In this paper I argue the way in which the UK asylum system currently functions, fails to legally and discursively acknowledge the UK’s culpability and contribution to contexts that generate refugees via, for example, legacies of colonialism and engagement in neoliberal economic practices. I claim that these legacies fundamentally and detrimentally impact on, and delineate the relationship between, asylum claimant and immigration judge.

Responding to these legacies and the concurrent interpersonal impact, I draw on the work of Iris Marion Young and Emmanuel Levinas in order to reframe the relationships between the interlocutors. Using an ethical framework, I focus on the benefits that engaging with, and bearing responsibility for the ‘other’ may have on the provision of justice for refugees. I rely in part on Iris Marion Young’s understanding of a communicative ethics based on ‘asymmetrical reciprocity’, which is indebted to Levinas’ conceptualisation of the other—the other as unknowable, and irreducible, and to whom we are obligated—in order to address the place of an ethics of responsibility (Levinas 2006; Hand 1996). Young’s work unpacks the relationship between locutionary positions; she relies on generosity towards the other through what she terms ‘the gift’ (Young 1997). The ‘gift’ is a relational concept—‘opening up to the other person is always a gift; the trust to communicate cannot await the other person’s promise to reciprocate’ (Young 1997, 351). The gift’s relationship to asymmetrical reciprocity requires each party to recognize and be open to the ‘irreducible points of view of the other’ and understand the ‘irreversibility’ of their subject positions (Young 1997, 351). I make this tentative turn to ethics as a way of repositioning the relationship of law to the politics of responsibility, in a bid to foster an ethical response to the other that reaches beyond the asylum court.

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Much has been written on the legal responsibility of the state towards asylum seekers. Dominating this literature are arguments which call for more rigorous application of the Refugee Convention, critiques of the UK’s abnegation of its international responsibilities, and analyses which unpack the intricacies of UK and EU asylum and immigration policy (Goodwin-Gill and McAdam 2007; Gibney 2004; Ryan and Mitsilegas 2010). In addition to the legal analysis the responses of anthropologists, sociologists, health care practitioners, amongst others, have sought to identify the ramifications physically, mentally and socially of what it means to identify, and be identified as an asylum seeker (Good 2007; Ager et al. 2002). Perhaps because of the paucity of governmental resources apportioned to asylum claimants, the academic emphasis has rested on the legal and economic plight and the social ramifications associated with gaining refugee status. My emphasis, though informed by this literature, approaches the claim to asylum via a reliance on a framework that draws on the ethical. Although there has been some engagement with the ‘ethical’ and the position of refugees, (Pugliese 2002; Metselaar 2005; Ahmed 2000) an emphasis on the ethical against the backdrop of colonial history and neoliberalism has yet to be explored in the context of the relationship between judge and claimant.

Premised on cultural imperialism, wilful ignorance of the historical, economic and political position of certain states and their relationship to the UK, normative conceptualisations of identity including gender and sexuality, and a misguided fear of the volume of refugees entering the UK, the current asylum system fails to deliver a consistent standard of ‘justice’ (Smart et al. 2012, 143–153). Such failure, rather than merely attributable to individual decision-making practices, is indicative of broader systemic problems in the system itself. In the face of such systemic problems I suggest an ethically based response, which I term communicative legacy. Communicative legacy is intended to act as an aid to communication and reflexivity; it does this through looking to the past, present and future context of the refugee claimant’s life and their broader situation within a global history that encapsulates the legacy of colonialism and its continued economic and political ramifications in conjunction with neoliberal economics. Communicative legacy forms a part of the intervening space between the interlocutors and is reliant upon an ethical imperative. This intervening space holds a history that incorporates and involves not only the parties to the dialogue (the judge and asylum claimant) but the legacies and histories that form a part of the historical derivation of the dialogue, such as the social, political and economic factors which have lead to the encounter. For refugees and migrants from former colonial states, colonial legacies still form an essential part of the push/pull factors of migration via, for example, the diasporic links fostered by colonial migration patterns.

More broadly within the structure of liberal legalism, and through the framework of the Refugee Convention, dwell the legacies of colonialism, and the excesses of

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1 See Marie Martin (2012); Ramos, C., ‘Unsafe return: Refoulement of Congolese asylum seekers’, 24 November 2011, http://justicefirst.org.uk accessed 18 November 2012.
2 Convention Relating to the Status of Refugees (1951), as amended by the Protocol Relating to the Status of Refugees 1967.
liberal/neo-liberal democracy and economics. I claim that neoliberal democracy and economics is an important contextual factor in the conversation between judge and claimant, and is therefore a key component of communicative legacy. Neoliberalism as the dominant form of global economic and political policy has a significant role in its effect on refugees, explicitly shaping state responses to the management of asylum flows and refugee claims on both a macro and micro level. At the macro, states have turned to a system of ‘global refugee management’, which implicitly incorporates neoliberal political and economic ideology. By global refugee management, I refer to uniform or aligned responses that are embedded in collective and international treaty laws and increasingly conservative national legislation that defines refugees’ legal status and appropriates similar methods of internal processing of asylum claimants. At the micro level, policy changes in the UK have further calcified the abnegation of financial responsibility on the part of the state, shifting responsibility wholly onto partners, spouses or sponsors.

Refugee management has also shifted responsibility to broader political/economising schemes such as the European Union’s, European Refugee Fund (ERF). The ERF disperses both the physical and financial burden of refugees throughout the EU. Schemes such as the ERF, which privatise state responsibility, are an explicit part of the neoliberal response to the ‘care’ of refugees. The ERF funds charitable and non-governmental organisations to carry out many of the social welfare tasks that were originally part of the states responsibility. This broader economised response to the management of refugees is symptomatic of a neoliberal approach to the political and legal responsibility states take, and a disappearance of the receiving states role in perpetuating the production of refugees in the first place. Rarely are neoliberal economics and politics considered as part of the formula in the creation of political and/or economic migrants.

Because neoliberalism is an economic system that can afford to include and exclude individuals by relying on abstract economic rationalism, the effects of such reliance can propagate social unrest (Brown 2005). The exclusion of individuals from particular spheres leads people to ‘[seek] meaning through particularistic identities based on ethnicity, religion, regionalism or nationalism’ (Castles and Davidson 2000, 6). Making sense of identity and social worth in the midst of scarce

3 For statistical information on claims to asylum in industrialized countries see UNHCR ‘Asylum Levels and Trends in Industrialized Countries—First Half 2008’ http://www.unhcr.org/statistics/STATISTICS/48f742792.pdf accessed 27 August 2011. For a breakdown of the claims to asylum worldwide see the statistical annex in UNHCR Statistical Yearbook 2007 http://www.unhcr.org/statistics/STATISTICS/4981b19d2.html accessed 27 August 2011.

4 See Immigration Rules HC 395; Asylum and Immigration (Treatment of Claimants etc.) Act 2004, sections 19–25; section 3(2) of the Immigration Act 1971.

5 ‘The European Refugee Fund fosters solidarity between Member States and promotes balance in the efforts they make in receiving asylum seekers, refugees and displaced persons. The European Refugee Fund also supports Member States action to promote the social and economic integration of refugees. It provides practical support to help asylum seekers, refugees and displaced persons take an informed decision to leave the territory of the Member States and return home, should they so wish. Also, at the Commissions initiative, it finances pilot initiatives and exchanges between Member States’. http://ec.europa.eu/justice_home/funding/2004_2007/refugee/wai/funding_refugee_en.htm accessed 13 December 2012.
resources can lead to behaviours which foster social and political unrest, and can lead to factional conflict, persecution and thus to the creation of refugees.\(^6\)

Consequently the ‘forced’ migration of people across borders because of the social effects of neoliberal economic and political policy has the effect of generating economic migrants. Such migrants have been viewed both legally and in the popular press as illegitimate or bogus asylum seekers. Economic migrants that enter the asylum system will be rejected on the basis that poverty is not persecutory and not a ground on which refugee status can be granted. Rarely conjoined in the public imagination is the relationship between the UK’s status as a wealthy, globalised power exploiting ‘developing’ countries and the direct contribution this has to the economic failure of those states (Joya et al. 2006, 317).

Furthermore, British asylum judgments often indicate the financial implications of accepting certain types of refugees. Refugees that are deemed to place a heavy financial burden on health care are classified as undesirable immigrants.\(^7\) Western governments’ ‘re-branding’ of the state through the endorsement of neoliberalism, and its concurrent move away from state as social provider, has created a populace that responds to, and is defined by, market terminology, and by processes of consumption and production. Refugees fail the neoliberal test of producing and their consumption of the minimum of social resources provides the press with fodder for their demonisation.\(^8\)

Thus the qualities of neoliberal economics have an ongoing impact on legal, political and economic structures, fostering contexts ripe for the creation of refugees via an imbalance of the distribution of wealth and poverty worldwide. My response to this context therefore is twofold; firstly, the court needs to explicitly acknowledge the impact of a dominant and coercive brand of economics as a fundamental factor in the generation of refugees; secondly, and more specifically, to acknowledge that economic context forms an integral part of the relationship that is established between immigration judge and refugee. In response to this context I suggest that as a dialogic method, communicative legacy would highlight a broader awareness of the political and economic ramifications of neoliberalism. Moreover it demands of the asylum system and national communities/citizens, a wider responsibility to the ‘other’, based not on tenets of law, but on social responsibility and refusal to engage in and further endorse exploitative behaviours. Communicative legacy therefore, would be the bearer of a more ethical, comprehensive and nuanced narrative of refugee claims.

This paper therefore is not a template for legal reform, rather it seeks to identify the contextual challenges that intervene in the relationship between judge and asylum seeker in-court. It establishes, via an ethical framework, foundational principles, which could potentially mitigate some of the dynamics of the judicial/defendant relationship. Furthermore it relies on a wider testimonial methodology.

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\(^6\) See UN News Service, Economic, social, political trends endanger world’s uprooted—UN refugee chief, 6 October 2008, available at: http://www.unhcr.org/refworld/docid/48ec79dac.html accessed 11 August 2011 and Sara E. Davies (2007).

\(^7\) See R.G. (Colombia) v Secretary of State for the Home Department [2006] E.W.C.A. Civ 5; N v S.S.H.D. [2005] U.K.H.L. 3. Toni A.M. Johnson (2007).

\(^8\) For more on state responses to migration see Matthew J. Gibney (1999), Charles B. Keeley (2001).
that includes a greater contextual awareness of the history, culture and economic and social legacies that have lead to the appearance of the asylum seeker in a UK court.

**Liberal Paradox and Judicial Scepticism**

The asylum system and the legislation which gives it meaning are predicated on political responsibility, which takes the form of a legal obligation to those who become stateless through persecution on grounds of race, ethnicity, political affiliation or membership of a particular social group. The paradox inherent in the asylum system is perhaps the paradox inherent in all legal decision making processes in the UK that rely on liberal legal thought. Liberal legality assumes the objectivity and neutrality of the decision maker who applies the law in a manner that follows the principles of natural justice. The paradoxical nature of law as applied to the asylum court is twofold: if the maxim that all cases are to be tried on their own merits is valid, the way in which the asylum court notoriously functions is that often cases with similar fact histories are adjudicated on as if the narratives and case details are the same; the contextual specificity and individual experience is disappeared from the space of the court thus denying a basic legal maxim (Good 2007).

The courts’ ready disposal of cases is influenced in part by administrative and judicial scepticism, when multiple migrants from the same state have similar, if not identical, narratives. The replication of narratives has the effect of making the claims appear bogus, impugning the credibility of the claimant. Secondly, the necessity for ‘objectivity’ on the part of the judge effaces the relationship between the claimant and the immigration judge. The effect effacement has, is to distance the claimant from the judge, and render the claimant as merely another case on the court’s docket. The reason why distancing is so problematic in an asylum court is that the asylum seeker’s narrative turns on the sequence of events provided by the claimant. Supporting evidence can be relied on in order to substantiate a story, but some claimants only have their submissions as proof of experience, therefore producing a narrative that can be heard by the judge as plausible, understandable and ‘knowable’, becomes essential (Young 2000, 72–75).

The heavy reliance on refugee claimant submissions can create an enhanced intimacy between the First Tier Tribunal and Immigration and Asylum Court (FTTIAC) judge and the refugee, which is dissimilar to the usual judicial/defendant relationship. There is little to intervene in the relationship between asylum claimant and judge, apart from the potential presence of lawyers representing their respective

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9 The *Convention* defines a refugee in Article 1A (2) as any person who:

[...]

10 See James Souter (2011), Gabriela Quevedo (2011), F. Hanna (2005), D. Morgan (2006).
clients (the claimant and the Secretary of State for the Home Department), an interpreter and in some cases witnesses. The judge has the opportunity to communicate with the asylum seeker in a manner that is atypical of legal environments; the burdens of proof and the formalities of court are of a less onerous standard.\textsuperscript{11} Bearing this slightly more relaxed formalism (court etiquette) and formulism (the form of arguments presented to the court) in mind, the site of asylum claims has the potential to be organised to a degree that is based on an enhanced receptivity to unsubstantiated narratives when compared to standards of proof required in other legal environments such as criminal courts (Johnson 2011). Furthermore, the asylum court purports to be non-adversarial in its organisation, founded on ‘burden sharing’ rather than questioning/interrogating.\textsuperscript{12} The potential of ‘burden sharing’ practices is that this could open up a space in which the ethical could be centred, by drawing on a process of dialogue rather than judgment.

What the legal strictures of the asylum court, and the overarching presence of a restrictive migration politics perpetuate, are a displacement of the ethical response owed to the other. Centring the ethical could help to counter the problematic dynamics which suffuse the asylum court in the form of racism, sexism, homophobia and wariness of the ‘stranger’, whilst concurrently contesting the political and legal stringency of asylum policy.

**Transitioning Through Politics to Ethics**

The political nature of the asylum debate has lead to more rigorous legislation, raising the threshold of what is necessary for a successful asylum claim. This increased rigour has lead to an increase in the number of rejected applications, disrupting the UK’s legal, political, and I would argue, ethical responsibility (Refugee Forum 2010). Bearing this context in mind, in the following section I sketch out how the disjunctive relationship between the political and the ethical can be usefully put-to-work if predicated on the basis of informing rather than replacing the other. Asylum discourse is suffused and dominated by a reactionary and highly politicised reading of claimants within the UK. In part, it is this reading which permeates the relationship between claimant and judge. In addressing this I draw on the work of Vikki Bell and Sara Ahmed in order to think through the way a Levinasian ethics can underscore politics. I use this methodological approach to deconstruct the relationship between the actors in court and to suggest ethically founded possibilities for renegotiating these interactions. Furthermore, I claim that

\textsuperscript{11} For burdens of proof see \textit{R v SSHD ex p Sivakumar} [1988] AC 958. The standard of proof required in an asylum hearing was framed in terms of ‘reasonable chance’, ‘reasonable degree of likelihood’, ‘a serious possibility’. The fear of future persecution must be linked to the reason for the asylum seeker being away from their country at the time of the claim. In the case of \textit{Kajac v SSHD} [2002] Imm AR 213, held the standard of proof should be considered in relation to a past set of events and whether there was a reasonable likelihood that persecution would occur in the future. Additionally the burden of proof of persecution sits with the asylum seeker. Also see \textit{Karanakaran} [2000] Imm AR 27 evidence of what has happened to individual’s who would have been in a similar situation is also relied on.

\textsuperscript{12} Thanks to Jenni Millbank for drawing my attention to this.
in renegotiating these interactions that a foundation for *communicative legacy* can be developed.

Levinas writes, ‘[e]thics, as the extreme exposure and sensitivity of one subjectivity to another, becomes morality and hardens its skin as soon as we move into the political world of the third’ (Levinas in Bell 2001, 165). The ‘third’ is the world that consists of ‘government, institutions, tribunals, prisons, schools, committees’. Ethics bears an extreme vulnerability to the imposition of the third. When the ‘third’ intervenes in the intimacy of the encounter, ethics is displaced. The displacement occurs as an effect of the necessity for a supposed ‘objectivity’ that stems from the political world. For Levinas it is not the place of ethics to ‘“legislate for society or produce rules of conduct whereby society might be revolutionised or transformed. It does not operate on the level of the manifesto or call to order”… Ethics involves a response of one to one other; politics necessarily involves the appearance of the third’ (Bell 2001, 165). The consequent effect of the appearance of the third is that it disrupts the ethical imperative, shifting the immediacy of response to the stranger/the other—the ethical response becomes a political imposition. The consequent effect of the political is that it alters the nature of the interaction, rendering the other as subjectified and open to judgement and classification. Levinas writes:

From uniqueness to uniqueness – transcendence; outside all mediation, all motivation that can be drawn from a generic community – outside all prior relationship and all a priori synthesis – love from stranger to stranger, better than brotherhood in the bosom of brotherhood itself. A gratuity of transcendence-to-the-other interrupting the being that is always preoccupied with that being itself and its perseverance in being (Levinas 2006, 171).

‘From uniqueness to uniqueness’, Levinas recognises that bearing radical otherness, radical strangerness, is what lies in common with the other; ‘the stranger is the other with whom one does not have anything in common—but who, in not being in common, one is paradoxically alike’ (Ahmed 2000, 149). Levinas links the ‘love from stranger to stranger’ to the bearing of responsibility to the other, drawing on the metaphor of the ‘face’ (Levinas 1985, 85). The face of the other is deployed and has been interpreted as both the abstract and specific other that stands before you. Tom Burvill has argued, drawing on the work of Simon Critchley that ‘the epiphany of the face and the discourse to which it gives rise “attests to the presence of the third party, of humanity as a whole… It is my responsibility before a face looking at me as absolutely foreign … that constitutes the original fact of fraternity”’ (Levinas in Burvill 2008, 234–235). The abstract and the specific are no longer juxtaposed they become mutually constitutive. The ‘face’ relates to humanity widely, drawing a response which is invested in the specific and in the abstract—this is a broader obligation of ‘infinite responsibility’ to the stranger.

The ethical responsibility to an infinite community of strangers has implications for the place of ethics in the constitution of politics. Drawing on Levinas, Vikki Bell argues that ‘ethics cannot be regarded as the basis or cause of politics, it can operate as an ‘inspiration’ and check for politics by asking how open the possibility of response and responsibility is, and how attentive to the other political culture, and
one’s politics within it enables one to be’ (Bell 2001, 169). Sara Ahmed has also reconceptualised the Levinasian response to the other by thinking about what is at stake in our relational encounter with the other. She warns:

We must be careful not to locate the particular in the present of a given ‘who’ we might encounter: rather, what is at stake, is the different modes of encounter that allow us to face (up to) others. A generous encounter may be one which would recognise how the encounter itself is implicated in broader relations and circuits of production and exchange (how did we get here? How did you arrive?) (Ahmed 2000, 152).

This particular approach to the ethical encounter enables a flexibility to develop, whereby relations are based on openness to the other, but stem from a position that acknowledges the context where interlocutors meet. An approach such as Ahmed’s would form a useful basis for the interaction between judge and asylum seeker; the interaction could be much more open to the history and contexts of how parties find themselves in particular venues. Hence, rather than generating stereotypical ideas of how claimants arrive in court, both parties would be primary actors in the narrative developed about how they came to arrive in particular spaces such as the asylum court.

Iris Marion Young’s work on the ethical encounter through dialogue takes a somewhat similar position to Ahmed’s, straddling the sites of the ethical and political. Young notes, ‘a condition of our communication is that we acknowledge difference, interval and that others drag behind them shadows and histories, scars and traumas that do not become present in our communication’ (Ahmed 2000, 156; Young 1997, 354). There are correlations between Ahmed and Young’s interpretation of the ethical encounter, both for example view the context from which interlocutors come, and the space within which they meet as significant, but there is a fundamental distinction. Where Young encourages the space of the ‘interval’ as crucial to an ethics of communication, a space in which questioning can take place in a bid to understand the other, Ahmed questions the usefulness of the ‘interval’. Young relies on the establishment of a respectful distance through which to engage with the other, a distance that cannot be broached by mere proximity (Young 1997, 345). Ahmed challenges Young’s idea that dialogue and questioning across space will serve the ethical encounter. Ahmed instead turns to an ethical encounter based on ‘touch’ that takes place, between our mouths, and our ears, in the very proximity and multiplicity of this encounter. What allows us to face each other … is also what allows us to move beyond the face, to hear and be touched by what one cannot grasp, as that which cannot be assimilated in a moment of recognition of either the other or the stranger (Ahmed 2000, 158).

The site of touch becomes about consecutively holding ‘proximity and distance’. Ahmed notes ‘One does not stay in place, or one does not stay safely at a distance (there is no space which is not implicated in the encounter)’ (Ahmed 2000, 156–157). For Ahmed, rather than envisioning the ‘interval’ as a site across which a
dialogue occurs, the interval is the site that contiguously embodies relational aspects of proximity and distance, suffused with an essential ‘unknowability’ of the subject.

Young’s and Ahmed’s conceptualisations of the occupation of the ‘space’/non-space between our interlocutors and its different configurations provide engaging accounts of its purpose and its presence. The place that my ethical engagement inhabits is perhaps part way between these positions. I am drawn to Young’s ‘asymmetrical reciprocity’ as it firmly establishes the proposition that embraces the ‘irreducibility’ of the other. For Young there is an explicit willingness to develop a space for communication with the other, communication positioned as a ‘gift’ which doesn’t rely on reciprocity and which doesn’t rely on equality of power or status. Where this may seem like a fairly simplistic reliance, when considered in terms of the asylum court and the court’s receptivity to open communication, the fundamental importance of that openness to communication is often precluded. What intervenes in that communicative site are the mechanisms and disciplining properties of law. Laws formalism and formulism quashes the receptivity of the court to mutual engagement and prevents a dialogically reciprocal relationship. Thus I draw on Young’s asymmetrical reciprocity as a starting point for entering into a mode of communication, or at the very least, a mode of engagement between refugee claimant and judge as the basis for my notion of communicative legacy.

Following this grounding I depart from Young’s analysis of how the space for communication occurs. Rather than perceiving the ‘interval’ as a projected site, which allows the passage of dialogue and questioning in order to engage with the other, I draw on Ahmed’s conception of the space between two interlocutors as embodied, as ‘holding proximity and distance’ (Ahmed 2000, 157), containing the possibility of dialogic process but as never having that dialogue fulfilled in its totality. I use Ahmed’s work in order to flesh out and provide structure to communicative legacy. Communicative legacy is reliant on the ungraspable, on the unsaid, on the broader historical and political context from which the refugee has come, on the more immediate context from which they have fled and on that, which Ahmed would phrase as, the ‘yet to come’. This communicative legacy would open up the ‘conversation’ that occurs during the asylum process and contest the notion of testimony as the indicator of the sole ‘truth’ of experience. Furthermore, communicative legacy would allow for greater receptivity to, and acknowledge the importance of, the multiple forms of communication that are part of the dialogue of the court for example silence, body language, stories that deviate from the question, histories etc.

In the following part of the paper I draw on the work of Young, Ahmed and Doreen Massey. Bringing together Young, Massey and Ahmed allows for a combined analysis for the development of ‘spaces of identity’ and the political responsibility held within these spaces to function on the basis of an ethical imperative that may act as the foundation for progressive political change. I flesh out what that intervening site between two interlocutors in a system based on judgment may contain and the possibility of that contracting/expanding space becoming infused with an ethics of responsibility rather than judgment. I analyse the proximity and distance between the interlocutors drawing on Massey’s ‘geographies of responsibility’ in order to understand the composition of that space (Massey
2004). I engage with a consideration of the unknowability of the refugee as a productive site that enables a refugee to retain agency over their identity but that also encapsulates some of the principles found in the work of Levinas, Ahmed and Young.

The Double-Edged Sword of Unknowability

The site of refugee claims is full of indeterminacy and unknowability, partly due to heavy reliance on claimant authenticity and ‘believability’, and partly due to ongoing contextual shifts in the country of origin. The very meaning of and the interpretation of refugeehood can never remain static due to new economic and social circumstances, ongoing political occurrences, or the emergence of alternative social groups being granted acknowledgement via the Convention such as lesbians and gay men have been viewed. The imagined wholeness of what constitutes a refugee is given the space to render itself unknowable and indeterminate—this indeterminacy forms a part of communicative legacy. The unknowability of the refugee and interlocutor as the basis for a dialogic relationship presents an opportunity for fostering intimacy between the two actors. The unknowability of the refugee destabilizes the template for refugee claims under the Convention, providing a basis for unique identity formation rather than a reliance on a projected or perceived identity (which can lead to routinized and formulaic understandings of refugee identity and their stories by immigration judges). Furthermore unknowability counteracts the judicial tendency of clustering together similar cases and dispensing of them in similarly dismissive fashions based on assumed knowledge. The mutual experience of unknowability broaches and probes the connection between the two central actors in the context of an asylum court. The unknowability of the actors involved in court proceedings would encourage a space for dialogue, rather than formal testimony, thus symbolically moving away from the asylum chamber as a space of adjudication and instead rendering it a space for reciprocal communication.

I use ‘unknowability’ in the asylum court in two ways: firstly as part of a resistant strategy to maintain a refugee’s agency. Unknowability ensures that the construction of identity by a claimant remains under their control, and that the subsequent and inevitable reading of this identity by an immigration judge can only ever be partial and incomplete. Secondly, I posit the idea of ‘knowability’ as a potentially problematic engagement with the refugee when an immigration judge purports to know the refugee through images and information given to them about claimants. The formulation of identity, and the behaviours that are associated with normative conceptions of refugees, propagate an adjudicative response that ‘knows’ the refugee but only through terms of reference which have been normatively constructed in order to ‘create’ a cognisable figure. For claimants traversing the asylum system, the importance of unknowability, is that it enables identity to be rendered fluid through the multiplicity of context-based encounters. Massey states,

13 See HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31.
‘beings… are constituted through practices of engagement’ (Massey 2004, 5). Refugee identity then is not just shaped by experiences of persecution prior to the claim to asylum; the very act of claiming asylum alters the imaginative interpretation of the refugees’ understanding of themselves, thereby undermining any fixed understanding one may have of the way in which interlocutors may respond to one another or come to understand one another (Luebben 2003, 399).

Within the current conditions of the asylum system, the consequent effect of an unstable and shifting conceptualisation of identity and consequent narratives would have negative ramifications in the way the refugee is perceived before the border agent or immigration judge. Shifts in the construction of identity have the potential to undermine the coherence of the testimony produced, leaving the refugee open to accusations that new narrative additions are manipulating the court. If a concept such as unknowability had purchase within the space of the court there would be an expectation that the narrative produced would be both experiential and evolving. Such an expectation would be a useful ally with psychological studies that have indicated the process of claiming asylum has a profound effect on the way a claimant interprets the type of persecution they experienced and their relationship to their sense of their own past, present and future selves (Bohmer and Shuman 2007, 613). Thus moving away from the formalism and formulism of law, towards a dialogic process, holistic in its engagement with refugees, would enable a more contextual account of the events leading to the claim to refugee status to be developed. An ongoing engagement with the refugee through the practice of developing a communicative legacy would allow for multiple modalities of engagement, multiple forms of narrative, and rely on an expectation that the initial statement given to a border agent is merely the first part of an official form of communication for refugee status.

In the proceeding part of the paper I engage more directly in an analysis that considers the composition of the intervening space between the interlocutors and whether this space has the ability to become a site of shared and productive dialogue. I begin with a brief consideration of the problem of cognoscibility in court and consider how a Levinasian interpretation of self/other can help us move beyond a critique of identity that relies on the problematic interpretation of ‘knowing’ the other through transposition of the self.

Unknowing and Sites of Engagement

The paradoxical fixity of ‘unknowing’ proves useful in counteracting the process of subjectivation that occupies the asylum hearing. In using the term subjectivation I refer to the court’s determination of the identity of the asylum seeker through facts established and assumed through country reports, medical evidence and Refugee Convention lead testimony. Currently the grounds of the Refugee Convention are inadequate as a response to understanding the context of an asylum seeker’s claim and fail to provide a response that centres ethical practice. Legalities do not encourage dialogue to develop, nor do they broach the distance between the interlocutors. Legalities do not engage in the micro and macro factors that
perpetuate the production of refugee’s via politics or economics; rather, law has an obligatory reliance on the formulism and formalism of the legal system. The broader impact this reliance has is to continue to render the refugee a stranger, rather than bridging the intervening space of engagement in order to develop a relationship based on reciprocity.

Levinas writes:

When we talk about consciousness, we are talking about knowledge: to be conscious of is to know; and in order to be just it is necessary to know: to objectify, compare, judge, form concepts, generalize etc. Faced with human multiplicity, these operations impose themselves and the responsibility for the other – which is charity and love – can go astray and therefore seeks truth … the very search for objectivity emerges in the ethical conflict, the acuity of which is assuaged by justice which is based on judgment (Levinas 2006, 176).

To know, in the Levinasian sense, is to objectify, to judge, and in judging fail our responsibility to the other. The displacement of charity and love through the act of judging requires objectivity, and objectivity displaces the immediacy of response to the other. Levinas makes the distinction that “knowledge of another is not love of another”. Knowledge does not necessarily promote care or responsibility towards another. ‘Knowledge’ of the other, as opposed to care, is one of the fundamental failings of an asylum system intended to aid those in need of a generous response.

One of the factors that contribute to the failure to respond lies with the narratives developed and information deployed about asylum seekers. The asylum seeker is lodged or known in the public imagination as the needy other, accompanied by a second-hand story. The testimonial provided by the claimant and taken up by the court, is a limited knowing of the situation that the refugee is fleeing from; the story appeases the legal necessities but concurrently absents the claimant from the process. The claimant’s written narrative, rather than the claimant becomes the embodiment of the refugee experience (Metselaar 2005, 61). Thus, the testimony provides what is legally necessary to further a claim for asylum so that it can be adjudicated on, but the context and history from which this testimony is borne can only ever be partial and incomplete.

Furthermore the broader context of refugee claims, their basis in global economic patterns, legacies of colonialism, slavery, racism and national and international conflict are important factors in the continued production of refugee claimants and directly implicate the UK, amongst others, as causative of the production of refugees. Factors such as the legacy of colonialism, and colonialism’s past and present economic ramifications tend to disappear from the space of the court as

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14 Paul Bracchi, ‘Millionaires Row (2009): How hundred’s of families get luxury homes on benefits far beyond the means of most working people’ Daily Mail (London 15 January 2010) http://www.dailymail.co.uk/news/article-1237061/Millionaires-Row-2009-How-hundreds-families-luxury-homes-benefits-far-means-working-people.html; Deborah Mattinson, ‘Labours catastrophic mistake on immigration: Brown’s pollster reveals how it cost him the election… and is now damaging democracy itself’ Daily Mail (London 7 August 2010) http://www.dailymail.co.uk/news/article-1301039/Browns-pollster-reveals-Labours-mistake-immigration-cost-power-damaging-democracy.html accessed 27 August 2011.
cause and effect of refugee production.\textsuperscript{15} Omissions to references of broader globalised responsibilities foist blame back onto the individual, rather than the global political and economic mechanisms that have perpetuated and made necessary an asylum system that wilfully displaces its own responsibility in the generation of refugees (Pellerin 1999, 469).

Reflecting on this abnegation of responsibility, Sherene Razack writes that the refugee hearing is a profoundly racialized space; she continues:

lawyers/judges – the elites - the describers and the imaginers whose gazes construct asylum seekers from the 3rd world as either unworthy claimants or as supplicants begging to be saved from the tyranny of the 3rd world (Razack 1998, 88).

Razack presents us with two visions of the refugee. The first is of the “fraudulent asylum seeker” who claims refugee status in order to gain access to the benefits of the first world—access to health care, the social services system, housing and monetary funds. The second vision of the refugee is the “legitimate claimant”, begging for the state to recognise the ‘horror’ of living in a ‘third world country’ where tyrannical rule, corrupt leadership, and/or the perpetuation of violence is an ‘implicit’ part of culture—placed in direct contrast to the clean, white, liberal mechanism of politics and law in the receiving state. Razack further presents the refugee in the space of the hearing as a generic entity; one refugee is a manifestation of all refugee identities, thus occluding individuality. The process of having refugee identity confirmed relies on an administrative decision which places the liberal doctrines of law firmly at the centre of the decision making process.

In a hearing, the refugee sits often times in the middle of the court space; the proceedings are intended to focus on his or her plight and flight from their home country. Nevertheless the formality of the court curtails the involvement of the claimant, rendering them sidelined as to the proceedings. In some cases it is only if there are inconsistencies within a hearing that the refugee as an individual comes to the fore. This is problematic in that if a refugee is there only to be questioned as to whether they have fabricated evidence, then the identity of the refugee is thrown into disrepute. If a refugee’s only purpose is the refutation of false allegations, this taints the identity of the refugee and perpetuates a stereotype of the undeserving, economically avaricious asylum seeker, or as Razack would term it ‘the unworthy claimant’. This positioning detrimentally affects the claim and delegitimises the claimant’s use of court time.

The space of the court is an alienating venue. Research has shown that the permanent legal actors seem to have a legitimate presence; all others are passing through and have little capital within the court (See Good 2007; Johnson 2011). The position that the asylum seeker assumes lacks permanence. The immigration judge will have no further contact with the claimant post this stage; this is a relationship of transience. Bauman has discussed in relation to the stranger on the street, the art of ‘mismeeting’, whereby ‘[t]heir point is to see while pretending that one is not looking … Provoking no response, neither inviting nor justifying reciprocation; to

\textsuperscript{15} See Roger Zetter (2007).
attend, while demonstrating disattention. What is required is scrutiny disguised as indifference’ (Bauman 1993, 155). Although Bauman is talking of passers-by, the transience of the relationship seems familiar, with the judge looking over but failing to see the individual before them—this is a wilful disattention that determinedly will not engage with the claimant in any substantive sense. Bauman goes onto note that the crowd is ‘faceless’, a ‘formless aggregate in which individuality dissolves’... ‘replaceable and disposable’ (Ibid).

In studies carried out by researchers, the agglomerative effect on judges who make refugee determinations is that after repeated hearings they can fail to see the individuality of the asylum seeker, which may detrimentally impact on the provision of justice (Lustig et al. 2008–2009). The process of identification within court is a practice that is mediated by the intervening space between interlocutors; the court setting directly impacts on the identification and interpretation of the parties to the hearing. Stuart Hall’s conception of identification is described as ‘a process of articulation, a suturing, an over-determination not a subsumption—there is never a proper fit, a totality’ (Hall 2000, 17). Hall’s use of articulation, suturing, over-determination, and ‘non-subsumption’ of identity informs a metaphorical tracing, whereby the holograph of identity formations can touch the racialised and, I would add, gendered and homophobic space of the court. The judge is given the statement produced by the asylum seeker; additionally he or she is given relevant country information about the claimant. The country information contains facts and figures about the history, political climate and tensions, which may be either historical or ongoing. There is information about the demography and geography of the country alongside other facts pertinent to the making of a refugee claim. Broadly judges have had to rely on a diversity of sources (Pettitt et al. 2008, 188) ranging from Human Rights Watch and Amnesty International to, in the Australian context, the Spartacus Gay Travel Guide (Millbank 2002, 151).

What country reports fail to tell is what else the judge considers when making their decision regarding the way in which they identify the claimant. These added adjudicative influences form a part of the intervening space between judge and claimant. The judge views the claimant as other to him/herself. The claimant may be a different race, gender, sexuality, religion, may have disabilities, may have an illness; some of these identifying traits are other to the judge. Hall has written that ‘identities emerge within the play of specific modalities of power….a product of the making of difference and exclusion, rather than a sign of…a naturally occurring unity’ (Hall 2000, 17). The adjudicator is able to project into the asylum hearing qualities that have stereotypically been assigned to asylum seekers. This may not come out as overt or blatant discrimination, but it does come out as an imaginary projection of identity traits, perpetrated upon asylum seekers, who may not identify with these imaginary projections. The way in which the space of court can potentially resist the projection of identity is through the deployment of an ethics of unknowability. Unknowability could act as that which disintegrates or momentarily disrupts the assertion of identity.

For Levinas, the subsumption of the individual even in terms of witnessing or the possession of knowledge of another’s suffering is viewed as incorporation (Bell 2001, 162). Writing on Levinas, Vikki Bell notes, ‘although this taking in may
express itself through bodily sensations or movements, it is not suffering in oneself. Its exteriority cannot be interiorized. Levinas’ argument in ‘Useless Suffering’ is that one’s response to the suffering of others cannot be an attempt to share that suffering as if one were able to experience that same suffering’ (Ibid). Following Levinas, Bell notes ‘the challenge is to be able to respond without totalizing forms of incorporation that deny the alterity of the other, making the other the same as oneself, or making her part of an already written story’ (Bell 2001, 163).

The sense of being part of an already written story is incredibly pertinent to asylum claims and connects back to Razack’s formulation of the constructed asylum seeker as holding one of two positions, supplicant refugee or unworthy claimant. The process of claiming asylum has the potential to incorporate the claimant into an already written story, exacerbating their displacement from the centrality of their narrative, providing a judge with space for assumption and determination. Bauman has written with regards to experiencing strangers, ‘the more ‘strange’ the stranger is (the less knowledge I have of her), the less I am confident in my decision to assign her to a type’ (Bauman 1993, 149). The Refugee Convention acts as a template within which identity and thus assignment to a particular ‘type’ makes the stranger legally cognisable. In trying to make the stranger less strange they are written into a common narrative, a narrative that western refugee receiving states understand. Individuals are ascribed roles, helping to diminish anxiety around ‘alterity’, providing a specific and limited understanding of who the stranger is or is capable of being.

Levinas’s reliance on unknowability represents a desire to maintain the irreducibility of the other as opposed to a subsumption of the other. The other is never reduced to the ‘I’ and thus is never that which is already known. Levinas sets out his relationship and responsibility to the other in Totality and Infinity:

We name this calling into question of my spontaneity by the presence of the other ethics. The strangeness of the other, his irreducibility to the I, to my thoughts and my possessions is precisely accomplished as a calling into question of my spontaneity, as ethics. Metaphysics, transcendence, the welcoming of the other by me, is concretely produced as the calling into question of the Same by the other, that is, as the ethics that accomplishes the critical essence of knowledge (Levinas 1969, 33).

Levinas’s quest to know the other is brought about by the ‘spontaneity’ of response towards the other, an ethical and immediate duty, implying a boundedness to the stranger. The relationship that is at stake when negotiating this passage between self and other is ‘the site [of] both ethics and knowledge’. Levinas’s concern in knowing the other is that this runs the risk of purporting to understand the other as a totalised, and therefore, objectified subject. The unknowableness of the other renders their identity transformatory; it renders individuals as unreadable and thus un-objectifiable. Bauman has written that:

A truly anonymous Other is outside or beyond social space. Such another is not truly an object of knowledge – apart, at best, from a subliminal awareness that there is … potentially a human who could be an object of knowledge …
she is not human at all, since humans we know are always ‘specific’ humans, classified humans … The humans who inhabit that space do not have identities of their own, they derive identities from the classes to which they belong – or rather to which they have been assigned (Bauman 1993, 149).

The context for a claim to asylum is dependent upon these classifications, to assign, to compartmentalise, and to prove to which class a refugee belongs in order to make the strangeness a little less strange, and a little more readable within the confines of a court. Thus how do we simultaneously demand anonymity whilst having to engage with and manage legal classification? I tentatively address this by returning to the concept of *communicative legacy* via Levinas, considering how we recognise and engage with others.

Kogler notes, ‘Levinas’s work makes it clear that the other is metaphysically beyond being, is defined by infinity, is an individual which is unspeakable, beyond thematization, beyond objectification’ (Kogler 2005, 255). My concern regarding the invocation of the other as ‘metaphysically beyond being’ is that it has the potential to abstract the other to the point where they lack material form or substance. Metaphysicality annuls experience that manifests in physical actions upon the body in the form of rape, beatings, torture, verbal abuse and psychological scarring etc. The physical and psychological effects of these activities leave their own imprints. How can that intensity of physical experience be ‘beyond being’, beyond a conception of the known-ness of the individual? I do not wish to imply that the physical and emotional scars of persecution constitute the identity of an asylum claimant, but what is essential to bear in mind is that these incredibly real, corporeal experiences have the ability to shape identity and form an intrinsic part of what constitutes the refugee’s understanding of self. The disappearing of the scars and traumas of abuse, the disappearance of the individual, can have broader politically problematic consequences divesting certain individuals from their corporeal realities and experiences.

It may be of use to turn to an oft-quoted piece from Levinas regarding the turn towards the face of the other.

you turn yourself towards the other as towards an object when you see a nose, eyes and forehead, a chin and you can describe them. The best way of encountering the other is not even to notice the colour of his eyes, one is not in a social relationship with the other (Levinas in Ahmed 2002, 562).

For Levinas the other is rendered faceless in the encounter, their physical appearance does not or ought not to register. A problematic element of this passage turns on the dehumanising effect of seeing the face, nose and eyes of what we recognise to be another person and of failing to acknowledge the specificity of that person, potentially rendering the Other as inanimate/indistinct within that moment. Does this unknowing of the other lead to the same space of dehumanisation as defined in the refugee hearing, where insufficient information and lack of connection to the refugee helps to create an atmosphere conducive to dismissal?

Sara Ahmed’s engagement with Levinas provides a pathway for negotiating the terrain of self and other and develops a method for negotiating the demand for
anonymity whilst engaging with and managing the necessity for legal classification. Ahmed begins by referring to a concern with Cynthia Willett’s consideration of difference and particularity, she quotes Willet, who writes: ‘without the possibility of individual self expression, the Other is denuded of its speaking. Denuded of her accents, cries and lamentations the Other… is in her embodied specificity, effaced’. Ahmed’s concern with Willet’s reliance on narrative is that the expression of self through narrative implies a movement towards an understanding of the truth of self, which, for Ahmed, is inadequate. That ‘we can gain access to the concrete difference and embodied specificity of a particular other at the level of her individual self expression’ is not enough (Ahmed 2002, 561). For the Other, who is given the liberty and space to speak, this liberty is insufficient with regard to its ability to tell of the self.

Within a refugee hearing much emphasis is placed on the statement that the asylum seeker provided upon initially requesting refugee status. Although this statement can be backed up by external reports of the country, media reports on the state, testimony by expert witnesses, the most important piece of evidence is the initial narrative. A particular problem associated with these narratives, is that if a refugee recalls additional incidents after the statement has been taken and wishes to include these incidents in the testimony provided in court, there can often be a concern on the part of the judge as to the veracity of the material. Narrative as a method of codifying experience, and as the form which provides the truth of persecution bears more weight than it ought to, or is able to. Rather it may be of more use to accept that the refugee’s response to their statement will change as the asylum process is furthered and thus there is no need to deny the inclusion of these new experiences to their initial statement, thereby developing a communicative legacy.

Alternative modes of engagement, and modes of responding to, and conversing with others is an essential component for rewriting the relationship between interlocutors. Ahmed suggests, rather than focusing on the particular individual, that we focus on the particularity of the ‘modes of encountering others’ (Ibid). These ‘modes of encountering’ others provides an alternative conceptualisation of the way in which we turn to the ‘face of the other’. Levinas’s reason for turning to the face of the other draws on a rejection of the objectification of the individual, and a rejection that the face is representative of the individual; Ahmed asks, drawing on Levinasian subtext, ‘what is already at stake in allowing some faces to appear’? (Ahmed 2000, 146). In the appearance of and the turning to the face, the face is interpreted in light of its context—its sociality, construction, history, its effect and affect on the self and on others. Ahmed writes and I quote at length:

Communication then does not take place in the present, nor is it about presence. For in the encounter in which something might be said or heard, there are always other encounters, other speech acts, scars and traumas, that remain unspoken, unvoiced or not fully spoken or voiced. Particular modes of communication do not involve the rendering present of the other’s voice, precisely because they open an unfinished, unheard history, which cannot be fully presented, even if it is not absent. Such an ethics of communication
would allow what cannot be spoken or voiced in the present to be opened or
reopened, as that, which remains ungrasped and unrealized, as an approach
that is always yet to be taken (Ahmed 2002, 564).

When Ahmed writes ‘communication does not take place in the here and now’ she
displaces the importance of the moment of speech. What is said in that moment is
not regarded as absolute, nor declarative but as contingent, and as in relationship to
the past, present and future. Communication in this mode is uttered as that which
has the ability to be viewed as both objective and subjective in the space of the
moment. It is objective in that if we place the speech in the context of other speech
declarations that have been made, there may be a connection, a chronology, a
history, a pattern, from which this speech derives, but if we look at it subjectively
then this new speech is an intervention into the space of the court and a locating of
the Other.

Where Ahmed states the ‘particular modes of communication do not involve the
rendering present of the other’s voice, precisely because they open an unfinished,
unheard history, which cannot be fully presented, even if it is not absent’, there are
two important things that are at stake: Firstly, the response of the individual refugee
within an asylum hearing, to which I have already spoken; and secondly the broader
politics of asylum within global refugee production. The composition of the space
of engagement between two interlocutors is an essential site for a politics
underscored by an ethical imperative and an ‘unheard history’, wherein to develop a
communicative legacy. The premise of Iris Marion Young’s theory of asymmetrical
reciprocity is to help our understanding that an assumed reversibility of subject
positions is oppressive and subsuming. The reversibility of positions fails to engage
with the presence of ‘socially structured difference, which usually involves relations
of privilege and oppression’ (Young 1997, 346). The recognition of privilege and
power is absent from a reflexive consideration of the positioning of the interlocutors
in an asylum court and from the construction of the asylum system and Refugee
Convention leading to the legal imposition of stereotypical traits. The individual
asylum claimant can neither give a full rendering of the experience that has directly
lead to their claim for asylum, nor can they provide an narrative which outlines and
implicates the broader social, legal and political structures that perpetuate claims to
asylum.

The intervening space therefore between judge and claimant is filled with
histories and legacies that stretch beyond the intimacy of the encounter, but that
nevertheless form a part of the historical derivation of the dialogue. Through the
framework of the Refugee Convention, dwell the legacies of colonialism, the
excesses of neo-liberal democracy and economics, factors which perpetuate the
production of refugees. This broader narrative, which stretches beyond the court,
demands a wider responsibility to the other, based not on tenets of law, but on social
responsibility and a refusal to engage in exploitative behaviours. Massey has written
that ‘responsibility…derives from the relations through which identity is con-
structed’ (Massey 2004, 10). The positioning of refugee claimants and their identity
within the asylum system has been constructed by the legal context within which
they are enmeshed. In order to be a refugee, particular necessities are implicated:
persecution, violence, ongoing fear, such qualities are essential in order to bear the benefits of the *Convention*; But what is also implicit in this is the entrenching of the west/global north as saviour and the east/global south as victim. These *Convention* structural and ideological dictates influence the intimacy of the encounter between refugee and immigration judge, re-enforcing positions of saviour and victim. Moira Gatens writes, ‘we are responsible for the past not because of what we as individuals have done, but because of what we are’ she continues, ‘for just as the past continues in our present so is the distant also implicated in our here’ (Gatens in Massey 2004, 9–10).

The UK’s prior legacy of colonialism and its current positioning in the global economic order bears a direct responsibility for the creation of conditions that foster refugees. This does not just implicate the UK government as the bearers of responsibility; such an implication involves individuals such as immigration judges and the cases they will adjudicate on, and a wider public culpability and responsibility. The intimacy of the encounter between immigration judge and refugee must speak to a broader narrative beyond the individual refugee’s story and implicate wider narrative configurations of the refugee.

**Concluding Remarks**

The UK’s history and responsibility in the production of refugees is disappeared from the narratives presented in court. The detrimental effect this has is to foist the responsibility of refugee status back onto the individual claimant rather than broader networks of power. Massey posits that ‘If we think space/place in terms of flows and disconnectivities rather than territories…then what should be the political relationship to those wider geographies of construction’? (Massey 2004, 6). The UK’s role as coloniser, and its continued engagement in global neo-liberal economic practices, ought to imply a reciprocity of access to the UK, formulating a wider global responsibility to the social, political and economic spaces which the UK engages with. Such an understanding of UK responsibility requires a broader discursive framework upon which asylum would rest; it requires a new imagination of what territoriality, and citizenry annexed to territoriality means; and further, it implies that the narrative supplied by a refugee claimant must be supplemented with a broader social, historical and cultural understanding of the place of UK law, politics and economics in the history and production of global refugee flows and its subsequent management. This is a call not just to liberalize the way in which asylum and immigration is adjudicated on, but a request to see the asylum process in itself as problematic in terms of its foundational premise. The way in which the asylum system is administered, and the way it reifies the victim/saviour dichotomy, without a reflexive awareness of a broader social politics, needs to be fundamentally revised and underscored by an ethical imperative.

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