

# **Asylum in Switzerland: a Challenge for the Church.**

A dissertation submitted to the University of Manchester for the  
degree of Master of Art in the Faculty of Humanities.

2007

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This dissertation counts 15'016 words, including footnotes, but, in accordance with my supervisor Dr. Peter Scott excluding the translations in English of the French quotations.

## List of Abbreviations.

AF	Assemblée Fédérale [Federal Assembly]
AFU	Arrêté Fédéral Urgent [Federal Urgent Decree]
ALCP	Accord sur la Libre Circulation des Personnes [Agreement on the Free Movement of People]
CES	Conférence des Evêques Suisse, [Swiss Bishops Conference]
CF	Conseil Fédéral [Federal Council]
EPER	Entraide Protestante Suisse [Swiss Protestant help]
EU	European Union
FSCI	Fédération Suisse des Communautés Israélites [Swiss Federation of the Israelite Communities]
FEPS	Fédération des Eglises Protestantes de Suisse [Federation of Swiss Protestant Churches]
HCR	High Commissioner for Refugees.
LAsi	Loi fédérale sur l'Asile [federal Law on Asylum]
LSEE	Loi sur le séjour et l'établissement des étrangers [the law concerning the staying and settlement of foreigners]
LEtr	Loi fédérale sur les Etrangers [federal Law on Foreigners]
NEM	Non-Entrée en Matière [No Consideration for i.e. an asylum claim]
ODM	Office fédéral Des Migrations [Federal Office of Migrations]
RSR	Radio Suisse-Romande [Swiss French-Speaking Radio]
TSR	Télévision Suisse-Romande [Swiss French-Speaking Television]
UDC	Union Démocratique du Centre [Democratic Union of the Centre]
US	United States

**Abstract.**

This piece of work aims at offering a political and theological analysis of the current Swiss policy concerning forced migration. Confronted with laws and policy detrimental to asylum seekers to the point of psychological and physical ill-treatment, the Federation of Swiss Protestant churches and some Protestant theologians took clear stances on this issue. They advocated both civil disobedience in some specific circumstances and participation in the civil society, by giving, in particular, alternative information concerning asylum seekers to the one offered by the Federal Council or the one circulating in the public opinion. With this work I intend to contribute to the theoretical and ethical reflection of Swiss Protestant churches by putting into question the current endeavour to give a response *inside* the political system and based on Human Rights, the rule of law and the social contract. My analysis shows that the mistreatment of asylum seekers is not a temporary deviation from a normally good political system, but another side of Western politics. Therefore, the question is less about adjusting the system than it is about asking what alternative politics, based on Christian values, worldview and premises, can and should the church offer.

**Declaration.**

No portion of the work referred to in the dissertation has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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**The Author.**

I am a graduate student in Swiss law and in Theology at the University of Lausanne. I have three years of experience as a jurist and have been involved in defending asylum seekers on a voluntary basis. Moreover, I am a committed Christian and have in particular participated in a humanitarian project in the Chiapas, organised by the Reformed Protestant Church of the canton of Vaud.

In accordance with my double academic background, this dissertation is the result of a judicial and theological research on the asylum question in Switzerland on the one hand, and on the role of the Reformed church related to this question on the other. From this perspective, I have first examined the international and national laws, which apply to asylum seekers in Switzerland, and the statements of the Federal Council that explain the reasons to amend the law on asylum. In a second step, I have studied the different stances of the Swiss main political parties concerning the last modification of this law. Finally I have confronted the positions on forced migration of failed asylum seekers, scholars – jurists and theologians – and members of the Swiss civil society.

## 1. Introduction.

### 1.1. The Question.

December 04, policemen of the Canton of Solothurn controlled and proceeded to a corporal search of three African NEMs (NEM is the appellation given to asylum seekers whose claim is considered as manifestly unfounded). They were forced to dress down to their underwear on a public place. A couple of days later, two of them were arrested for illegal stay and put into prison for twenty-four hours. They were deprived of food and drink. When asking for food, they were told: “You will eat in Africa.”<sup>1</sup>

April 05, Switzerland: Two NEMs have no choice but to sleep in public toilets, for the Cantonal authorities do not provide them with any accommodation and forbid them to work.<sup>2</sup>

July 06, Michel Flückiger, President of the municipality of Bex in the Canton of Vaud, spoke on the French-speaking radio of a “nouvel arrivage au centre Fareas, dont des NEMs...” [a new arrival in the Fareas centre (centre for asylum seekers), some of which were NEMs...]. A couple of months later, he was asked if he intended to apologise for the use of the term “arrival”, his answer was: “Je n’ai pas l’intention de m’excuser. Surtout pas auprès de ces NEMs qui ne disposent pas de statut legal”<sup>3</sup>. [I do not intend to apologise. Especially to these NEMs who do not have any legal status.]

These three stories are not unfortunate exceptions; they are the normal daily experience of these people labelled NEM (*Non entrée en matière* [no consideration for]). NEM is a procedural term, but it is currently used also to label the asylum seekers whose application for asylum will not be considered. They stay in Switzerland despite the refusal to grant them asylum, for they do not have the possibility<sup>4</sup> or do not want – by fear or other reasons – to leave. But they are deprived of almost all fundamental rights. They are not allowed to work and they do not have right to social security. They have little freedom of movement, for they are forced to stay in a specific canton. And when the canton provides them a dormitory,

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<sup>1</sup> Vivre-ensemble: [http://www.asile.ch/vivre-ensemble/actualite/allegement2003.asp#article\\_terre\\_vaudoise](http://www.asile.ch/vivre-ensemble/actualite/allegement2003.asp#article_terre_vaudoise).

<sup>2</sup> <http://www.tsr.ch/tsr/index.html?siteSect=500000#bcid=351404;vid=5666003>.

<sup>3</sup> Naki, *Sois Parfait*, pp. 75 and 188.

<sup>4</sup> It is highly difficult to obtain identity documents in many countries of the Majority World and without such documents, it is not possible to return to one’s country. Moreover leaving means having the financial means to travel, but the NEMs and failed asylum seekers often do not have them.

they are not allowed to stay during the day.<sup>5</sup> As a result they are condemned to a life without privacy, without social life, and without income. This breach of their very dignity is denounced by some journalists of the TSR (*Télévision Suisse Romande* [Swiss French-speaking television]), Amnesty International and other members of the Swiss civil society. Despite these denunciation and attempts to challenge the image of asylum seekers as potentially dangerous (for the Swiss economy and the public order), 68% of the Swiss people accepted on 24<sup>th</sup> September 06 a new tightening of the legislation on foreigners (*Loi fédérale sur les étrangers*, abbreviated *LEtr*) and asylum seekers (*Loi fédérale sur l'asile*, abbreviated *LAsi*). One of the consequences of the *LAsi*'s last modification is that failed asylum seekers are treated as NEMs.

The question that upholds this work is how the Swiss reformed church should respond to such a situation. The responses actually are manifold due to the characteristics of both Federalism and Protestantism. Indeed, the Swiss cantons have different relationships with the church, some are Catholic, some are Protestant, and some have state church, others not. In some cantons the church is strongly involved in helping asylum seekers, failed asylum seekers and NEMs, in others less. In some churches the sermons are politically engaged, in others not. This is why a full analysis of the local answers would require interviews, surveys, sociological study etc. and would largely exceed the scope of this dissertation. Rather, this dissertation aims at analysing the theoretical positions of the FEPS (*Fédération des Eglises Protestantes de Suisse* [Federation of the Swiss Protestant Churches]) and of the protestant theologian and professor of ethics in the University of Zürich, Pierre Bühler<sup>6</sup>. I intend to outline the coherence and the strength of the thinking of both the FEPS and these theologians. However, I will also put into question their views and offer a new direction to the theological reflection concerning asylum, based on a sophisticated political and judicial analysis of both the political figure of NEM and the Swiss system concerning forced migration.

The reflection of the FEPS and Bühler, Fuchs and Grappe is a reflection *inside* the Swiss political system of liberal democracy, conceived as based on Human Rights and the social contract. They understand the term state as the ensemble of institutions

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<sup>5</sup> <http://www.asile.ch/vivre-ensemble/temoignages/>

<sup>6</sup> Pierre Bühler (1950 -) wrote in particular *Le Problème du Mal et la Doctrine du Péché* (1976), *Justice en dialogue* (1982) and *Gerhard Ebeling 1912-2001* (2003). To my knowledge, he is the Swiss theologian who took the clearest and most specific stance on this issue.

that exercise public authority, and which benefit from a monopoly on the legitimate use of violence.<sup>7</sup> According to this understanding, the tightness of the *LAsi* to the detriment of the human dignity of NEMs and failed asylum seekers is perceived as a *deviation* from the grassroots principles of an essentially good political system.

I do not share this view and intend to show in the third chapter that the *LAsi* is not a deviation from but *another other side of* Western politics and a product of the imagined community of nation-state. Proceeding from this viewpoint, I will try to show first that the understanding of resistance sustained by both the FEPS and the aforementioned theologians fail to offer an appropriate Christian answer to the state of affairs of NEMs and failed asylum seekers and even upholds the system that produces the situation that they denunciate. Second, I will explain why I think that the participation of the FEPS in the civil society does not suit its Christian mission and why its effort to give alternative information to the official one in the civil society is – in this particular issue – doomed to failure. If I insist on the Christian specificity of the response coming from the church, it is because I share, with some theologians<sup>8</sup>, the conviction that the premises, the understanding of human being and politics (understood as a way of living together), and the values of democratic liberal politics are different from the Christian ones. Therefore, a response of the church, based on Christian values and worldview, can only come from a reflection *outside* the current political system. This response then may – or not – concur with the liberal and democratic one, but cannot be based on the same premises. In the issue raised in this work, I will show that the church should oppose the liberal democratic way of dealing with asylum, but it does not mean that the church should *always* be in opposition with the politics of the world. Finally, my last chapter will be devoted to the emergent tradition of political theologians<sup>9</sup>, represented by Stanley Hauerwas<sup>10</sup> and William T. Cavanaugh.<sup>11</sup> This theological tradition offers a new vision of the

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<sup>7</sup> Definition adapted from the one of Bell. Bell, “State and Civil Society”, p. 425.

<sup>8</sup> Standley Hauerwas and William, T. Cavanaugh for instance.

<sup>9</sup> According to Rasmusson, these theologians “give primacy not to politics understood as the struggle for control over the processes of social change (the politics of the world) but to the politics of the church as an alternative polis...”, Rasmusson, *The Church as Polis*, p. 17

<sup>10</sup> Stanley Hauerwas (1940 -) is a Professor of ethics at the Duke Divinity School in Durnham and is originally a Methodist. He wrote in particular *A Community of Character* (1981) and *The State of the University: Academic Knowledges and the Knowledge of God* (2007).

<sup>11</sup> William T. Cavanaugh (1962 -) is a Catholic Professor of Theology at University of St. Thomas in St. Paul, MN. Among his numerous publications are the books *Torture and Eucharist: Theology, Politics, and the Body of Christ* (1998) and *Theopolitical Imagination: Christian Practices of Space and Time* (2002).

relationship between church and politics. I intend to show to what extent this understanding is promising for the issue raised in this dissertation. However, this chapter will remain open, for “Theological Politics” raises questions at the level of applied ethics that by far exceed the scope of this dissertation. Moreover, as one of the arguments in this work is that the church has a key role to play in the current Swiss state of affairs, this reflection needs to be followed through in the church.

### *1.2. The Swiss Legislation on Foreigners.*

The brief outline of the Swiss legislation on foreigners that follows, aims at giving the reader the key to understanding the legislative framework with which the following reflection is concerned. Though it may be slightly tedious for a reader not used to legal terms, I consider this outline necessary for the understanding of the problem of asylum. To facilitate reading, annex I presents a diagram of the Swiss legislation concerning foreigners.

The Swiss policy on foreigners is regulated by the *LSEE* (*Loi sur le séjour et l'établissement des étrangers* [the law concerning the staying and settlement of foreigners]), which defines the possibilities to stay or to settle in Switzerland. The *LSEE* was completely reformed and replaced by the *LEtr*, which was accepted on 24<sup>th</sup> September 06 and will enter into force in 2008. Moreover, two particular categories of foreigners benefit from specific judicial treatment. The first category concerns the refugees. Their status and rights are mainly defined by the *LAsi*, which entered into force on 1<sup>st</sup> January 1981 and was completely reformed in 1998 after four amendments and then newly amended twice, the last time on 24<sup>th</sup> September 06. The second category groups the nationals from member countries of the European Union (EU) and the European Free Trade Association. Their status and rights are regulated by the *ALCP* (*Accord sur la Libre Circulation des Personnes* [Agreement on the Free Movement of Persons]). (Afterwards, I will refer to them as “Europeans”).

These different legislations make a clear distinction between European and non-European foreigners on the one hand, and between qualified and non-qualified non-European foreigners on the other. Indeed, thanks to the *ALCP*, Europeans benefit from conditions of staying, work, study, family reunification and right to the social

security system similar to Swiss people, whereas Non-European foreigners are subjected to the restrictive regime of the *LSEE*. In this legislative system, firstly, the authorisations to stay are mainly causal – which means that their granting is dependent on specific reason (e.g., a job, studies, marriage, a need of protection, etc.) and that they are withdrawn when the reason ceases. Secondly, the authorisations to work are limited<sup>12</sup> and can be obtained only if the employer can prove that she could find workers neither among nationals and foreign residents, nor among nationals from a member country of the *ALCP*. Therefore, most non-Europeans who are employed in Switzerland are highly qualified. The *LEtr* is in the same vein and clarifies that:

“l’admission d’étrangers en vue de l’exercice d’une activité lucrative doit servir les intérêts de l’économie suisse; les chances d’une intégration durable sur le marché du travail suisse et dans l’environnement social sont déterminantes. Les besoins culturels et scientifiques de la Suisse sont pris en considération de manière appropriée.”<sup>13</sup>

[the admission of foreigners with a view to exercising a lucrative activity should serve the interests of the Swiss economy; the chances of a lasting integration in the Swiss job market and in the social environment are decisive. The cultural and scientific needs of Switzerland are taking into consideration in an appropriate way].

Moreover the article 23, paragraph 1 stipulates that:

“Seuls les cadres, les spécialistes ou autres travailleurs qualifiés peuvent obtenir une autorisation de courte durée ou de séjour.”<sup>14</sup>

[Only the executives, specialists and other qualified workers can obtain an authorisation of a short term stay.]

Concerning the specific case of asylum seekers, both the *LAsi* and the *LEtr* regulate their situation. We can distinguish among asylum seekers two categories of persons. The first category concerns the refugees as defined by the *Geneva Convention relating to the status of refugees*, which compels the signatory countries to offer protection to any person who:

<sup>12</sup> For instance the number of licences to work cannot exceed 4000 from 1<sup>st</sup> November 06 to 31<sup>st</sup> October 07. [http://www.admin.ch/ch/f/rs/823\\_21/app1.html](http://www.admin.ch/ch/f/rs/823_21/app1.html),

<sup>13</sup> Article 3, paragraph 1, *LEtr*.

<sup>14</sup> The *LEtr* has some exceptions to this rule, but their analysis would bring us too far from our topic.

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>15</sup>

The *LAsi* regulates the status of refugees in Switzerland. Nevertheless, other reasons can cause a need for protection. For instance people fleeing a civil war, generalised violence or people who have a serious disease that is not treatable in their own country do not have the status of refugee but can receive protection from Switzerland. This second category of asylum (in the broad sense of protection) seekers can benefit from an *admission provisoire* [provisional admissions]. As those who are provisionally admitted are not considered as refugees, they do not benefit from either the protection of the 1951 Geneva Convention, or any international treaty. Both the *LAsi* and the *LEtr* regulate their status.

This brief synopsis shows that it is extremely difficult for someone coming from the Majority world to obtain an authorisation to stay and work in Switzerland. Indeed, as these nationals are mainly non-qualified workers they have few chances to obtain an authorisation to work. Therefore, they mainly stay and work in Switzerland by way of family reunification or if they obtain a status of refugee or a provisional admission. However, as we will further see, the tightness of the *LAsi* considerably diminishes the possibility to obtain asylum. These difficulties partly explain why a large number (from 150'000 to 300'000) of non-European and unqualified workers stay and work illegally in Switzerland.

This migration policy has been qualified as the *politique des trois cercles* [policy of the three circles]. It distinguishes the foreigners according to their proximity with Switzerland in terms of culture, and favours the first circle (the most similar) to the detriment of the second, and the second to the detriment of the third.<sup>16</sup> Europeans

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<sup>15</sup> [http://www.unhchr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhchr.ch/html/menu3/b/o_c_ref.htm). The mentions “As a result of events occurring before 1 January 1951 and...” and “...as a result of such events” were removed by the Protocol from 4th October 1967, <http://www.ohchr.org/english/law/protocolrefugees.htm>.

<sup>16</sup> The 1991 report of the CF on the policy toward foreigners and refugees. FF, 27 III, p. 327.

belong to the first circle, Americans, Canadians, Australians, and New Zealanders to the second and people of the Majority World to the third. This policy has been formally abandoned, for having been denounced as racist. Nevertheless, as we have seen, the *LEtr* takes up this distinction and treats differently the Europeans (first circle) from the non-Europeans, as well as the qualified workers (coming mainly from the second circle) from the non-qualified workers (coming mainly from the third circle). Moreover, the Federal counsellor who is responsible for the Foreign policy indirectly referred to this policy in a political speech in August 2005, where she said that the Swiss policy favours European migrants, for they integrate better and serve the Swiss economy.<sup>17</sup>

### ***1.3. Methodological Issues.***

A couple of methodological points are necessary before I begin the analysis in itself. Firstly, the data concerning NEMs and failed refugees vary to an important extent depending on the source of information. Indeed, political parties and members of the Swiss civil society do not always have the same figures and above all do not interpret the data in the same way. This is why, at the end of the bibliography, there is an index of the used websites with a brief description of the party or of the associations (annex II). Moreover, all quoted websites have been accessed on 28<sup>th</sup> August 07. Secondly, I disagree with the claim that an objective reality or a neutral position exists. I think that any reality is built by and shared with a community and that the neutral position is one position among others that actually serves some interests. Therefore, I claim neither to offer a neutral study nor to show the “objective” reality by uncovering the state ideology, for I consider that they support each other to a large extent.<sup>18</sup> However, I intend to show the detrimental effects of the current Swiss policy on NEMs and failed asylum seekers and to offer an alternative way of looking at the asylum question. Thirdly, if not otherwise stated, I use the term “Christian” to define a person or an institution whose aim is to follow Jesus Christ; the term “civil

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<sup>17</sup> [http://www.labreche.ch/lb/2005/LB17\\_DayAfter.htm](http://www.labreche.ch/lb/2005/LB17_DayAfter.htm)

<sup>18</sup> To illustrate my position: I have asked three persons to read my dissertation over. Two of them are Swiss and one is a failed asylum seeker living in Switzerland. The two Swiss thought that my sections concerning Swiss migration policy were extreme and describing rather a totalitarian state than democracy. The failed asylum seeker, on the contrary, thought that these sections were particularly accurate and correct.

society” to describe the sphere “that comprises the private domain which exists in the space between (a) the state and its various apparatuses, and (b) the economy and its various expressions; flourishes where the state is in pluralistic democratic mode and the economy is in capitalist mode, is a Western European/North American phenomenon..., and can be interpreted from the right and the left of the political spectrum and appropriated by both in support of their arguments”;<sup>19</sup> the term “politics” to define the “social arrangement of bodies, the organisation of human communities”;<sup>20</sup> and the term “state” in its modern definition as an “ensemble of institutions that exercise public authority, enforced through a monopoly on the legitimate use of violence”.<sup>21</sup> For the purpose of this work the Swiss state will refer to the CF (Conseil Fédéral [Federal Council])<sup>22</sup> and the AF (Assemblée Fédérale [Federal Assembly])<sup>23</sup>, as well as to the ODM (Office Fédéral des Migrations [Federal Office of Migrations]), charged in particular to grant or refuse asylum.

## **2. The Swiss Protestant Church Committed to Defend Asylum Seekers.**

### ***2.1. The Elements of the Problem.***

Since the 1990s, the FEPS and several Protestant theologians – especially Bühler and two other Professors of ethics, Eric Fuchs and Christian Grappe – have been deeply concerned about the tightness of the asylum legislation. From 1990 to 1995, several publications about resistance related to the question of asylum were published, and since then, the FEPS has always taken a stance on the many reviews of the *LAsi*. In the last years, the FEPS has been stressing dialogue and information, but is more cautious about calling for resistance. As for Bühler, he has maintained his position and still advocates resistance in some specific conditions, as we will further see.

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<sup>19</sup> Van Rooy, *The Global Legitimacy Game* p. 5. I have deliberately removed “which has contributed to the creation of the conditions for freedom, democracy and successful economic performance.”

<sup>20</sup> Bell, “Civil Society” p. 423.

<sup>21</sup> *Idem*, p. 425.

<sup>22</sup> The CF is the executive power and is composed of seven counsellors. Currently four political parties are represented in the CF.

<sup>23</sup> The AF is the legislative power and is divided into two Chambers, one with 200 seats and the other with 46. Sixteen political parties compose this Assembly.

The FEPS and the theologians who wrote about resistance are worried about the increasing xenophobia and the many amalgams concerning foreigners that occur in the speeches or publications on foreign people,<sup>24</sup> mainly from the UDC (Democratic Union of the Centre which is, contrary to what its name suggests, the hard right party of Switzerland). Indeed, the foreigner is quickly likened to a criminal or an abuser of the system.<sup>25</sup> Whereas they all acknowledge the presence of criminal or abuser among foreigners, they insist that only a minority of foreigners wrongly behave. Above all they express their worries about the increasing violation of human dignity that NEMs and failed asylum seekers are facing, and about the creation of a law of exception concerning asylum. Indeed the *LAsi* is the only administrative law that is so precise with the conditions of admission of a request,<sup>26</sup> only non-Europeans can be sanctioned by administrative detention (administrative detention means that someone can be locked up without having committed any crime, on the basis that the administration *suspects* that she will not accept an administrative decision), searched on basis of suspicion is allowed, and they are presumed guilty as the suspicion is sufficient.<sup>27</sup> The mechanism of scapegoat is also highlighted, for the foreigner becomes responsible for all Swiss problems and troubles, in particular for the increase of unemployment and criminality.<sup>28</sup>

In such a situation, the FEPS and the concerned theologians first remind the preferential option of God for the persecuted,<sup>29</sup> and therefore in our case for the asylum seekers. Then, facing the legal interdiction to help NEMs and failed asylum seekers (articles 23 *LSEE* and 116 *LEtr*), the question of the relationship between law and ethics or law and one's conscience arises. Ethics here involves systematizing, defending, and recommending concepts of right/good and wrong/bad behaviour. In other words, when the law forbids doing what someone believes she should do, what is she supposed to follow, the law or her conscience? This dilemma goes back to the biblical tradition itself that is divided between the duty to obey the state (Ro. 13:1) but God rather than men (Acts 5:29). And here arises the question whether someone is allowed to resist state rules and under what conditions. The FEPS and the

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<sup>24</sup> See the FEPS's position on the last review of the *LAsi*:  
[http://www.sek-feps.ch/media/pdf/stellungnahme/Menschliche\\_Asylopolitik\\_fr.pdf](http://www.sek-feps.ch/media/pdf/stellungnahme/Menschliche_Asylopolitik_fr.pdf) and  
[http://www.sek-feps.ch/shop/media/gemeinsame\\_texte/4/3\\_fr.pdf](http://www.sek-feps.ch/shop/media/gemeinsame_texte/4/3_fr.pdf)

<sup>25</sup> Bühler, "L'Asile en Suisse : une Détérioration continue", p. 26.

<sup>26</sup> Barbey, *Interdits d'Asile* p. 34.

<sup>27</sup> Bühler, "L'Accueil de l'Autre, Défi de l'Ethique Politique", p. 65

<sup>28</sup> Bühler, "L'Etranger et ses Enjeux d'Herméneutique Théologique" p. 18.

<sup>29</sup> FEPS, *Résistance!*, p. 28.

theologians who took a stance on resistance in the area of asylum agree that the political system globally well works in Switzerland and hence that resistance should be a strict exception.<sup>30</sup> The damaging evolution of the *LAsi* is considered as a *deviation* from a theoretically good system, which is supposed to put into practice its grassroots principles: Human Rights (which are supposed to guarantee the equal dignity of every human being), and the rule of law, (which stipulates that any administrative decision and any judgment are subjected to law), and the social contract.<sup>31</sup> Moreover positive law should be in accordance with the national constitution and the latter with the international treaties to which Switzerland has subscribed. Resistance is advocated precisely when a law or an application of it highly contradict either a superior norm or a grassroots principle.

The second question that this particular issue raises is whom we can welcome and how. Indeed, if xenophobia has to be fought, the fear of the stranger and the question of the Swiss identity also need serious consideration.<sup>32</sup> Welcoming the stranger should not be done to the detriment of national citizens. Therefore one has to distinguish between the asylum seeker and the economic migrant, the former being part of the Human Rights and the latter of the economic policy. Nevertheless, the economic migrant is not free from the respect of the worker's human dignity and should not indirectly cause illegal work, because of a too restrictive policy. Indeed, knowing that the Swiss economy illegally employs – and therefore needs – between 150'000 to 300'000 unqualified foreign workers,<sup>33</sup> one may ask whether the refusal to legalize their staying does not indirectly cause illegality.

The two following sections aim at analysing how the FEPS and Bühler, Fuchs and Grappe respond to the issues raised. I will first examine resistance and then dialogue and information, as the stress seems to chronologically move from the former to the latter.

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<sup>30</sup> FEPS, *Résistance!*, p. 39.

<sup>31</sup> FEPS, *Résistance!*, pp. 33ss, Fuchs, *Le Droit de Résister* p. 23 or Bühler, “les Critères...” p. 33.

<sup>32</sup> See the FEPS's position on the last review of the *LAsi*:  
[http://www.sek-feps.ch/media/pdf/stellungnahme/Menschliche\\_Asylopolitik\\_fr.pdf](http://www.sek-feps.ch/media/pdf/stellungnahme/Menschliche_Asylopolitik_fr.pdf) and  
[http://www.sek-feps.ch/shop/media/gemeinsame\\_texte/4/3\\_fr.pdf](http://www.sek-feps.ch/shop/media/gemeinsame_texte/4/3_fr.pdf).

<sup>33</sup> Bühler, “Introduction”, p. 10.

## 2.2. *The Ethical Act of Resistance.*

As we have seen, the FEPS and Bühler, Fuchs and Grappe understand the Swiss political system as globally good or just. Therefore the norm for the citizen is to be loyal to the state. The FEPS clarifies its view when saying that the monopoly of power of the state is the guarantor of peace, security and integration,<sup>34</sup> and that Human Rights, as the basis of the system, in themselves justify the existence of the state.<sup>35</sup> Nevertheless, they all underline that there is no perfect system on earth and that no system is free from mistakes. Therefore the citizens have to exercise a “loyauté critique”<sup>36</sup> [a critical loyalty] toward the state, its laws and decisions, which can lead to resistance.

Hence, according to the FEPS, resistance is justified in the area of asylum, when “la sécurité du droit n’est plus assurée” [the security of law is no longer guaranteed] that is “quand la procédure, au lieu de garantir le traitement approfondi et sincère de la demande, est menée d’une telle manière que le requérant n’a plus la possibilité de faire entendre les raisons justifiant sa demande”<sup>37</sup> [when procedure, instead of guaranteeing the deep and honest treatment of the request, is lead in such a way that the asylum seeker has no longer the possibility to present the reasons justifying her request]. Moreover, the FEPS specifies that “si acte de résistance il peut y avoir, celui-ci doit... être mené *pour l’état de droit*”<sup>38</sup> [if there can be an act of resistance, the later should be enacted *for the sake of* the state based on law]. According to Bühler, the ethical duty of resistance emerges when the gap between the fundamental principles – i.e. Human Rights<sup>39</sup> – and a law and/or its application is intolerable. Indeed, when someone’s life, liberty or physical integrity is threatened, one is allowed – and even has to – resist insofar as it is the appropriate way to prevent such a situation from happening. And according to Fuchs and Grappe, resistance should serve to fight any kind of absolutization of power and the reduction of the other to a means, for law and liberty cannot be separated from justice. The state has to serve the human community and not the other way round. The equal dignity of human

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<sup>34</sup> FEPS, *Résistance!*, p. 94.

<sup>35</sup> FEPS, *Résistance!* p. 29.

<sup>36</sup> Bühler, “L’Accueil...”, p. 67.

<sup>37</sup> Beck Kadima, *Eglises, Terre d’Asile*, p. 11.

<sup>38</sup> *Idem*, p. 12

<sup>39</sup> Bühler, “Requérants d’Asile...” p. 37

beings created at the image of God, forbids the treatment of people as means.<sup>40</sup> To sum up:

“l’action de résistance ou de désobéissance civile est une opposition aux ordres de l’Etat par la non observation de prescription du droit positif, motivées par le fait que la réglementation imposée par l’Etat, ou son application, lèse de manière patente et grave certaines valeurs fondamentales enfreignant par là des normes (de comportements) supérieurs.”<sup>41</sup>

[The act of resistance or of civil disobedience is an opposition to the state’s orders by way of a non observation of positive law, motivated by the fact that the regulation imposed by the state, or its application, hurts patently and seriously some fundamental values, and hence harms some superior rules (of behaviour)]

Moreover, in its first publication on resistance, the FEPS stressed the importance of good relationship between the church and the state on the one hand, and their respective sphere of influence on the other. In a very Lutheran sense, the FEPS thinks that the church should be autonomous in all specifically ecclesiastic matters – i.e. all that concerns faith and the church organisation – and should be subjected to the state’s rule in other matters. Therefore, anybody, Christian or not, minister or not, is subjected to national laws. This is why an important part of this work concerns the risk taken by the person who resists, especially for the minister who can be in some cantons a civil servant. Indeed resistance means the probability of a sanction: a fine, imprisonment or disciplinary measure. A whole chapter is therefore devoted to a judicial analysis of the article 34CP (Penal Code) related to the state of necessity, which allows someone to infringe the law in particular circumstances if someone’s life or physical integrity is at stake. Having read this chapter, one can only be very sceptical about the possibility to escape a sanction while illegally resisting the law. This means first that it is highly risky to help someone who is staying illegally in Switzerland. Second, the person who helps a failed asylum seeker should be able to prove (a) that in all sincerity she thought that this person would be in danger when leaving Switzerland, (b) that she did everything to get the relevant information about the failed asylum seeker’s situation, and (c) that based on this information her fears were justified. Therefore, resistance cannot be the result of a humanistic enthusiasm,

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<sup>40</sup> Fuchs, pp. 18-21.

<sup>41</sup> Beck Kadima, p. 16.

but only of a responsible analysis of the situation and after having exhausted all possible legal solutions. The second publication of the FEPS on this issue is in the same vein, but stresses more the prophetic task of the church and the difficulties that the practice of resistance could encounter.

As for Bühler, his thinking concerns more the person who resists and the ethical conditions of resistance, than the relationship between the church and the state. He does not distinguish between the two spheres of law and ethics/one's consciousness, but between the three spheres of law, theology and ethics. The Law defines the limits and the frame of human actions. Theology offers foundations to ground and evaluate our actions. Ethics "a pour tâche simultanément de remplir concrètement le cadre un peu formel et vide du droit, et de traduire en un attitude responsable les conviction religieuses des croyants et des communautés"<sup>42</sup> [has to simultaneously fill in concretely the slightly formal and empty frame of law, and transform into a responsible attitude the religious convictions of believers and communities]. According to Bühler, resistance is an ethical act and not a specifically Christian one. It is the duty of the mature citizen, Christian or not, to recall the state or the administration to its mission, when there is an intolerable gap between their decisions and the fundamental values that ground both the state and its administration.<sup>43</sup> Therefore, ethics is the discipline that helps to define what an intolerable gap is and how to exert resistance. Indeed, due to his important concrete involvement with asylum seekers in the milieu of the church, Bühler is highly aware of the difficulty and practical limits of resistance. Therefore, resistance should be a last resort act, proportional to its aim, non-violent and *for the sake of the law*. Indeed,

"Par loyauté à l'égard du droit, qu'elle ne veut pas affaiblir, mais renforcer, la résistance ne vise pas à instaurer une confrontation violente, mais s'inscrit dans la perspective de la non-violence. Elle ne se conçoit donc pas comme une action révolutionnaire, visant à un renversement politique de l'ordre social ; elle porte le souci de réformer cet ordre en contribuant à la restauration de ses principes premiers."<sup>44</sup>

[by loyalty to the law, that it (i.e. resistance) does not want to diminish but to reinforce, resistance does not aim at installing a violent confrontation, but is in line

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<sup>42</sup> Bühler, "Requérants d'Asile..." p. 32.

<sup>43</sup> Bühler, "Les Critères Ethique de la Résistance", p. 35.

<sup>44</sup> Bühler, "Les Critères...", p. 36.

with the non-violence perspective. Resistance is not to be conceived as a revolutionary action, aiming at a political overthrow of the social order; it intends to reform this order, while contributing to the restoration of its primary principles.]

Moreover, according to Bühler someone who resists has to do it in a highly responsible way. Indeed, one should be aware of what one can promise to a failed asylum seeker, for there are very few chances that the asylum authority changes its mind. Again, the person who resists must be well informed and ready to change her mind if she receives new information, because, if resistance is for the sake of the law, one has to be consistent, honest and coherent with the primary principle that grounds one's act of resistance.

As previously introduced, my main objection to the position of the FEPS and Bühler is regarding their endeavour to respond to the problem from *inside* of the current political system, understood as globally good. I think the very system in itself has to be put into question and that a response *outside* the system is more relevant. My reasons for this will be explored in the next chapter. Nevertheless, there are some criticisms that can be addressed even without changing the premises of the reflection. First, the position of Bühler does not take the specificity of Switzerland as a semi-direct democracy sufficiently into consideration. Indeed, most amendments of the legislation have been voted and accepted by a huge majority of the people. When question of the violation of Human Rights was raised, the Swiss citizens disagreed that there was a violation of Human Rights. In that case, how to legitimate resistance based on a personal and contradictory analysis of the situation? Fuchs and Grappe precisely think that the right to initiative and referendum “rend justice à ce que le droit de résistance exprime dans une démocratie, tout en évitant les inconvénients.”<sup>45</sup> [acknowledges what the right of resistance expresses in a democracy, while avoiding its (i.e. resistance) inconvenient.] and hence considerably limits the legitimacy of resistance in Switzerland. Moreover, the aforementioned views understand resistance mainly as an individual act and do not question either the traditional understanding of the quoted biblical texts, or the reformed traditions' view of the relationship between church and state.

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<sup>45</sup> Fuchs, p. 29.

Before I elaborate further on these criticisms, I shall briefly outline the evolution of the FEPS to a more cautious position of dialogue and information. Bühler explains this shift of focus by the weariness and discouragement experienced by people who are involved in helping asylum seekers on the one hand, and by the fact that many parishioners leave their church if it is too politically involved, especially concerning the question of foreigners.<sup>46</sup>

### ***2.3. The Necessity of Informing and Dialoguing.***

In collaboration with the CES (*Conférence des Evêques Suisse*, [Swiss Bishops Conference]), the Christian Catholic Church, Caritas and the EPER (*Entraide Protestante Suisse* [Swiss Protestant help]), the FEPS published a memorandum concerning asylum on 31<sup>st</sup> March 2003. Three years later, the FEPS, in collaboration with the CES and the FSCI (*Fédération Suisse des Communautés Israélites* [Swiss Federation of the Israelite Communities]) took a stance on the last review of the *LAsi*. In neither of the two pieces of work is mention of resistance. The endeavour consists in depoliticizing the current debate on asylum, in avoiding amalgams and generalization and in fighting abuses, whilst trying to respect the human dignity of every person involved in this issue. They intend to offer a more complete and nuanced information on the asylum than the two opposite positions of the hard right and hard left of the Swiss political chessboard. For instance, they recall that the provisional admissions are not part of the current statistics, with the result that one has the impression that less than 10% of the asylum seekers obtain asylum. Actually, less than 10% obtain the status of refugee, but more than 50% benefit from an authorisation to stay if we count the provisional admissions.<sup>47</sup>

Furthermore, they express the fear that tightening the *LAsi* and the *LEtr* will only cause more illegal situations and worsen the very fundamental dignity of those persons.<sup>48</sup> Indeed, to be illegal means to live in hiding, in fear of the police and with the uncertainty of not knowing when you will be sent back to your country, a situation that causes tragic psychological traumas. Moreover, illegal residents risk

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<sup>46</sup> Bühler, "l'Asile...", p. 30.

<sup>47</sup> [http://www.sek-feps.ch/media/pdf/stellungnahme/Menschliche\\_Asylopolitik\\_fr.pdf](http://www.sek-feps.ch/media/pdf/stellungnahme/Menschliche_Asylopolitik_fr.pdf).

<sup>48</sup> [http://www.sek-feps.ch/shop/media/gemeinsame\\_texte/4/3\\_fr.pdf](http://www.sek-feps.ch/shop/media/gemeinsame_texte/4/3_fr.pdf), p. 6.

exploitation, for they have no rights and are at the mercy of their employer.<sup>49</sup> Finally, these Christian institutions denunciate the last tightness of the *LAsi* that prevent many asylum seekers from asserting their rights, for the conditions of acceding the procedure are too restrictive. For instance, an asylum seeker who does not have an identity card or a passport has 48 hours to make it appear likely that she has good reasons not to have such documents. If she fails, her motives for asking protection will not be examined. But what can one do in 48 hours, when one knows neither the language nor the cultural rules of the country in which one just arrived?

On the other hand, the FEPS and its collaborators agree that there are abusers and uphold an acceleration of the procedure, so that asylum seekers quickly know whether they can stay in Switzerland or not. Moreover, they encourage international collaboration in order to have a common policy with the rest of Europe or to contract readmission agreements with the “producer” countries of migrants.

These two stances show that the different Swiss Christian institutions chose to appear among other organisations in the civil society and to have a politically correct and rational discourse. Indeed, there are very few explicit references to Christianity, for they seem to have chosen to transmit their message through rationality and words that are immediately accessible to any agent of the civil society. I believe this choice is questionable and I will explain why in the next chapter. Moreover, one can regret that they did neither conduct nor publish an analysis of the reasons why their argumentation did not convince 68% of the Swiss population on 24<sup>th</sup> September 06.

### **3. An Alternative Approach.**

#### *3.1. A Different Understanding of the Situation.*

As we have seen, both the FEPS and Bühler, Fuchs and Grappe consider the Swiss political system as essentially good. The state normally can – and even should – be trusted. Resistance is therefore understood as an exception, when the decisions of the state deviate from the frame asserted by Human Rights, the rule of law and the social contract.

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<sup>49</sup> For more details, see Beck Kadima or the TSR’s reportage on illegal people: <http://www.tsr.ch/tsr/index.html?siteSect=500000#bcid=438239>;

My understanding is different. First I think that the *LAsi* is not a temporary deviation, but another side of Modern Western politics. On the basis of the work of the Italian philosopher Giorgio Agamben<sup>50</sup> in particular, I aim at showing that the social contract is the façade of a political system that is actually based on the ban, and that the institution of Human Rights is part of this system. In a second part, I will exemplify Agamben's thesis with the case of the *LAsi*'s modifications and show the ambiguous role of the humanitarian argument in the Swiss asylum policy. In the last part, I will offer some explanations to the tightness of the *LAsi*, in particular by analysing the role of imagination that upholds the community of nation-state.

### 3.1.1. The Origin of Modern Politics: the Social Contract or the Ban?

After a sophisticated study of the history of politics, Agamben reached the conclusion that abandonment of "bare life" firstly produces the sovereign power and secondly constitutes the political dimension. According to this author, the key representative of "bare life" is the roman figure of *homo sacer* [the sacred man]. *Homo sacer* is, according to the Roman law, someone who cannot be sacrificed, but could be killed without the killer committing homicide.<sup>51</sup> Therefore, this figure is excluded from both divine and human law, but at the same time "belongs to God in the form of unsacrificeability and is included in the community in the form of being able to be killed."<sup>52</sup> The opposite figure is the sovereign (defined as "he who decides on exception"),<sup>53</sup> for he "stands outside of the normally valid juridical order, and yet belongs to it, for it is he who is responsible for deciding whether the constitution can be suspended *in toto*."<sup>54</sup> Both *homo sacer* and the sovereign are at the threshold between exclusion and inclusion. Moreover, the former also "presents the originary figure of life taken into the sovereign ban and preserves the memory of the originary exclusion though which the political dimension was first constituted."<sup>55</sup> And if the

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<sup>50</sup> Giorgio Agamben (1942 -) is Professor of philosophy at the University of Luav in Venice. His most famous books are *Homo Sacer. Sovereign Power and Bare Life* (1998) and *State of Exception* (2005).

<sup>51</sup> Agamben, *Homo Sacer*, p. 71.

<sup>52</sup> *Op. cit.*, p. 82.

<sup>53</sup> Schmitt, *Political Theology*, p. 5.

<sup>54</sup> Schmitt, quoted by Agamben in Agamben, *State of Exception*, p. 34.

<sup>55</sup> Agamben, *Homo Sacer*, p. 83.

ban was at the margin in pre-Modern politics, Agamben claims that it has become the foundation of Modern biopolitics.<sup>56</sup>

Indeed, before Modernity “bare life” (*zoé*) was essentially excluded from politics, and the main political aim was the good life (*eu zoé*). According to Agamben, with the advent of Modernity and the generalisation of the state of exception (Benjamin’s thesis), the pair “bare life”/political existence have become the “fundamental categorical pair of Western politics”<sup>57</sup> and its foundation. In other words, since the French declaration of the rights of man<sup>58</sup> and citizen in 1789 – declaring that men are born and remain free and equal in rights – the very natural life (the mere fact of birth) “vanishes into the figure of the citizen”<sup>59</sup> and appears as the bearer of rights. At the same time “bare life” – in the figure of the rights of *man* – is “placed at the foundation of the order”<sup>60</sup> of the modern nation-state. Furthermore, before the rise of nation-state, “bare life” belonged to God. With the advent of Modernity, both “bare life” (man) and political existence (citizen) belong to the sovereign nation. Therefore, the principles of nativity and sovereignty are no longer separated, and the fiction of Western politics is that birth (“bare life”) immediately becomes nation (citizenship). Consequently, “rights are attributed to man... solely to the extent that man is the immediately vanishing ground... of the citizen.”<sup>61</sup> This partly explains why, when the European geopolitical order was devastated after World War I, the fictional continuity between man and citizen is uncovered and Nazism and fascism could appear, two properly biopolitical movements. Indeed, they made of natural life the exemplary place of the sovereign decision and redefined the relations between man and citizen.<sup>62</sup> This is also why

“In the system of the nation-state, the so-called sacred and inalienable rights of man show themselves to lack every protection and reality at the moment in which they can no longer take the form of rights belonging to citizens of a state.”<sup>63</sup>

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<sup>56</sup> Agamben takes up the Foucauldian term of biopolitics but claims that what is modern is not the relation between “bare life” and politics but its centrality. *Idem*, p. 9

<sup>57</sup> *Idem*, p. 8.

<sup>58</sup> I use the words “rights of man” in reference to the French Declaration or to Agamben’s work, for he writes “rights of man” instead of “rights of human”. Otherwise, I employ the words “rights of humans/persons”.

<sup>59</sup> *Idem*, p. 127.

<sup>60</sup> *Idem*, p.127.

<sup>61</sup> *Idem*, 128.

<sup>62</sup> *Idem*, p. 129-130.

<sup>63</sup> *Idem*, p. 126.

The drastic increase of mobility and the ease with which we travel today also uncovers the fictional continuity between man and citizen. Consequently, the European and Swiss asylum policies appear to be accurate examples of biopolitical policies. Indeed, the section 3.1.2 will show how, in 26 years, the *LAsi* drastically distinguished between the rights of humans and the rights of citizens – and with this redefined the relation between humans and citizens. Moreover, we will see that the situation that NEMs and failed asylum seekers are facing is the result of “juridical procedures and deployments of power by which human beings could be so completely deprived of their rights and prerogatives that no act committed against them could appear any longer as a crime.”<sup>64</sup> Whilst writing that, Agamben had in mind the situation of the Jews in the Third Reich, of human guinea pigs in US prisons and of prisoners on death row. He would certainly also add the NEMs and failed asylum seekers of Switzerland. Be they detained in administrative detention, semi-detained in the centres of registration,<sup>65</sup> ill-treated by some policemen with impunity<sup>66</sup> or simply left to a restless wandering, since they have no money and are welcomed almost nowhere. In this respect, the three examples of the introduction show that NEMs and failed asylum seekers can be humiliated with impunity and, because they lack a legal status, they are no longer completely considered as human beings, but only as bare lives.

Therefore, when the FEPS and the previously analyzed theologians accept the notion of “abuse” based on the distinction between citizen and non-citizen (a Swiss does not abuse the system by staying in Switzerland for economic reasons) or advocate resistance only to help “genuine” refugee and for the sake of the grassroots principles of the Modern state, they leave intact the biopolitical system and the distinction man-citizen, which causes so many tragic human destinies about which they are deeply – and rightly – concerned. Therefore:

“The refugee must be considered of what he is: nothing less than a limit concept that radically calls into question the fundamental categories of the nation-state, from the

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<sup>64</sup> *Idem*, p. 171.

<sup>65</sup> The FEPS has recently denounced the condition of life of the centres of registration. FEPS, Bulletin, p. 16

<sup>66</sup> Amnesty International has denounced such treatment in a worrying report about the Swiss situation: <http://www.amnesty.ch/fr/themes/les-violations-des-droits-humains-en-suisse>.

birth-nation to the man-citizen link, and that thereby makes it possible to clear the way for a long-overdue renewal of categories in the service of a politics in which bare life is no longer separated and excepted, either in the state order or in the figure of human rights.”<sup>67</sup>

In my view this is the way that the church should take, rather than to support the system in place, for the separation and exception of “bare life” is *intrinsically* linked with Modern Western politics. Rather than for the “depolitization of the debate” or for the “re-humanisation” of NEMs and failed asylum seekers, the church should fight for their “politization”. In this way, these individuals may become members of a community instead of belonging to it through their exclusion.

### 3.1.2. The Swiss State, NEMs, and the Humanitarian Argument.

A sophisticated analysis of the modifications of the *LAsi* as well as of the CF explanatory statement<sup>68</sup>s concerning these amendments, exemplifies Agamben’s thesis. Indeed, throughout these amendments, we can distinguish a process, which has increasingly opposed the two figures of the sovereign (the Swiss state) and *homo sacer* (NEMs and failed asylum seekers). If the former has seen its discretionary power increasing, the latter has been subjected to an almost complete deprivation of rights.

First, if the 1951 Geneva Convention is international, its application entirely relies on the states that decide to whom they grant asylum and under which condition. In this view, asylum seekers do not benefit from a subjective right or from a possibility to appeal to an international judicial court. In Switzerland, the application of the Geneva Convention became increasingly restrictive. Indeed, the ODM grant the status of refugee to about 5% of the requests. On the one hand this small percentage of positive decisions seems to be the result of a worrying practice of the asylum authorities – denounced by many persons committed to the asylum question –

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<sup>67</sup> Agamben, *Homo Sacer*, p. 134.

<sup>68</sup> Before any legislative modification, the CF directs at the AF a statement in which it gives an account of the experts’ results, different specialised commissions’ propositions and its own reflection concerning the legislative modification. Moreover, before each vote, the CF directs at the Swiss citizens an explanation concerning the stakes of the amendment or new law.

aiming at finding the mistake or any contradiction in the story of the asylum seeker.<sup>69</sup> A mistake about a date, a spelling mistake in a document or the slightest contradiction invalidates the whole story and justifies the denial of asylum.<sup>70</sup> Moreover, according to Maillard the civil servants who are responsible for granting asylum have been ordered to devote only 5% of their working time to positive decisions,<sup>71</sup> and often lack international knowledge.<sup>72</sup> On the other hand, the *LAsi* increasingly enabled the ODM to refuse to examine some asylum claims and hence to reject them. Asylum seekers coming from “safe countries,”<sup>73</sup> not collaborating enough, claiming asylum for the second time (1990), and entering Switzerland without a passport or an identity card (2006) cannot assert their potential right to protection. Indeed, in these circumstances, their request is considered as manifestly unfounded, what releases the ODM from examining the reasons to flee.

Second, the sovereignty of the Swiss state is all the more considerable that the *LAsi* has an abundance of vague notions. For instance the article 7, paragraph 2 stipulates that: “La qualité de réfugié est vraisemblable lorsque l’autorité estime que celle-ci est hautement probable. ” [The quality of refugee is likely when the authority estimates that this quality is highly probable]. And the ODM has the possibility to justify its refusal to accredit the story of asylum seekers, by reference to the *expérience générale de la vie*<sup>74</sup> [general experience of life], even if the general experience of life of a Swiss civil servant is obviously not similar to the one of an opponent to the Pinochet regime for example.

The other side of sovereignty is the degradation of the living conditions of NEMs and failed asylum seekers. Indeed, they are subjected to administrative detention (1986-7; increase of its length: 1990 and 2006), if the migration policy suspects that they will not comply with their expulsion, if they threaten the public security, if “l’étranger enfreind les règles de la cohabitation sociale” [the foreigner infringes the social rules of cohabitation] and if they show a “comportement rétif ou asocial”<sup>75</sup>

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<sup>69</sup> See for instance the article of Calame in Caloz-Tschopp, pp. 255-63

<sup>70</sup> H. Küng, *La Politique d’Asile à la Dérive*, pp. 18-32.

<sup>71</sup> Maillard and Tafelmacher, pp 43-4.

<sup>72</sup> One functionary charged to listened to the reasons of claiming asylum did not know that something happened in Romania in 1989, another thought that Colombo (Sri Lanka) was the capital of Colombia, or another that the African State of Nigeria did not exist. Maillard and Tafelmacher, p. 189.

<sup>73</sup> The notion of “safe countries” gathers a group of countries, which are considered to be safe and hence cannot produce refugees.

<sup>74</sup> Maillard and Tafelmacher, p. 202.

<sup>75</sup> Statement of the CF, 22<sup>nd</sup> December 1993, p. 325.

[restive and asocial behaviour]. Moreover, the police often arrest them, for being illegally in Switzerland.<sup>76</sup> They can be searched without judicial mandate (1990 and 2006). And they have no privacy, for they have no place to be alone. Finally, as previously seen in the introduction, in 2004 and 2006, NEMs and failed asylum seekers have been forbidden to work and refused social security, what excludes them from having a social life and hence from integrating into Swiss society. Furthermore, without income, they do not know where to sleep, they cannot take a bus or buy a coffee. In short, the treatment of these persons solely as bare lives, who entirely depend on the ethical sense of the people they are confronted with, is all the more obvious that they are no longer called by anything else, but their non-legal status: NEM.

Nevertheless, the successive modifications of the *LAsi* have always been justified by the need to fight and prevent abuses from the asylum seekers *in order to maintain the Swiss humanitarian tradition*. (“Humanitarian” refers here to the duty of helping victims of persecution.) For instance, in the explications addressed to the Swiss population concerning the last review, the CF says in particular:

“Les personnes victimes de persécutions doivent pouvoir trouver refuge chez nous. Or pour que la Suisse puisse continuer de leur garantir sa protection, il faut que les problèmes liés aux renvois et les abus constatés dans le domaine de l’asile soient résolus. [...] Les modifications proposées ne nuiront en rien à la tradition humanitaire de la Suisse.”<sup>77</sup>

[The victims of persecutions should be able to find refuge in our country. Nevertheless and in order for Switzerland to continue to guarantee its protection, it is necessary that the problems linked to expulsions and the noticed abuses in the asylum area are solved. [...] The suggested modifications will not be harmful in the slightest to the humanitarian tradition of Switzerland.]

By analysing the successive modifications and their justification in the CF statements, one is rather pessimistic about the maintaining of the Swiss humanitarian tradition. And this is all the more true when one knows that during the last debate in the Federal Chambers, the deputies took a stance neither on the specificity of women

<sup>76</sup> <http://www.asile.ch/vivre-ensemble/temoignages/>, testimony of Françoise Kopf.

<sup>77</sup> <http://www.ch.ch/private/00987/00995/00997/01011/01021/index.html?lang=fr>

refugees,<sup>78</sup> nor on the treatment of the children of refugees,<sup>79</sup> although these questions had been raised. This confirms François Crépeau's<sup>80</sup> thesis, according to which first the humanitarian argument is used to justify policies and second the real stakes are first and foremost to protect nations.<sup>81</sup> Indeed, the 1951 Geneva Convention, whilst allowing protection to a category of asylum seekers – the refugees – to the detriment of others (those fleeing wars, generalized violence, poverty...) enabled the states to solve the problem of asylum seekers, which they were facing in 1951, without having to interfere militarily in the countries producing forced migrants.<sup>82</sup> The question of refugee is therefore a *humanitarian* question, which enables on the one hand the HCR (High Commissioner for Refugee) to claim that it is apolitical<sup>83</sup> and on the other the states to focus on the individual who claims asylum, without politically/militarily interfering in the state of origin. The Swiss tendency to offer provisional admission, instead of the status of refugee to people fleeing wars, Human Rights' systematic violation or generalized violence is in the same vein. Indeed, this tendency reflects the conception that asylum is first and foremost a humanitarian and not a political question (if it was the case they would receive the status of refugee, not a provisional admission). But it also reflects the will to treat asylum claims in a sovereign way. Indeed, as only the status of refugee – in its 1951 definition – is internationally regulated, the treatment of asylum claims that do not correspond to that definition can be treated in a sovereign way. The 4<sup>th</sup> December 1995 CF statement, concerning the regulation of provisional admission, confirms this tendency, when one reads: “En matière d’existence d’un danger concret, les autorités disposent d’un large pouvoir d’appréciation”<sup>84</sup> [Concerning the existence of a concrete danger, the authorities benefit from a large discretionary power]. Moreover, in the case of provisional admissions the CF can also decide in a

<sup>78</sup> See for instance the international journal *Nouvelles Questions Feministes* on this particular issue.

<sup>79</sup> See the work of *Terre des Hommes* that shows to what extent the *LAsi* and the *LEtr* contradicts the Convention on the Rights of the Child, though ratified by Switzerland.  
[http://www.tdh.ch/website/doc\\_dnl.d.nsf/bf25ab0f47ba5dd785256499006b15a4/ece56f94cbc12ba9c125715a004c524e/\\$FILE/AnalyseCDE\\_F.pdf](http://www.tdh.ch/website/doc_dnl.d.nsf/bf25ab0f47ba5dd785256499006b15a4/ece56f94cbc12ba9c125715a004c524e/$FILE/AnalyseCDE_F.pdf)

<sup>80</sup> François Crépeau, is Professor of International Law at the Université de Montréal. He also holds the Canada Research Chair in International Migration Law. Holder of a Canada Research Chair in International Migration Law, François Crépeau is a recognized expert in international refugee law, international human rights, international migration law and the relationship between international law and globalization. He wrote in particular *Mondialisation des échanges et fonctions de l'État* (1997) and *Droit d'asile: De l'hospitalité aux contrôles migratoires* (1995).

<sup>81</sup> Crépeau, *Droit d'Asile*, p. 55.

<sup>82</sup> Crépeau, pp 29-188.

<sup>83</sup> Crépeau, p. 318.

<sup>84</sup> Statement of the CF, 4<sup>th</sup> December 95, p. 13.

sovereign way to *remove* this status – i.e. when it estimates that the reason to flee no longer exist.<sup>85</sup> According to the aforementioned thesis of Agamben, if asylum is a humanitarian question, asylum seekers are bare lives relying on the ethical sense of the states. For this reason, the term “humanitarian” is ambiguous in itself, for it commonly means “helping people in distress”, but is based on the assumption that a human being as such (“bare life”), outside of her political life, exists and can be regulated by law. This dialectic law/“bare life” is precisely the basis of biopolitics, with the result that in the state of exception – and the numerous AFUs (*Arrêté Fédéral Urgent* [Federal Urgent Decree]), which modified the *LAsi*, point to it – the one who was supposed to be protected (asylum seeker), is exposed to the life of *homo sacer*.

Finally, the Europeans and the Swiss trend to generously welcome asylum seekers (between 80% and 90% were granted asylum)<sup>86</sup> during the “Trente Glorieuse” [Glorious Thirty] does not contradict what precedes. Indeed, during that time, asylum seekers essentially came from communist regimes and were welcomed by the states with liberal ideology, certainly because they discredited communism. This would explain why in 1973 Switzerland restrictively accepted Chilean left opponents to Pinochet, arguing that these people should find asylum in a place culturally and geographically closer, but welcomed in 1975 a large number of Vietnamese people fleeing communism.<sup>87</sup> Moreover, until the 1973 energy crisis, workers, wherever they come from, were admitted to by the flourishing economy. Consequently, whatever the humanitarian desire to help may be, it currently needs political or economic supports to be efficient.

### **3.1.3. What Vision of Community Lies behind the Tightness of the *LAsi*?**

What interests me in this section is to understand what image of “community” and “immigrant” lies behind the tightness of the *LAsi*. As Bell rightly points out: “every

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<sup>85</sup> Article 76 *LAsi*.

<sup>86</sup> Concerning the situation in Europe, see the article of Valluy, “La nouvelle Europe Politique des Camps d’Exilés...” and concerning the situation in Switzerland, see Maillard and Tafelmacher, p. 16-19.

<sup>87</sup> Maillard and Tafelmacher, p. 20.

politics involves the (re)production of a vision, a *mythos*, of community”<sup>88</sup> or in Cavanaugh’s words, every community is an “imaginative community,”<sup>89</sup> which “involves and requires a narrative”<sup>90</sup> to take up Hauerwas’s expression. Therefore we may ask now what are the images and narratives, which lie behind the tightness of the *LAsi*.

The nation-state is a community, imagined as “both inherently limited and sovereign”.<sup>91</sup> This means that it has frontiers<sup>92</sup> that delineate an inside and an outside. To take up Didier Bigo’s<sup>93</sup> analysis, nations are considered as a container or a body for the polity<sup>94</sup> that can be thought as more or less homogeneous to the extent that the fundamental heterogeneity of people can be “occulté au profit d’une unite nationale mythique et fondatrice”<sup>95</sup> [occulted to the advantage of a mythical and founding national unity]. In Switzerland, we can see this way of thinking in the three circles policy. First, because this policy goes by a static and essentialist understanding of culture – instead of a dynamic one.<sup>96</sup> If one claims that persons coming from a certain culture integrate, while others do not, or do so much less so, one produces the idea that “culture” is a homogeneous body. Moreover distinguishing between three types of cultures in term of their proximity to Switzerland means that *nations* – and not individuals – are more or less heterogeneous to Switzerland. By means of the image of homogeneous body Bigo explains why the image of the foreigner as an *immigrant*, an invader, is so powerful and why the symbolic control over territorial boundaries is so crucial. In this respect, the statements of the CF that refer to an “augmentation massive des demandes d’asile”,<sup>97</sup> [massive increase of the asylum claims], an “afflux de réfugiés”<sup>98</sup> [wave

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<sup>88</sup> Bell, p. 423.

<sup>89</sup> Cavanaugh, *Theopolitical Imagination*, chapter 1, p.1

<sup>90</sup> Hauerwas, *A Community of Character*, p. 4.

<sup>91</sup> Anderson, *Imagined Communities*, p. 6.

<sup>92</sup> See the interesting article of Balibar for more details about the arbitrariness of the frontiers and the difference of experience that Western or non-Western people have, while crossing – or not being able to cross - frontiers, Balibar, “Qu’est-ce qu’une Frontière”, pp. 335-341.

<sup>93</sup> Didier Bigo (1956 -) is Professor of international relations, at the *Institut de Sciences politiques* at Paris and Associated researcher at the Center for international studies and research. Among his numerous book are *Controlling frontiers: free movement into and within Europe*, (2005) and *Les nouveaux enjeux de l’(in)sécurité en Europe : terrorisme, guerre, sécurité intérieure, sécurité extérieure* (2005).

<sup>94</sup> Bigo, “Security and Imagination”, p. 65.

<sup>95</sup> Trauman, “Vers un nouveau droit de cite”, p. 11.

<sup>96</sup> Zeugin, *Où en est la Politique Migratoire en Suisse*, p. 83.

<sup>97</sup> Statement of the CF, 25<sup>th</sup> April 1990, p.542

<sup>98</sup> Statement of the CF, 4<sup>th</sup> December 1995, p. 11.

of refugees] or to an “afflux massif de requérants d’asile”<sup>99</sup> [massive wave of asylum seekers] reinforce the image of asylum seeker as an invader and justify security policy. The reference to the army to secure the border,<sup>100</sup> the administrative detention and the production of AFUs (“U” refers to an emergency) is in the same line and reinforces the image of asylum seekers as threatening the public order and security of Switzerland.

Concerning more precisely the figure of the asylum seeker, one can notice in Switzerland two opposing images. She is either someone who needs protection or someone who abuses the Swiss system. This second conception has been crystallized in the notion “fake refugee.”<sup>101</sup> This notion was first used in 1983 by the hard right party “Vigilance” [Vigilance] in Geneva, on the occasion of a petition aiming at distinguishing between genuine and fake refugees. Other hard right party – in particular the UDC – has frequently used the notion of fake refugee since then. A fake refugee is not only someone who has mistaken, but also someone who intends to abuse the Swiss system, avoid the *LSEE* and steal work from Swiss people, wrongly benefit from social security, and to commit crimes, especially drug trafficking.<sup>102</sup> If the CF has not taken up the notion fake refugee as such, its statements concerning the successive modifications of the *LAsi* largely echo it. First the notion of abuse – which does not mean to simply be mistaken – is present in all statements concerning the *LAsi*’s modifications and several times. Moreover, if these statements do not employ the term fake refugee, the notion “authentiques réfugiés”<sup>103</sup> [genuine refugees] appear. This means *a contrario* that fake refugees exist. Moreover, the decisions of the ODM systematically report the explanations to flee, given by the asylum seekers, by using conditional forms “according to Y, she would be in danger...”, “she is supposed to live in...” “she may have spent time in prison” that make them potential liars. When the information comes from the embassy or from local authorities however the tone changes: the verbs are at the present tense.<sup>104</sup>

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<sup>99</sup> Statement of the CF, 13<sup>th</sup> May 1998, p. 2830.

<sup>100</sup> Statement of the CF, 2<sup>nd</sup> December 1985, p. 19.

<sup>101</sup> Fake refugee is the literal translation of *faux réfugié*, which is similar with the notion of bogus refugee.

<sup>102</sup> See for instance the website of the UDC from the canton of Vaud, where the foreigner is responsible for the increase of criminality, for the cultural and religious problems, the diminution of the quality of teaching and moreover empty the treasury coffers.

[http://www.svp.ch/index.html?page\\_id=2235&l=3](http://www.svp.ch/index.html?page_id=2235&l=3)

<sup>103</sup> Statement of the CF, 13<sup>th</sup> May 1998, p. 2834.

<sup>104</sup> Maillard and Tafelmacher, pp. 175-250.

Therefore, if the prevailing image of asylum seekers is that they are potentially dangerous and may abuse the system, the ODM has to be vigilant and to unmask lies and abuses. To claim that one is able to unmask lies implies that one can know the truth. However, as Cynthia Hardy rightly points out, “it is impossible to prove whether an asylum-seeker had genuine fears of persecution when he or she left their country – what, exactly, the situation was at that time, and what the individual knew of it, and how the individual interprets the information are unknowable.”<sup>105</sup> Therefore:

“The determination system is not a rational decision process that conveys the truth about individual claims... Instead, it represents one of the techniques discussed by Foucault (1980) that enable individuals to distinguish between "true" and "false" information.”<sup>106</sup>

And this why in a suspicious attitude vis-à-vis the asylum seeker, the civil servant will be inclined not to believe the asylum seeker’s story. As a result, asylum is increasingly denied, which will confirm the impression that most asylum seekers are not genuine refugees and hence legitimizes the tightness of the *LAsi*.

Finally, the left parties have difficulties to invert the trend to consider all asylum seekers as fake refugee for at least two reasons. First, if one problem lies in the way the ODM interprets the asylum seekers’ stories and grants or refuses asylum, the objectivity and non-biased quality of the Federal administration are gravely put into question. If the ODM can be mistaken, it cannot be arbitrary, because what justifies the monopoly of force of the state is in particular its “*non-arbitrariness*”. Therefore it is difficult for left parties to use this argument. Second, as political participants in the imagined community of a nation-state, left parties do not put into question the very distinction between the rights of persons and the rights of citizen, between national/non-national. And if they do not manipulate this identity distinction, they can neither deactivate “the device that, in the state of exception, ties [law] to life”<sup>107</sup>

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<sup>105</sup> Hardy, “Refugee Determination”, p. 476.

<sup>106</sup> Hardy, p. 476. For another understanding of the responsibility of the state in the work of Foucault, see the interpretation of Cavanaugh who claims that: “Foucault showed that the institution of civil society – the party, the union, the school, the corporation, the church, the prison – have a educative or disciplinary function which realizes the state project.” Cavanaugh, *Theopolitical Imagination*, p. 77.

<sup>107</sup> Agamben, *State of Exception*, p. 88.

nor offer an identity that is not to a certain extent based upon nationality. Therefore, they can only moderate the excesses of the nationalist imagination.

The same point can be made about the position of the FEPS and the aforementioned theologians, for they do not challenge the discrimination based on nationalities, but only its extent and manner. However, if we talk about community and reality shaped by a certain imagination or narrative,<sup>108</sup> it means that we can imagine another way of understanding identity and politics. More specifically as Christians, we can experience identity and community through the “imagination of God”<sup>109</sup>. And this is why the role of the church could be crucial, for it can live this alternative. Indeed, the role of the church is neither to take side nor to make the political system work, but to serve the world on its own terms.<sup>110</sup> It has to embody another narrative and to be “a community capable of witnessing to others the kind of life made possible when trust rather than fear rules our relation with one another”.<sup>111</sup>

### ***3.2. For who’s Sake Do we Resist?***

From what precedes, I have concluded that resistance for the sake of the grassroots principles of the state and of the laws is highly questionable. Moreover, when theologians advocate resistance for the sake of the law, they have to be explicit about this term. Is it the human or divine law? Is it an idealised concept, such as the rule of law or the concrete law, whose creation is always influenced by political and economic forces? Eventually when the law is a slightly formal and empty frame – to take up Bühler’s words – one has to wonder why. Indeed, Modern politics justifies the “neutral” position about what *is good*, arguing that there is no rational consensus about what a good life is and therefore that each person has to “choose” for herself what is good. Another consequence however is that some areas are *not* subjected to ethical concerns. Politics and economy are very often free from moral consideration and can subject their field to rational and instrumental criteria of efficiency alone.

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<sup>108</sup> “Every community and polity involves and requires a narrative”, Hauerwas, *A Community of Character*, p. 4.

<sup>109</sup> According to Cavanaugh the sharing of the Eucharist enables Christians to live “inside God’s imagination” and to become members of the body of Christ, before being members of any other political body. Cavanaugh, *Torture and Eucharist*, pp. 253-275.

<sup>110</sup> *Idem*, p. 10.

<sup>111</sup> *Idem*, p. 70.

Indeed, the *LAsi* and its interpretation by the asylum bureaucracy well illustrate the use of law as an empty frame for the purpose of a restrictive asylum policy. Moreover in a neutral frame, there are only *personal opinions* to be opposed to the official moral behaviour, which consists in obeying the state's rule. This, obviously, significantly reduces the weight of these positions.

Again, it is extremely uncomfortable to realize this, knowing that power and the monopoly of force are in the state's hands. Nevertheless, the comfort of responses, which leave the political system untouched at its basis, has a high price too. And this price is *homo sacer* and even God himself, for he identified with all *homines sacri* of this earth (Mt 25:31-46). And this is why, if Cavanaugh is right by claiming that the Christian way of imagining human beings, their relationships, time and space is different from the democratic liberal one.<sup>112</sup> The church has a key role to play in the current state of affairs. This also means that, as a Christian, one should not resist for the sake of a political system, but for the sake of God. Furthermore, the frame of Christian ethics should not be Human Rights and the social contract, but the kingdom of God. Then except by reducing the latter to a liberal democracy, these two frames do not always overlap. Furthermore and contrary to the claims of Collange<sup>113</sup> and the collective work edited by Dermange<sup>114</sup> the notion of Human Rights is not biblical, for liberty or life are *gifts* and not *rights*. And this means that human dignity as a gift from God has to be respected *at all costs*, there is no pragmatic or security argument to be opposed. Moreover, if life is a gift from God and belongs to him, it can no longer be linked with law nor be the object of biopolitics. This opens the space for a new political imagination – theological politics –, whose aim is to always create the possibilities of a life together, in which every one can benefit from her gifts.

In other words, there is a specificity of being Christian that not only cannot be reduced to being a good citizen but also prevents Christians from looking for solutions *inside* the system, due to the “not yet” of the kingdom. Indeed, all earthly systems are temporary and the kingdom of God cannot be established by men – only by God – but can be, and should be, witnessed to<sup>115</sup>. Therefore, the response lies

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<sup>112</sup> Cavanaugh, *Theopolitical Imagination*, chapter 1, p. 1ss.

<sup>113</sup> Collange, *Théologie des Droits de l'Homme*.

<sup>114</sup> Dermange, *Ethique et Droit*.

<sup>115</sup> This is why the political solution of a radical democracy (a democracy without the nation-states) advocated by some thinkers – in particular Caloz-Tschopp – cannot meet the complete Christian agreement. Moreover, these thinkers have to justify the implementation of democracy in countries that are not democratic and do not wish to be.

neither in a revolutionary act nor in an endeavour to make the current political system work, but in Christian ethics. Following Samuel Wells<sup>116</sup>, I do not understand Christian ethics as the determination of what a good behaviour should be, but as the transformation of both the church and the individual by the Holy Spirit,<sup>117</sup> so that they may embody the work and the fruits of the Holy Spirit: love, joy, peace, patience, kindness, goodness, faithfulness, humility, and self-control (Ga 5:22-23a). Such a transformation enables us to imagine the world differently. In this respect, the understanding of Wells is remarkable. He claims that failure of imagination is one of the two sides of sin. Without the Holy Spirit, human being would be incapable of imagining the abundance of God and see scarcity where there is abundance (Gen. 3: 1-6). To say it in Wells' words: "what the church needs is not "more" from God, but the grace to receive the "everything" that God has already given."<sup>118</sup> While recalling the wedding in Cana (Jn 2), the abundance of the living water (Jn 4) and the multiplication of bread and fish (Jn6), Wells claims that we have got what we need – and even more – to follow God, to live in abundance in the human condition of scarcity and to be fully hospitable.

To go back over the position of the FEPS and the analysed theologians, when they are careful with the parishioners' susceptibility, enter an "either-or" (foreigners or Swiss) position, show pragmatism, they lack imagination. The reactive response they offer also shows their difficulty in imagining another way of living together other than the existing one. However, in their defence, such an imagination cannot arise from some committed individuals, manhandled by the hard practical experience of helping asylum seekers in Switzerland. This imagination needs to be taught and carried by a community that actually experiences and lives this other way of imagining life together and that is able to help and encourage Christians in their difficult mission of following Christ and of being witnesses of the kingdom of God in a world opposed to it. In our particular case, the church should embody the fruits of the Holy Spirit and welcomes and resists for *every* person, without investigating if

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<sup>116</sup> Samuel Wells is currently Dean of the Chapel at Duke University and Research Professor of Christian Ethics at Duke Divinity School. He wrote in particular *Transforming Fate into Destiny: The Theological Ethics of Stanley Hauerwas* (2004) and *God's Companion, Reimagining Christian Ethics* (2006).

<sup>117</sup> Wells, *God's Companion*, pp. 49-50.

<sup>118</sup> *Idem*, p. 44.

she can stay in Switzerland or not or if she lied about her story or not,<sup>119</sup> for Asylum seekers, NEMs and failed asylum seekers are above all individuals created and willed by God, so to them we have an “infinite responsibility” – to take up Levinas’ words<sup>120</sup> – and to whom we owe an infinite love (Mt 5:43) and a sharing of her suffering (Mt 25, 31-46).

### ***3.3. What Place for which Information?***

Before opening the reflection on the church conceived as an alternative culture and on Theological Politics, I will briefly discuss the recent position on dialogue and information of the FEPS. This institution justifies this evolution by the wish to depoliticize the debate and to take into consideration all the political tendencies of the parishioners, while transmitting Christian values. This position is in line with the public theologians that claim that Christianity “is essentially a matter of values, worldviews, or basic orientations from which no specific political agenda can be inferred in any direct and unmediated fashion.”<sup>121</sup> The political place of the church, therefore, can only be in the civil society, understood as a place of freedom where everybody can try to influence politics. So it also has to “translate” her concepts in words that are accessible to everyone. However, not everybody agrees with this definition of civil society. According to Cavanaugh, it can also be understood as “essentially a disciplinary space”, “a space where persons are shaped and formed in the state’s image, in the image that corresponds to the state’s end” and a place where “people “freely” and gently and, for the most part, willingly find their place in the dominant *mythos* (i.e. the liberal democratic one)”.<sup>122</sup> In other words, “as such an educative or disciplinary space, civil society is but another species of the power exerted by the state in its victory over the medieval public church.”<sup>123</sup> Indeed in line

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<sup>119</sup> I agree with Bühler that we have to be careful with what we are promising, but I think the church should protect and resist for every person, whatever her reasons to come in Switzerland are.

<sup>120</sup> The ethics of Levinas are also highly valued by Bauman and the collective work of Dicken and Laustsen, understood as a way to overcome the dangers of Modernity, represented by the Holocaust for the former and by the logic of the camps for the later. Bauman, *Modernity and the Holocaust*, pp. 182ss and Dicken and Laustsen *The Culture of Exception*, pp. 184ss

<sup>121</sup> Bell, p. 432

<sup>122</sup> Cavanaugh, “the church”, p. 428.

<sup>123</sup> *Idem.*

with Cavanaugh,<sup>124</sup> Bell, claims that the opponents of the so-called wars of religions were not religions, but the emergent states and the church.<sup>125</sup> Furthermore, the stakes were less religious than political and about the replacement of a public church by a sovereign state. In other words, “it is as a result not of ecclesial incivility but of an ecclesial defeat at the hands of an ascendant sovereign state that a Weberian world appears, in which the church is shorn of its public, political presence and politics becomes a matter of statecraft.”<sup>126</sup> And according to both Bell and Cavanaugh the church’s acceptance of the new location of religion, either in the private sphere or in civil society, is most questionable. Concerning our issue, this acceptance is not only a theological issue, but as we have seen also an unintended solidarity with the system that produces NEMs and failed asylum seekers.

My second criticism is the lack of reflection – or published reflection – on the reasons why the arguments and statements of the FEPS and other religious institutions did not convince the Swiss population. First, I think that this is related to a problem of power struggle. Indeed, the asylum authorities’ speeches benefit from an authority that members of the civil society do not have. The asylum authorities are indeed commonly understood as being more informed, neutral and objective, whereas members of the civil society can be biased.<sup>127</sup> Moreover, Bigo’s reflection sheds light on the difficulty for opponents to the dominant trend to convince public opinion. Indeed he explains that as long as nation-states are understood as homogenous body, as long as the sovereignty of the state is believed to be necessary for peace and security, and as long as these two premises exist as realities for common people, all claims to untie the link between immigration and security will have very little effect. This partly explains why the FEPS, and other members of the Swiss civil society advocating the refusal of the *LAsi*’s modifications, did not convince 68% of the Swiss citizens. Since the FEPS did not put these imagined realities into question, it was incapable of inverting the trend. Indeed, when this

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<sup>124</sup> Cavanaugh cleverly showed that the modern understanding of religion as a set of beliefs is the product and not the cause of the wars of the 16<sup>th</sup> century and hence the appellation “wars of religions” is anachronistic, besides being misleading concerning the real stakes. Cavanaugh, *Theopolitical Imagination*, p. 20-31.

<sup>125</sup> In a similar vein see Gauchet, who contrary to Cavanaugh’s position, sees the defeat of the church as something positive. Gauchet, *Le Désenchantement du Monde*.

<sup>126</sup> Bell, p. 427.

<sup>127</sup> See this American asylum officer who says: “the problem is that Amnesty has a bias for showing the worst while I like to think the Foreign Office is objective and hasn’t got an interest either way”, Hardy, p. 474.

institution accepted the notion of abuse – that can only be justified on the basis of the nationalist distinction between citizen and non-citizen – it left intact the imaginary homogeneity and sovereignty of the Swiss nation. When this institution accepts the difference of treatment between Europeans and non-Europeans and between political and economic migrants, it does not put into question the arbitrariness of distinguishing between migrants. Moreover if pragmatism (lack of imagination) or the selfishness of the Western world can justify accepting certain persons and refusing others, I do not think that there is any Christian justification for such a distinction. What would be Christian is to remember that in Christ there are no longer Jews nor Greeks (Ga. 3:28) and to witness this eschatological reality that strongly contradicts the notions of frontiers that draws drastic different fates, whether one comes or not from the right side. In Hauerwas' words: "nation... is not an ontological necessity of human being."<sup>128</sup>

This is why it is neither by participating in the civil society, where the rules are defined in advance, nor by translating the Christian concepts in politically correct words – as if the content could be separated from what contains it – that the church can change the current state of affaires, but by offering an alternative narrative carried by an alternative community. Indeed rational discourse is not the only way to transmit a message and the daily incarnation of hospitality may be much more convincing than words. Furthermore this would contravene the reproach that without a translation in words accessible to anybody Christian faith becomes unintelligible, for one does not need to be Christian to understand loving and welcoming gestures.

#### **4. Theological Politics as an Alternative to Liberal Politics.**

The third chapter enabled me to explore the responsibility of biopolitics in this situation on the one hand, and the inherent link that binds the imaginary of nation-state to the current ill-treatment of the NEMs and failed asylum seekers on the other. I have also shown that the Christian *mythos* of community is significantly different from the democratic and liberal myth. Theological Politics goes one step further by claiming that an alternative community based on alternative narratives can already be experienced now, before the advent of the kingdom. The Christian mission is to

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<sup>128</sup> Hauerwas, *A Community of Character*, p. 109

witness to this reality as a possibility and as a reality at the same time. This is why I consider this new theological trend as very promising, especially in view of the issue raised in this dissertation.

Theological Politics suggests that the church should regain its public character, that theological discourses may not be separated from practice and that the experience of this alternative *polis* requires education. Indeed, this theological trend, by rediscovering Christian narratives and by historicizing the current relationship between state and church, claims that the church fails in its mission if it is not a public body living an alternative politics. It drastically challenges the Lutheran understanding of the relationship between church and state, based on the concept of the two kingdoms and the distinction of planes, while claiming that there is only one history and hence that “there is no separate history of politics apart from the history of salvation”. In this respect the main reproach of Theological Politics to other Political Theologies is that they tend to assimilate (in contradiction with Ro 12:2) and play to the state’s rules. Hence, they miss their mission to witness to the kingdom and to embody another way of living.

Furthermore and in the line with most political theologians, they claim that theology is first a practice – and not a set of belief – and therefore intrinsically political. This is why the role of the church takes such a significant part in the reflection of Theological Politics. Indeed, it is only by adopting, embodying and remembering the story of Jesus Christ, that the church can make intelligible Christian narratives and shape Christian lives. We need a community that enacts, tells, teaches and interprets the bible, to understand what being a follower of Christ means. Without such a community, we will be as Peter who rightly answered the question of Jesus: “who do you say I am?”, but did not understand what he answered, for in his imagination the Messiah was different from what Jesus was (Mk 8:29-33).

Concretely, it means that this alternative neither correspond to the different current Swiss Protestant churches, nor to a pure utopia – *ou topos*, [in no place] – but has to be worked at in the church by being transformed by the Holy Spirit. It is possible, for God gives everything we need to be witnesses of his kingdom, but highly difficult, for we so often lack of trust and imagination.

Firstly, in the imagination of God, identity does not rely on blood or territory but is a given, and is experienced in faith. In Grappe’s words, “si le Chrétien n’est pas un juste, mais un pécheur qui reste toujours pécheur et que Dieu déclare digne de son

amour ou de sa compassion, alors il ne peut acquiescer aux “dieux obscures” qui réclament la pureté du sang, de la race ou de l’histoire pour conférer un dignité, une identité.<sup>129</sup>” [if Christian is not a righteous man, but a sinner who always stays sinner, and who God declares worthy of his love or his compassion, therefore he (man) cannot acquiesce to “dark gods” that reclaim the purity of blood, race or history to give dignity, identity]. In this imagination, the alien cannot be a threat to Christian identity, for he cannot remove what God gives in his love for every human. And the church, by witnessing to this identity given in God can show that identity does not need to rely on nationalities. It can also help Christian to be anchored in this identity that will enable them to welcome foreigners instead of being afraid of them.<sup>130</sup> In the particular case of NEMs and failed asylum seeker, welcoming means addressing to them as anybody else based on the equal dignity of human beings, created at God’s image. It also means trusting<sup>131</sup> them when they want to tell their story, respecting their silence and not searching the “truth”. First because we do not know what is true and second because in case of a lie to the ODM, we should have the same respect than God, when He gave clothes to cover the nakedness that one feels by doing something wrong (Genesis 3:10.21) and to remove these clothes. However if there should be no “inquisition”, there should neither be any fantasy concerning the figure of the foreigner. She is not better, purer, less contaminated by the decadency of the Western world. Indeed, some people committed to help asylum seekers have been seriously disappointed in discovering asylum seekers that do not come to appointments, refuse help or use their little income to buy a mobile phone.<sup>132</sup> Asylum seekers do not only share equal human dignity, they also share the same sinful condition.<sup>133</sup>

Secondly, the traditional relationship between state and church and the traditional understanding of Romans 13<sup>134</sup> for instance should be reimagined. The church

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<sup>129</sup> Grappe, “De l’étrangeté Chrétienne à l’Etranger”, p. 42.

<sup>130</sup> The psychiatrist De Saussure shows that “loving” strangers does not correspond to the general reaction, but can be learned and taught. This is precisely one of the tasks of the church. De Saussure, “Inquiétante, attrayante et fascinante étrangeté”, pp. 31-39.

<sup>131</sup> By this, I do not mean that it is not already the case, but only in case it was not, it should be.

<sup>132</sup> Caloz-Tschopp, *Asile – Violence – Exclusion...*, pp. 129-133.

<sup>133</sup> De Gruchy recalls that “all of us, whether oppressors, benefactors or victims, are caught up together in a web of human fallenness and fallibility”, we share solidarity in sin. De Gruchy, *Reconciliation*, p. 191-192.

<sup>134</sup> It is rather surprising the FEPS and Fuchs and Grappe did not – as it could be expected from Protestants – put into question the traditional understanding of Romans 13, although it contradicts the very negative vision of the state that Paul develop in the first twelve chapters. To see a non-traditional

should regain its autonomy and learn the uncomfortable experience of living between times and of being both *in* the world (for God sent his son to save the world (Jn 3:17)) but not *of* the world (Jn 15:19). This means that the church can never be satisfied either with any political system or with a fixed relationship with the state – for following Christ means being in motion. But this also means that from the “already” of the kingdom, the church can draw strength to affront conflicts with the world. It can both stay firm itself and encourage individuals that experience weariness and discouragement. In other words the church should take the narrow gate between withdrawal (being systematically in opposition) and assimilation (try to make the political system work). In the issues raised, one way of confronting the world could be to publicly acknowledge our participation in the system that produces and dehumanizes NEMs and failed asylum seekers and apologize for it. One way of not withdrawing from the world would be to share the experience of and to learn from the numerous non-Christian people and organisation that help NEMs and failed asylum seekers<sup>135</sup>.

As introduced, this chapter neither solves all the questions that the action of concrete welcoming and help raise. Nor does it explain how to establish such a church. What is required is a deeper reflection with *all* Christians – not only Swiss nor Protestant – willing to experience such a community. Indeed, the asylum seekers’ deprivation of dignity concerns all Western countries and should be a challenge to all churches. Moreover, the relationship with national law deserves to be deepened, for I am convinced neither by the reflection of Hauerwas nor by the opposite position. Hauerwas claims complete submission, based on his ethics of non-violence<sup>136</sup> and the opposite position estimates that the state should serve the church and not the other way round.<sup>137</sup> I think that Jesus overturning the tables of the money-changers (Mk 11:15) and claiming that the Sabbath was made for the good of man and not the opposite (Mk 2:27) nuance the position of Hauerwas. However, as long as we live between times, the church is unable to always incarnate the kingdom. This put into question the statement that the state should serve the church. Moreover, I share Wells’ view that “the world is a theatre of the grace of God and Christians are often

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interpretation, show for instance the article of Elliot who thinks that Paul wanted to discourage a desperate resistance. Elliot, “The anti-Imperial Message of the Cross.”

<sup>135</sup> This is actually already – at least partly – the case among Protestant institutions that help asylum seekers.

<sup>136</sup> Cavanaugh, “Church”, p. 404.

<sup>137</sup> Bell, p. 437.

largely spectators”, which means that if the church has a particular mission, God’s Spirit blows where she wishes. So this is not only in or through the church.

## 5. Conclusion.

An African asks a chaplain in a registration centre : “N’avez-vous plus le même Dieu, celui que vous êtes venus nous prêcher en Afrique? Jésus n’est plus celui qui a fait de nous des frères et des soeurs? Où sont-ils, ces frères et ces soeurs?”<sup>138</sup>

[Do you no longer have the same God, the one you came to preach to us in Africa? Is Jesus no longer the one who made us brothers and sisters? Where are they, these brothers and sisters?]

This African calls Christians to become a *visible* church, to embody hospitality and the infinite responsibility that we owe to one another. He recalls us the particular mission of the church: “to be the witness to, and the place of, transfigured social relations.”<sup>139</sup> As we have seen throughout this work, the overwhelming distress and suffering of NEMs and failed asylum seekers have their source in a biopolitical system and in a community imagined as both sovereign and limited through boundaries. This is why, in order to regain the human dignity of these people, it is necessary to “politicize” their existence and to “de-absolutize” the sovereign power of nation-states. NEMs and failed asylum seekers need to become part of a political community, in which bare life is no longer a political concern and is not linked to the law. For this reason, the church has a key role to play. And it is also why the church should not search for solutions *inside* the current political system. Its response should be *outside*, in alternative politics that is not of the world but rooted in God. Then the church could embody a different way of living together, in which a person is no longer differently treated dependent upon whether she is a citizen or only a “human being”, and in which bare life belongs to God alone. The church may recall that in the Christian tradition, people are called by their name and not by their non-legal status, and that identity does not depend on nationality or race. Christians have a

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<sup>138</sup> Barbey, p. 76.

<sup>139</sup> Bretherton, *Hospitality as Holiness*, p. 108.

chance to show that in Christ there are no longer Jews, or Greeks and that nation-states are not ontological necessities to politics. But Christians also have the occasion to choose between the two tendencies of separation from<sup>140</sup> and welcome of<sup>141</sup> the stranger that go across the Bible, and hence overcome the fear of the foreigner and discover that in God we have all we need to assume full hospitality. We have the opportunity to show what being *in* the world and in solidarity with all human beings reduced to bare lives means. This is a real challenge for the church today.

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<sup>140</sup> See Dt 7; 1-6 or Mt 15; 21-26 for instance.

<sup>141</sup> See Dt 10;18-19 or Mt 25, 31-45 for instance.

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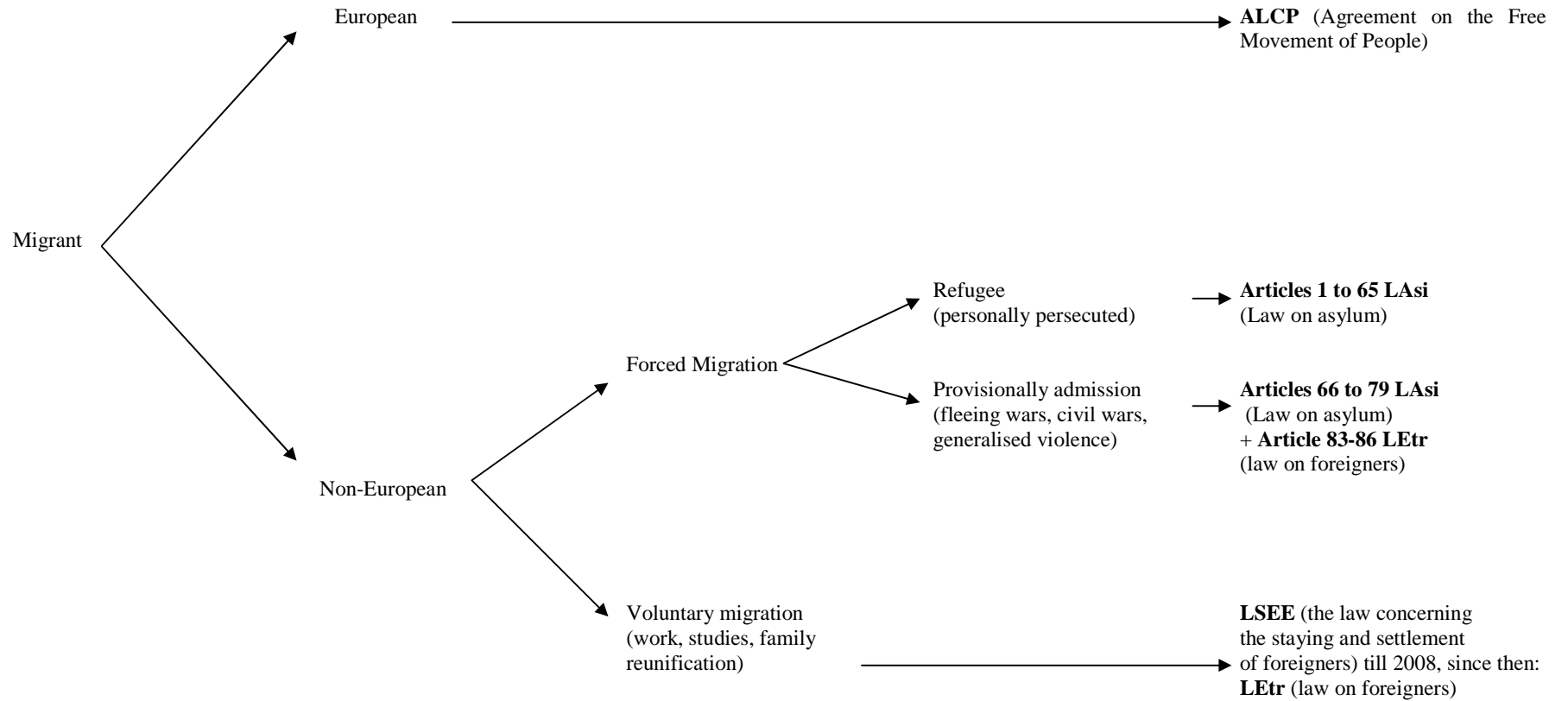
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**Annex I Diagram of the Swiss Legislation on foreigners.**



## Annex II List of Websites.

### 1. Legislation :

- ALCP : <http://www.admin.ch/ch/f/as/2002/1529.pdf>
- Convention relating to status of Refugees:  
[http://www.unhchr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhchr.ch/html/menu3/b/o_c_ref.htm)
- LAsi : [http://www.admin.ch/ch/f/rs/142\\_31/index.html#id-1](http://www.admin.ch/ch/f/rs/142_31/index.html#id-1)
- LSEE : [http://www.admin.ch/ch/f/rs/c142\\_20.html](http://www.admin.ch/ch/f/rs/c142_20.html)
- LEtr : <http://www.admin.ch/ch/f/ff/2005/6885.pdf>
- Prescription concerning the Emergency help for NEMs and failed asylum seekers: [http://www.sodk-cdas-cdos.ch/neu/Dokumente/pdf/Ausreisepflichtige\\_Entwurf\\_BEKO\\_frz\\_4.4.07.pdf](http://www.sodk-cdas-cdos.ch/neu/Dokumente/pdf/Ausreisepflichtige_Entwurf_BEKO_frz_4.4.07.pdf)
- Protocol relating to the status of refugees:  
[http://www.unhchr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhchr.ch/html/menu3/b/o_c_ref.htm)
- Ordonnance limitant le nombre des étrangers [Decree limiting the number of foreigner [http://www.admin.ch/ch/f/rs/823\\_21/app1.html](http://www.admin.ch/ch/f/rs/823_21/app1.html)

### 2. Statements and explanations of the Federal Council :

- 4th September 2002 : <http://www.admin.ch/ch/f/ff/2002/6359.pdf>
- To find the other statement referred to in this essay:  
<http://www.amtsdruckschriften.bar.admin.ch/showDoc.do>
- Explanations concerning the 24<sup>th</sup> September 2007 vote:  
<http://www.ch.ch/private/00987/00995/00997/01011/01021/index.html?lang=fr>

### 3. Federal Administration :

- Home Page : <http://www.admin.ch/index.html>
- Response of the Federal Council to Doudou Diène the Special Rapporteur on contemporary forms of racism of the UN:  
<http://www.news.admin.ch/message/index.html?lang=fr&msg-id=11755>
- Information concerning the last modification of the LAsi: Révision partielle de la loi sur l'asile, <http://www.parlament.ch/f/do-asyugesetz> and Votation: La loi sur les étrangers et la loi sur l'asile,  
[http://www.ejpd.admin.ch/ejpd/fr/home/dokumentation/abstimmungen/2006/dossier\\_auslaender-0.html#Modification%20de%20la%20loi%20sur%20l%E2%80%99asile](http://www.ejpd.admin.ch/ejpd/fr/home/dokumentation/abstimmungen/2006/dossier_auslaender-0.html#Modification%20de%20la%20loi%20sur%20l%E2%80%99asile)
- ODM: <http://bfm.mit.ch/index.php?id=233&L=1>

### 4. Journalism:

- **La Brèche** [the Gap]. *This is the newspaper of the hard left Mouvement pour socialisme [Movement for socialism].*  
- Home page: <http://www.labreche.ch/>

- Article: “Le Jour d’Après” [The Day after]  
[http://www.labreche.ch/lb/2005/LB17\\_DayAfter.htm](http://www.labreche.ch/lb/2005/LB17_DayAfter.htm)
- **Le Courrier** [Mail]. *This is a newspaper independent from any political party, but committed to offer information and progressive and humanist positions.*
  - Home page: <http://www.lecourrier.ch/>
  - Article: “Les deux «lex Blocher» n'ont rien à envier à la loi Sarkozy”  
<http://www.lecourrier.ch/index.php?name=NewsPaper&file=article&sid=41751>
  - Article: “L’ Art de Fabriquer de Faux Requérants” [Art of Making Fake Refugees]  
<http://www.lecourrier.ch/index.php?name=News&file=article&sid=40265>
- **Solidarités** [Solidarities]. *There are the publications of the hard left party Solidarités on this website.*
  - Home page: <http://www.solidarites.ch/>
  - Article “Camps et centres spéciaux: vers un Guantanamo helvétique?” [camps and special centres: to a Helvetian Guantanamo?]:  
<http://www.solidarites.ch/index.php?action=6&id=2722&rubr=7>
- **TSR** :
  - Home page : <http://www.tsr.ch/tsr/index.html?siteSect=100000>
  - Article concerning the denunciation of the Swiss racist dynamic:  
<http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=7661771>
  - Article concerning the “non-eurocompatibility” of the LAsi:  
<http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=7099057>
  - Article concerning emergency help,  
<http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=6910785>
  - Article on the satisfaction of C. Blocher about the tightness of the LAsi,  
<http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=6030332>
  - Article on the religious mobilisation concerning the last modification of the LAsi,  
<http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=6814776>
  - Article on the first critical assessment on the last modification of the LAsi.  
[http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=8036643&wysistatpr=ads\\_rss\\_texte](http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=8036643&wysistatpr=ads_rss_texte)
  - Article on Amnesty International denunciation of the impunity of some mistreatment to foreigners by policemen.  
[http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=7959024&wysistatpr=ads\\_rss\\_texte](http://www.tsr.ch/tsr/index.html?siteSect=200001&sid=7959024&wysistatpr=ads_rss_texte)
  - Broadcast: Sans toit, ni droit [without roof nor rights]  
<http://www.tsr.ch/tsr/index.html?siteSect=370501&sid=5623255>
- **Vivre Ensemble** [living together]. They offer critical information concerning asylum and stand by asylum seekers. They also produce reports concerning some countries of origin.
  - Home page: <http://www.asile.ch/vivre-ensemble/qui/>

- Témoignages [testimonies]: <http://www.asile.ch/vivre-ensemble/temoignages/>

## 5. FEPS's positions concerning asylum in Switzerland:

- 31<sup>st</sup> March 2003: [http://www.sek-feeps.ch/media/pdf/stellungnahme/Menschliche\\_Asylopolitik\\_fr.pdf](http://www.sek-feeps.ch/media/pdf/stellungnahme/Menschliche_Asylopolitik_fr.pdf)
- 19<sup>th</sup> June 2006: <http://www.sek-feeps.ch/index.php?lang=2&idcatside=346>
- June 2006: [http://www.sek-feeps.ch/shop/media/gemeinsame\\_texte/4/3\\_fr.pdf](http://www.sek-feeps.ch/shop/media/gemeinsame_texte/4/3_fr.pdf)

## 6. Christian institutions concerning asylum in Switzerland:

- Christians and Jews for the freedom of thought : <http://www.pasaj.ch/multimedia/dossier-presse-libresdaider.pdf>
- La Maison des Croisettes (Croisettes Home). *This is the Ecumenical chaplaincy for asylum seekers in Geneva.* [http://www.agoralacroisette.ch/Fusterie\\_page.htm](http://www.agoralacroisette.ch/Fusterie_page.htm)
- Presence et Solidarité [Presence and Solidarity]. This is a particular council in the Protestant Church of the Canton of Vaud. [http://cscps-10.blogspot.com/2005\\_12\\_11\\_archive.html](http://cscps-10.blogspot.com/2005_12_11_archive.html)

## 7. Political stances on the last modification of the LAasi and on migration policy:

- **UDC. *Hard right party***
  - “La violence n'est pas le fait du hasard” [violence is not the result of random] [http://www.udc-vaud.ch/a\\_lire/a\\_lire.htm#171](http://www.udc-vaud.ch/a_lire/a_lire.htm#171)
  - “Les conséquences d'une politique des étrangers erronée” [the consequences of a wrong migration policy] [http://www.udc-vaud.ch/a\\_lire/a\\_lire.htm#163](http://www.udc-vaud.ch/a_lire/a_lire.htm#163)
  - “Nos règles sont valables pour tous” [Our rules are valid for everybody] [http://www.svp.ch/index.html?page\\_id=2235&l=3](http://www.svp.ch/index.html?page_id=2235&l=3)
  - “Les femmes UDC Suisse rejettent la politique de gauche des églises” [The UDC women reject the left policy of churches] [http://www.udc-vaud.ch/a\\_lire/a\\_lire.htm#155](http://www.udc-vaud.ch/a_lire/a_lire.htm#155)
- **Liberal Party. *Right party*** <http://www.liberal.ch/index.php?page=7&sousPage=1&ssousPage=0&langue=de&lngCommuniqueId=31>
- **Radical Party. *Right party*** [http://www.prd.ch/NotFound.asp?search=index.asp\\_Q\\_Menu\\_E\\_3\\_A\\_Item\\_E\\_1\\_A\\_ID\\_E\\_21226\\_A\\_ConID\\_E\\_21226\\_A\\_View\\_E\\_](http://www.prd.ch/NotFound.asp?search=index.asp_Q_Menu_E_3_A_Item_E_1_A_ID_E_21226_A_ConID_E_21226_A_View_E_)
- **Christian Democratic Party. *Right party*** <http://www.cvp.ch/de/documents/documentdetail---1--20000001--0--1--4205.html>
- **Evangelical Party. *Centrist to right party*** [http://www.evppev.ch/index.php?id=54&L=1&tx\\_ttnews\[tt\\_news\]=684&tx\\_ttnews\[backPid\]=12&cHash=11fa4e4aac](http://www.evppev.ch/index.php?id=54&L=1&tx_ttnews[tt_news]=684&tx_ttnews[backPid]=12&cHash=11fa4e4aac)

- **Green Party:** *Ecological party*  
[http://www.verts.ch/ge/pdf/argumentvert/06024/060924\\_LET-LA.pdf](http://www.verts.ch/ge/pdf/argumentvert/06024/060924_LET-LA.pdf)
- **Socialist Party.** *Left party*  
<http://www.sp-ps.ch/index.php?L=1>
- **Solidarités** [Solidarities]. *Hard left party.*  
<http://www.solidarites.ch/>
- To read all the press conferences concerning the modification of the LAsi and the adoption of the LEtr: <http://www.parlament.ch/f/do-asylgesetz-medienmitteilungen>

## 8. Diverse websites concerning asylum in Switzerland:

- **United Nations**
  - Home page: <http://www.un.org/>
  - General Assembly of the United Nation, AG/SHC/3867: <http://www.un.org/News/fr-press/docs/2006/AGSHC3867.doc.htm>
  - Report by Doudou Diène – Mission to Switzerland: [http://ap.ohchr.org/documents/dpage\\_e.aspx?m=92](http://ap.ohchr.org/documents/dpage_e.aspx?m=92)
- **Solidarité sans frontière** [Solidarity without boundaries]. *This is a non-religious and apolitical association that offers information concerning asylum and migration policy, racism and Human Rights.*
  - Home page  
[http://www.sosf.ch/cms/front\\_content.php?client=1&lang=2&idcat=245&idart=1764&m=&s=](http://www.sosf.ch/cms/front_content.php?client=1&lang=2&idcat=245&idart=1764&m=&s=)
  - Article : “L’exception vaudoise, nous en sommes fiers!” [the exception of the canton of Vaud: we are proud of it”.  
[http://www.sosf.ch/cms/upload/pdf/bulletin\\_fr04dez.pdf](http://www.sosf.ch/cms/upload/pdf/bulletin_fr04dez.pdf)
  - Coordination asile [Asylum Coordination]. *It depends from Solidarity sans Frontières and fight for preventing the expulsion of the failed asylum seekers in the canton of Vaud.* <http://www.stoprenvoi.ch/historique.php?show=all>
- **OSAR** [The Swiss Refugee Council], established in 1936, is a non-governmental, politically and religiously independent umbrella organisation of all important Swiss relief organisations: Caritas Switzerland, Protestant Charity Switzerland, Swiss Red Cross, Swiss Workers’ Aid and Swiss Union of Jewish Welfare Organisations.
  - Home page: <http://www.osar.ch/>
  - Position on the last modification of the LAsi:  
<http://www.osar.ch/asylum-politics/asylum-law/revision>
- **The LEtr and the LAsi in the light of the Convention for the Children Rights:**  
[http://www.tdh.ch/website/doc\\_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/ece56f94cbc12ba9c125715a004c524e/\\$FILE/AnalyseCDE\\_F.pdf](http://www.tdh.ch/website/doc_dnld.nsf/bf25ab0f47ba5dd785256499006b15a4/ece56f94cbc12ba9c125715a004c524e/$FILE/AnalyseCDE_F.pdf)