

# Keeping Numbers Low in the Name of Fairness

## Ethos and Ethics in a Swiss Asylum Administration

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### Introduction

“I am interested in foreigners, other cultures. The basic idea is to help these people, even if we do – of course – reject many of them”, Gabriel, a caseworker in the Swiss Secretariat for Migration (SEM), once said to me (Gabriel, caseworker, interview transcript).<sup>1</sup> The SEM is where first-instance asylum decisions are made in Switzerland. Officials working there – officials like Gabriel – make decisions about whether asylum seekers fulfil the requirements for refugee status, and whether they believe the applicants' statements are credible.<sup>2</sup> Applicants must fulfil both preconditions before receiving asylum. Although Gabriel works in the SEM “to help people”, for him it is okay that most applicants get rejected. This has to do with his understanding of *fairness*, a core issue in professional decision-making. Thus, later in the conversation quoted above, he went on to say that it was the decision-makers' duty to meticulously examine the credibility of each case, because otherwise “everybody could just receive asylum and that would be unfair to those who

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1 All the names in this chapter are pseudonyms.

2 I use the terms “asylum seekers”, “applicants” and “claimants” because they are the emic terms SEM officials employ and it is their perspectives that I critically engage with in this paper. However, I am aware that labels carry meanings and, by using them, there is the danger of reproducing them. Labels do not “exist in a vacuum” but are “the tangible representation of policies and programs”, Zetter argues (2007: 180). Hence, only through entering the asylum system do “people on the move” become “asylum seekers” (ibid.: 175). In fact, the term “asylum seeker” fits with the shift that Fassin (2016) describes from asylum as a right to asylum as a favour (see also Jubany 2011: 85).

really deserve asylum, who really need protection" (ibid.).<sup>3</sup> Gabriel's statement exemplifies a common view within the SEM that, in order for decision-making to be fair, granting asylum and temporary protection must be reserved exclusively for those "truly deserving of it". Fairness is, therefore, based on exclusion.

The exclusionary workings (in particular, the outcomes) of asylum decision-making have been widely criticised (see, for instance, Harvey 1997; Jubany 2017; Marfleet 2006; Scheffer 2001; Souter 2011; Zimmermann 2011). By tracing historical changes in asylum and refugee policy, several studies have shown how asylum policies and asylum law started to become more restrictive in the early 1980s as applicants increasingly fell outside the East/West, communist/non-communist divide, and after the 1970s recession increased unemployment, which led to restrictions on labour immigration (see, for instance, Däpp 1984; Fassin 2013: 8ff; Fassin & Kobelinsky 2012: 448ff; Piguet 2006). Furthermore, they describe how, in the 1980s, a discourse about "false" or "bogus" refugees trying to abuse the system emerged as the number of asylum applications increased (Däpp 1984: 216ff; see also Fassin 2007). In Switzerland, this "fight against abuse" has been the driving force behind and the means of legitimating many of the restrictions made in Swiss asylum law in the past thirty-seven years (see Miaz 2017: 83ff). However, these historical accounts do not tell us much about how such policies or policy changes are translated into practice and shaped and mediated in this process (see, for instance, Lipsky 2010; Shore and Wright 1997, 2011; Wedel et al. 2005). Furthermore, while they show how the eligibility criteria for refugee status or for receiving temporary protection have gradually become more restrictive, they offer little explanation as to why most asylum applications are rejected on the basis of so-called "non-credibility".<sup>4</sup>

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3 I use the term "decision-makers" for the SEM officials who conduct asylum interviews and write decisions. Final decisions bear their signatures and also that of their direct superiors. As I will show in this contribution, decision-makers' decisions can be changed by their superiors. Hence, the superiors also become decision-makers in a way. For a critical reflection on the term "decision-maker", see Lavanchy and Garros (forthcoming). Here, I use the terms "decision-maker", "caseworker" and "(SEM) official" synonymously, separating them from the heads of the asylum units, whom I call "superiors".

4 Unfortunately, negative asylum decisions are registered with the same code regardless of whether they are made on the basis of "non-credibility" (article 7 of the Swiss Asylum Act, AsylA), of non-eligibility for refugee status (article 3 AsylA) or a combination of both. It is

Kelly, who in *Sympathy and Suspicion: Torture, Asylum, and Humanity* “explore[s] the epistemological conditions under which it is possible to doubt or deny the claim of others” (2012: 755), offers one explanation. He argues that “the very process of imagined identification found in compassion can lie behind suspicion” (ibid.: 753). Several other authors have argued that elements of “non-credibility” – and through them “lies” and individuals labelled as “liars” – are actively created by means of decision-making processes, particularly through the questioning techniques used in asylum interviews (see Crawley 1999: 52ff; Sbriccoli and Jacoviello 2011: 184ff; Scheffer 2001, 2003; Trueman 2009: 296ff). This argument challenges the common explanation put forward by asylum administrations, politicians and much of the mainstream media that the majority of claims are rejected because the majority of asylum seekers lie. Building on both these approaches, I examine what makes it *normal* and *desirable* for “otherwise compassionate and rational people” (Kelly 2012: 755) to doubt and deny the claims of others. In other words, how does it become routine for decision-makers to adopt questioning strategies that actively generate indicators of “non-credibility”?

I approach this question by empirically exploring what SEM decision-makers think they should be doing. Following Eckert’s argument in the introduction of this volume, I claim that what “bureaucrats” do is shaped by what they think they should do.<sup>5</sup> What they think they should do, in turn, is shaped by both the ethics and ethos of the office. Eckert (this volume) defines bureaucratic ethics as the “values and norms associated with the substantive goals of a bureaucratic apparatus geared towards ideas of a good society,

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therefore not possible to quantitatively analyse what reasons were cited for negative decisions. However, the SEM online manual on asylum and return (*Asyl und Rückkehr*) states that the majority of rejections are attributable to the lack of credibility of asylum seekers’ claims (<https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/hb/c/hb-c5-d.pdf> [accessed 19 September 2018]). In addition, all of my interaction partners (both SEM decision-makers and legal advisors) were of the impression that most negative decisions are based on non-credibility. In Affolter (2018) I discuss different reasons why it is an institutional preference to argue negative decisions on the basis of “non-credibility”, rather than on “non-eligibility for refugee status”.

5 The terms “bureaucracy” and “bureaucrats” carry negative connotations. They are often associated with “red tape” and “officialism” and used as criticism (Eckert, this volume; Poertner 2017: 12). Here, I mostly use the terms “administration” and “office”. However, when referring to literature that uses the terms “bureaucracy” and “bureaucrats”, I employ the same terminology.

good life, welfare, or justice". Thus, the term "bureaucratic ethics" stands for the specific purposes of a bureaucracy; the goals its employees are tasked with, both explicitly and implicitly. Bureaucratic ethos, on the other hand, describes the assemblage of procedural behaviours deemed proper for fulfilling these purposes (ibid.). Taking up Eckert's argument that bureaucracies are not anethical, as Bauman (2000), Graeber (2015) and Herzfeld (1992) have claimed, but rather that ethics are "intrinsic to bureaucratic work", I show how the ethics of office shape its procedural values: the ethos of the office. That is, decision-makers' understanding of *what* their role is shapes their understanding of *how* to carry it out professionally. Since what "bureaucrats" think they should do informs their everyday practices, and their everyday practices shape and mediate the policies and laws they are charged with implementing (see, for instance, Silbey 2005: 324; Wedel et al. 2005: 34), we need to explore the ethics and ethos of the office in order to understand how asylum law and policies work. Furthermore, as Fassin (2015:4) has stated, paying attention to state officials – their "actions, routines, values and feelings" – is crucial to understanding how the state works.

This chapter consists of four main parts. Part one describes a field episode in which two SEM officials – a superior and his employee – discuss the rightfulness of a decision. From that point of departure I extract, in part two, what the officials as decision-makers consider their duties to be. Their conceptualisations form the basis for deriving the ethics of the office. In part three I discuss a variety of norms associated with the notion of being professional in the SEM. Particularly through the norm of fairness, we see how procedural ethos is shaped by bureaucratic ethics. Part four shows how the ethics and ethos of the office make one particular decision-making practice, which I call "digging deep", the normal and desirable thing for decision-makers to do. "Digging deep", in turn, leads to reaffirmation of the office's norms and values.

This paper is based on ethnographic material from fieldwork for my PhD, which was conducted in the SEM during various stays between 2014 and 2015. I shadowed decision-makers from various organisational units in their work, observing them as they wrote decisions, prepared and conducted asylum interviews, chatted to colleagues in hallways and during coffee breaks, helped each other with difficult "cases", performed administrative tasks and

participated in team meetings.<sup>6</sup> Furthermore, I took part in a three-week training session for new employees, conducted semi-structured interviews with decision-makers and superiors from nine different units in the SEM and analysed case files.

## Negotiating "the right" decision: a field anecdote

A decision-maker, Rebecca, and her superior, Alfredo, are discussing a decision she has made. As Rebecca's superior, it is Alfredo's duty to check and countersign her decisions before they are sent to the applicants. In this case, he does not agree with Rebecca's decision to grant temporary protection to a family from Iraq. I quote this excerpt from my field notes in detail because it brings to light several aspects of what Alberto and Rebecca believe professional decision-making involves.

I am sitting in Alberto's office, watching him go through his employees' decisions and case files. The documents he appraises, decisions that need his signature before they can go out, were left by his employees on a table outside his office. The first decision he picks up is a negative one for a family from Iraq. Yet, the decision-maker, Rebecca, has granted the family temporary protection. For my benefit, Alberto comments on the decision as he reads through it. I learn that the family came to Switzerland a couple of years ago because the husband started work with a human rights organisation. When the husband's contract ended, the family stayed on and filed for asylum.

Alberto tells me that he agrees with the negative decision. He says the family's problems do not qualify them as refugees. Then, looking at the internal application for temporary protection Rebecca has submitted, he says: "Ok, the kids are still quite young and they've been here for quite a while, so they haven't lived in their country of origin for a long time. But someone else might still have decided differently". He feels that it is a very "generous" decision. "I mean", he goes on, "they're an upper-class family. It wouldn't be a problem for them to be socially reintegrated. [...] They're a family, they're together, they can travel. They could go anywhere they want". Alberto is not quite sure what to do about the case, but he feels he cannot just let it pass

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6 "Cases" is an emic term. Of course, what SEM decision-makers really deal with are not cases but people whose lives are greatly affected by their practices and decisions.

like that. In the end, he decides to put it aside for two hours and then return to it. Quickly, he goes through the other decisions from the pile on his desk, reading through them, flicking through the case files and then countersigning them. Once he has finished with the other decisions, he turns back to the case of the Iraqi family even though the two hours have not yet passed.

Seemingly out of the blue, and slightly defensively, he says to me: “The question of nation states and whether one thinks nation states are good or not, has nothing to do with what we do here. It cannot be solved by what we do. I’m all for granting protection”, he continues, “but we don’t have to hand it to them on a plate” (*aber man muss es den Leuten nicht nachschieszen*). He explains to me that seeing so many cases over the past several years has made him stricter and less naïve. What is important to him is that whatever leaves his desk is fair. This, he explains, also means protecting the asylum system from abuse. Saying that, he grabs the Iraqi family’s case file and tells me he will take the decision back to the caseworker, Rebecca, to discuss it with her. He says that she will either have to add more reasons for granting the family temporary protection or reconsider her decision. Alberto asks if I would like to join him. Slightly hesitant, but also curious, I follow him to Rebecca’s office.

Alberto explains to Rebecca that he thinks this is a very opportunistic, upper class family that does not need temporary protection. Rebecca says that she can see his point, but she worries that because the children are still quite young, their decision denying the family temporary protection might be quashed if case is taken on appeal to the Federal Administrative Court (FAC). “Also”, she argues, “the wife has health problems”. But Alberto does not think her problems are severe enough. He also does not think that the young children’s not having lived in their country of origin would pose a problem in the event of an appeal, and he feels that the risk is worth taking. Together they discuss other possible “obstacles to removal”, but Rebecca had already ruled them all out after consulting the *Federführung*.<sup>7</sup>

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<sup>7</sup> *Federführungen* are SEM officials who hold lead positions for particular “count[r]ies of origin”. They are responsible for (co-)determining and monitoring the institution’s decision-making practices in dealing with cases from these countries.

The discussion ends with the following dialogue:

Alberto: "I think the decision is too generous".

Rebecca: "That's my problem. I'm too nice."

Alberto: "I'm also nice."

Rebecca: "Yes, of course".

Alberto and Rebecca agree that she will work on the case again and rethink her original decision. Before leaving to go back to his office Alberto asks Rebecca whether she "can live with" this new decision. Rebecca assures Alberto that she can, and that she will still be able to sleep at night. She promises that it will not take her long to change the decision.

As Alberto and I set off towards his office again, Rebecca holds me back, causing Alberto to come back too. She explains to me that this is just a normal part of the job. Sometimes, though not often, decisions are given back and one has to work on them again. She says that in this case she was probably influenced by the fact that she had interviewed the family herself and that they had come across as being very pleasant. Alberto says that he finds this understandable and that this is something that has really changed for him since he was put in charge of the subdivision and stopped doing asylum interviews himself. "I have become stricter, because I see so many cases", he explains, "but I can also see things more clearly now, from a certain distance, more objectively".

This ethnographic vignette could be analytically explored in several different directions. Here, I limit myself to mapping out both Alberto's and Rebecca's understandings of professional decision-making. Professional norms that directly contribute to the exclusionary understanding of fairness posited at the beginning of this paper will be analysed in more detail later.

Rebecca and Alberto mention several different aspects of what they believe professional decision-making involves. From Alberto we learn that professional decision-making is fair, objective and apolitical. The latter characteristic he expresses by saying that one's personal opinion of nation states (and of the restrictions on freedom of movement and residence associated with them) has nothing to do with their job. He also has clear ideas of what constitutes fair and objective decision-making. For Alberto, fair decision-making relates to strictly following the law, and objective decision-making to making decisions "from a distance" and not becoming too

personally involved in the case. From Rebecca, we learn that being a good and professional decision-maker means working fast, not becoming too personally involved in one's cases, and making decisions that one can personally endorse. We further infer from this anecdote that being naïve, "too generous" and "too nice" are considered to be features of unprofessional decision-making. Protection should be granted, but not too easily. In Alberto's words: "It shouldn't be handed to asylum seekers on a plate."

In order to understand why all of this has come to define professionalism for Rebecca and Alberto, I turn to the ethics of the office to demonstrate how it can be derived from what caseworkers understand their duties as decision-makers and state officials to be.

## **Ethics of the office: decision-makers as protectors of the system**

In this field anecdote, Rebecca seems to be primarily occupied with what the FAC might think about her decision in case it is appealed. She worries that if she does not grant the family temporary protection, her decision might get quashed by the court for two reasons: first, because the children have never lived in what is referred to as their "country of origin" and it could be seen as unreasonable (or illegitimate) to send them "back", and second, because the mother has health problems.<sup>8</sup> Hence, Rebecca regards one of her main duties to be the making of "correct decisions", i.e., decisions that will not be quashed by the FAC.<sup>9</sup>

Generally, this is also considered important by her superiors. However, in this particular case, Alberto finds issuing a removal order for the family a risk worth taking because he deems two other duties to be of greater importance than trying to avoid a quashed decision. These duties are, on the one hand, to make sure that only those "really deserving of protection" receive

8 Rebecca fears that by issuing a removal order she might be defying article 3 of the UN Convention on the Rights of the Child.

9 Not having one's decisions quashed is important for two reasons. First, SEM units "keep records of how many of their employees' decisions are quashed" (Affolter et al. 2019: 270). Too many quashings is regarded as bad decision-making. Second, quashings stand in the way of fast and efficient decision-making (another important professional norm), since decision-makers often have to work on those cases again.



protection and, on the other hand, to protect the system from being abused by “undeserving” applicants. For Alberto, the Iraqi family does not deserve protection because, as an “upper class family”, they are not sufficiently vulnerable. They do not fit the image of victims in need of help.<sup>10</sup> “They could go anywhere they want”, he claims. This dual duty of protecting people – but only deserving people – and filtering out the undeserving in order to protect “the system” becomes apparent in the wording the SEM uses to describe the “[b]asic principles of asylum legislation” on its website:

It is the duty of asylum proceedings to identify those asylum seekers among the new arrivals who are entitled to protection under the terms [of the Geneva Convention]. Many asylum seekers cannot be classified as refugees or persons displaced by war. On the basis of their situation, they clearly belong to the group of migrants. They are in search of a better place to live in Switzerland. Knowing that they would hardly obtain an entry or work permit, they cross the border illegally. Many of them invent a dramatic story of persecution for the hearing by the authorities. With such tactics they hope to be granted refugee status. From the viewpoint of the person concerned, this behaviour is understandable, from the perspective of asylum legislation it constitutes abuse of asylum proceedings. The authorities must reject such applications without delay and execute removal systematically, making asylum proceedings unattractive for foreigners seeking employment.<sup>11</sup>

The quote illustrates a common assumption within the SEM that many (or even most) asylum seekers will lie. While deemed understandable (“anyone in that situation would do it”, I was often told), it is, nevertheless, the decision-makers’ duty to separate the “real” from the “false” refugees, the ones “telling the truth” from the ones “who are lying” (see also Fassin & Kobelinsky 2012: 446; Kobelinsky 2015: 67). This is regarded as important because the asylum system is only seen to work if those “not deserving of protection”

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10 Several authors have shown that asylum (and immigration) politics, law and decision-making produce a very particular “figure” (Fassin 2007: 512) of the deserving aid recipient, framing him or her as a victim in need of protection” (Cabot 2013: 453; see, for instance, Ticktin 2006; Zetter 2007).

11 <https://perma.cc/ZG4B-NN6U> [accessed 22 August 2019].

are denied asylum. This quote from Miaz's fieldwork shows this distinction nicely:

I think that saying “no” to someone who's not a refugee in the sense of the UNHCR and of the Refugee Convention contributes to the protection of the asylum institution. One has to say “no” to those who are not refugees in order to be able to say “yes” to those who are (Affolter et al. 2019: 273).

Similarly, Fassin and Kobelinsky have argued that “[t]he less frequently [asylum] is granted, the more precious refugee status becomes” (2012: 464). Thus, in order to maintain the value of asylum, many applications need to be rejected (*ibid.*: 465). Furthermore, the quote from the SEM website states that it is decision-makers' duty to make “asylum proceedings unattractive for foreigners seeking employment”. I would argue that it is as much about making applying for asylum in Switzerland generally unattractive, or, at least not “as attractive” in comparison with other European countries. On the first day of training, new decision makers are told: “You are going to hear this often from now on: We are always afraid of the ‘pull-effect’” (field notes). The assumption is that if Switzerland is “too generous in the granting of asylum (and humanitarian protection) compared to other countries”, many more people will come (Poertner 2017: 17). Hence, although not officially stated, it follows that the office aims to keep both the number of new applications, and the number of successful applications low. That keeping numbers low is a decision-maker's duty was a message repeatedly conveyed in induction training. It may not have been explicitly taught, but it was consistently implied, as the following examples show.

In one of the training courses I attended, the instructor presented us with a graph comparing the number of new asylum applications in Europe and in Switzerland between 1998 and 2014. The graph showed that, in 2014, the percentage of asylum applicants in Switzerland was at its lowest point since 1998, dropping from 8.2% in 2012 to 3.8% in 2014. Drawing attention to this, the instructor commented: “Switzerland must have done something right, since the percentage of applications has gone down like this” (field notes). The message was quite clear. If “Switzerland” – partially through its frontline decision-makers – did its job well, this reduced the number of applications (especially in comparison with other European countries).

The second example comes from a course on how to deal with applications for family reunification. The instructor told the new decision-makers that the institutional practice for dealing with Eritrean applications was to request DNA proof that the applicants were indeed related to the people they intended to bring to Switzerland. The instructor said: “If they do not hand in DNA proof, the case is ready to be decided, namely negatively. I have seen that people have still been granted entry in such cases. Please don't do that. That's the worst signal we could be sending out” (field notes). With this statement, the instructor urged trainees to make sure their decision-making did not send out the wrong message to avoid creating a “pull-effect”. The wrong message is that Switzerland is a country where family reunification is as easy as circumventing the regulations.

The two substantial goals the office is geared towards can be deduced from the examples above. As a Federal institution, the SEM – and, therefore, its staff – are requested to represent “national interests”. On the one hand, this means fulfilling Switzerland's duties under international law (particularly the Geneva Convention and the UN Convention on the Rights of the Child) and maintaining its self-ascribed image as a humanitarian country. Upholding the noble value of asylum succeeds by excluding those “undeserving” of it. The scarcer asylum protection becomes, the more precious its value. On the other hand, it also means securing Switzerland's “borders” by restricting non-citizens' access to rights and goods, and by making sure that there are not too many “foreigners” residing in Switzerland. My analysis subsumes both sets of practices within the phrase “protecting the system”, which, via two ostensibly opposed logics, comes to mean keeping numbers of asylum applicants low. This is at least partly achieved by keeping acceptance rates low. Decision-makers become “guardians of a restricted good”: the right to reside in Switzerland (Heyman 2009: 381; see also Lipsky 2010: 4). My point here is not to say that all decision-makers consciously strive towards keeping numbers low. Many explicitly do not. However, I argue that the ethical goals of the office shape decision-makers' understanding of what it means to do their job well.

This is illustrated by the widespread language usage I encountered amongst decision-makers in the SEM. The verb most commonly used in granting asylum is “have to”, whereas for rejecting asylum claims it is “can”. Decision-makers typically say things like: “In that case I will *have to* grant asylum”. Or: “If I had better arguments, I *could* reject this claim, but I *can't*

like this". This language usage is not something decision-makers seem to be aware of, but it is also common amongst caseworkers prone to criticising colleagues for being "too strict" or "cynics" who want to reject as many asylum claims as possible (see Affolter et al. 2019; Miaz 2017: 371ff). This particular language usage shows how the role of protector of the system is adopted and internalised by decision-makers. It becomes part of their institutional habitus, which, building on Bourdieu, I define as the schemes of thinking, acting, feeling and desiring that arise from an official's position in the SEM (Bourdieu 1976; see Terdiman 1987: 811).<sup>12</sup> Protecting the system becomes the self-evident priority for decision-makers, as can be seen in the following example. While discussing a text in which I had written that the (implicit) goal of decision-making practices was to protect the system, a caseworker said to me: "Ok, yes, you could put it like this, but you could also phrase it as loyalty. That would be a bit more positive" (field notes). Although intended as critique, this remark actually reinforces my analytical point. For the SEM official, loyalty refers to being loyal towards a particular actor: the state. Whereas we could picture other loyalties, towards asylum seekers, for example, it is self-evident to the official that being loyal means putting what he sees as the state's interests first. This understanding of loyalty shapes the norms and values that define what it means to be professional in the SEM.

## The good decision-maker: professional ethos

This section explores the professional norms and values that lie at the heart of everyday decision-making. In the SEM, the idea of fairness builds on many other professional values: apolitical-ness, objectivity, (emotional) detachment, professional suspicion (or non-naïvety) and strict rule-following. Subsequent sections deal with individual norms in more detail, showing how they both reinforce and conflict with each other.

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12 I develop the concept of the "institutional habitus" in more detail in my thesis (see Affolter 2017a: 10ff).

## The fair decision-maker

Alberto tells me that for him it is very important that all the asylum decisions leaving his section are fair. That is why he does not want the Iraqi family to be granted temporary protection. His view fits with that of Gabriel, quoted at the beginning of this paper. For both of them, fairness is about reserving protection for those “truly deserving” of it.

Fairness is an important value in the SEM. Hence, a widespread understanding amongst caseworkers, which came up a lot in my material, is that their decision-making should always be fair. In most cases, fairness is equated with legal equality. The principle of legal equality means treating equal things equally and unequal things unequally. Therefore, for SEM officials, making fair decisions means using “the same standards for evaluating each claim” (Nora, superior, interview transcript). Ideally, they said, it should not matter who decides a particular case, the outcome should always be the same. For them, the way to achieve this is by strictly following the rules set by institutional practice (see also Lavanchy 2013: 69). Strict rule-following or “law application” is understood in this sense: if there are legal arguments for rejecting a case, it must be rejected. One should not grant asylum or temporary protection in such cases (“just”) because making a positive decision might be quicker than meticulously arguing a negative decision, because one has become emotionally attached to the applicant, or because of personal political opinions, for example. At the same time, if there are clearly no justifications for rejecting a claim, reasons should not be made up out of thin air. That too is considered unfair. Connected to this norm of strict rule following is caseworkers’ understanding that good decision-makers who properly fulfil their duties “dig deep” into every case to make sure that there are “truly no reasons” for rejection.

Consequently, decision-makers who take justice into their own hands by trying to help someone who is “undeserving” are portrayed as behaving in an unfair and unprofessional manner. Often such behaviour is equated with being “political”. One caseworker, Lucy, once explained to me that trying to help an “undeserving” applicant – even someone who had suffered great injustice, for example, by being “so poor he could not feed his five kids” – would be unfair to others because:

This can rapidly lead to one marching to a different drummer. And in my opinion, then you are not being *fair* anymore, even though you want to be. Because your decisions don't conform with our asylum practice, you're not maintaining a *unité de doctrine*. [...] It is not up to us to decide what is *just* or not. [...] Really, it's the politician who should ask himself that question" (Lucy, caseworker, interview transcript).

As we see, Lucy fears that by "over-generously" helping one person she might end up being "unfair" towards other (more "deserving") asylum seekers. While for her (like most of my other interaction partners) good and professional decision-making is very much linked with fairness, it has little or nothing to do with justice. The world is an unjust place, several of them offered in explanation, but it was not up to them to change that. Justice, they felt, was the responsibility of politics and politicians.<sup>13</sup>

Yet this does not mean that decision-makers never deviate from "strict rule-following". Even where there are reasons for rejection, decisions to grant asylum or temporary protection are sometimes still made. In "exceptional cases", I was told by several interaction partners, it was sometimes okay to turn a blind eye. The expression "to turn a blind eye", used in this context, once again highlights that good decision-making filters out the "undeserving" by finding legal reasons and arguments to exclude them from protection. Only in "exceptional cases" are these reasons deliberately overlooked. As the following quote shows, whether or not decision-makers turn a blind eye and become more lenient may also depend on the ethics of the office:

You know, if you have a single man without family and you think what he is telling you could possibly be predominantly credible, then you can more easily turn a blind eye. But with someone with a big family back home, you really have to see the *bigger picture* (Julie, caseworker, interview transcript).

Julie and many of her colleagues may therefore turn a blind eye if doing so does not deviate (too much) from their duty to protect the system. She says in the quote that, for a single man, she might stop "digging" for reasons to

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13 This fits with what Das argues when she writes that "detachment is done by an explicit distancing from the political process, taking it as a given for the particular outcomes to be produced" (2015: 104).

reject the case sooner than for a big family who would all be allowed to stay. That is what she refers to as the “bigger picture”. In the latter case, she has to be more careful to reserve the right to stay for those “truly deserving”.

### **The objective and (emotionally) detached decision-maker**

Since he has seen so many cases as a superior, he is now able to “see things more clearly, from a certain distance, more objectively”, Alberto explains to Rebecca and me. For him distance and objectivity are what it takes to be professional and reach good decisions. He considers Rebecca's decision to be a bad one because it is “too generous”. Rebecca thinks that the fact that she was “too nice” and made “too generous” a decision might have been influenced by the family's pleasant appearance when she interviewed them. In other words, she thinks she had liked them too much. In the SEM, emotional attachment and personal involvement are seen as the antithesis of objective decision-making. For a decision to be objective, it should be based solely on the “facts” of the case: on applicants' recorded statements and all the written documents applicants have supplied or decision-makers have acquired. “Distance” is considered crucial for achieving this. In the following, I examine what SEM officials understand by distance, and what measures are undertaken to create distance in order to enable objective decision-making.

SEM officials are not allowed to interview asylum seekers they know personally. If they are assigned the case of an applicant they know, they are obliged to give it back or pass it on to a co-worker. Moreover, in a training module dealing with the role of decision-makers in the interviews, trainees were told to maintain appropriate distance – not just towards asylum seekers, but also towards other professionals who participate in asylum interviews. They were informed that, whereas it was not forbidden to befriend these professionals outside work, the interview was not a place for informal or personal conversation.<sup>14</sup>

14 In practice, this is somewhat different. Several decision-makers maintain friendly ties with minute-takers and interpreters and this was evident during interviews when they initiated personal conversations or took breaks together. However, caseworkers are always careful to maintain a certain distance between themselves and the asylum seekers. Thus, conversations between decision-makers and asylum seekers are usually limited to the interview itself and, at times, to some formal small talk on the way to and from the office and the waiting room.

Separate waiting rooms reflect the distance created between different types of actors. At the headquarters, one waiting room is for asylum seekers, and a separate room is shared by interpreters, social aid representatives and other visitors such as myself. At the reception and processing centres where I conducted my fieldwork, these auxiliary personnel sit in the same common room as the decision-makers themselves, while asylum seekers wait elsewhere. This separation ensures that all personal encounters and interactions between officials and asylum seekers are confined to interviews, where they are entirely “professional”.

Another feature that promotes professional distance is the seating arrangement during the interviews, which usually take place in an official's personal office. The offices are equipped in a standard manner. The stenographer takes minutes at a desk with a computer. Other participants are placed around a larger rectangular table. These small rooms become very cramped during an interview with five participants (plus me) sitting in them. This forces people to sit close together. Although seating arrangements are generally not conscious decisions, but merely copied from other officials, most decision-makers sit at opposite ends of the table from the asylum seekers, and they therefore sit the farthest apart. When I asked an official why they always sat like that he replied: “Well, for me it's important that I can look the applicant in the eye, that I can look at him during our conversation, that I'm opposite him and sometimes I am also grateful for the distance” (Gabriel, caseworker, interview transcript).

Gabriel's quote points not only to the importance of distance, it also illustrates the value decision-makers ascribe to the “proximity” of face-to-face encounters. Face-to-face encounters are valued for a number of reasons. First, they are seen as an important source of professional-practical knowledge, a term, building on Reckwitz (2003: 289ff), that I use for the institutionalised intuitive knowledge or “gut feeling” that plays an important role in decision-making (see, for instance, Jubany 2011: 86ff; Lavanchy 2014: 92; Macklin 1998).<sup>15</sup> Furthermore, decision-makers believe that by seeing the applicant they can do better justice to the individual case, because they get

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15 I develop this concept of “professional-practical knowledge” in more detail elsewhere (see Affolter 2017a: 67ff, 2017b: 156ff). It describes what has also been called “tacit knowledge” or *Erfahrungswissen* (experience-based knowledge) by other authors that is acquired *on the job* (see Polanyi 1966; Sofsky & Paris 1995: 54).



a better feeling of what is really at stake. Moreover, many decision-makers told me that it was easier to stand by their decisions if they had personally interviewed the asylum seeker. They usually felt more confident that they were making “the right” decision when this was the case. Finally, one decision-maker told me that she found doing asylum interviews important, because “you sit opposite these people time and again and you realise that it is not just a number [you are dealing with], but a human being with all his hopes and dreams” (Lucy, caseworker, interview transcript). Yet, while close encounters in the interviews are acknowledged as important for the aforementioned reasons, decision-makers also see a danger that, like Rebecca, they will become emotionally attached. All my interaction partners told me that, for this reason, they usually put the case file aside for a couple of days after the interview, to (re-)gain some distance, so that their decision will not be influenced by sentiments the interview triggered. In this way, they become objective again.

As shown above, Lucy felt that it is important not to reduce people to numbers. I frequently encountered this norm in the SEM. Reducing people to numbers, not recognising them as persons (but instead as “piece[s] of paper”) is regarded as doing one's job badly. Thus, a common outside critique (of reducing people to numbers, cases or files) is mirrored in this internal value (see, for instance, Eule 2014: 109; Fuglerud 2004: 36; Scheffer 2001).<sup>16</sup> Good decision-makers are supposed to care for the people they deal with (see also Watkins-Hayes 2009: 70).

### The sufficiently but not overly suspicious decision-maker

Alberto tells me that over the years he has become “stricter” and “less naïve”. Both attributes he (implicitly) connects to fair decision-making: They allow him to be fair. As shown above, the common assumption in the SEM is that most asylum seekers are “bogus”. They belong to the group considered “economic migrants” and are trying to manipulate the system in order to stay (see also Kelly 2012: 755; Souter 2011: 48). It is therefore the decision-makers' duty to combat “fraud”, uncover the “underserving” and reject their claims

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16 However, “distancing”, as Eule (2014: 109) calls it, also occurs in the SEM in ways that are not recognised and reflected on by caseworkers, for instance, in terms of language usage.

as quickly as possible.<sup>17</sup> This understanding of asylum decision-making leads to “a shift from trying to find the truth to searching for untruth, from a concern with proof to a concern with lies” (Kelly 2012: 765).

On the whole, the role decision-makers have in the interview and in decision-making processes is that of a “sceptic”, as some have called it themselves. They see it as their duty to ask as many questions as necessary until they are convinced that the asylum seeker's story is true, or to produce sufficient arguments for writing a negative decision. Similar to what Alpes and Spire (2014: 269) describe for French consulates and Scheffer (2003:456) cites with regard to German asylum administrations, in the SEM “to be suspicious is a sign of professionalism” (Alpes and Spire 2014: 269). Conversely, to believe asylum seekers' statements without testing their credibility is a sign of naïvety. Decision-makers often worry when statements “seem credible” that the asylum seekers memorised them beforehand, or have knowledge about certain things for reasons other than personal persecution. For instance, once, after an asylum interview in which the applicant had talked for quite a long time about being in prison, the decision-maker said to me: “This is maybe a bit ‘obsessive’ (*zwanghaft*), but the applicant could also have been a prison guard and that's why he's so familiar with the conditions in prison” (field notes).

While being sceptical is a sign of professionalism, being overly suspicious is regarded as a vice. As Das argues, (emotional) detachment does not equal cold disinterest (2015: 103ff; see also Candea et al. 2015: 24). In the SEM, disinterested or indifferent decision-makers are called “cynics”. They are criticised – mostly behind their backs, as far as I observed – for doing their job badly.<sup>18</sup> Cynics are said to enter asylum interviews with closed minds,

17 The same has been observed in the case of registry offices in Switzerland and welfare offices in the US (Lavanchy 2014: 99; Watkins-Hayes 2009: 50f).

18 An observation I made in the SEM is that decision-makers often denounce their colleagues – particularly those working in other units of the office – for bad decision-making (see Affolter et al. 2019). The most common emic distinction made is between “hardliners” and “softies” (see Miaz 2017: 372). While the former are criticised for being too rigid in their decision-making, the latter are accused of being too lenient. During my fieldwork, I only observed such criticism being made behind other people's backs. However, I was privy to a rumour which leads me to believe that the different “attitudes” may actually be used in apportioning cases. I was told that superiors tend to direct the applications they think will most likely be rejected to those caseworkers who take negative decisions more frequently than others whereas the cases more likely to be judged favourably are

always already knowing that everything will be a lie. This opposes the norm of open-mindedness. During my research, I was frequently told what is also taught in the training modules, that decision-makers must be open-minded in order to do their job well. They should go into every interview with a *tabula rasa* even if, at the same time, they should already have an idea of what the decision might be in order to conduct the interview efficiently.

While becoming a cynic is perceived as a greater risk for older employees who have already “seen too much”, being naïve (and not sceptical enough) is regarded as an attribute that new employees have to grow out of. Connected to these perceptions is a crucial difference in critique. Whereas naïve decision-making is regularly equated with being *unprofessional*, I have never come across that criticism of cynical decision-making.<sup>19</sup> New decision-makers who “naïvely believe everything the claimants tell them” appear to lack sufficient understanding of what it means to properly fulfil their duty, and experienced decision-makers who naïvely believe an applicant are often criticised as being lazy – too lazy, one could interpret, to properly fulfil their duties. On the other hand, the term often used to describe an overly suspicious and cynical attitude is *déformation professionnelle*, or occupational hazard. Used by SEM officials to describe how the views of decision-makers may become distorted by long service on the job, this term is applied when veracity is disparaged too much.<sup>20</sup> Thus, critiques of cynical decision-making do not criticise officials for being unprofessional or not protecting the system, but for taking protection too far, and losing sight of those who are “deserving”.

## The apolitical decision-maker

When Alberto, slightly defensively, brought up “the question of nation states” in a conversation introduced earlier in the chapter, and “whether one thinks nation states are good or not,” he was referring to a particular political ide-

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given to those decision-makers with a reputation for granting asylum more readily (see also Fassin and Kobelinsky 2012: 462).

19 And neither have Jonathan Miaz and Ephraim Poertner who also conducted research in the SEM (see Affolter et al. 2019: 281).

20 In academia, the term *déformation professionnelle* can be traced back to the sociologist Daniel Warnotte, who used it to describe how “bureaucrats” become “intellectually and emotionally damaged by their roles” (Maccoby 2007: 62).

ology that questions the fundamental idea of nation states. Even if he was sympathetic towards this idea – Alberto did not really state his opinion and left this possibility open – the message he conveyed is clear: On the job, there is no place for personal political opinions. But not only that. By saying that these problems “cannot be solved by what we do”, he insinuated that decision-making is also apolitical. Both of these statements reflect perspectives that are common in the SEM.

The “apolitical” norm fits with the impersonal spirit Weber depicts as an important feature of the bureaucratic ethos. He writes:

“*Sine ira et studio*,” without hatred or passion, and hence without affection or enthusiasm. The dominant norms are concepts of straightforward duty without regard to personal considerations. [...] This is the spirit in which the ideal official conducts his office (2013: 225).

In contrast, the “politician's element” is “*ira et studium*” (Weber 1991: 95). Thus, according to Weber, politicians must have passion and fight, whereas bureaucrats should do neither. A similar opinion is widespread in the SEM: there “all” an official should do is to follow rules and “neutrally apply the law”. This is illustrated in the following quote:

I have a problem with “missionaries”. And there are some here in the SEM. We don't have a mission here. We just have to decide upon cases. We don't have to protect Switzerland from foreigners. That is not our role. But some people here feel this way. They think that there are too many asylum seekers here. But that is not my problem. I am paid to take decisions, so I take decisions. On the other hand, there are some who proselytise on behalf of the asylum seekers. They think that everybody should be able to stay here. But that is not the case. We have the law. [...] And then there are the others who say: “If you give a temporary permit to this guy, who is only 20, and then he stays for 30 years, that will cost Switzerland 10 million francs.” Again, that is not my problem. If he fulfils the eligibility criteria he can stay. If you're not happy with it, you have to change the law. But then you have to go into politics, you shouldn't be working here. (Barbara, caseworker, interview transcript)

I find Barbara's quote particularly telling in three regards. First, she depicts “doing the job one is paid to do” and “sticking to the rules” as apolitical work.

However, from an analytical perspective, I would not claim that SEM decision-makers are apolitical actors, but rather that they make policies (and politics) while “translating and implementing [them] into action” (Wedel et al. 2005: 34). Barbara’s statement illustrates how “the political” is masked “under the cloak of neutrality” (Shore and Wright 1997: 8).

Second, Barbara uses the word “missionaries” to describe a role decision-makers should not take on. Missionaries pursue clear goals with their decision-making: they either want to enable everybody to stay, or to make sure that as few people as possible are allowed to remain in Switzerland. In contrast, Barbara claims that a professional decision-maker’s only aim should be to “correctly” and “neutrally” apply the law. For her, professional decision-making has no room for ideologies and pursuit of goals other than following the law. At first sight this could be perceived to contradict what I have described as being the ethics of the office. But I argue that this is not so for the following reason. Although my interaction partners rarely presented what I have described as the ethics of the office as explicit norms, they are, nevertheless, prevalent in my material as ideologies underlying the explicitly stated norms and values. Because they lie at the heart of professionalism in the SEM, these ideologies (unlike the ones Barbara describes) are not perceived by decision-makers as being outside the law, but they implicitly inform what “correct” and “neutral” rule-following means.

Third, Barbara’s quote tellingly advocates for “political neutrality” – which is widely recognised as an important norm within the SEM. However, what this means exactly may vary for individual decision-makers. At several points during our conversations, Barbara clearly identified herself as “anti-SVP” (the right-wing Swiss People’s Party). Hence, she was most critical of what she sometimes called “SVP-decision-making”. On the other hand, several other interaction partners criticised “left-wing decision-making”. For example, one superior claimed that some of her “left-wing” colleagues, who were too lenient in their decision-making because they “want[ed] to save the world”, were egoistic. By calling her “left-wing” colleagues’ decision-making egoistic, she is criticising them for doing what feels good and looking out for themselves, instead of strictly following the rules. In her view, they should have fulfilled their duties as decision-makers by attending to the broader aims of the office: protecting the system and reserving government protection for the “truly deserving”.

## The necessity of “digging deep”

This section addresses a widespread decision-making practice regarded as a “correct” and “neutral” rule application: “digging deep”. My example shows how the ethics of the office shapes decision-makers’ discretionary practices, making it normal and desirable for them to act in specific ways. I understand discretionary practices to be processes of interpreting the law when fitting it to specific cases or situations. Therefore, discretion necessarily forms part of the law, since (written) law is “by its very nature unspecific” and “always needs to be applied to a specific situation, and therefore interpreted” (Eckert 2015: 1). “Digging deep” is a discretionary practice used to “apply” Article 7 of the Swiss Asylum Act, which regulates “proof of refugee status”.<sup>21</sup> The example of “digging deep” that follows allows me to show how this everyday practice is shaped by the norms discussed above, and also how it reaffirms these same norms and values, upon which it is based.

Fair decision-making requires strict rule-following. As discussed above, if legal arguments support rejecting a case, it must be rejected. Many scholars have observed that asylum proceedings function as quests to find reasons to doubt applicants and deny their claims (see, for instance, Scheffer 2001: 194, 2003: 455). This can be seen in asylum interviews, where questioning is oriented towards “discovering” mistakes and “uncovering untruths”. While decision-makers simply call this practice “testing credibility”, I call it “digging deep”. When “digging deep”, decision-makers ask “tricky” questions in asylum interviews and/or undertake extra investigations until they have enough arguments to reject a claim, or are convinced that the applicant’s story is true “after all”.<sup>22</sup>

As the above-mentioned norms and values suggest, “digging deep” is the epitome of good and professional decision-making in the SEM. The practice

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21 Article 7 AsylA reads as follows: “1Any person who applies for asylum must prove or at least credibly demonstrate their refugee status. 2Refugee status is credibly demonstrated if the authority regards it as proven on the balance of probabilities. 3Cases are not credible in particular if they are unfounded in essential points or are inherently contradictory, do not correspond to the facts or are substantially based on forged or falsified evidence” (<https://www.admin.ch/opc/en/classified-compilation/19995092/index.html> [accessed 20 September 2018]).

22 An exception is when decision-makers know “from the beginning” that a story is “simply true” due to their professional-practical knowledge (see footnote 15).

is framed as “necessary”, allowing decision-makers to make positive asylum decisions with a “clear conscience”:

Sometimes you do an additional interview when technically everything indicates that a story could be true but there are two, three contradictions in it. In such cases it just *feels strange* to grant asylum when there are still some uncertainties, some open questions. So, then you do [an additional interview] so that if you then get an answer that really satisfies you, you can write a positive decision *with a clear conscience*. (Denise, caseworker, interview transcript)

Here Denise is talking about the need to carry out additional asylum interviews if, after the first “in-depth” interview, too many uncertainties remain. She refers to cases in which something “feels off”, but there are not enough discrepancies to reject the claim. In those cases, Denise declares, she has to “dig deep” in order to see whether there are arguments against asylum. If arguments exist, the claim “can” be rejected. If not, a positive decision can be made with a “clear conscience”.

In order to “dig deep”, decision-makers use a particular questioning technique taught to all caseworkers during their initial training.<sup>23</sup> It is common for decision-makers to begin their questioning by asking about applicants’ reasons for leaving their country and applying for asylum. Interviews open with a question such as: “Why did you leave country and apply for asylum in Switzerland?” After that, decision-makers follow-up with specific “wh-questions” and some yes or no questions. At the end of the interview, the asylum seekers are usually confronted with contradictions found in their story.

The open question at the beginning is intended to give asylum seekers the opportunity to tell their stories. One purpose of the follow-up questions (the wh- questions in particular) then is to enable the decision-makers to collect all the necessary information for taking their decisions (e.g. who exactly the persecutors were and what might have been motives for persecution). Another purpose of these questions is to see whether asylum seeker can talk in detail about certain events they are asked about (e.g. “please tell me in detail about the daily routine in prison”) or to generate answers the decision-makers can then compare with “facts” they can look up (e.g. “what was

23 For a closer discussion of this technique in reference to a specific empirical example, see Affolter (2017a: 71ff).

the name of your church that was bombed?”). Both these things – depending on whether asylum seekers manage to answer them adequately or not – serve as indicators of credibility or non-credibility. Finally, these questions allow for comparisons. Hence, in order to “be able to” reason non-credibility decisions on the basis of contradictions, decision-makers need on-file facts that they can compare with each other.

My interaction partners used two distinct metaphors to describe this three-step questioning technique: “It is like a funnel (*Trichter*)”, one of them said. Another one compared it to the “tightening of a noose (*Zuziehen einer Schlinge*)”. The first metaphor seems to indicate that one gets closer and closer to the heart of the matter through this kind of questioning, “the truth” (or “non-truth”) of what happened. The second metaphor seems to assume that asylum seekers often lie, and sees the procedure as a means of exposing the liars. Several decision-makers stated that starting with an open question was useful because asylum seekers’ “free narrative” (*freien Erzählung*) tended to get tangled up in contradictions “if the story was not true”.

As Scheffer (2001: 184) and Trueman (2009: 296) have argued, such questioning techniques, rather than passively “discovering” mistakes and “untruths”, actively generate them. They therefore contribute to creating the figure of the “false refugee”. Once asylum seekers have been classified as “false refugees” and assigned to the legal category of “non-refugee” (with or without temporary admission), their very existence reinforces the perception that there “are” indeed many false refugees. This perception, in turn, strengthens endeavours to identify and deny them asylum (see also Zimmermann 2011: 337). Thus, the practice of “digging deep” reaffirms decision-makers’ duty to protect the system, and confirms ideas of how professionals should act in service of this duty (see Eckert, this volume).

## Concluding remarks

In this chapter, I have shown how the ethics of protecting the system make “digging deep” the routine thing for decision-makers to do. “Digging deep”, in turn, reinforces the professional norms that lie at its heart, and reaffirms decision-makers’ role as protectors of the system. By exploring the professional norm of fairness in detail, I have portrayed how the procedural values that make up the bureaucratic ethos are shaped by the ethics of the



office. The bureaucratic ethics not only seem to yield professionally necessary behaviours – things decision-makers *have to* do – certain professional behaviours, such as “digging deep”, also become *morally right* or, we could also say, *ethical* ways for decision-makers to act.

It has frequently been argued that “bureaucracies” and “bureaucrats” are indifferent (see Arendt 2013; Bauman 2000; Gill 2016; Herzfeld 1992). Gill thus writes that “bureaucrats” cease to care about the people they deal with because their concern and compassion for them is overridden by other concerns: most notably instrumental-rational rule-following (2016: 136). However, I have shown on the basis of the procedural norm of fairness not how concern for people is overridden by other concerns but rather how it is brought into accordance with the exclusionary ethics of the office.

For this purpose, many authors have argued that in order to understand how bureaucrats bring in line law and policy work, we need to pay attention to “bureaucrats” actions, routines and habits (Fassin 2015: 4; Silbey 2005: 324; Wedel et al. 2005: 34). Here, rather than “simply” looking at what “bureaucrats” do, I have dealt with one important aspect of *what makes them do what they do*; namely, what they think they should do (see Eckert, this volume).

Institutional norms shape the “practices of the state” (Migdal and Schlichte 2005: 15; see also Bierschenk & Olivier de Sardan 2014: 5ff; Eckert et al. 2012: 15). Such norms, images of what the public good constitutes and the understanding of how the public good might best be served change over time (Eckert, this volume). Taking what bureaucrats think they should be doing seriously at different times and places, i.e. within their specific historical situations, we are able to show how bureaucratic ethics and ethos are transformed. This allows us to better understand “states at work” (Bierschenk and Olivier de Sardan 2014) in and across different (historical) settings. My analysis offers an explanation for the exclusionary workings of the Swiss state, asylum law and policies. In particular, it contributes to understanding why the majority of asylum claims end up being rejected on the basis of “non-credibility”.

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