Department of State, 1980).
129 Ibid.
two months for the administration to decide to treat the arrivals as asylum seekers rather than refugees.\(^{130}\) It was clear that this was an effort to avoid setting a precedent that foreigners arriving by boat would be automatically considered refugees.\(^{131}\)

**Figure 3.2**

Cuban Arrivals: April–June

![Graph showing Cuban arrivals from April to June.](source)

**Figure 3.3**

Cuban Arrivals: July–September

![Graph showing Cuban arrivals from July to September.](source)

\(^{130}\) At an event in Miami on June 20, one attendee asked President Carter, “I meant whether you have decided to grant them, or asked that they be granted, refugee status versus applicants for asylum.” The President responded bluntly, “That decision has not been made.” Carter, Jimmy. “Miami, Florida Remarks to Reporters Following a Meeting With Community Leaders.” *Public Papers of the President. June 9, 1980.* (Washington, D.C. Government Printing Office, 1981).

The above charts (3.2 and 3.3) illustrate the flow of Cuban immigrants from the boatlift. While it seems that the stricter policy toward the immigrants did coincide with the slowing down of the arrivals, this was mostly because most of the pressure had already been released from the island—the vast majority of those willing to leave, had done so. For, even after Carter’s newly announced restrictive policy, more than 84,000 people would come in the remaining months of the summer. Not only was this a result of Cuban-American willingness to defy the law, it was also a reflection of the administration’s inability to enforce its warnings.

Juncture Closes: Reagan Decouples Cubans and Haitians

While the boatlift officially ended on September 26th, 1980, this paper argues that the critical juncture did not. The legal designation that Carter set was a non-decision; instead, it was a decision to forego making a decision on the legal status of the Cubans. Carter effectively deferred the decision on the final status of the Cubans to his successor and political polar opposite, Ronald Reagan. At this time, Reagan proposed to Congress to improve the situation of those Mariel immigrants with acceptable records to “temporary residents” from “status pending” parolees. This proposal still left these Mariel Cubans in an anomalous class as compared with the Cuban immigrant predecessors, as it afforded them fewer benefits than refugees but still allowed them to petition for permanent residency after five years. Congress did not approve this change and on October 17, 1984, the Reagan administration opted instead to use its prerogative to apply the more generous benefits of the Cuban Adjustment Act of 1966 to those good-

134 Ibid.
standing Mariel immigrants.\textsuperscript{135} This definitive resolution signaled the end of the interesting critical juncture.\textsuperscript{136} But because of the complications inherent in law and policy, it did not mean the end of the challenges posed by Mariel. Even after this decoupling of Haitians and Cubans in legal status, there remained the population of Mariel Cubans who were imprisoned and ruled excludable for violating a parole status that was no longer relevant.\textsuperscript{137} This was the relevant policy path, a legacy of decisions made during this period, which will be traced henceforth.

\textit{Conclusion}

The purpose of this chapter is to explore whether there existed an uncharacteristic widening of policy possibilities for political actors. It observes that indeed, as a result of the Mariel immigration crisis, the period of 1980-1984, demonstrated significant change beyond any sort of normal, gradual, or predicted institutional evolutionary processes. The opportunities for change and widened policy possibilities were made all the more available for two reasons: (1) despite warning signs, the Carter administration did not foresee the magnitude of the impending crisis, and (2) there was a lack of leadership and an organizational disarray with regard to bureaucratic agencies charged with policy implementation. The Carter administration’s policy exhibited two phases. The shift from the first phase, characterized by humanitarianism, to the second phase, aimed at deterrence, demonstrated a remarkable change in priorities for the United States and represented a very significant personal sacrifice for President Carter. That sacrifice constituted a surmounting a significant start-up cost investing in the policy and

\textsuperscript{137} It will be shown shortly that by 1987, 3,800 Mariel Cubans were serving sentences for crimes committed in the United States, and another 3,800 were in indefinite detention after completing sentences. Mirta Ojito, “The Long Voyage From Mariel Ends,” \textit{New York Times} January 16, 2005, “Week in Review,” 3.
represented the beginning of a crystallization of a new policy trajectory over time. The
continuation of Carter’s policy of deterrence under Reagan reinforced the newly minted
restrictive policy path. The critical juncture was ultimately brought to a close when
Reagan decoupled the Cubans from the Haitians in 1984.

The day before yesterday, I was talking to a reporter who was investigating more than 1,800 Cuban refugees who came to my country [in 1980]. They committed some crimes—small or large. They have long ago finished their sentences and still are being detained in prisons in my country. And the judicial system, combined with the Immigration and Naturalization Service, has not found yet a way to give these immigrants justice. Every nation that grossly violates human rights justifies it by claiming that they are acting within their laws. The way we are doing it now is the same kind of human rights violation that we’d vehemently condemn if it was perpetrated in another country.\(^{138}\)

-Jimmy Carter, December 1993

As explained in the previous chapter, the indefinite detention of criminal excludable aliens is a quintessential example of an unintended consequence that demonstrates the relative inefficiency of a particular path-dependent policy.\(^{139}\) It is inefficient in the sense that it did not achieve full control of immigration policy as it intended and at the same time presented a great deal of costs and challenges to the United States government, including serving as a blemish on its hallowed human rights record.\(^{140}\)

This reality was made all the more evident in light of the comment made by President Carter in 1993 that opens this chapter. Remembering that it was, ironically, Carter who began the policy trajectory which initiated the indefinite detention of the criminal immigrants underscores a key observation. Had the Carter administration expected that the parole status it granted (as well as the legislation it failed to achieve to resolve


“Efficiency” refers to the less than optimal nature of the policy path embarked upon. Had the Carter Administration projected the expectation of an indefinitely detained population of criminal and non-criminal immigrants, they may have coped with the Mariel exodus differently. Although the dilemma faced by the United States government in the 1980s and beyond will continue to be expounded later, it is relevant to include the quote which commences this chapter to substantiate the previous counterfactual argument.
immigrant status), would produce an indefinitely detained population of immigrants, they may have coped with the Mariel exodus differently. This is important as it relates to the less-than-optimal nature of the immigration policy trajectory toward Cubans after Mariel and the collateral damage that such a trajectory caused. It reinforces one of the primary pillars of path dependence arguments, and one of the main findings of this thesis—that small contingent causes at the beginning of a path can sometimes have unintended, large, and long-term consequences.

In this case, these consequences impacted the nature of immigration policy and the lives of immigrants previously invited to the country. It was, indeed, important to many of the courts discussed later in this work that Carter’s initial reaction was to invite the Cubans “with open heart and open arms,” as was described in Chapter 3. This “small contingency” as Pierson would term it, gives the U.S. government much less legitimate standing in its curious pursuit to return and indefinitely detain this population. In proceeding to analyze the historical narrative at hand through the lens of path dependence this chapter will look next to the myriad tribulations of the Mariel excludables. These Cuban immigrants were trapped in an extremely unique political dilemma.

It has been the argument of this thesis that the decisions made during the period of the critical juncture of 1980-1984 regarding the Mariel Cubans impacted the legacy of

142 Stinchcombe, Constructing Social Theories, Intro.
143 “The detention, exclusion, and treatment of this group represented a sharp reversal in the traditional ‘open arms’ U.S. immigration policy of welcoming and admitting virtually all Cuban migrants as political refugees. Cubans also had been—and still are—privileged by the Cuban Adjustment Act of 1966, which allows Cubans entering the United States, by any means, the right to permanent-resident status one year and one day after their arrival. The Mariel detainees, however, were the only Cubans not protected by the act, since they were never officially admitted to the United States.” “Immigration and Naturalization Service, American Civil Liberties Union, Coalition to Support Cuban Detainees,” American Civil Liberties Union, Accessed, February 16, 2011. http://www.jrank.org/cultures/pages/3801/Detainees-Cuban.html#ixzz1FBaWMchA
U.S. policy toward Cuban immigration as a whole. U.S. policy shifted significantly from immigration-accepting to immigration-deterring action as alternative policy options were systematically closed over time despite the absence of the original cause. It has also argued that the decision making during the critical juncture led to the creation of an anomalous class of Cuban immigrants who faced unique challenges. The resulting policy inertia led to the establishment of institutions that generated self-reinforcing path-dependent processes—“mechanisms of reproduction.” These theoretical “mechanisms” are illustrated through the case narrative at hand in the period of 1984-1987. This period was selected as an important historical phase as it began with the unexpected renegotiation and passage of a migration agreement by the Reagan administration with Cuba and was also characterized largely by the actions—and noteworthy inactions—of the Cuban-American community.

This chapter will identify the layered variables exhibiting elements of increasing returns that perpetuate path dependency and, in turn reinforce a counter-intuitive policy path. The policy path becomes so “locked-in” and persistent that despite exogenous shocks, or challenges to policy, it remains increasingly difficult to change or reverse course. The chapter identifies three prominent theoretical features evident in the Mariel immigration saga which do importantly affect the policy trajectory: (1) sunk costs, (2) coordination effects, and (3) negative feedback/balancing effects. As they appear in the historical stages of the narrative, these features define the “mechanisms of reproduction” that determine the legacy of the policy trajectory.

144 “Inertia” refers to the establishment of a single equilibrium that is resistant to change as a result of increasing returns and positive feedback processes. It is among the four distinguishing features of path dependence outlined by Paul Pierson, “Increasing returns, Path Dependence.” “These mechanisms of reproduction become a type of “constant cause” [functionalist] – but one that is distinctively a legacy of the critical juncture. Krasner, Stephen, “Causes and Regime Consequences,” 235.
“Mechanisms of reproduction” constitute those ongoing institutional processes which perpetuate the policy path and determine the relative stability of the policy legacy. According to the historical institutional literature at the thrust of this theory, the mechanisms of reproduction often feed positive feedback loops that originate with a single historical cause.\footnote{Feedback loops have been recently emphasized by the work of Mahoney and Thelen. They stress the importance of identifying the particular feedback loops (synonymous in their work with “mechanisms of production”) which are at work and provide insights to the events that sustain legacies or produce abrupt change points.} A positive feedback loop can be seen wherever an action creates an effect that reinforces the propensity for repetition of the first action: A leads to B which leads to A. This can be seen in the figure 4.1 below where a single cause, “x,” may lead to a particular functional response, “y,” as new stimuli periodically provoke the return to that same response despite the absence of the specific original cause, x. It will be the task of this chapter to demonstrate that, consistent with the argument on path dependence, the policy choices of President Ronald Reagan and his administration with regard to the unresolved Mariel population specifically, and Cuban immigration as a whole, were significantly constrained by early actions made during the Carter administration. Further, the events in this period (1984-1987) exhibit a reproduction, or reiteration, of very similar mechanisms to those that initially established the new policy trajectory in the previous, 1980-1984, period and consequently reinforced this path.\footnote{These “time horizons” as Pierson refers to them, have been artificially delineated by the author. The dates represent formative moments in this historical narrative which correspond to features of the theoretical model expounded by: Collier and Collier, \textit{Shaping the Political Arena}, 33.} This contention supports the argument that the decisions made in the period of 1980 to 1984 which were analyzed in the previous chapter were qualitatively different from “normal” development in institutional settings.\footnote{One of the important measures of studies worthy of merit in historical-institutional literature: Thelen, Skocpol.}
Policy is in constant institutional flux and its trajectory is shaped by a distinct set of processes, or “mechanisms,” which exhibit positive and negative feedback or increasing returns. Increasing returns create strong incentives to focus on a single alternative and to continue down a specific path once initial steps are taken in that direction. Each of the examples in this chapter demonstrates the constrained abilities of particular actors due to contingent events to which they are, often inadvertently, causally linked. One of the primary reasons that decision makers find themselves choosing between bad and worse policy options is because of previous historical constraints and the high costs associated with reversal. This argument moves beyond the assertion that $x$ period demonstrates a path dependent process into the more fruitful observations of

\[149\] Stinchcombe, “The Basic Structure of Historicist Explanation,” *Constructing Social Theories*, 106.

\[150\] Commentary on the literature disputing the merit of analysis of positive feedback loops, negative feedback and increasing returns. Andrew Bennett, and Colin Elman, “Complex Causal Relations and Case Study Methods: The Example of Path Dependence,” *Political Analysis* (Oxford University Press, Society for Political Methodology, 2006), 14:250–267.

\[151\] Pierson, “Increasing Returns, Path Dependence,” 254.

\[152\] This describes the process of increasing returns and gets to the heart of why policy paths become “path dependent.” Margaret Levi.
what mechanisms are strong enough to perpetuate sub-optimal paths in spite of large exogenous shocks—as this chapter will illustrate.\(^\text{153}\)

_Sunk Costs: President Reagan’s 1984 Negotiations_

Leaders may also be reticent to change path in a policy trajectory due to the high costs associated with initial _start-up_.\(^\text{154}\) Such costs are referred to in complex causal relations and path dependence literature as “sunk costs” or “vested interests.”\(^\text{155}\) These components make the continuation of the established institutional pattern a less “expensive” option than creating new patterns.\(^\text{156}\) Analysis of the potentially high costs of entering a policy path with little choice and identification of who may bear exactly what _interest_ in the perpetuation of that path is vital to the empirical analysis of what sustains and dislodges institutions over time. The excludable immigrants associated with the Mariel Cuban population came to challenge the U.S. government financially, philosophically, logistically, and otherwise for years after the 1980 exodus. For President Ronald Reagan, the next great challenge in regard to the legacy of Mariel was deciding how to cope with the thousands of Cuban immigrants who came to the United States having recently committed crimes in Cuba. He would also have to cope with those who had committed crimes in the United States while designated with temporary immigration

\(^{153}\) Thelen, 102: The explanatory power of historical-institutionalism.

\(^{154}\) Pierson, “Increasing Returns, Path Dependence,” p.254.

\(^{155}\) Stinchcombe, _Constructing Social Theories_, 124.

“Political actors develop investments, “specific assets,” in a particular arrangement—relationships, expectations, privileges, knowledge of procedures, all tied to the institution at work. Where investments in the specific institution are high, actors will find the cost of any institutional change that endangers these assets to be quite high; indeed, actors in this situation may be reluctant to run risks of any change at all…Investment of specific assets helps to explain institutional persistence. As actors in each society invest in a particular institutional arrangement, they have incentives to protect their investment by opposing change.” Gourevitch, _Strategic Choice_, pp.144-45.

\(^{156}\) Collier and Collier, _Shaping the Political Arena_, 35, 36.
“parole” status by President Carter.\footnote{Reagan’s first tough task in regard to this population, described in the previous chapter, was finalizing a legal designation distinguishing Cuban and Haitian immigrants without granting the Cubans the full preferential refugee treatment that they had received in the past.} In the case of immigrants from other countries, this situation resulted in the immediate exclusion—that is, deportation of the alien to their country of origin. But, as relations with the government of Cuba were generally antagonistic and Cuba had just gladly exported these “undesirables” and was unwilling to take them back, this particular population of Cubans fell into U.S. prison-detention limbo.\footnote{Harvard Law Review, “Indefinite Detention of Immigrant Parolees: An Unconstitutional Condition?” 116 Harvard Law Review p.1868, 1871 (2003). Eliot Walker. “Safe Harbor: Is Clark v. Martinez the End of the Voyage of the Mariel,” 39 Cornell International Law Journal 2006, 121. By 2004 there were still over 1,770 indefinite detainees nationally according to ICE. See Bahadur, Gaiutra, “Boatlift Refugees Fighting Limbo: Mariel Cases Could Affect 1,700-plus U.S. Detainees, Philadelphia Inquirer, October 13, 2004, at. Al.}

As time passed in Ronald Reagan’s first term, it became evident that a decision had to be made regarding this population of immigrants. Based on policy recommendations from the Central Intelligence Agency, the Department of State, and an exercise in logical counterfactual thought experiment, it is clear that President Reagan faced three choices in coping with the population—none of which would have been good solutions as because of the high costs associated with each.\footnote{Counterfactual analysis has been emphasized as an emerging tool for studies of critical junctures and their legacies, to project possible choices. Phillip Tetlock and Aaron Belkin eds., Counterfactual Thought Experiments in World Politics: Logical, Methodological, and Psychological Perspectives, Princeton University Press, 1996. Giovanni Capoccia and Daniel R. Kelemen, “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism,” World Politics, Volume 59, Number 3, (The Johns Hopkins University Press, April 2007), pp. 341-369.} (1) The administration could decide to release the potentially dangerous criminals back into society after their sentences had been served (as the justice system afforded to all other criminals absent the
variable of immigrant designation importantly decided and applied by President Carter and carried out by President Reagan early in his administration). (2) The incarcerated excludables could remain imprisoned indefinitely, that is until Cuba finally decided to accept them.\(^1\) (3) The administration could take an active approach to return the incarcerated excludables to Cuba which may result in the United States needing to make particularly significant political concessions to Cuba to resolve a dilemma that Fidel Castro initiated in the first place.

The first option of indiscriminately releasing criminals into society was especially costly in light of the popular media reports and misreports about the Mariel population, including one account from *People Magazine* that wrote, “85 percent of the refugees are convicts, robbers, murderers, homosexuals and prostitutes.”\(^2\) In actuality, among the original cohort fewer than half of one percent of the immigrating Cubans had a significant violent criminal history.\(^3\) To put this into perspective, criminality within the general U.S. population was roughly seventeen times greater than that among members of the Mariel boatlift.\(^4\) Further, 97% of Mariel immigrants had become “productive, law-abiding members of their communities.”\(^5\) In time, other purported “experts” also emerged to make blanket generalizations and condemnations of the population, further raising the cost of this policy path in spite of the relative credibility of these statements.

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\(^1\) Part of the delicate tragedy is that some of the imprisoned population became excludable for somewhat minor crimes, and already served the sentence for their crimes in the United States, but were still not automatically released into society because of the threat that they were perceived to pose.


\(^3\) Hamm: 59.


For example, one publication apparently appealing to questionable anthropological authority wrote that, “The extreme violence of their behavior, accompanied by cultural and religious sanctioning of this behavior, makes the Marielitos a tremendous threat to even the private citizens of our country.”\textsuperscript{166} Reagan’s second option put the United States in a difficult position with the international human rights community who explicitly forbids prolonged or indefinite detention without proper cause, or cruel and unusual punishment.\textsuperscript{167} This would weaken the United States government’s ability to lobby other countries for human rights improvements. Prolonged detention in maximum security facilities also burdened the budget of the U.S. justice system who spent an estimated $40 million per year.\textsuperscript{168} The third option was especially distasteful for the proudly anti-communist Reagan administration, bitterly opposed to sitting down to negotiate anything with the Cuban government. Endeavoring upon any of these paths would mean a large set-up cost and therefore, low probability of reversal once chosen.

The first step taken by Reagan was to gain some leverage to induce Cuba to accept the criminal Mariel excludables by completely denying all migration from Cuba. Thus, Reagan’s State Department ceased processing immigrant visa applications from Cuba. The closure to immigration became an important policy tool that the staunchly anti-communist Reagan administration predictably justified as incubating internal social

\textsuperscript{168} The Kastenmeier committee, who produced a report on the prison conditions of the Mariel excludables publically reported: “The measure of a nation can be seen in the way it treats the least advantaged among us. By this measure our country has failed to meet any minimal standard of decency in our treatment of the Cuban detainees at Atlanta... The current living situation for Cubans at the Atlanta Federal penitentiary is intolerable considering even the most minimal correctional standards. These detainees—who are virtually without legal rights—are worse off than virtually all other Federally sentenced inmates. They are confined without any practical hope of ever being released. These conditions...present a strong possibility of future violent confrontations. For these reasons alone, Congress and the Administration should be motivated to seek out a constructive solution. \textit{The House of Representatives Report}, 7; Gary Leshaw, “Atlanta’s Cuban Detainees: A Retrospective,” \textit{The Atlanta Lawyer} (Fourth Quarter 1992), 6-28.
pressures on the Cuban regime. Although this policy began in 1984, it was made official by two specific Executive Proclamations. The first of these Presidential actions which *reproduced* and reinforced the policy trajectory came on October 4, 1985. Proclamation 5377 suspended the entry of officials and employees of the Cuban government and members of the Cuban Communist Party.\(^{169}\) This helped the Department of State control immigration, as virtually every Cuban in the island’s command economy was, by necessity, an employee of the state. Proclamation 5517 instituted on August 22, 1986, also supported this policy by prohibiting entry into the United States of Cuban nationals located in countries other than the U.S. and Cuba. This sought to curb the practice of Cubans effecting entry into the United States from third countries. However, these were the very same pressures initially causing the Mariel crisis that displaced thousands of immigrants.\(^{170}\)

The rationale for this policy, initiated because of events during the critical juncture, was expressed by the Deputy Assistant Secretary of State of Inter-American Affairs, James Michel. He argued that the government of Cuba used emigration as “an outlet…to relieve social strains within Cuba,” exporting those who were particularly “less supportive” of the regime.\(^{171}\) Michel admitted that this policy clearly meant a “cost to individuals;” but it bore a vital strategic role preserving the opportunity to negotiate an agreement to return the Mariel excludables.\(^{172}\) With such a policy, there was a negative reaction from members of both parties in the Congress (minor policy “shocks”), but the Reagan administration still stuck to this policy.\(^{173}\) Representative Barney Frank (D. MA)

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\(^{170}\) See figure 4.2 below.

\(^{171}\) May 1984, in Skoug, “The U.S.-Cuba Migration Agreement.”

\(^{172}\) Ibid.

said that the policy was, “[h]olding innocent people hostage.” Representative Hamilton Fish, the ranking Republican on the Judiciary committee felt, “we are penalizing the wrong people.”

It is ironic that the Carter administration may have had much greater difficulty in adhering to this particular limb of the policy because of their ideological commitment to humanitarianism. But it was Carter who initiated it by the combination of demanding that Cuba close the Mariel Harbor to emigration and deciding not to grant refugee status and benefits to those who already immigrated. The Reagan administration was responsible for refining and reproducing this restrictive policy in regard to Cuba, Haiti and the rest of Latin America—and all because of Mariel. Such is the role of the path dependence argument in this thesis: *large consequences may result from small contingent causes.*

With this, the first significant historical-cause-loop has been identified. “Historical cause, or historicist explanation, means one in which an effect created by causes at some previous period becomes a cause of that same effect in succeeding periods.” These types of causes are important contributors to the stability of path-dependent legacies. Recall that it was a period of prolonged restriction and closure on immigration in the 1970’s from Cuba that contributed to building the pressure for demand for emigration among the Cuban people which lead to the 1980 crisis. 1971-1980 was the period where Cuba unilaterally suspended the migration agreement originally signed in the autumn of 1965. In the pursuit of controlling its immigration policy (closing immigration and returning problematic immigrants), the U.S. again caused an increase in the probability of new crises to challenge that policy in the future. This will,

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174 Ibid.
175 Ibid.
in turn, call for a renewed deterrent policy toward immigration. Such a situation might
demand new reasons to cooperate and make concessions with “hostile” and
“antagonistic” regimes.

An example of a specific historical instance posing a renewed threat for mass
exodus occurred in 1983 during the Reagan administration. On June 10, it was
determined that there was a U.S. cabin cruiser in Varadero, Cuba, which U.S. intelligence
speculated was preparing to move Cubans to Florida. For the U.S. government, this
greatly aroused fears of a “Second Mariel.” If one boat came back successfully, more in
South Florida might attempt the trip again as well. At a June 13 meeting involving the
Department of State, Justice, and the Coast Guard, the Justice Department urged State to
plead with Cuba not to repeat its 1980 actions. The boat did not bring back any Cubans
and did not spark another exodus. The initial propensity for resorting to forbearance
signaled to high-level U.S. officials in this instance the continued need for the replication
of the 1980 policy legacy. This is a mechanism of reproduction directly feeding an
historical causal loop. The path dependent legacy of the new policy is made up of many
instances that create self-reinforcing processes like the one described in the figure below.
These are the vital mechanisms of reproduction that sustain the policy trajectory despite
periodic exogenous shocks.

179 Ibid.
180 Giovanni Capoccia and Daniel R. Kelemen, “The Study of Critical Junctures: Theory,
Narrative, and Counterfactuals in Historical Institutionalism.”
After closing immigration from Cuba, President Reagan decided to assume the costs of the path initially begun under Carter. Late in his administration, Carter began exploring an agreement with the government of Cuba to return individuals among the immigrant population who admitted to having committed violent crimes in Cuba. In December of 1980 and January of 1981 the Carter administration had reached agreement with Cuba on most points for a migration agreement including Cuba’s assent to take the excludables. Cuba deliberately delayed formally signing the agreement until the Reagan administration took office, likely in order to ensure enforcement compliance from the new executive. But the Reagan administration was initially not interested in making any agreements. And so, for nearly four years, the Reagan administration’s hostility toward the government of Cuba prevented them from reaching any agreement over the return of the criminal excludables.

This path clearly bore additional costs for President Reagan who would be effectively sacrificing his anti-communist ideology by arriving at a mutually beneficial

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184 “Cuban Refugees,” U.S. Department of State Bulletin (July 7, 1980), p.71. “We will not,” concluded the White House, “Permit our country to be used as a dumping ground for criminals who present a danger to society.”
agreement with Cuba. In December of 1984 a migration agreement was reached. Cuba would take back exactly 2,746 individuals who the United States found excludable. These individuals were listed by name, which allowed the Cuban government to argue later that they were not obligated to accept anyone who was not on the list. The United States also resumed issuing preference visas to Cuban nationals up to 20,000 per year, and would accept former Cuban political prisoners and their families, starting with 3,000 in 1985. With this agreement Reagan sacrificed a great deal precisely because he was limited by the decision making begun by the Carter administration in the “critical juncture,” which led to an indefinitely detained excludable population foisted on the United States by a hostile regime. (1) Reagan reluctantly lent legitimacy to the government of Cuba by negotiating with it as an equal. (2) Only former political prisoners were considered refugees, setting the trend that most future immigrants would be treated as immigrants from other countries. Thus, the preferential immigration status of Cubans continued to be phased-out. (3) The agreement did not provide formal protections for the human rights of the excludables being returned to Cuba. Ironically, Reagan administration officials were forced to argue in U.S. courts that the human rights of the returned Marielitos would be respected and they would not be submitted to double jeopardy. In actuality, between January and April of 1985 a total of 201 Mariel prisoners from Atlanta were deported to Cuba and 73 of them are immediately re-imprisoned.

185 Ibid.
186 The assurances of respected human rights can be traced to informal words of Vice President Ricardo Alarcon and passing allusions by Fidel Castro; however, of the 201 Mariel Detainees returned to Cuba in 1985, at least seventy-three of these prisoners were immediately re-imprisoned. “Seventy-Three of the 201 Cuban Refugees Who Were Deported to Cuba are still in Cuban Prisons,” Diario de Las Americas (June 23, 1986). Further, the Haitian Migration Agreement, also worked out in this period, did include clauses guaranteeing the protection of the rights of those returned to Haiti.
188 Hamm, The Abandoned Ones, p.222.
Ultimately, Reagan choose the third route outlined at the start of this section, taking action for an agreement to return the excludables. But, as will be expounded on in the next section, the implementation of this agreement would be temporarily soured by the Cuban regime. Upset with unfiltered radio transmissions broadcasted across the Florida straits through Radio Martí—serving as counter-discourse to the rhetoric being propagated by Cuba’s state-controlled media—Castro shortly suspended the migration agreement. Thus, the Cuban regime added insult to injury when Fidel Castro forced Reagan to also bear the cost of the second route outlined in the beginning of this section: indefinite detention. This cost was absorbed in addition to already having made the sunk cost—sacrificing anti-communist ideology—with a vested interest in the return of the excludable criminals.

*Coordination Effects: Interest Group (In)Action*

Like large set-up costs discussed in the previous section, *coordination effects* are a prominent feature of increasing returns processes that drive path dependence and define the relative stability of the core attributes of the legacy of the critical juncture.\(^{189}\) Coordination effects are especially significant when a policy, or in the literature of Brian Arthur, a “technology,” are compatible with “linked infrastructure.”\(^{190}\) For example, in technological processes, a particular technology is more likely to exhibit increasing returns in persistence if it complements an already established mode or institution. As a corollary to this theory, the case at hand presents problems that may arise when institutions or technologies that should be compatible (for example: interest groups and allied political governments with mutual goals) become incompatible—when allies begin to undermine their own gains, however inadvertently. This particular dynamic, as the

\(^{189}\) Pierson, “Increasing Returns, Path Dependence, 254.

logical reversal of some increasing returns literature, presents itself in this case as the Cuban-American community. Although considered allies and kindred in anti-communist spirit with President Reagan and his administration, the Cuban-American community inadvertently disrupted the policy path of President Reagan not once, but twice. In the first instance, the initiation of the Radio Martí program, which was a victory for Cuban-American lobbying, caused Fidel Castro to suspend the migration agreement that cost President Reagan so much to work out in the first place. In the second instance, to be discussed in the next section, incarcerated excludable Cubans rioted in response to news of their probable removal to Cuba and Cuban-American leaders were called to mediate the crisis, forcing significant concessions from the Reagan administration.

Still, despite these massive policy disruptions, the Reagan administration ultimately proceeded on their policy path of exclusion and deportation for the criminal excludable aliens. The interesting dynamic exhibited in this portion of the narrative was that the Reagan administration found itself in a position, as a result of the constraints caused by path dependence, where it was forced to cooperate with its enemy—the government of Cuba—with whom it found mutual interest. In doing so, it scorned its ally—the Cuban-American community—whose interests became secondary.\(^{191}\)

By the 1980s the Cuban-American community in the United States had begun to fulfill the “American Dream,” achieving tremendous success in assimilation and socio-economic upward-mobility beginning with the transformation of their enclaves in places like Miami, Florida and Union City, New Jersey.\(^{192}\) The result was not only a hard-earned

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\(^{191}\) For an additional detailed analysis of the United States “cooperating with the enemy,” see Domínguez, “Cooperating with the Enemy?”

positive reputation as an immigrant population, but also gains in political capital.\textsuperscript{193} Harnessing the potential energy of this inherently politically charged community was the influential Jorge Mas Canosa, who charmed the halls of Congress lobbying for Cuban issues with his passion and charisma in the late 1970s and early 1980s. He established the Cuban-American National Foundation (CANF) in January of 1981.\textsuperscript{194} As an institution, the CANF represented—at the time—the monolithic political expression of the Cuban-American community.\textsuperscript{195} Under the Reagan administration, Cuban-Americans sharing foremost intolerance for communist domination bore unprecedented access to the executive branch, and the halls of Congress. But the Mariel immigrant group and the questions and problems they posed challenged not only the executive administrations who faced them, but also the ethnic-interest groups they represented.

The delicate tragedy in which the Cuban-Americans were caught was a direct result of the path dependence brought by the policy shift during the critical juncture of the Mariel crisis. The Cuban-Americans sought two incompatible goals at once: the United States should not keep Cubans dissatisfied with their lives in Cuba from coming to the United States, but it should not help Castro by removing his enemies by allowing him to export opposition. Cuban-Americans clearly preferred seeing only immigration

\textsuperscript{193} Ibid.


from Havana, northward. Further, they wanted to see their recently arrived brothers and sisters—the thousands of people for whom they had broken U.S. law and risked their lives to ferry to the United States—treated with leniency. But Cuban-Americans also wanted to preserve their hard-earned reputation.

This “no-win” decision circumstance, just like that which this work describes as faced by Carter and Reagan, represented the less-than optimal path of contingent causal events in historical institutional analysis. This conclusion is not drawn simply because the political actor is observed to have a poor menu of choices. It is because the menu was specifically shaped by the legacy of the 1980-1984 critical juncture resulting from the Mariel boatlift. Ultimately, because the negative perception of the Mariel immigrants tarnished the established Cuban-American community’s hard-earned reputation, there seemed to be a tremendous reticence to assist or defend the Mariel population. This observation serves to make the next point, about the unintentional delay in the return of many of the excludable immigrants all the more interesting.

One of the early demonstrations of the great political power of this interest group was witnessed by its victory in Radio Martí. Some Cubans who emigrated to the United States recall listening to “Voice of America” radio, illegally, on short wave to access any source of information outside of the official media propagated by the Castro regime. The Cuban-American lobby hoped to create an official, Cuba-specific station that would similarly broadcast information in counter-discourse to that of the official media in Cuba to serve as an informational beacon, as did Radio-Free Europe. In response to what the government of Cuba saw as an attack on “Cuba’s national sovereignty,” as INS was earning its right in U.S. courts to deport any illegal alien it wanted, Fidel Castro

197 Anecdotal evidence.
suspended the immigration accord of 1985. This reaction rendered that U.S. court permission useless with respect to the Cuban Mariel immigrants.

Thus, the Cuban-Americans accidentally delayed forced return of the excludables to Cuba. In effect, this situation initiated by the Cuban-Americans with their persistence on *Radio Martí*—despite being well-intentioned—served as a mechanism that reproduced several paths. (1) For the United States, the radio programming subverted the deterrent immigration policy that Carter initiated and Reagan perpetuated by portraying life in Cuba as bad and life in the United States as good—thus compounding push and pull factors for migration. (2) For the Mariel Cubans the effect of *Radio Martí* in delaying their departure was great news and the best help they had yet received from the Cuban-American community, albeit accidental. (3) Not to mention, as a result of poor *coordination effects* with the Reagan administration which was committed to their return, after “sinking” a great deal of start-up costs in initiating this policy, it perpetuated the current condition of indefinite detention begun under Carter and raised the costs in coping with this population. This circumstance—and all of its resulting processes—constituted a bizarre, but legitimate and important, mechanism of reproduction. At once it shocked a new path upon which the Reagan administration had briefly endeavored before—returning excludable Mariel immigrants—*and* reinforced the dismal path of indefinite detention, which President Carter would have dreaded as an outcome had he foreseen it when his administration neglected to apply the refugee status of the old policy during the critical juncture.\(^{199}\) As will be seen in the next section, even despite this

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\(^{198}\) Fidel Castro criticized the station for being a violation of the right of states to their own national sovereignty, despite his own attempts at radio broadcasting abroad and his efforts to jam the signals. “La Causa: Exiles Redirect their Efforts,” *The Miami Herald*, 13 April 1986.

\(^{199}\) The reader should remember that had the Cuban immigrants been granted a different status other than the “entry-fiction” alien parole granted under the special status initially given by the Carter Administration, (“Cuban/Haitian: Status Pending”) they would not have been excludable under U.S. law and the United States would therefore not have had the *option* or presumed legal
formidable policy shock, Reagan continued attempting to implement the migratory agreement with Cuba. His administration continually affirmed that it was willing to negotiate to reinstate the migration agreement, but would not compromise the Radio Martí programming.200

Negative Feedback: Excludable Prisoners Riot over Migration Agreement

Digressing for a moment from the positive feedback mechanisms that engender increasing returns described earlier in this work, this section turns to negative feedback mechanisms. In this context, negative feedback works in the exact opposite manner as positive feedback. Negative feedback may produce a particular equilibrium not because an alternative proves too costly. Brian Arthur summarizes this process as he describes “[negative] feedback tends to stabilize the economy because any major changes will be offset by the very reactions they generate....”201 In this case, the United States government and the Cuban government realize, operating in isolation from each other, that in particular policy realms even overtly antagonistic countries may have mutual interests. This feature is most evident in the politics of the migration agreement. In sum, the same decision to negotiate and establish a migration agreement was reached three times over the course of the 1980s: in 1980 during the Carter administration, in 1984 during the Reagan administration, and again in 1987 with the Reagan administration.

The moments of most interest in this particular section are the latter two agreements. The reader is reminded that in 1984, Castro suspended the recently approved migration agreement. In doing so, he ushered in a period of self-inflicted sacrifice in order to punish the United States. During the period of 1984 to 1987 while the migration

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agreement was suspended, Castro coped with the costs associated with the many individuals that his government continued to amass in prisons for political crimes—individuals that he could have exported to the United States at the amount of 20,000 per year as a part of the forgone migration agreement. Further compounding this effect, domestic discontent was exacerbated during a period of accelerated economic disintegration resulting from a 1986-1987 recession.\footnote{Dominguez, “Cooperating with the Enemy,” 58.} In turn, the United States was also punished. The Reagan administration continued to be irked by the same Mariel excludable prisoner issue that challenged Carter and, as will be shown later in this work, would challenge subsequent Commanders-in-Chief. In fiscal capital, the prisoners cost an estimated $240 million between 1981 and 1986.\footnote{The Kastenmeier committee, who produced a report on the prison conditions of the Mariel excludables publically reported: “The measure of a nation can be seen in the way it treats the least advantaged among us. By this measure our country has failed to meet any minimal standard of decency in our treatment of the Cuban detainees at Atlanta… The current living situation for Cubans at the Atlanta Federal penitentiary is intolerable considering even the most minimal correctional standards. These detainees—who are virtually without legal rights—are worse off than virtually all other federally sentenced inmates. They are confined without any practical hope of ever being released. These conditions…present a strong possibility of future violent confrontations. For these reasons alone, Congress and the Administration should be motivated to seek out a constructive solution.” \textit{The House of Representatives Report}, 7; Gary Leshaw, “Atlanta’s Cuban Detainees: A Retrospective,” \textit{The Atlanta Lawyer} (Fourth Quarter 1992), 6-28.} But they also cost in political capital.\footnote{“President Carter in 1980,” \textit{Congressional Quarterly}, 1981. Carter, in retrospect, explicitly said that his handling of the Mariel boatlift was “costly in political popularity.” Jimmy Carter, \textit{Keeping Faith: Memoirs of a President}, (University of Arkansas Press, 1995), p. 534.} They were a magnet for criticism of the U.S. government for both those who saw them as a social burden and for those who saw the situation of detainment as a contradiction of the ideological principles upon which the United States takes so much pride.

On June 22, 1987, months before violent prison riots by the imprisoned Cuban population, the INS instituted the Cuban Review Plan in an effort to defray the criticisms of the situation of indefinite detention.\footnote{Lourdes M. Guirbitey, “Criminal Aliens Facing Indefinite Detention Under INS: An Analysis of the Review Process.” \textit{55 University of Miami Law Review} 275, January 2001.} For critics of the prolonged detention based on
international standards, the Attorney General reminded that international law vests jurisdiction only in those cases where there is no treaty and no controlling executive or legislative act or judicial decision. Still, the impetus behind the review plan seemed logical and helpful to the Reagan administration. Since the Attorney General retained implicit statutory authority to detain Mariel Cubans, and each detainee received an annual review of his or her parole eligibility, their detention would neither be “prolonged” nor “indefinite” and therefore not in violation of any international standards.

By 1987 about 3,800 Mariel Cubans were serving sentences for crimes committed in the United States, and another 3,800 were indefinitely detained after having completed sentences. The problem was that the proceedings lacked major components of fairness and justice implied by real due process. Problems with the Cuban Review panels are numerous but included mainly the central lack of due process. The review process itself was extremely informal and termed an “interview” rather than a “hearing.” There was no opportunity for the detainee or representative to present evidence against what was already in his file. Often, detainees with objections to accusations by the INS were considered as uncooperative or unwilling to accept responsibility. The burden of proof was with the detainee who needed to convince the panel that he would not violate terms of his parole, which include any minor infraction of the law. Some legal scholars note that the judgment of the “probability” of committing petty crimes should not be the determinant for continued indefinite imprisonment in our system.

In effect, this policy fostered the psychological conditions that made violent riots possible and predictable. It was a vital antecedent condition in this subplot. The Cuban Review Plan raised expectations among the detained population that they may be released in the United States. So, as news of a renewed migration accord signals the population’s

probable return to Cuba, an intense reaction could be expected. Further, the Cuban Review Plan—with its lack of due process and constitutional guarantees—although absolutely legal in the United States when applied to excludable aliens, highlighted the absurd exceptionality of “entry fiction” and drew even more criticism of the lack of legitimacy of the United States judicial remedy. 

Between July and November of 1987, only 80 Atlanta detainees were released under the plan of the nearly 1,300 who came before the INS panels. Another eight-hundred and eighty were approved for release pending placement in half-way houses or with community sponsors, but remained in maximum security confinement indefinitely. That only nearly six percent were actually released was expected, considering the concern with assuaging public commentary over the lack of safety in releasing this population into society. But that nearly seventy percent of the reviewed cases were recommended for conditional release under strict INS criterion clearly shows that the population was not as much a threat as perceived.

On November 20, 1987, the migration agreement was settled, once again, by the United States and Cuba. With this, and the continued position of the State Department

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210 Memorandum to the CIA Director, From: Latin American Division: Recommendation for “Return to Cuba of Mariel Refugees unfit for Release into U.S. Society.” Secret. 25 February 1982. Approved for Release 05/25/2006. This note mentions that most criminals were only guilty of negligible offenses and concedes that their misbehavior is because they are products of a dysfunctional post-revolution Cuban society.

211 See 8 C.F.R. Statute 212.12(d)(2)(ii). The regulation requires that the detainees (i) is presently nonviolent, (ii) is likely to remain nonviolent, (iii) is not likely to pose a threat to his community following his release, and (iv) is not likely to violate parole conditions. See 8 C.F.R. Statute 212.12(d)(2). The ICE officers then weigh several additional considerations, such as participation in work programs, in their discretionary determination of parole.
who reinforced this path by issuing statements that publically defended Cuba’s human rights record, both the Mariel immigrants and the Cuban-American community as a whole became increasingly uncomfortable with the policy trajectory. The State Department’s stance was summed up by its releases that it, “ha[d] no independent factual material about this specific applicant...[and] the Department of State ha[d] no reason to believe that any Mariel Cuban [would] be persecuted upon his return to Cuba because he ha[d] been part of the Mariel group.”212 A close reading of this statement does not exclude the implication that the immigrants would not be subject to the normal, routine human rights abuses directed to all Cuban citizens.

This clearly uncomfortable stance for the Reagan administration became the cause of intense riots by the excludable immigrant population in U.S. prisons. To be sure, some of the most important dynamics in path dependency analysis are “balancing processes.”213 Balancing processes constitute those events which may possess certain negative feedback that work to bring a system back to a sort of equilibrium.214 Here the dynamic was not the “amplification of what comes before” or the replication of what came before, but rather, reactions against it.215 In this case, the reaction against the migration agreement again put the Reagan administration initiative of returning the Mariel excludables on hold. It returned the policy path back toward indefinite detention in the United States, coupled with restrictive, immigrant-deterring policy.

On November 21, 1987, the day after the announcement of the reinstatement of the migration agreement, Cuban detainees rioted in the Oakdale (Louisiana) Federal Alien Detention Center, taking over the facility and taking hostages in order not to be

214 Ibid.
215 Bennett and Elman, “Complex Causal Relations and Case Study Methods: The Example of Path Dependence,” 258.
returned to Cuba. The Cuban-American National Foundation immediately reached out to high-level Reagan officials to offer assistance. The Cuban-American community was especially concerned with this insurrection matter, as the extreme resort to violence exhibited in this desperate operation by the Mariel immigrants to obtain freedom would not reflect well on their ethnic community as a whole. On the following day, November 22, six-hundred miles away, Cuban excludable prisoners also rioted in the Atlanta Penitentiary, setting buildings ablaze and taking hundreds of hostages. Part of the problem was that the United States government miscalculated its expectations and did not predict the gravity of response from the Cubans who were so unwilling to return to Cuba. It was known very well that no Mariel criminal would be willing to return to Cuba. The experience in 1984-85 with the small percentage of Cubans sent back before the migration agreement was fully called-off was that the Cubans left the United States quietly, even if involuntarily. The absence of violence, protest, or riot from either those prisoners in 1984-1985 or the Cuban-American community not only failed to disrupt the Reagan migration-agreement policy path, but it also left the administration wholly unprepared for the reaction from the Cuban prisoners in 1987.

On November 24, detainees in the Oakdale compound threatened to burn a hostage to death in full view of the other hostages, detainees, and government officials. Attorney General Meese was unable to gain control of the front-page newspaper-headline events unfolding at these prisons only escalating in violence. As can be seen in figure 4.3 (below), the escalation of violence fed the causal loop of aptness to deportation because of the demonstrated high costs associated with the rioters remaining in the United States.

216 Skoug, The U.S. and Cuba Under Reagan and Shultz, 76.
217 Ibid., at 176
218 Ibid., at 177. Skoug cites that Jorge Mas Canosa, the founder of the CANF, contacted him offering to do whatever possible to help…” He said he knew the development would be of no service to the Cuban-American community.
219 Hamm, The Abandoned Ones, 167.
220 Hamm, Mark S., The Abandoned Ones, 226.
States. Violent acts corroborated preconceived stereotypes that initially rendered the group undesirable. At the same time, complete concession to their demands, meaning the release of the prisoners, would signal a failure of the United States government to maintain any sense of control.

Figure 4.3

(Source: Created by the Author.)

The United States government was initially unable to mediate the crisis on their own and was forced to enlist help from the Cuban-American community. To be sure, it was not the riot itself which disrupted the Reagan deportation policy, rather it was the negotiation of the conditions that would end the crisis which was central. The rioting detainees had little trust in the Reagan administration and even less in Attorney General Meese. It happened that one of the only individuals fit for mediation, who had earned the trust and admiration of the rioting population was the Cuban-American leader, Bishop

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Augustín A. Roman. Roman had important positional power at this critical moment. Four days before the detainees began to riot, Roman was chairing a Catholic conference in Washington, D.C. on the plight of the imprisoned Mariel Cubans.  

The conference delegates submitted a document to Attorney General Meese asking for him to end the practice of indefinite detention, placing Roman in opposition to Meese. The Cuban detainees, on the second day of siege, even asked specifically to speak to Roman in order to begin mediation. But, knowing that Roman was an opponent of the INS detention practice led Meese to attempt to actively exclude the Bishop. This included an instance where Meese left Roman grounded in a plane on the runway as he authorized his flight be canceled last-minute so Roman would not meet with Bureau of Prisons Director Quinlan and involve himself in the negotiations. Eventually, Roman’s communication with the prisoners led to the cessation of violence and the laying down of weapons within hours. This meant that his active and continued exclusion from the negotiation process by the Attorney General only contributed to the human, fiscal, and political costs associated with the riots.

Meese was delicately removed from the negotiation and mediation phase by Bureau of Prisons Director J. Michael Quinlan and the Congress who lobbied for the involvement of Bishop Roman. Although their inaction and indifference to the struggling portion of the Mariel population prior to the riots was importantly emphasized, the Cuban-Americans were generally sympathetic to the rioting detainees in this moment. The extreme measures taken to riot were perceived as evidence of the harsh nature of

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225 The memo was said to cross Meese’s desk at the same moment that Senator John Tower’s Iran-Contra report was submitted to Meese loudly chagrining him with “disdain for the law.” Commission Pro-Justice Mariel Prisoners. “The Commission Pro-Justice Mariel Prisoners,” *The Mariel Injustice*. (Coral Gables, Fl, 1987).
226 “Something surprises me as a Cuban: to think that a person would rather live in a prison in another country than to return to his country of birth.” Augustín A. Roman, Auxiliary Bishop of Miami, November 29, 1987.
227 Bureau of Prison: *After Action Report* cited Bishop Roman as an “Outspoken Critic of the INS detention policy.”
Cuban society and a condemnation of the U.S. government for trying to return them there.\textsuperscript{228} This resort to outside counsel forced the United States Government into an even tighter position and lack of control. So, Bishop Augustín A. Roman was able to end the violence within only hours, but at a high cost.\textsuperscript{229} The Cuban-American leader, who was enlisted as an ally of the U.S. executive branch and its Bureau of Prisons, ended up forcing two major concessions from the Reagan administration. (1) Now all prisoners would have to be considered as possibly non-excludable with additional thorough reviews. (2) Their expedited return would no longer be possible if 7,600 cases would have to be re-reviewed in a “fair and equitable” manner. And with this, the Cuban-American community, again, thwarted the efforts of the Reagan administration which appears to be their ally and to which Cuban-American community leaders retained high-level contact and unprecedented access.

Conclusion

In sum, the period of 1984-1987 exhibited several interesting shocks to the policy path; these include Fidel Castro’s decision to suspend the migration agreement as well as

\textsuperscript{228} Skoug, \textit{U.S. and Cuba Under Reagan and Scultz}, 177.
\textsuperscript{229} “Pursuant to negotiations with the riot leaders to end the takeover and release hostages, the Attorney General agreed to place a moratorium on deportations to Cuba, and to create a Department of Justice panel process to review the case of each Mariel Cuban in custody at Atlanta and Oakdale prior to any final INS action concerning detention or repatriation. The DOJ review program was placed under the supervision of the Office of the Associate Attorney General (later re-delegated to the Office of the Deputy Attorney General, ODAG), and consisted of a file review by two Department of Justice attorneys and one representative of the United States Community Relations Service. Those Cubans who did not appear on the list of 2,746, who were in INS custody at the time of the riots, and who were ordered detained under the INS Cuban review plan, received a Department of Justice panel review to determine whether they would be paroled or detained. Those who did appear on the list of 2746, and who were recommended for repatriation by INS, received a DOJ review to determine if they would be repatriated or paroled. The DOJ review process took place between early 1988 and July 1991, and produced approximately 1600 final decisions.” U.S. Department of Homeland Security/ U.S. Immigration and Custom’s Enforcement Field Manuel, “Detention and Deportation Officer’s Field Manual,” March 21, 2006. http://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf. Accessed: January 28, 2011.
the actions and inactions of the Cuban-American community. During this period, Reagan was constrained to policy options limited by the mechanisms of production and contingent decisions occurring in the 1980-1984 critical juncture period. Even despite such exogenous shocks, the staunchly anti-communist Reagan administration remained committed to the strict, deterrent policy path which excluded immigrants from communist countries. In order to cope with the excludable immigrant population, one of the products of the critical juncture period, the Reagan administration sacrificed its anti-communist ideology, dealing with the Cuban government as an equal and making concessions in order to restore an immigration agreement initiated earlier in talks by Reagan’s political opposite, Jimmy Carter. Such investment costs were shown in these sections to increase the likelihood of commitment to this policy of detention and intended return.

Although considered an ally and kindred in anti-communist spirit with President Reagan and his administration, the Cuban-American community—the most important interest group involved—inadvertently disrupted the policy path of President Reagan not once, but twice. In the first instance, the initiation of the Radio Martí program—a victory for Cuban-American lobbying—caused Fidel Castro to suspend the migration agreement that cost President Reagan so much to work out in the first place. In the second instance, incarcerated excludable Cubans rioted in response to news of their probable removal to Cuba and Cuban-American leaders were called in to mediate the crisis, forcing significant concessions from the Reagan administration. This section concluded that problems may arise when institutions or technologies that should be compatible (for example: interest groups and allied political governments with mutual goals) become incompatible—or when allies begin to undermine their own gains, however inadvertently. This particular dynamic presents itself in this case as the logical reversal of some increasing returns literature on coordination effects.

Justice Stevens: Mr. Kneedler, can I ask you a question, forgetting the statutes for a moment—I—which we’ve already covered at some length? Just going to your constitutional position, it’s clear that a person who’s not been admitted and has been paroled could be excluded forthwith, summarily, and so forth because he’s never been admitted. But does that person have any protection under the Constitution? Could we shoot him?

[DEP. SG] KNEEDLER: No, no, surely. What—the—the—

Justice Stevens: Then what is the protection under the Constitution that deals—is it the Due Process Clause?...

Mr. Kneedler: Yes. We—our position is not that he’s—not that he’s not a person. The question is what—is what process is due.

Justice Stevens: And is he a person who has a right to liberty, entitled to some protection, very, very, very minimal, but there is some protection to that—that individual?

Mr. Kneedler: It—depending upon the context. The one protection for liberty he does—

Justice Stevens: Well, the context is he got off a boat. We couldn’t—but Cuba won’t take him back or—or whatever—wherever he came from. They can’t. And the only thing we can do to keep him out of the country is to keep him in jail.

Mr. Kneedler: He has no substantive due process right to be released into the United States.

Justice Stevens: He—he doesn’t have a right to be released. But—but you do not contend that we could kill him?230

Oral Arguments in Supreme Court: Clark v. Martinez, January 2005

Listening to the recordings of the oral arguments of Clark v. Martinez heard before the Supreme Court in January of 2005, it is easy to notice an alarming and obvious feature in the conversations between the Deputy Solicitor General and the Supreme Court Justices.231 Voice intonations alone suggest that Supreme Court justices were very surprised that indefinite detention of anyone could still be defended as legal. The Deputy Solicitor General, representing the Justice Department—as is shown in the above

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231 Ibid.
exchange—clearly experienced great difficulty articulating the rationale for a practice so counterintuitive to American notions of “justice.”\textsuperscript{232}

But it is the encounter like the one just described that makes this historical narrative particularly well-suited to path dependence analysis. There is a counterintuitive policy path that persists despite continuous challenges to its trajectory. In their formative work, the Colliers emphasized that “the stability of a legacy is not an automatic outcome, but is rather perpetuated or destabilized by ongoing institutional processes.”\textsuperscript{233} As in the last chapter, the following empirical analysis will identify the mechanisms of reproduction which perpetuated the new restrictive and excluding policy path traced in this thesis from the critical Mariel crisis juncture, as well as the various “shocks’ that challenge the trajectory.

This chapter confirms two significant historical institutional theoretical observations in light of the historical narrative. (1) The Clinton administration faced the opportunity for a new policy juncture with a Cuban migration crisis in 1994. Clinton interestingly took an inverse policy approach to that of Carter by originally detaining and excluding, but eventually welcomed the immigrants as refugees. It is ironic that Clinton’s initial reaction was taken literally from the books of the Carter administration as neither seemed to have wanted to adopt such a restrictive approach in retrospect. Clinton relied on a “credible commitment”—safe loyalty to an already-accepted measure. This feature served as evidence that increasing returns were initially at work in perpetuating another tough and restrictive immigration policy carried, as if by momentum, from the 1980 Mariel crisis.\textsuperscript{234} (2) As a separate issue, the courts would be challenged to destabilize the

\textsuperscript{232} “A scenario where all property and liberty rights are granted by the sovereign has been criticized as repugnant to American notions of inherent rights.” Lawrence Tribe, \textit{American Constitutional Law}, 10-12 at 708 (2d ed. 1988).
\textsuperscript{233} Collier and Collier, \textit{Shaping the Political Arena}, 31.
\textsuperscript{234} President Clinton also produced the same negative externalities that made the policy path so inefficient for Carter and Reagan. (See the quote at the start of this chapter for juxtaposition.)
great negative externality which made the restrictive policy legacy of the Mariel critical juncture so “inefficient”—the Mariel excludables. By virtue of the Plenary Power Doctrine, courts cannot influence immigration policy, but were unpredictably forced to affect immigration procedures on account of the dilemma with the Cuban Mariel immigrants, effectively limiting executive power. The Supreme Court and the Clark v. Martinez case constituted the fulcrum which served to dislodge the externality of indefinite detention resulting from the path dependent policy that originated with Mariel.

Take the case of Lazaro Lahens, for example. Lahens came from Cuba during the 1980 Mariel boatlift—a seventeen year old with no past criminal record. In 1996, Lahens served some time in prison after being charged with a misdemeanor burglary. As part of a work-release program, Lahens joined a company called Painting Contractors and resumed his productive life. Immigration and Custom Enforcement officials eventually sought him out in 2003 and confined him without criminal charge. As Lahens entered under the temporary parole status established by President Carter, the form of detention used against him was legal. Technically, Lahens was a “non-admitted” alien.

Recognizing this classification, the Attorney General revoked his temporary parole status and refused his legal entry placing him in the class of Cubans who were excludable and deportable, but who would not be accepted back in Cuba.

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235 The Plenary Power Doctrine prevents the judicial branch from meddling in immigration policy.
236 In mechanics, the fulcrum is the “point at which a lever is placed…” (Oxford English Dictionary); In literary analysis and poetry, the fulcrum (figurative) is the moment in the story when conflicting or contrasting ideas become resolved and one may win out. It is often among the most meaningful points in the narrative and carries a strong clue to the message of the work. In the historical narrative presented in this thesis, the asymmetrical nature of political authority inherent in the judicial branch creates a high-stakes atmosphere poised for a significant, though unexpected decision—to be described shortly. The authority of the court is leveraged to dislodge a significant aspect of a path dependent policy.
Following temporally from Reagan’s policies, the inertial immigration policy trajectory regarding Cubans proceeded largely unchanged under President George H.W. Bush. This is not extremely surprising for a number of reasons. First, Bush was Vice President for Reagan and was naturally inclined to preserve the policies of his predecessor and former boss who he had spent the previous eight years publically defending. All the way back in February of 1982, for example, in a speech intended to assuage local concerns over rising crime rates, then-Vice-President Bush offered sixteen points of initiative in the South Florida area that would make for a harder line toward immigration as well as face head-on the crime stemming from immigration. He knew how significant the challenges of the recently arrived Cuban population were and how politically volatile the Cuban immigration issue could be—facing the varied demands of civil rights interest groups, native local residents, the Cuban-American community, the various bureaucracies in the executive branch and the government of Cuba itself. Second, the prison riots discussed in the previous chapter, which exploded in late 1987 and troubled the Reagan administration so much, were largely resolved by 1988. Also, the guarantee of annual review of the cases of indefinitely detained Cubans which emerged from the negotiations resulting from prison riots gave the appearance of fairness and hope in the justice system for this population—relieving some interest group pressures. Next, the return of those confirmed by the United States government to be indeed legitimately legally excludable was dramatically slowed from the original intent of the policy. Individuals in this population of undesirables who remained from the Mariel exodus and were deemed unfit for release by review panels, was only slowly trickling back into Cuba as a result of an extremely delayed migration procedure produced by the Reagan negotiations discussed earlier. For example, even though the agreement was that 2,746

239 “Remarks of Vice President George Bush at the Miami Citizens Against Crime Luncheon,” OMNI Hotel, Miami, FL. Office of the Vice President. February 16, 1982.
Mariel refugees in custody at that time would be returned to Cuba, by the beginning of October 1997 only 1,362 had been repatriated.\textsuperscript{240} By 2003, only 1,625 among this group had been repatriated.\textsuperscript{241} Finally, for President Bush, there happened to be no single event or crisis that might serve as a portal or juncture to immediately call for revisiting the immigration issues that previously challenged both the Carter and Reagan administrations. But, the same could not be said for his successor.

\textit{The Next Juncture: Déjà vu and Mariel II}

The policy which emerged from the Clinton administration during the Rafter or “\textit{Balsero}” crisis of 1994 resurrected the measures implemented by President Carter at the end of the Mariel crisis of 1980 and reinforced the dramatic 1980 policy shift. Originally the shift was manifested in Carter’s decision not to grant blanket refugee status to the entire Mariel population and instead designate them under a temporary parole status and deal with the immigrants on an individual basis. As described in Chapter 4, this decision for parole status and the legal implications it bore would create a unique and anomalous class of excludable aliens who could not be excluded and a class of Cuban immigrants who did not have the same legal designation or social privileges as their predecessors (or successors-who arrived to the United States after reluctant mutual agreements were made between the U.S. and Cuba). The 1980 shift also implemented deterrent measures for migration including the interdiction of boats moving people between the Cuba and the


Indeed, it was Carter’s emergency resort to these measures 14 years prior that made this path a viable alternative for President Clinton.

The historical narrative shows that in August of 1994, President Clinton was challenged to face a situation which, at the start, appeared like it might become almost identical to the exodus faced by the Carter administration nearly fourteen years prior. Between the middle of August and the end of September of 1994, over 30,000 Cubans set sail for the United States. While the harsh measures and great sacrifices made by the United States government since 1980 to uphold a strict immigration policy, from turning boats back southward in the Florida Straits to negotiating with distasteful governments for migration accords, were intended to deter this type of uncontrolled movement, this episode undermined those efforts making once again clear that state-level policy cannot unconditionally dictate the movement of people.242

The reasons for the exodus this time were not unlike those in the Mariel episode.243 Thus, the situation was naturally not unfamiliar to the United States government. Around 1981, two “Secret” documents were circulated within the upper levels of the United States’ government. Titled “Preventing another Mariel” and “Using Guantanamo to hold the Undesirables who arrived in the Mariel boatlift,” these documents summarized the lessons learned from the mishandling of the Mariel crisis.244 Interestingly, the strict deterrence policy that the documents prescribe is almost the exact same recipe that Clinton follows, which will be elaborated upon shortly.

243 Indeed the 1994 crisis was referred to by some journalists and pundits as “Mariel II” or the “Slow-motion Mariel.” Smith, Jonathan C., “Foreign Policy for Sale? Interest Group Influence on President Clinton’s Cuba Policy, August 1994,” Presidential Studies Quarterly 28 (Winter 1998), 207.
However, this episode of Cuban migration had two antecedent conditions that were distinct from other instances of mass migration from Cuba. The first was the established laws which prohibited Cuban-Americans from navigating boats southward to pick up relatives and friends. This initiative was based on the false assumption addressed in the previous paragraph that a massive exodus could not take place in the absence of Cuban-American participation. Second, at the time of the 1994 crisis, there was already an established migration accord that gave the Cubans hope of leaving the island in a legal manner. Despite this accord, a few institutional factors undermined both of these conditions which appeared favorable to the United States maintaining control of its borders—namely the overriding interest of U.S. policy toward migrants since 1980.

The United States Interests Section in Havana was not adequately staffed in order to meet the workload demand associated with application for immigration visas. (2) Since the collapse of the Soviet Union, and therefore its economic supplements, the Cuban economy had been in free-fall. (3) The United States government overestimated the trust it could afford to the Cuban government in controlling its own borders—a case of poorly formulated adaptive expectations.

It should be noted at this point that of the important purposes of analyzing the historical narrative for historical institutionalists like Stinchcombe is in order to glean evidence that might help predict moments in which new critical junctures may emerge to dislodge particular policy paths. Indeed a great criticism of critical juncture analysis is that it is often purely descriptive because in the moment, actors cannot distinguish a critical juncture from any other crisis. This thesis challenges such a criticism and presents

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245 Further, the law enforcement approach had little teeth because the federal government had never successfully prosecuted Cuban-Americans for participating in the prior two boatlifts: Camarioca, 1965 and Mariel, 1980.

246 Engstrom, *Presidential Decision Making Adrift*, 188.

247 Pierson, “Increasing Returns, Path Dependence,” 254. Adaptive Expectations: “When 'picking the wrong horse' may have very high costs, actors must constantly adjust their behavior in the light of how they expect others to act.”
the 1994 Cuban migration crisis to prove otherwise. I contend that in a situation where an actor has observed or experienced such crisis open policy paths before, it is reasonable to expect new policy opportunities again. In this case knowing the history of Mariel, the Clinton administration saw crisis warnings early and understood that in this situation a new policy path could be forged. Otherwise stated, in the terminology of Margaret Levi, a new branch could be seized. For example, anticipating that inducing a migration crisis was in Castro’s policy menu, Principal Deputy Assistant Secretary of State for Inter-American Affairs, Robert Gelbard, warned Castro on July 30th that the “consequences of launching another Mariel boatlift would be quite grave.”

Unlike the Mariel crisis, the 1994 exodus was not initially as officially organized and orchestrated by the government of Cuba. It began as a steady flow of desperate individuals, commandeering and hijacking ships in Cuba as they set course for the United States. Later, it developed into the creation and navigation of any raft that might be more or less seaworthy. With the primary bureaucratic mission concerned with safety of the migrants, the Coast Guard often assisted the rafters, transporting them to Florida where they often earned political asylum.

Frustrated and embarrassed by these illegal departures, Fidel Castro promised he would, “stop blocking the departures of those leaving the country…” Saying, “[w]e cannot continue to guard the coast of the United States.” One of the interesting elements to the plotline was that issues with Cuban migrants were actually a ghost from Clinton’s past that motivated him to pay close attention to this crisis. Clinton was the Governor of Arkansas when the indefinitely detained Cubans rioted and took hostages in their prison facilities in protest of U.S.

251 Ibid.
pursued a policy to cope with the 1994 migration crisis that was the cause of the prison riots in his state in the first place.\textsuperscript{252} Like Carter, President Clinton ordered the U.S. Coast Guard to begin to intercept Cubans and transport them back to Guantanamo Bay, Cuba. With this, the Clinton administration resumed the restrictive policies established during the critical juncture period of the Mariel crisis that discontinued the practice of allowing all Cubans leaving for the United States automatic entry to the country. Clinton bluntly stated:

\begin{quote}
The people leaving Cuba will not be permitted to come to the United States. They will be sent to safe havens. The people who reach here will be apprehended and will be treated like others…They will be now treated like others who come here.\textsuperscript{253}
\end{quote}

As if it were not eerily similar enough, the 1994 crisis came to an end for President Clinton with the resumption of effectively the same migration agreement that President Carter began negotiating and the Reagan administration so reluctantly adopted in 1984. Clinton was forced to negotiate with the Castro regime as the number of Cubans grew in Guantanamo. On September 1\textsuperscript{st}, 1994, Clinton administration officials opened talks with Cuban officials in New York City, and in less than a week the U.S. and Cuba were back to their previous migration agreement providing for the United States acceptance of 20,000 Cuban immigrants per year—which relieved the government of Cuba of some of its thorny opposition. In return, the Cuban government would resume the protection of its borders and ensure that Cuban citizens did not depart illegally for the United States. But unlike the context of the 1984 migration agreement, Clinton made no determination regarding the status of the Cubans d Guantanamo at this time.

\textsuperscript{252} “Preventing another Mariel” and “Using Guantanamo to Hold the Detainees.” Declassified. Secret. No Author.
Faced with the same challenge as the other Presidents since 1980 regarding excludable aliens, Clinton again responded similarly and by May 2, 1995, reached a joint agreement with Cuba to return those Cubans entering the Guantanamo Naval Base illegally or who were found at sea. Defending the decision to the Cuban-American community, who was still shocked and angry by Clinton’s decision to perpetuate the strict immigration policy, Clinton said, “I know that many of you have questions about aspects of this policy… We cannot let people risk their lives on open seas in unworthy rafts. And we cannot sentence thousands of young men to live in limbo at Guantanamo.”

He sought to appear bound.

Under serious pressure from interest groups and local governments, Clinton responded to his own version of Mariel by laying out an exclusionary policy that reinforced the aforementioned deterrent measures. Specifically, Clinton completely prohibited entry of Cubans to the United States and instead transported them to the military base at Guantanamo Bay Cuba. Further, Clinton unveiled measures that called for immediate repatriation of any Cuban intercepted at sea—declaring that individual an illegal alien. The 1980 crisis served as the critical juncture and foundation which made the implementation of this strict policy, fourteen years later, easier. The original implementation of this strategy was not smooth. Reproduction and coordination effects as evidence for increasing returns however, produced the conditions that gave this policy momentum. Interestingly, in an unexpected reversal nearly a year later, Clinton eventually allowed the 21,000 refugees who remained detained at Guantanamo Bay to enter the United States while promising to uphold the same strict measures against

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255 See the “Opening of Policy Choice,” section of Chapter 3 in this work.
Cubans migrating to the U.S. which he implemented in the previous summer. This exception eliminated a huge class of potentially excludable aliens who were at that time in indefinite detention in Guantanamo and avoided repeating the problems created by the Carter administration who granted no refugee status, only parole status.

Given the rare opportunity to change policy course, Clinton would—as a result of political pressures—initially bound himself to what Pierson has referred to as a “credible commitment,” or loyalty to what is perceived at least to have been an acceptable measure. Political actors sometimes feel compelled to “bind themselves,” as Odysseus to the ship-mast as he passed the Sirens, to previous policies even in impending moments of widened choice. In this way, as is described by the literature on “credible commitments,” they may do better in the short and long-run by removing certain options from their future menu. To constrain themselves, leaders create large obstacles to institutional change. Clinton, like the Presidents before him was prepared to sacrifice humanitarian principles for some semblance of control on policy. He used rhetoric to make it appear as if he had no other option than the path that he chose to perpetuate.

It is clear to the historical institutionalist that the 1994 immigration crisis that Clinton faced had the potential to be a new juncture in policy. With this crisis and its aftermath, Clinton took active agency in redefining Cuban immigration policy to keep it restrictive in order to deter future episodes. But he also satisfied his humanitarian pangs by finally granting the detained population admission to the U.S. He got it both ways.

While Clinton was able to avoid the creation of another anomalous class of Cubans in limbo, his negotiations did nothing to alleviate the plight of the great negative

externality of the Mariel crisis critical juncture—indefinitely detained excludable immigrants.

**Pivotal Corrective Mechanism: The Court and Political Authority**

By this time, this thesis has observed and sought to understand such curious processes as deeply humanitarian Presidents ordering the U.S. military to send immigrants back to their decrepit totalitarian country of origin; anti-communist U.S. Presidents negotiating with distasteful regimes as equals and making accords that benefit the favor of communist countries; and interest groups with major potential power making little effort for civil rights advocacy for their compatriots while undermining the initiatives of their political allies. But now, how did the George W. Bush administration, more than twenty-five years after the Mariel crisis of 1980 traced in this thesis, find itself in a public forum—the hallowed halls of the nation’s highest court of justice no less—arguing for the merits of indefinite detention of these individuals (including some which had already served criminal sentences)? The answer lies in the same thread as the previously observed, less-than-optimal, policy outcomes: path dependence originating in the unique and formative critical juncture of 1980-1984 which shifted policy.

Unlike interest group pressures and even Presidential ideology, which according to Paul Pierson—being intrinsically quite messy and opaque—are subject to “collective action” and effects of “institutional development,” judicial decisions have the potential to abruptly and definitively dislodge key components of policy trajectories.\(^{259}\) I argue that the role of the courts is especially interesting in path dependence analysis, as it has a unique corrective power that is rare among any other political institution. Normally, political processes happen to lack the two most powerful correctors that might provide the means for exiting problematic paths. These two concepts appear as correctors almost

exclusively in economics; their absence explains why there may be more fertile ground for path dependence and explanation for lock-in in politics. The first is learning; the second is competition.\textsuperscript{260} Many economists were reluctant to accept path dependent analysis because they thought these mechanisms adequately provided for opportunity to exit a path. Learning, allows firms to correct their mistakes over time as they observe their own experiences and the demonstration effects of other firms.\textsuperscript{261} Competition, and the pressures it affords, allows new organizations to develop and replace sub-optimal organizations.\textsuperscript{262} Both are lost in the political arena.

However, this thesis finds that the court can indeed navigate a path which produces a decision destabilizing a policy trajectory with a political rationale independent of, and insulated from, the original cause and continuing mechanisms of reproduction. In doing so it has identified a most rare and highly valuable exit valve for inertial and less than optimal policy loops. This section constitutes a revision of Pierson’s contention regarding the role of “political authority and power asymmetries.”\textsuperscript{263} Political authority is not only, as Pierson identifies, an element of politics susceptible to path dependent processes. But, under the right conditions, disproportional power asymmetries may actually induce a great enough shock that could undermine the great policy rationales and executive interests that initially sustained policies bearing significant enough negative externalities. Using Pierson’s own words and applying them to this case, “when certain actors are in a position to impose rules on others, the employment of power may be self-reinforcing.”\textsuperscript{264} Indeed it may be self reinforcing in the first sense, which is less important to this work; but on the other hand, it not only sustains old paths, but an asymmetry in

\begin{flushright}
\textsuperscript{260} Pierson, “Increasing Returns, Path Dependence,” 254.
\textsuperscript{261} Ibid.
\textsuperscript{262} Pierson, \textit{Politics in Time}, 40
\textsuperscript{263} Ibid., at 36.
\textsuperscript{264} Ibid.
\end{flushright}
power can dislodge old paths as well. In sum, court cases are so important, theoretically, because there is so much at stake.

The critical condition antecedent to the pivotal *Clark v. Martinez* Supreme Court decision to be discussed later in this section was the ruling in the case of *Zadvydas v. Davis*. At the time of the ruling, the decisions constituted a mechanism of reproduction for the policy path traced through this thesis from the Mariel migration crisis. In the context of the effect of periodic court cases, remember, “[t]he stability of the legacy is not an automatic outcome, but rather is perpetuated and destabilized by ongoing institutional and political processes.” Lower courts as well as some courts of appeals had consistently upheld the government’s ability to deny due process rights to the excludable Mariel detainees, all in the government’s interest for restriction and exclusion. In doing so they also preserved the government’s right to indefinitely detain the immigrants who could not be excluded. These cases served as mechanisms of reproduction, in path dependence terminology, wherein the ongoing process of detention and deterrence may have been challenged, but were ultimately upheld and therefore perpetuated. This further entrenched the path dependent process.

In the *Zadvydas* case, the court ruled in favor of the excludable claimant holding that the Immigration and Nationality Act provision for post-removal-period detention contained an implicit “reasonable time” limitation. Kestutis Zadvydas was an admitted resident alien who was born of Lithuanian parents in a German displaced persons camp. He was ordered deported from the United States, like the excludable Mariel Cubans

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266 Collier and Collier, *Shaping the Political Arena*, 32.
267 Zadvydas v. Davis, 533 U.S. 678, 682 (2001). The court determined that a six-month period would be presumptively reasonable, although it noted that an alien may be detained longer if there were a “significant likelihood of removal in the reasonably foreseeable future.” If no such likelihood existed, the government might grant some sort of supervised release. in: “Indefinite Detention of Immigrant Parolees: An Unconstitutional Condition?” *Harvard Law Review*, The Harvard Law Review Association. Vol 116, No.6 (Apr., 2003), pp.(1863-1888).
because of his criminal record but neither Germany nor Lithuania would accept him. Although the court ruled in favor of the indefinitely detained claimant, it was previously mentioned that this case still constitutes a mechanism of reproduction for the negative externalities resulting from the strict immigration policy toward Cubans since the Mariel migration crisis. This is because the court did not go so far as to revise the entry-fiction doctrine, or extend constitutional rights to immigrant parolees—which were what the Cubans were considered. In ruling as they did, the court implicitly endorsed the actions of the executive branch in their decision to perpetuate conditions for indefinite detention of immigrants in the Cubans’ class even when they could have extended the decision to them. Interestingly, it was a close 5-4 decision in this case regarding the prolonged detention of a non-Cuban in Zadvydas v. Davis, which shook the policy and path dependence toward the Mariel Cubans. Eventually the basis for the Zadvydas ruling was used in the Clark v. Martinez ruling which set a “reasonable limit” on executive detention. It is prudent to note that this case, which I have argued was a “mechanism of reproduction,” later became an actual contingent cause which was referred to by the Supreme Court in the 2005 Clark decision and which served as example and precedent. Although the Zadvydas decision was completely unrelated to Cuban immigrants, it is unlikely that without it the 2005 Supreme Court ruling it would have been the same.

Generally, once the government orders removal, it may detain parolees pending their actual removal. In this moment, parolees have no standing or right to challenge their detention. Lower courts since Mariel consistently hold that the indefinite detention of parolees does not violate the Due Process Clause.\textsuperscript{268} Some opponents of the practice

\textsuperscript{268} Due Process Clause of the Fourteenth Amendment. See also: Guzman v. Tippy, 130 F.3d 64, 66 (2d Circuit 1997). (Holding that the indefinite detention of excludable aliens, including parolees, does not violate due process). Gisbert v. U.S. Attorney General, 988 F2d 1437, 1446-47 (5\textsuperscript{th} Cir. 1993). (Holding that the INA allowed the U.S. Government to indefinitely detain the Mariel Cubans whose parole had been revoked, while it attempted to find a country to which they could be deported); Alvarez-Martinez v. Stock, 941 F2d 956 (9\textsuperscript{th} Cir. 1991) (holding that the indefinite
appeal to the apparent violation of international law exhibited by the condition on individuals like those who were still in detention after Mariel. Indeed, opponents of the practice even invoke the fundamental nature of the very concept of “liberty” in world history expressed in such hallowed documents as the *Magna Carta* which says

> No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, or Free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land.269

This is seen in *The Universal Declaration of Human Rights*, which also prohibits “arbitrary arrest, detention or exile.”270 The same rule is codified in the *UN Covenant on Civil and Political Rights*.271 Regional agreements are also congruent with these norms including the *American Convention on Human Rights* which provides “[e]very person has the right to personal liberty” and that “[n]o one shall be subject to arbitrary arrest or imprisonment.”272

The violation of international law is especially relevant in the area of court proceedings, as the *Paquete Habana* case charges the court with the responsibility of conforming to international law and norms.273 This prohibition against prolonged arbitrary detention was affirmed as applicable in U.S. courts in the case *Ma v. Reno*,

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273 *The Paquete Habana* 175 U.S. at 700 (1900), reviewed by *Garcia-Mir v. Meese*, 788 F. 2nd at 1453. In Garcia-Mir, the court held that paroled Mariel Cubans have no right under international law to challenge their arbitrary detention, because the Attorney General’s “controlling executive act” superseded the aliens’ rights. 788 F. 2nd. At 1454-55.
which was cited in the Zadvydas case. But in judicial proceeding there is a hierarchy of laws. In this case, domestic statute was controlling, not international law. This is valid in light of the possibility left open by the *Paquete Habana* case which allowed for violation of international law if there was "controlling executive decision." In this case, such authority is granted by the immigration parole authority afforded to the Attorney General that was initially invoked by Carter. It is an example of an important instance of self-reinforcing “asymmetrical power relations” where the executive uses vague power to perpetuate its continued power augmentation that would eventually be countered by the courts. What is important about the discussion surrounding international law is that this practice of indefinite detention, especially if formally legal, calls core liberties into question—philosophically challenging the United States government while it undermines the United States’ human rights foreign policy agenda. It is important to note that whatever advances were made in international jurisprudence against indefinite detention were completely absent for the Cubans who waited until *Clark v. Martinez*, some even more than 19 years after their imprisonment. International law, even as it stood unequivocally contrary to the immigration policy and its effects, was a variable—like many present so far in this thesis—that may have destabilized and challenged a policy, but ultimately proved insufficient in dislodging the policy path—insufficient as a corrective mechanism.

The fulcrum moment for a path dependent policy would be a showdown between the Executive Branch and the Supreme Court during the 2005 *Clark v. Martinez* case. That the Supreme Court decided to accept the case, supports the understanding that there was some extremely inefficient externality to the immigration policy pursued by the

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274 *Ma v. Reno*, 208 F.3d 815 (9th Cir. 2000).
275 *The Paquete Habana* 175 U.S. at 700 (1900).
277 Conspicuously absent from the Court’s decisions in Zadvydas, and in *Clark* is greater recognition of the pressures of international law.
United States government toward Cubans and other aliens from hostile countries (who could not be excluded) since the 1980 Mariel crisis. The resort to trial in the highest court signified that conventional recourse, including various executive administrations as well as legislative and many other judicial processes, were unable to definitively resolve some of the greatest challenges emerging from the Mariel crisis—even 25 years after the original crisis. Several themes set this stage in the historical narrative significant, each of which demonstrates that the court’s decision in *Clark v. Martinez* was not predictable or intuitive. This, of course, makes it all the more politically interesting. (1) It was not expected, by the legal community, to have a ruling in that favor; (2) it was a sweeping decision with various ideological perspectives in its favor; (3) The decision limited the power of the executive; (4) it affected immigration policy by using constitutional and statutory rationale.

The January 2005 ruling on the case of *Clark v. Martinez*, which combined the requests of two similar appeals in *Clark v. Martinez* and *Benitez v. Pozos*, would come to completely redefine the immigration strategy of the United States government. The ruling overturned various prior decisions which had supported the government’s prerogative for indefinite detention. It was argued that Carter’s discomfort over the great negative externality of indefinite detention which resulted from having admitted the Mariel Cubans under the parole power of the executive branch was an expression of the path inefficiency. Yet, indefinite detention seems counterintuitive to many Americans, which makes it an even more interesting practice considering it has been a legal, strategic, and actively defended policy by every president since Mariel. Even with whatever strategic security advantage it may afford, the policy is fiscally costly. One Department of

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278 See e.g. “Supreme Court Oral Argument Previews: *Benitez v. Wallis* (No.34-7434) and *Crawford v. Martinez* (No. 03-878),” *LII Bulletin* (Cornell Legal Information Institute., Ithaca, N.Y.), October 12, 2004. (Concluding: “it seems very likely that the Supreme Court will rule against Benitez.”)
Homeland Security audit report shows that in Fiscal Year 2003, the detention of both criminal and non-criminal aliens from the “top eight uncooperative countries that block repatriation” took up 981,202 detention days and cost over $80 million.279

The Supreme Court decided 7-2 in *Clark v. Martinez* that the government cannot indefinitely detain criminals who are inadmissible or excludable immigrants. The decision extended the 2001 *Zadvydas* ruling against indefinite detention of admitted immigrants to immigrants in the “entry-fiction” class. “Entry fiction” refers to the designation of parolees as being legally outside United States’ borders despite their physical presence on U.S. soil.280 The arguments concerned two Cubans came to the United States in the Mariel Boatlift and violated the temporary parole status afforded them under the Carter administration. The two individuals in question were part of a group of nearly one-thousand Cubans who were convicted of crimes in the United States and were made excludable and therefore eligible for deportation. As the Cuban government refused to accept them, these immigrants were being held in U.S. prisons for an indefinite period without realistic prospect of repatriation.281 The court made a statutory decision that the extended detention statute applied for excludable immigrants. They argued that the statute in question, 8 U.S.C. 1231(a)(6), contained a “reasonableness limitation” prohibiting the indefinite detention of any alien included under the statute—being a roughly six-month extended detention limit while the government arranges deportation.

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The Supreme Court exhibited a great deal of agency in choosing their particular approach and could have chosen from two legitimate paths. (1) Allow the U.S. government the power to indefinitely detain excludable immigrants that cannot be excluded and which it believes to be a threat to society. (2) Allow the U.S. government to detain excludable immigrants for a period of up to six months after the initial 90 days, and only if their deportation is reasonably foreseeable. In Clark v. Martinez, they chose the latter and in doing so overturned five of the seven courts who previously considered the issue. Their decision was not predictable at all.

As with Presidential administrations before it, the Bush administration attempted to leverage a weighty argument of national security in order to sustain a restrictive policy toward asylum-seekers and continue to indefinitely detain excludable immigrants. In the wake of the terrorist attacks of September 11, 2001, the Justice Department’s Deputy Solicitor General, Edwin S. Kneedler, argued the strong position that without the ability to indefinitely detain, the United States would open up a fatal loop hole that would compromise national security. The argument was that releasing these detainees would induce a security gap that could be used by hostile governments and organizations who might think to, as Castro did in 1980, foist undesirable immigrants on the United States. The U.S. would subsequently be forced to provide some sort of informal amnesty.

Surprisingly, the Supreme Court, as an institution, proved insulated from this line of

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282 See e.g. “Supreme Court Oral Argument Previews: Benitez v. Wallis (No.34-7434) and Crawford v. Martinez (No. 03-878),” LII Bulletin (Cornell Legal Information Institute., Ithaca, N.Y.), October 12, 2004. (Concluding: “it seems very likely that the Supreme Court will rule against Benitez.”)

283 “Brief for the Petitioners, Clark v. Suarez Martinez, No. 03-878 (U.S., May 2004). ‘[A]s recent events have taught, the Cuban government is not the only foreign power or organization that thinks little of putting civilian lives at risk as part of its hostile endeavors. It is difficult to understate the damage that could occur to the United States’ international relations and national security if the government does not speak with one voice in the handling of migration crises at the border, or if foreign powers are told that the President and Congress cannot control the physical infiltration into the United States of criminals and other aliens…’).’ Donald Kerwin, “Use and Misuse of ‘National Security’ Rationale in Crafting U.S. Refugee and Immigration Policies” (Oxford University Press, 2005), p.11.
political argument and made a choice that was statutorily justified, but which clearly possessed ideological undercurrents.

The 7-2 decision also transcended the traditional political polarity often associated with Supreme Court rulings. The conservative Justice Scalia delivered the majority opinion of the court and the moderate O’Connor concurred with Scalia and the very liberal John Paul Stevens. But the ideological undertone to which I allude presented itself in the logic it used to come to a conclusion. It seems the court chose the second alternative posited in the previous paragraph because, ideologically, the Justices could not see the United States of America as a place where indefinite detention should be a viable policy option, even though it quite clearly was in this case. This was the ideological undertone. Further, some paradoxical language came out of the decision. In his majority opinion Scalia wrote, “Whether the US should be able to put people in prison for the rest of their lives is a huge policy decision that the courts should not be making. Congress can do it.” While it seems as though this was his effort to follow the Plenary Power Doctrine and relegate a power not delegated to the court to a legitimate source, the decision actually does much more. Implicitly this quote meant that whether individuals ought to be indefinitely detained is not a policy decision that the executives should be making either. Thus, not only did the Supreme Court prove insulated to a “national security” argument which sustained the institution of indefinite detention, but it actually

285 “That Congress has the capacity to do so is demonstrated by its reaction to our decision in Zadvydas. Less than four months after the release of our opinion, Congress enacted a statute which expressly authorized continued detention, for a period of six months beyond the removal period (and renewable indefinitely), of any alien (1) whose removal is not reasonably foreseeable and (2) who presents a national security threat or has been involved in terrorist activities. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), §412(a), 115 Stat. 350 (enacted Oct. 26, 2001).
drew power from the executive who defended and employed the practice for so long.

The Bush administration, in comparison with executives before it, had both special incentive and a greater stake in preserving the practice of indefinite detention. To the Bush administration, what was upheld for over 20 years as a negative externality of a path sustained by the continually legitimized practice of indefinitely detaining immigrants became a vital security advantage in other policy arenas. This is a prime example of positive feedback that gave the Bush administration the impetus to defend such a controversial policy as indefinite detention. While indefinite detention of admissible immigrants was already prohibited in the Zadvydas case nearly seven months before the September 11 attacks in 2001, the “national security” argument did not have much urgency or currency at that point. Now, even with that urgency, and a sound argument about the fear of hostile regimes foisting undesirable immigrants, the Bush administration would still lose the prerogative to detain excludable immigrants who could not be excluded. According to U.S. Immigration and Customs Enforcement, the decision would affect 1,776 detainees nationally, including over 920 immigrants from the Mariel Boatlift who were more than six months past the end of their sentence. What was so harmful to the Bush administration was that the next step might be losing the ability to indefinitely detain enemy combatants.

Conclusion:

During this phase, more mechanisms perpetuate the condition of the excludable immigrants that remained in prison without remedy. In this final phase, the policy established by Carter and refined by Reagan toward this population of Mariel Cubans persists across the administrations of Bush and Clinton. Surprisingly, however, Clinton

will face a migration crisis of his own in 1994, which at its start appeared similar to the Mariel immigration episode, if not worse. To a certain extent, Clinton’s response reflected lessons learned from previous episodes. But, the initial response of detaining nearly 30,000 immigrants at the military base bordering Guantanamo Bay, Cuba, appeared as if it would again replicate the Carter experience of creating a new class of excludable immigrants who could not be sent back to Cuba. Clinton ultimately reversed course, and inverse to the Carter decision making experience, admits the detained migrants as refugees to the United States of America. A final migration agreement with Cuba also makes no action with regard to those from Mariel who were still in indefinite detention in the United States waiting to be returned to Cuba.

As time goes on, courts appear to affirm the prerogative of the government to indefinitely detain criminal immigrants. These decisions, too, ultimately sustain the policy path by applying no corrective or revision to the executive branch practices. Interestingly, as the Zadvydas v. Davis decision, unrelated to U.S. policy toward Cuba or Cubans, impacted the Cuban Mariel population in the Clark case, the Clark case eventually served to impact the indefinite detention of detainees from the “War on Terror” in the influential Hamdi v. Rumsfeld case, which reversed a ruling denying a habeas corpus petition to a Guantanamo detainee.\footnote{289} In that case, Justice Scalia appealed to the very issues that have made the legacy of the Mariel crisis so challenging to policymakers since 1980. Scalia wrote, “[t]he very core of liberty secured by our Anglo-Saxon system of separated powers has been freedom from indefinite imprisonment at the will of the Executive.”\footnote{290} Scalia continued by citing the revered legal source of Sir William Blackstone, “[o]f great importance to the public is the preservation of this personal liberty: for if once it were let in the power of any, the highest magistrate to

\footnote{289} Ibid.  
\footnote{290} Ibid.
imprison arbitrarily…there would soon be an end of all other rights and immunities…”291 And so, the Bush administration’s worst nightmare came true. They lost the strategic advantage afforded in the realm of national security by the policy of indefinite detention, and all because of these contingent challenges that destabilized inefficient portions of policy.

The Supreme Court decision which sought to resolve lingering negative externalities of the exclusionary policy, signaled—aptly for historical institutional analysis—that time was an important variable. What made the detention of criminal immigrants unacceptable and unreasonable was that readmission to Cuba was “unforeseeable.” It was unforeseeable because a “startling amount of time had passed since the 1980s with no success in resolving this aspect of immigration.”292 And while it may be technically constitutional to detain excludable immigrants without due process, they must only be in custody for a reasonable length of time. Ultimately the significant takeaway here is that the Supreme Court, while it took its time, proved to be an effective corrective mechanism for some of the inefficiencies exhibited by the path-dependent policy because of the effect of power asymmetry. Its decision in this case proved that the court, at least the highest court, could be insulated from extremely attractive and timely arguments of “national security.”

To be sure, the court decision did not swing prison doors open for Mariel detainees. First, the population of Cuban Mariel criminals who had not served their full sentence would remain in prison until their sentence expired. At this point, they would sometimes need to acquire attorneys to accelerate the release process as INS was in no hurry to affect their release. As is the nature of bureaucracy and policy momentum, the

implications of Clark v. Martinez were not swiftly implemented in practice.293 For those whose sentences finally did expire, the INS consistently took their court-permitted 90 day period before approving release even in the absence of immigrant return negotiations between the U.S. and Cuban governments. In many cases, INS took even longer before releasing the detainee, as the 90 day limit was a loose restriction that could be extended for some time longer if there was reasonable expectation for arranging for return, or if the immigrant was proven by immigration officials to pose a special danger to society. But, the Supreme Court decision did lead to beginning the slow and quiet release of approximately 750 qualifying Mariel detainees still incarcerated.294 As it altered the legal designation of this anomalous population of Cuban immigrants, it also marked the end of what proved to be the greatest and most costly negative externality of this path dependent process.


Himilce Novas, Everything You Need to Know About Latino History (Plume; Revised edition, October 1, 1998).
CONCLUSION

Findings and Implications

This thesis argues that the immigration policy trajectory toward Cubans is perpetuated and destabilized by ongoing, and at times counterintuitive, institutional processes emanating most significantly from the presidency, ethnic interest groups, and the courts. At different points in time, each group seizes disproportionate control of policy and may provoke negative externalities. More specifically, this thesis shows that the critical juncture of the Mariel immigration crisis of 1980 happened in a particular way and dramatically shifted policy. The entire policy turn toward restriction and deterrence that occurred because of this single immigration episode, left a lasting legacy and created a new class of Cuban immigrants who posed persistent logistical, philosophical, and legal challenges for U.S. policymakers. As a result of path dependence and the increasing returns mechanisms supporting it, these issues remained unresolved for more than 25 years.

The primary understanding supported by this work is that policy tends to proceed in seemingly inertial trajectories. It evolves mostly during formative critical policy junctures—a phenomenon recently identified by contemporary political science analysis as “path dependence.” The case of immigration policy toward Cuba, traced in this thesis around the pivotal Mariel immigration crisis of 1980, provides for a worthwhile analysis of this process. This work has gone beyond recounting a little known, though significant, narrative in contemporary history. It has sought to do more than just carefully unravel the relative effects of the many voices and institutions that shape U.S. immigration policy—including the presidency, interest groups, and even the courts. It has identified a “critical juncture,” or moment of “punctuated equilibrium” that dramatically and unexpectedly shifted a long accepting-immigration policy course toward Cubans and posed various
challenges in its wake. Further, it disentangled and evaluated the many “shocks” created by these three major policy players serving to destabilize or reinforce the policy trajectory over time.

This work first traced the generous nature of U.S. policy toward Cuba before 1980 that stands in alarming contrast to that policy after 1980. From the moment Fidel Castro assumed power and began to unveil his increasingly autocratic agenda, the rhetoric of the United States’ federal government had consistently been one of kindness to Cuban immigrants. Until the summer of 1980, these public affirmations of generosity translated to a policy generally favorable to the unconditional acceptance of these immigrants as refugees. The words of the U.S. presidents throughout this tumultuous period reflected that pervasive humanitarian ethos and consistently showed the United States’ commitment to a policy path that could once be defended as serving strategic and ideological ends. It was considered strategic as long as there was promise that the Cuban exile community would undermine the power and discourse of the Cuban government. It was ideological in the sense that it gave humanitarian aid and refuge to those fleeing political systems that aspired to communism through totalitarian measures.

The study began by identifying a crucial moment where a long history of immigration-accepting policy toward Cubans is abruptly disrupted by the sudden arrival of more than 125,000 immigrants to the United States—an act initiated by a hostile regime. Consistent with historical institutionalism’s critical juncture model, in this section I argued: (1) the unheeded warnings of the impending crisis demonstrate the lack of preparedness by the United States’ government and contribute to the haphazard nature of policy-response at t0, serving to widen the range of policy possibilities with the onset of the Mariel crisis. (2) Having a new array of possible policy choices, the Carter administration’s decision to endeavor on one path and not pursue another is especially significant. (3) The Carter administration’s policy exhibits two phases. The shift from the
first phase, characterized by humanitarianism, to the second phase, aimed at deterrence, demonstrates a remarkable change in priorities for the United States and represents a very significant personal sacrifice for President Carter. That sacrifice constitutes surmounting a significant start-up cost investing in the policy and represents the beginning of a crystallization of a new policy trajectory over time. (4) Finally, the continuation and endurance of Carter’s policy of deterrence under Reagan reinforces the policy path. The critical juncture is ultimately brought to a close when Reagan decouples the Cubans from the Haitians in 1984. This contention supports the argument that the decisions made in the period of 1980 to 1984 demonstrated a unique evolution in policy which was qualitatively different from “normal” development in institutional settings.

In the next chapter, I found that contingent on the mechanisms of production in the critical juncture period of 1980-1984 that limited policy options, the Reagan administration inherited and was forced to cope with the lingering and unresolved challenges of Carter’s boatlift crisis. The most significant among these challenges were the thousands of excludable immigrants who emerged from the paroled Mariel population for having violated their temporary status by committing any crime—small or large—and who would now face indefinite detention pending unrealistic expectations for their deportation. Within the United States, these individuals were considered “non-admitted” and bore no due process rights under this “entry-fiction” designation.

In order to cope with this population, the Reagan administration sacrificed its anti-communist ideology, dealing with the Cuban government as an equal and making concessions in order to restore an immigration agreement initiated earlier in talks by Reagan’s political opposite, Jimmy Carter. It even argued in U.S. courts that the basic human rights of the excludables would not be violated if they were returned to Cuba—a less than certain claim. Such start-up and sunk costs were shown in these sections to increase the likelihood of commitment to this policy of detention and intended return.
The next section explored the curious case of the Cuban-American interest group. This interest group, rising in political capital and high-level access to the United States government at this time, was trapped in a false choice as a direct result of the path dependence brought about by the policy shift during the critical juncture of the Mariel crisis. For, the Cuban-Americans sought two incompatible goals at once: the United States should not keep Cubans dissatisfied with their lives in Cuba from coming to the United States, but it also should not help Castro by removing his enemies and allowing him to export his opposition.

Thereafter, I defined some of the features of increasing returns in politics exhibited in this case with regard to the Cuban-American interest groups. For example, in the discussion on “coordination effects,” I describe how a particular technology is more likely to exhibit increasing returns and persistence if it complements an already established mode or institution. I present a corollary to this theory, the case at hand presents that problems may arise when institutions or technologies that should be compatible (for example: interest groups and allied political governments with mutual goals) become incompatible—when allies begin to undermine their own gains, however inadvertently. This particular dynamic, as the logical reversal of some increasing returns literature, presents itself in the case of the Cuban-American community. Although considered allies and kindred in anti-communist spirit with President Reagan and his administration, the Cuban-American community inadvertently disrupted the policy path of President Reagan not once, but twice. In the first instance, the initiation of the Radio Martí program—a victory for Cuban-American lobbying—caused Fidel Castro to suspend the migration agreement that cost President Reagan so much to work out in the first place. In the second instance, incarcerated excludable Cubans rioted in response to news of their probable removal to Cuba and Cuban-American leaders were called in to mediate the crisis, forcing significant concessions from the Reagan administration.
In the final empirical chapter, I present the 1994 immigration crisis faced by Clinton that showed early its potential to be a new juncture in policy. In many ways it was. This section challenges critics of historical institutionalism who claim critical junctures are purely retrospectively descriptive and not at all predictive or sufficiently explanatory. With this crisis and its aftermath, Clinton took active agency in redefining Cuban immigration policy to keep it restrictive in order to deter future episodes, as had every U.S. President since Mariel. But President Clinton also satisfied his humanitarian pangs by finally granting the detained population admission to the U.S. He got it both ways. To be sure, this thesis finds in this section that it was the 1980 critical juncture and mechanisms of production in response to it that made the implementation of a strict policy easier fourteen years later with President Clinton. While President Clinton was able to avoid the creation of another anomalous class of Cubans in limbo, his negotiations did nothing to alleviate the plight of the great negative externality of the Mariel crisis critical juncture—large classes of indefinitely detained excludable immigrants still in U.S. prisons. The presidency proved unable, yet again, to correct this continually vexing circumstance.

Finally returning to the class of immigrants still in limbo from Mariel, this thesis investigated the influential role of courts in what began as an immigration and foreign policy issue. After 1980, courts (with few exceptions) consistently affirmed the prerogative of the government to indefinitely detain criminal immigrants. These decisions sustained the policy path by applying no revision to executive branch practices. Ultimately, however, the Supreme Court proved to be an effective corrective mechanism for some of the inefficiencies exhibited by the path-dependent policy because of the effect of power asymmetry. Its decision in the case of Clark v. Martinez ruling that there must be a reasonable limit to executive detention practices, even for excludable aliens, proved that the highest court could be insulated from extremely attractive and timely
arguments of “national security.” It granted inadmissible aliens some rights for the first time. This decision was particularly interesting because, (1) The legal community did not expect such a ruling; (2) it was a sweeping decision with various ideological perspectives of the court in its favor; (3) The decision limited the power of the executive; (4) it affected immigration policy by using constitutional and statutory rationale. Thus, the court, as an institution, navigated its own path destabilizing a policy trajectory and supplying a rationale independent of, and insulated from, the original cause and continuing mechanisms of reproduction. In doing so it identified a rare and highly valuable exit valve for inertial and less than optimal policy loops. This section thus revises Pierson’s contention regarding the role of “political authority and power asymmetries.”

_Some Lingering Problems:_

Several issues are still worth addressing. One is the anomalous nature of the interesting “entry-fiction” doctrine—a curious technicality in immigration law and policy. This legal paradox means that though aliens have physically entered the United States, they are treated as legally outside of its borders and are granted no due process rights. This thesis reports something tragically incompatible and intuitively unjust about the situation where an alien who risks life and limb seeking refuge is compelled to face the complex mechanisms of the United States legal realm with the mere faculties of an individual detained at the border. Legal counsel should be a right when an immigrant has a legitimate substantive claim to entry (like the invitation by a U.S. president). No individual—Cuban or otherwise—should face a fate as grave as indefinite detention in high security prisons alongside hardened criminals based only on the whim of a

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296 Pierson, “Increasing Returns, Path Dependence,” 259
bureaucratic review that is known to be subject to such inherent glitches as emotional bias and lack of adequate translation services, without a day in a legitimate court. The 2005 Supreme Court case regarding indefinite detention, *Clark v. Martinez*, did not resolve this concept of “entry fiction.” It may be time for legislation or high court decision to finally question the merit of this legal designation.

The United States government should consider alternative methods of coping with excludable immigrants who cannot be excluded. One possibility is to consider an extended supervised parole, consisting of halfway houses and other similar innovative social solutions. Programs like that run by Catholic Charities of New Orleans, serving released detainees, cost significantly less than continued detention of these immigrants and may merit federal funding.\(^{297}\) If the primary concern upon release of such individuals is social safety; a similar, though government-funded, social program could provide legitimate oversight to released immigrant criminals to reduce recidivism. This would also lend more integrity to the U.S. justice system as it ensures immigrants are not as imprisoned in “free” society under the restraints of social institutions, language barriers, and employment disadvantages as they were in maximum security cinder-block cells.

Cases like those reported to have occurred with detainees released from Alabama prisons (where government officials gave Mariel detainees an immigration card and basically dropped them off at a local Salvation Army) should never occur in the United States—especially not to its newest members who have paid the highest price for inclusion in free society.\(^{298}\)


\(^{298}\) Himilce, Novas. *Everything You Need to Know about Latino History*, p.197.
Another interesting aspect of the Mariel population is how it was perceived. To reduce the already anomalous legal and political stigmas attached to the Mariel population, the Cuban-American community should continue recent efforts to embrace the history of Mariel and celebrate its immigrants.\footnote{Concluding that the Mariel immigrants have been as successful in assimilation as previous waves of Cuban immigrants: Alejandro Portes and Alex Stepick, “Unwelcome Immigrants: The Labor Market Experiences of 1980 (Mariel) Cuban and Haitian Refugees in South Florida,” \textit{American Sociological Review} Vol. 50, No. 4 (American Sociological Association, Aug., 1985), pp. 493-514. Alejandro Portes, Alex Stepick and Cynthia Truelove, “Three Years Later: The Adaptation Process of 1980 (Mariel) Cuban and Haitian Refugees in South Florida,” \textit{Population Research and Policy Review} (1986). Alejandro Portes, J.M. Clark. “Mariel Refugees: Six Years After.” \textit{Population Research and Policy Review} (Volume 5, Number 1, 1987), 83-94.} In 2010, thirty years after the Mariel boatlift, the \textit{Miami Herald} whole-heartedly embraced the history of the Mariel crisis hailing the “Freedom Flotilla,” as one of the important moments in American history while identifying many of the obvious blunders that tainted the episode at the time. The newspaper even launched an interactive website and online database for boat and passenger records to commemorate the event.\footnote{http://www.miamiherald.com/mariel/, accessed January 20, 2011.} It is interesting to trace and juxtapose this reaction to the heart-wrenching humanitarian-appeal of images of desperate boat people that initially graced the front page of the Miami Herald in beginning of the summer of 1980, followed by headlines that announced the horrid wretch of scum and criminals which were foisted on the U.S. It is also anthropologically interesting that the term “Marielito,”-- a term of reference to immigrants who arrived in the U.S. by way of the Mariel boatlift-- which once connoted a negative stigma, has now become a designation of pride to many of those Cuban-Americans.

It would send a promising signal if Cuban-American interest groups took as active an approach at solving the present domestic challenges concerning their population as they take to involvement in foreign affairs. While it is unfair to say that Cuban-American interest groups were wholly uninvolved in advocacy on behalf of indigent Mariel immigrants who found themselves in major civil rights predicaments, there
persisted a strong apathy among many in the community toward this particular group of recent arrivals at the time. It would behoove this community to continue small recent efforts through domestic U.S. civil society vehicles to take a more active involvement in housing, education, poverty and political corruption issues in their enclaves, as well as more systematic legal and medical advocacy for all ethnic groups. Such services were markedly lacking during the unexpected Mariel boatlift and its aftermath and it would have reduced the long-term challenges sustained by that crisis. Such an approach might also improve political capital and influence for this constituency in the long run and would therefore increase its capacity to eventually influence Cuban politics—the overarching goal of many of these organizations.

Having traversed the diverse realms of presidential power, the role of the courts, the effectiveness of particular interest groups and the function of bureaucracy, this work raises a few lingering issues. The most obvious large conceptual problem is that of persistent, path dependent policies. While it may seem to logical for a leader in a time of dire crisis to temporarily employ detention strategies, it is unacceptable that such policies persist for a quarter century without sufficient disruption, despite their clear costs. The quote by President Carter, serving as the epigraph to Chapter 3, in which the former president laments the condition of the indefinitely detained, is perfect evidence of the tragedy of persistent policy paths. I argue that it was because of the small contingent decisions made initially by Carter that many of these prisoners are still behind bars years after having served their sentences. But to Carter, this is a regrettably unintended consequence—still perpetuated by his successors because of the cost of pursuing an alternative path.

Political actors must continue to apply a critical lens to current policy in order to explore whether it is executed with good reason or if it is a harmful artifact of a crisis
long-past. The policy paths we choose to perpetuate should always be reevaluated, especially if they appear to challenge core values of “the most generous nation.”

## APPENDIX A: ORGANIZING CHART

<table>
<thead>
<tr>
<th>Thesis Component:</th>
<th>Chapter 2</th>
<th>Chapter 3</th>
<th>Chapter 4</th>
<th>Chapter 5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Time:</strong></td>
<td>$t-1$</td>
<td>$t_0$</td>
<td>$t+1$</td>
<td>$t+2$ to $t-n$</td>
</tr>
<tr>
<td><strong>Theoretical Purpose/Prediction:</strong></td>
<td>The baseline against which the change in the critical juncture will be measured. Definition of the nuances and motivations of policy before observed shift.</td>
<td>Watershed event creates an opening of choice, which serves to widen policy possibilities. Officials choose to take one course of action when it would have been possible—even predictable—for them to take another. The new policy trajectory is &quot;produced&quot; by critical decisions which, over time, sharply narrow opportunities to change path.</td>
<td>Despite exogenous shocks, including significant negative externalities, and no repetition of the original cause [mass exodus], the new policy formed during the critical juncture persists and is &quot;reproduced.&quot; Political actors experience increasing returns which limit options as time goes on and the new trajectory is reinforced.</td>
<td>The policy path continues to be reinforced by events that perpetuate the trajectory formed during the original crisis in 1980. Look for a large enough shock or &quot;corrective mechanism&quot; to attempt to resolve lingering negative externalities.</td>
</tr>
<tr>
<td><strong>Political Context In Case-Study and Resulting Policy Trajectory:</strong></td>
<td>&quot;Statue of Liberty&quot; treatment of Cuban immigrants who are welcomed as refugees, &quot;voting with their feet&quot; against the rule of the Cuban regime.</td>
<td>a.) Carter initially continues previous policy: &quot;welcome with open hearts and open arms.&quot; b.) Carter policy deliberately shifts to strict deterrence. Not treating Cubans as Refugees, but rather, on individual, special parole status basis: &quot;Cuban/Haitian entrant status-pending,&quot; and prosecuting Cuban-American boat-captains. c.) Under Reagan, deterrence policy proceeds. Proposes unsuccessfully that Cubans get opportunity for residence but still much fewer privileges than pre-1980 Cuban refugees. Eventually Reagan decouples Cubans from Haitians and grants the prior status. Thousands of detained Mariel immigrants become anomalous among Cubans in legal distinction. Indefinite detention issues compound.</td>
<td>a.) Reagan works to instate the December 1984 Migration agreement with Cuba. Arriving Cubans would be subject to almost all pre-1980 privileges. b.) Cuban-American influence undermines ally in Reagan administration goals. Curiously not very concerned with the humanitarian challenges of the crisis. c.) Excludables riot in 1987, as Reagan re-opens talks with Cuban government which undermines Reagan administration goals. Reagan proceeds with restrictive and excluding policy, though is delievered by post-riot negotiations.</td>
<td>a.) Clinton faces a new policy juncture, not unlike that faced by Carter in 1980 with a boatlift that began similarly in 1994. b.) The asymmetrical power of courts is displayed by how they face the challenges to destabilize the great negative externality of indefinite detention left as a legacy of the 1980 Mariel boatlift—and thus far unresolved by all other actors. Court adopts an autonomous logic from executive, removing the power of detention and affecting immigration policy by altering the legal rights of detainees.</td>
</tr>
</tbody>
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