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# Ethical vulnerability analysis and unconditional hospitality in times of COVID-19: rethinking social welfare provision for asylum seekers in Scotland

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## Abstract

We deploy a novel and radical approach to vulnerability theory to investigate Scotland's response to asylum seekers' vulnerability during the COVID-19 pandemic and test Scotland's self-affirmation as a hospitable country. Our ethical vulnerability analysis enhances Fineman's vulnerability analysis by denationalising the vulnerable subject and locating her within our 'uneven globalised world'. We further enrich this fuller version of vulnerability analysis with insights from Levinas's and Derrida's radical vulnerability theory and ethics of hospitality. We demonstrate how our ethical vulnerability analysis enables us to subvert the hostile premise of migration laws and policies, and thus fundamentally redefine relationships between guests and hosts so that the host is compelled to respond to the Other's vulnerability. We argue that this hospitable impulse yields a generous and absolute commitment to progressive social welfare provision for asylum seekers, which brings Scotland closer to fulfilling its aspirations to be a hospitable host by welcoming the Other.

**Keywords:** social welfare law; vulnerability theory; ethics of hospitality; asylum seekers; COVID-19 pandemic; Scotland

## 1 Introduction

In April 2020, as the UK Secretary of State for Health warned that 'the [COVID-19] virus was at its "peak" in the UK' (UK Parliament, 2020), the asylum accommodation provider for Glasgow moved 300 asylum seekers into hotels where social distancing was impossible (Scottish Housing News, 2020). Such inhospitality in times of such acute vulnerability prompted us to deploy a novel and radical approach to vulnerability theory – ethical vulnerability analysis – to investigate Scotland's response to asylum seekers' vulnerability during the COVID-19 pandemic and test Scotland's self-affirmation as a hospitable country welcoming to others. A focus on Scotland is particularly apposite as it positions itself as a hospitable outlier in the face of a UK-wide hostile asylum policy. Our theoretical framework enhances Fineman's (thinner) vulnerability analysis (Fineman, 2008; 2010–2011) by denationalising the vulnerable subject and locating her<sup>1</sup> within our 'uneven globalised world' (Gear, 2013, p. 53). We further enrich this fuller version of vulnerability analysis (Gear, 2013) with insights from Levinas's and Derrida's radical vulnerability theory and ethics of hospitality, and make the point that Fineman and many other vulnerability scholars have overlooked these theories for far too long. We demonstrate how our ethical vulnerability analysis enables us to subvert the hostile premise of migration laws and policies, and thus fundamentally redefine relationships between guests and hosts so that the host is compelled to respond to the Other's vulnerability. We argue that this hospitable impulse yields a

<sup>1</sup>We use the pronouns 'her' and 'she' in respect of the vulnerable subject to differentiate this subject from the 'male' liberal subject.

generous and absolute commitment to progressive social welfare provision for asylum seekers, which brings Scotland closer to fulfilling its aspirations to be a hospitable host by welcoming the Other.

To this end, we construct our ethical vulnerability analysis by bringing fuller and radical vulnerability analyses in conversation with Levinas's and Derrida's ethics of hospitality to inject a more ethical and thus progressive impulse in vulnerability theory. We argue that our ethical vulnerability analysis reaches out to the other as it is equipped to respond to the vulnerability of those who are denied the resources they need to build their resilience. We delve into our ethical vulnerability analysis's relationship with politics to explore and demonstrate how our ethical vulnerability analysis renders migration laws and policies accountable to the ethics of hospitality and consequently responsive to the other's vulnerability. Next, we deploy our ethical vulnerability analysis to interrogate Scotland's hospitality towards asylum seekers, and more specifically social welfare provision for asylum seekers in the time of the COVID-19 pandemic – with a focus on accommodation. Before offering some concluding remarks, we show how our ethical vulnerability intervention can transform Scotland into a *radical* hospitable outlier so it can live up to its political promises.

## 2 Furthering vulnerability as a radically ethical theory: ethical vulnerability analysis

The language of vulnerability has become ubiquitous in migration laws and policies. Yet, as the construction of vulnerable groups of migrants – the so-called vulnerable-group approach – shows, this language has done little to improve the plight of migrants (Fitzgerald, 2010, p. 279; Mainwaring, 2016, p. 290). However, rather than refute the concept of vulnerability, we reclaim it by offering a multi-tier approach to vulnerability that anchors vulnerability analysis in the realities of our 'uneven globalised world'. Our ethical vulnerability analysis creates a dialogue between fuller vulnerability analysis (Grear, 2013) and Levinas's and Derrida's radical vulnerability theory to create a potent critical device to investigate and respond unconditionally to human vulnerability. We further inject Levinas's and Derrida's ethics of hospitality to buttress the ethical drive of our vulnerability analysis and to offer practical suggestions for policy change.

### 2.1 Challenging the vulnerable-group approach

Prevailing approaches to vulnerability attach the label 'vulnerable' to certain groups only. Proponents of the vulnerable-group approach expound that it does not negate the notion that vulnerability is universal – a notion that goes to the core of vulnerability theory (Fineman, 2008; Turner, 2006). They contend that this approach recognises that some of us are more vulnerable than others and thus in need of special protection (Tobin, 2015, p. 162; Mégret, 2008, p. 495). They further posit that the vulnerable-group approach makes the concept of vulnerability more fathomable and thus more useful (Levine *et al.*, 2004). We disagree with the proposition that the vulnerable-group approach offers a practical conceptualisation of vulnerability that enables it to serve as a protective device. We argue that this approach yields distorted versions of human vulnerability because its theoretical underpinning and instrumentalisation reconstruct the lived experience.

The vulnerable-group approach is grounded in liberal theory and so affirms the *invulnerable* liberal subject (Fineman, 2019, p. 355). As it upholds *invulnerability* as the norm, the vulnerable-group approach problematises vulnerability and consequently the vulnerable subject. Vulnerability is reduced to something entirely negative, something to deplore (Herring, 2011, p. 256), which obscures its generative dimension (Fineman, 2012, p. 96; Herring, 2011, p. 256). Importantly, this problematising extends to the inescapable dependency on others that comes with being vulnerable (Herring, 2011, p. 256). This rebuke of dependency is particularly acute in the case of migrants as the construction of asylum seekers and other 'unwanted migrants' as 'parasites upon the nation's hospitality' shows (O'Gorman, 2006, p. 52). Indeed, in addition to being invulnerable, the liberal subject is nationalised; this subject is firmly anchored in the bounded nation state – he is a (national) citizen.<sup>2</sup> As those

<sup>2</sup>We use 'he' to reflect the traditional conceptualisation of the liberal subject as male.

labelled vulnerable inevitably fail to meet the unachievable standards of the fictional liberal subject, they are stereotyped and stigmatised (Da Lomba, 2014, p. 344) as well as objectified and silenced (Tobin, 2015). With their agency negated, these persons are ‘dealt with’ by paternalistic powers and institutions (Butler, 2016, p. 25). Revealingly, ‘the term “vulnerability” too often serves to portray migrants in a negative light, as helpless victims’ (Atak *et al.*, 2018, p. 2).

Critically, the vulnerable-group approach is not the protective device that it purports to be. This approach is commonly instrumentalised to serve restrictive migration policies. For example, the categorisation of female trafficked migrants as vulnerable is frequently used to legitimise stringent border and migration measures (Fitzgerald, 2010, p. 279). Similarly, under the guise of protection against ruthless smugglers, pushback measures serve to keep ‘undesirable’ migrants out whilst concealing their vulnerability to these very measures (Freedman, 2018). This instrumentalisation of the vulnerable-group approach is also apparent in policy-makers’ decisions not to categorise certain groups as vulnerable. Tellingly, young male adult migrants are not categorised as vulnerable notwithstanding their undeniable vulnerability to migration policies (Sözer, 2019, p. 15).

## 2.2 Fuller vulnerability analysis

We posit that in contrast to the vulnerable-group approach, fuller vulnerability analysis – described as a ‘critical normative project’ (Gear, 2013, p. 42) – offers a potent device to recognise and respond to human vulnerability in all its complexities and diversity. Gear’s fuller vulnerability analysis builds on (thinner) vulnerability analysis in that it debunks the myth of the *invulnerable* liberal subject and replaces it with the human *vulnerable* subject (Fineman, 2008). Its rebuke of the fictional invulnerable subject is further apparent in its purpose. Fuller and (thinner) vulnerability analyses work towards resilience-building; they do not countenance invulnerability as an aim to be pursued (Fineman, 2010–2011, p. 269). However, and in contrast with (thinner) vulnerability analysis (Fineman, 2010–2011), fuller vulnerability analysis is grounded in the realities of our ‘uneven globalised world’ (Gear, 2013, p. 53), including migration. As it looks beyond the relationship between the state and its (national) citizens, fuller vulnerability analysis compels a rethink of how we look at and respond to the vulnerability and dependency of ‘others’.

Fuller vulnerability analysis conceptualises vulnerability in light of the human experience. Its understanding of vulnerability draws on Fineman’s (thinner) vulnerability analysis. It recognises that vulnerability is universal and constant (Fineman, 2008, p. 1); it acknowledges that we are *all* vulnerable at *all* times both as embodied (Fineman, 2008, p. 9) and socially embedded beings (Gear, 2013, p. 49). The theorisation of vulnerability as universal does not eschew the particular. Fuller vulnerability analysis recognises that we all experience vulnerability in different ways because we ‘have different forms of embodiment and also are differently situated within webs of economic and institutional relationships’ (Fineman, 2010–2011, p. 269). The COVID-19 pandemic, which has prompted the theoretical framing of this paper, acutely exposes the universal and particular dimensions of human vulnerability as we are all vulnerable to this virus, but in very different ways (Khunti *et al.*, 2020). In contrast with the vulnerable-group approach, the recognition of the particular does not essentialise the experience of the vulnerable subject – a risk associated with labelling populations as vulnerable (Tobin, 2015, p. 169). Fuller vulnerability analysis’s all-embracing conceptualisation of vulnerability is also apparent in its affirmation of its generative dimension. It is undeniable that vulnerability has negative traits, but it is also good (Herring, 2011, p. 256). Our vulnerability and resultant dependency on others carry ‘opportunities for innovation and growth, creativity and fulfilment. It makes us reach out to others, form relationships, and build institutions’ (Fineman, 2012, p. 96).

Whilst we espouse Fineman’s basic conceptualisation of vulnerability, we challenge the exclusionary paradox that lies at the core of her vulnerability analysis. Fineman’s theory rests on the premise that vulnerability is universal; yet, both her vulnerable subject and responsive state are shaped by the nation state. We concur with Fineman that vulnerability calls for a responsive state (Fineman, 2010–2011). The latter indeed plays a crucial role in the creation and distribution of resilience-building

resources. However, the state is only one actor among many, and complex power relationships mediate its (lack of) responsiveness to vulnerability within and beyond its borders. For this reason, we espouse Grear's fuller iteration of vulnerability analysis as it locates investigations into the 'systems of power and privilege that interact to produce the webs of advantages and disadvantages' (Fineman, 2008, p. 16) within our unequal, interdependent and interlocked world (Grear, 2013, pp. 52–56).

Crucially, fuller vulnerability analysis denationalises the vulnerable subject. Whilst Fineman rebukes the invulnerability of the vulnerable subject, she accepts his nationalised dimension. Her vulnerability theory is essentially concerned with the state–(national) citizen relationship. When it comes to non-citizens, Fineman suggests that the responsive state has a duty towards 'others to whom [the state] owes some obligation' and intimates that these 'others' may include 'non-citizens who are resident, long-term visitors, or those who have some other connection with the State which makes the state responsible for them' (Fineman, 2010–2011, p. 256). Who benefits from Fineman's responsive state is therefore contingent on the nation state's understanding of who belongs, which excludes 'unwanted migrants'. As it affirms the responsive state's immigration power, Fineman's vulnerability analysis has an inevitable exclusionary dimension – a dimension that weakens the claimed progressiveness of her theory. As we will show below, Levinas's theory of radical vulnerability denies the state this choice. The state is *obliged* and has no other option but to offer a warm and generous welcome to the Other.

As it denationalises the vulnerable subject and situates her within our *uneven* globalised world, fuller vulnerability analysis prompts a 'deeply ethical impulse' that empowers us 'to envision cooperations and solidarities across the divide and the asymmetry' of our globalised world (Radhakrishnan, 1996, p. vii) as it extends the reach of our emotional identification with others (Carens, 1996). Our ethical vulnerability analysis, however, goes further. Below, we engage with Levinas's and Derrida's radical vulnerability and the ethics of hospitality to deepen the ethical drive that comes with fuller vulnerability analysis. This deepening takes the form of a duty of hospitality owed to the Other – a duty of paramount significance in times of global pandemic.

### 2.3 Radical vulnerability analysis

We posit that Levinas's radical vulnerability analysis makes fuller vulnerability analysis an even more progressive device. It provides the transformative (philosophical) accountability that is so needed in times of crisis. Levinas's theory does so by forcing us to confront and respond to the vulnerability of the Other.<sup>3</sup> For this reason, Levinas's vulnerability analysis has a particularly valuable contribution to make to vulnerability theory, notably in relation to asylum seekers and other migrants.

Levinas adopts a phenomenological approach to vulnerability. He recognises that the self has a vulnerable body; to be more specific, he observes that she has biological needs – like eating. This initial observation, however, does not mean that Levinas's vulnerability analysis starts from the self. Quite the contrary: Levinas uses the self's vulnerability as an opening to be receptive to the vulnerability of the Other. He uses the self's biological needs as a way to interrupt the self-centric notion of the subject (Wurgaft, 2019, p. 558). Accordingly, for Levinas, 'to recognise the Other is to recognise a hunger' (Levinas, 1969, p. 75). Thus, food and eating not only become a signification of the vulnerable body, but they also represent 'the central modality of ethical encounter' (Wurgaft, 2019, p. 561). Consequently, in addition to appreciating the vulnerability of the body, Levinas's theory recognises the relational aspect of vulnerability. Levinas's understanding of vulnerability as both embodied and embedded resonates with tenets of vulnerability analysis (Perpich, 2020, pp. 208, 214). Yet, vulnerability theorists such as Fineman do not engage with Levinas notwithstanding the points of connection between his work and mainstream vulnerability theory. This lack of engagement with Levinas's work pervades Anglo-American legal theory and political philosophy (Fagenblat, 2020, p. 9; Houser, 2019, pp. 587–589). In general terms, this can be attributed to the analytical and Continental divide in philosophy, but there are also some more specific reasons of which two stand

<sup>3</sup>We have capitalised Other only when we specifically refer to the way Levinas uses Other to signify the moment that the self, the ego, has opened itself to the Other and is in an ethical relationship with the Other.

out. First, Levinas's highly abstract prose that draws heavily upon a religious (Jewish) experience is not easily accessible and translatable to specific situations (Fagenblat, 2020, p. 8). Second, Levinas's work on ethics offers something related to moral philosophers, such as Fineman, but simultaneously is also very different. What Levinas calls ethics does not belong in the field of moral philosophy, but rather deals with the metaphysics of meaning (Fagenblat, 2020, p. 10). Levinas's theory is for some too progressive and unachievable as Levinas's ethics is based on an absolute, radical and asymmetrical responsibility unlike most other vulnerability and ethical theories that are based on mutual recognition, reciprocity and symmetry (Breuer, 2020, p. 114). As Perpich reflects, while traditional ethical theories (including Fineman's) are seeking to optimise moral stability, Levinas, on the other hand, disrupts the status quo of our society (Perpich, 2020, p. 217). Below, we show how our ethical vulnerability analysis compels us to reimagine our relationship with the Other.

For Levinas, vulnerability lies in the inter-human relation – the encounter between the Other and the self. Critically, this encounter begets a duty towards the Other: a duty to welcome the Other. Levinas situates the vulnerable subject relationally in the face-to-face relationship to account for the vulnerability of the Other, but also the self. For Levinas, 'the face [of the Other] is the testimony of the suffering that grounds ethics' (Breuer, 2020, p. 100). To call upon responsibility towards the Other, Levinas situates the ethical encounter in the face of the Other and uses the naked face as a trope to instigate vulnerability that obliges responsibility (Levinas, 1989, p. 48). The nakedness of the face signifies that the self, when encountering the destituteness of the Other, has no other option but to respond to the needs of the person who is facing her (Levinas, 1969, pp. 245–256).

What makes Levinas's ethics of the face particularly valuable within the context of migration and welcoming the Other is that Levinas refers to the face within the context of making a 'higher' demand that cannot be ignored. The otherness of the Other consists of a command that emanates from the destitution of the face of the Other (Levinas, 1969, pp. 198–199, 245–246), meaning that the command of the Other cannot be ignored. The command that appears is an expression of the ultimate command 'you shall not kill' but discloses itself also in other forms, such as 'feed me' or 'shelter me', 'make room for me', 'share the world with me' or 'reduce my suffering' (Levinas, 1969, pp. 198–199). It is in these commands that we can detect Levinas's aversion of symmetry and, therefore, that we are in debt towards the Other. Through the notion of asymmetry, Levinas airs a strong critique against the social order that is based on the liberal protection of free will, autonomy and reason (Houser, 2019, pp. 588–589). Instead, Levinas proposes that, through an asymmetrical relationship whereby I am always there for the Other, another form of extreme responsibility emerges that not only guides the inter-human relationship, but also becomes the basis for the state and other institutions (Smith, 2019, p. 624) to act responsibly. Indeed, Levinas's ethics of the inter-human relation shapes the ethics of the state. As Mao confirms, Levinas prepares the ground for a new sociopolitical debate by, first, introducing the vulnerable subject and, second, the entrance of the third (*le tiers*) or the sociopolitical destiny of many others (Mao, 2020, p. 214).

The concept of the third signifies for Levinas the point that morality reaches beyond just the face of the one who faces the self but extends to all others – all humanity including the self. This awareness shows that Levinas extends responsibility and morality to those who are not present. Indeed, just listening to the demand of the one who faces me would mean excluding all the others. For Levinas, the idea that all the others – humanity – are incorporated in the demand of the other who faces me provides the structure of justice. As Cohen explains, for Levinas, humanity is 'the source of the call to justice, the demand for fairness, measure, quantification, and equality' (Cohen, 1998, p. xvi). Consequently, being-for-the-other is always already conditioned in the nation state (Levinas, 1998, p. 116; Bernasconi, 2019, p. 263). Hence, social spaces should welcome not only the Other, but also the other Others (Simmons, 2019, pp. 281, 285). Here, Levinas is expressing a critique against the idea of autonomy being a key characteristic of selfhood. The welcome offered to the Other is not a gesture that is freely given because of the autonomous position of the self. Rather, it is a preceding responsibility because we are in this world relationally and defined by kinship – two aspects that are making us all vulnerable (Simmons, 2019, p. 287). Critically, Levinas's approach unequivocally



denationalises the vulnerable subject as it makes us and our institutions responsible towards the Other irrespective of her position vis-à-vis the nation state.

Through the realm of *le tiers*, the third party – or the responsibility to not just one Other, but many Others – Levinas holds politics accountable to the ethical norm of an inter-human relationship centred on the idea of being there for the Other (Levinas, 1998, p. 159). Thus, Levinas's ethics of the individual shapes his understanding of institutional ethics. As Mao explains, Levinas situates vulnerability in the triangular relationship between the vulnerability of the subject, the vulnerability of the Other and the vulnerability of the third (Mao, 2020, p. 211). This relational and communal approach to vulnerability allows us to make the point that Levinas's ethics, although starting from the ethical encounter with the Other, can be extended into migration laws and policies.

We contend that Levinas's approach to vulnerability provides fuller vulnerability analysis with the ethical underpinning that it needs to render the political accountable to the vulnerable subject. By bringing politics into the relation with the third, Levinas's radical vulnerability analysis supports fuller vulnerability analysis's awareness and responsiveness of our *uneven* globalised world. Levinas compels us to recognise that we owe the Other – including the asylum-seeking Other – an unconditional welcome, which injects a much-needed ethical element into the political debate around the meaning and praxis of asylum. There is an explicit call from Levinas that any state institution – including the law – is accountable to the responsibility of the one and all the others (Levinas, 1998, p. 159). Levinas is clear that although it may be more obvious to be responsible to the one who is close to me, justice can only be justice 'in a society where there is no distinction between those close and those far off' (Levinas, 1998, p. 159). The asymmetry that is brought about in proximity – the self being responsible for the Other – also plays an important role in bringing about justice in the political system – or the state being responsible for Others.

Critically, the duty owed to the Other is never fulfilled and can always be perfected (Levinas, 2001, p. 206). Consequently, for Levinas, justice requires that the responsible state questions itself when faced with the ethical encounter; self-critique is indeed an important part of an ethico-political task (Simmons, 2019, p. 293). Legislation is therefore something that is unfinished; it should remain open and receptive for betterment (Levinas, 2001, p. 206). It follows that Levinas's vulnerability theory buttresses the self-reflective dimension of the *critical normative project* that is fuller vulnerability analysis (Gear, 2013, p. 42). Thus, within the context of migration, Levinas's vulnerability analysis offers the basis from which to subvert the host–guest relation – a relation that goes to the core of migration policies – so the state has a responsibility to welcome asylum seekers and other migrants as if they are the hosts. In order to fully understand this premise, it is important to unpack the notion of hospitality in the work of Levinas and one of his main interlocutors, Derrida.

### 3 Making vulnerability analysis ethical: Levinas's and Derrida's ethics of hospitality

According to Derrida, Levinas's welcoming of the face can be interpreted as an act of hospitality (Derrida, 1999, p. 21). He points to Levinas's use of *la porte* (the door) as a trope for hospitality (Derrida, 1999, p. 26). For Derrida, the open door signifies reaching out to the symbols of hospitality: 'with one's hand held out, addressing oneself to the Other so as to give him something to eat or drink' (Derrida, 1999, p. 26). However, for Derrida, the open door also represents the welcoming of the infinite responsibility towards the Other, which stands for justice (Derrida, 1999, p. 23). The relationship with the Other is not just an abstract relationship that exists outside the lived world experience. Quite the contrary, for Levinas, being requires sharing the world or indeed to offer hospitality (Levinas, 1969, p. 156). Opening the home to hospitality is a sign of what is meaningful in life.

However, as Derrida shows, hospitality is a rather ambiguous concept. Its ambivalence is already contained in the etymological roots of the Latin word *hostis*, which includes the words 'inviting master' and 'invited guest', but also refers to hostility and the enemy. Reflecting on the shared Latin root for host and hostility, Derrida uses the word *hosti-pitalité* to represent this ambiguity (Derrida, 2001, p. 7). He critiques the idea that when welcoming the foreigner into the country, there is already a

requirement that she speaks the language of the country. If the foreigner speaks the language and shares the culture of the host, Derrida questions whether, in these circumstances, it is still appropriate to speak about asylum and hospitality (Derrida, 2000, pp. 23–25). To unpack this paradox further, Derrida makes a distinction between hospitality and absolute or unconditional hospitality. As Derrida explains, hospitality entails a difference between the foreigner and the absolute other. While the foreigner is given a name, a family and status, the absolute other is deprived of such ‘privilege’. When an absolute other arrives and is welcomed and given an immigration status, the new arrival is not only recognised by the ‘foreigner’s rights’; she also has to fulfil the obligations that accompany these rights (Derrida, 2000, pp. 23–25). Once labelled, the other ceases to be an absolute other who is welcomed without conditions. Instead, she is offered what Derrida calls conditional hospitality.

From a Levinasian and Derridean perspective, the problem with the current migration laws – what Derrida calls hospitality laws – is that they sanction and restrict hospitality. Typically, hospitality laws refuse entry to certain others and place conditions on the entry and sojourn of other others. The moment unconditional hospitality is turned into migration laws, a common space is being created with its own rules and norms that no longer offer unbounded hospitality to the guest (Dufourmantelle, 2013, p. 15). A hostile environment is thus created the moment the guest is assigned a label such as asylum seeker or refugee. The latter negates her ‘proper’ name and makes her invisible so that her face can no longer express a command to offer a home. As Derrida further unpacks the paradox arising from the distinction between conditional and absolute or unconditional hospitality, he points out that welcoming the guest also means to differentiate between the foreigner and the absolute Other. Indeed, unconditional hospitality ‘breaks with the law of hospitality as right or duty, with the pact of hospitality’ (Derrida, 2000, pp. 25–27). In other words, for unconditional hospitality to happen, the door must be opened not only to the other who is given an immigration status, but also to the anonymous other (Derrida, 2000, p. 25). The absolute foreigner, the one with no status, is offered a shelter and a home, without having to fulfil duties in exchange for hospitality (Derrida, 2000, p. 25). Derrida is thus arguing that for hospitality to be meaningful from the perspective of the vulnerable, ‘the law of hospitality commands a break with hospitality by right, with law of justice as rights’ (Derrida, 2000, p. 25). This reinforces Levinas’s idea that hospitality is allowing the Other to come into our own being. What makes Derrida and Levinas’s theory so compelling for transforming migration laws into hospitality is that they theorise from the experience of the vulnerable other.

As we deploy fuller and radical vulnerability analyses together with the ethics of hospitality to critique and transform migration policies and laws, it is important to discuss their relationship with politics. Unpacking this relationship is necessary because we disagree with the critique that radical vulnerability analysis informed by Levinas’s and Derrida’s ethics of hospitality, and thus our ethical vulnerability analysis cannot be translated into an affirmative politics of change (see e.g. Ferrarese, 2016, pp. 225–226).

Critically, Levinas’s theory is not just about introducing the ethical into the political; it makes the political accountable by the ethics of everyday experiences. This allows the political to become a form of resistance and a space in which to act against oppression (Critchley, 2007, p. 103). Levinas’s theory requires that migration laws and social justice must respond to the demand of the migrant before she even has uttered a word. In other words, migration laws must be based on the ethical principle of an ‘unconditional’ welcome before the migrant knocks at the state’s door. As Pugliese writes in relation to asylum seekers, there is a non-negotiable responsibility emanating from Levinas’s idea of ethics as first philosophy (Pugliese, 2011, pp. 24, 30). Vulnerability provokes a sense of responsibility and a requirement to act that cannot be avoided; politics *must respond* to the vulnerable. From a Derridean perspective, there can only be ‘true’ or unconditional hospitality when the radical vulnerability of the Other is welcomed to such an extent that the distinction between hosts and guests disappears (Cheah, 2013, p. 70).

This means that not only the ‘guest’ is vulnerable, but, very importantly in Derrida’s unconditional hospitality, the host is also vulnerable towards the guest as the host must open her house to any stranger (Cheah, 2013, pp. 71–72). This preparedness to be vulnerable on the part of the host requires an

alienation from the home, the nation state and sovereignty (Derrida, 2003, p. 129). However, while Derrida is calling for unconditional hospitality, based on the above observation, it is also clear that from a practical viewpoint, this is impossible to achieve in political and legal terms. Derrida argues that there can be no choice between conditional and unconditional hospitality as the two concepts exist together in paradoxical relations. It may seem that Derrida is asking the impossible, as he argues that migration laws must use the aporia between conditional and unconditional hospitality. However, we follow Zaccaria's suggestion that this aporia consists of finding a new political and juridical climate that transforms the welcome of the Other from visitation to invitation (Zaccaria, 2013, pp. 182–184). As we posit in the next section, this act of invitation must be expressed in and experienced through progressive social welfare policies. Critically, our ethical obligation towards others calls for generous and asymmetric responses to their vulnerability that go beyond enabling their survival – living is not surviving. Consequently, in addition to subverting relationships between hosts and guests, the proposed social welfare framework reassesses the relationships between ethics and the political as it renders the political accountable to the demands of the ethics of hospitality.

#### 4 Interrogating Scotland's hospitality towards asylum seekers

We deploy our ethical vulnerability analysis to ask whether Scotland has seized upon the momentous moment that is the COVID-19 pandemic to commit fully to the Other. We interrogate Scotland's (in) hospitality towards its asylum-seeking guests and investigate whether the pandemic has signified a hospitable shift. We focus our enquiry on welfare provision for asylum seekers in Scotland and pose two interrelated questions: What does welfare provision in the time of COVID-19 tell us about the relationship between the Scottish host and its asylum-seeking guests? And does it enable Scotland to uphold its duty of hospitality towards the asylum-seeking Other?

Our enquiry takes place within the context of Scotland's self-positioning as a hospitable outlier against the backdrop of the UK's hostile environment. It is important to acknowledge from the outset that the UK's present constitutional settlement makes it impossible for asylum seekers in Scotland to escape (fully) the UK-wide draconian asylum laws and policies; asylum and immigration are indeed matters reserved to the UK parliament.<sup>4</sup> Asylum includes asylum policy, the asylum process and refugee resettlement programmes, as well as asylum support and accommodation. Although other critical services such as health care, social work and education are devolved to the Scottish parliament, it remains the case that Scotland's hospitality laws are in the main forged at the UK level. With this in mind, we first consider how the UK's hostile environment has problematised social welfare for asylum seekers. We then investigate Scotland's hospitable claims with a focus on asylum accommodation and, more specifically, responses to asylum seekers' accommodation needs during the COVID-19 pandemic.

##### 4.1 The UK's hostile environment and the problematising of social welfare for asylum seekers

Asylum and immigration laws and policies have an inbuilt hostile dimension as they seek to control and exclude the 'other'; they are fundamentally host-centred. As Derrida compellingly argues, these laws and policies inevitably negate unconditional hospitality as the host unilaterally sets out the requirements that the Other will have to satisfy to be 'welcomed' into the host's space (Derrida, 2000). Increases in the number of asylum seekers in the UK in the late 1980s and early 1990s coupled with the 1990s economic recession yielded a policy shift that marked the onset of today's UK's (even more) hostile environment (Mulvey, 2010). Since then, the problematising of asylum seekers – epitomised by the construction of the 'bogus asylum seeker' (Bales, 2013, pp. 435–436) – has served to justify hospitality laws that demarcate asylum seekers from national citizens. This inhospitality paradigm makes for policies that are desensitised to asylum seekers' vulnerability and dependency on *national* resources, and closely entwine social welfare for asylum seekers with immigration control. This

<sup>4</sup>Scotland Act 1998, Sched. 5, Reserved Matters, s. B6. Immigration is also a reserved matter (*ibid.*).



entanglement feeds off the pull-factor rhetoric that associates welfare provision for asylum seekers and other migrants with increased immigration. This has caused welfare provision for asylum seekers to be highly contested (Fox O'Mahony and Sweeney, 2010, p. 295). Following successive restrictions to welfare provision,<sup>5</sup> the construction of asylum seekers as 'undeserving others' was cemented by the Immigration and Asylum Act 1999 ('the 1999 Act').<sup>6</sup>

The 1999 Act, which is still in force, excludes asylum seekers from mainstream welfare benefits as persons 'subject to immigration control'.<sup>7</sup> In addition to introducing a separate welfare scheme for asylum seekers – the asylum support system<sup>8</sup> – the 1999 Act established the UK's compulsory dispersal of asylum seekers.<sup>9</sup> The UK's asylum support and dispersal policies have played a key part in enabling its hostile environment and its treatment of asylum seekers as 'parasitic guests' whose vulnerability and dependency place undue burdens on national resources and render the UK guest more vulnerable. The relationship between the asylum-seeking guest and the UK host is thus envisaged as a relationship between parasite and reluctant host, which antagonises their respective vulnerability with far-reaching consequences for asylum seekers' participation in the mobilisation and distribution of social welfare.

Support for asylum seekers is in the form of financial support and/or accommodation. The asylum support system provides two main packages: one for asylum seekers who have not received a final decision or have an appeal pending (Section 95 support)<sup>10</sup> and one for asylum seekers who have been refused asylum (Section 4 support).<sup>11</sup> Temporary support may be provided to asylum seekers awaiting a decision on their application for Section 95 support.<sup>12</sup> All support schemes require that applicants be destitute or likely to become destitute.<sup>13</sup> Asylum seekers are considered destitute when they do not have and cannot obtain adequate accommodation, food and other essential items.<sup>14</sup> Cohen compellingly observes that the level of support granted to asylum seekers constitutes 'a qualitative leap in the link between welfare and immigration status' as it reduces 'assistance to asylum-seekers to a form of Poor Law' (Cohen, 2001, p. 24). They 'receive welfare support, which amounts to less than a third of the weekly spend of the poorest 10% of British citizens' (Mayblin and James, 2019, p. 375). Tellingly, calls for an increase in asylum support payments in line with that of universal credit<sup>15</sup> in the face of the COVID-19 pandemic were met with a feeble response on the part of the UK government. The latter agreed to an increase, but the increase remained much lower than for mainstream benefits (Scottish Refugee Council, 2021b). Asylum seekers are thus left to survive below the subsistence level (Mulvey, 2010, p. 441) and exposed to the risk of destitution, which is compounded by their being denied the right to work.<sup>16</sup> The prospect of facing destitution is heightened in the case of refused asylum seekers as Section 4 support is construed as a short-term mechanism for people who must leave the UK (Bloom, 2015, pp. 77–96). It follows that asylum support cannot be construed as an act of hospitality within the Levinasian and Derridean understanding. It is not instrumental in opening the door to asylum seekers; rather, asylum support merely provides these 'parasitic guests' – if at all – with resources to survive rather than cohabit with their UK hosts.

<sup>5</sup>Welfare provision for asylum seekers was initially restricted by the Asylum and Immigration Appeals Act 1993 and the Asylum and Immigration Act 1996.

<sup>6</sup>Immigration and Asylum Act.

<sup>7</sup>*Ibid.*, s. 115(9).

<sup>8</sup>*Ibid.*, Part 6.

<sup>9</sup>*Ibid.*

<sup>10</sup>*Ibid.*

<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid.*, s. 98.

<sup>13</sup>*Ibid.*, s. 95(1) and (3) and Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, SI 2005/930, Reg. 3(1)(a).

<sup>14</sup>Immigration and Asylum Act 1999, c. 33, s. 95(3).

<sup>15</sup>Universal credit is a means-tested mainstream social benefit designed to assist eligible persons with their living costs.

<sup>16</sup>Asylum seekers can only apply for permission to work if they have waited over twelve months for an initial decision on their asylum claim or for a response to a further submission for asylum and are not considered responsible for the delay in decision-making (Immigration Rules, Part 11B, para. 360).

The problematising of asylum seekers' vulnerability and dependency is further manifest in the UK's dispersal policy. Entangled with the restrictive asylum welfare regime, this policy plays a part in the UK's exclusionary system of control (Weber, 2012). Revealingly, the rhetoric that accompanied the introduction of the UK's dispersal policy equated the provision of asylum accommodation to a burden that had to be spread across the UK (Darling, 2016). Thus, enforced dispersal further entrenches asylum seekers' treatment as 'parasitic guests' as it evidences the UK host's unwillingness to share its space with them.

#### 4.2 Social welfare for asylum seekers in Scotland: asylum accommodation and the COVID-19 pandemic

Scotland's *New Scots Refugee Integration Strategy 2018–2022* ('the New Scots Strategy') epitomises its positioning as a hospitable outlier as it sets out the country's vision 'for a welcoming Scotland where refugees and asylum seekers are able to rebuild their lives from the day they arrive' (Scottish Government *et al.*, 2018, p. 10). Yet asylum seekers do face inhospitality in Scotland. Taking asylum accommodation as our focus, we show that asylum seekers remain 'parasitic guests' in Scotland and that the COVID-19 pandemic has (to date) failed to reverse – or even curb – the problematising of welfare provision for asylum seekers in Scotland.

The vision that underpins the New Scots Strategy envisages the status of guest as a transitory phase to 'hosthood'; the New Scots Strategy aims to support Scotland's asylum-seeking and refugee guests to become Scottish hosts. The breadth of Scotland's welcome to refugees and asylum seekers – a welcome that extends to asylum seekers who have been refused asylum but remain in Scotland (Scottish Government *et al.*, 2018, p. 11) – suggests a strong hospitable ethos that is capable of challenging the UK hostile environment. However, we posit that Scotland's hospitality remains fundamentally conditional and consequently inevitably exclusionary.

We attribute the conditional nature of Scotland's welcome to the UK's present constitutional settlement that places Scotland within the reach of UK's hospitality laws and hostile environment. However, we also contend that Scotland's understanding of what it means to be hospitable is problematic. The term 'New Scots' evokes a radical ethical turn in Scotland's approach to hospitality that will enable Scotland's asylum-seeking guests to become Scottish hosts. The door, however, is not as open as the image of the 'New Scot' first suggests. Indeed, the New Scots Strategy (implicitly) concedes that hospitality is conditional as it notes that 'there is a distinction [between asylum seekers and refugees] in UK immigration legislation, which means they have different rights and entitlements' (Scottish Government *et al.*, 2018, p. 11). Therefore, Scotland's hospitality is only extended – one might say can only be extended – to those 'guests' who satisfy the requirements of UK immigration and asylum laws. For others, Scotland's door is likely to remain ajar – if not shut. For example, under current hospitality laws, asylum seekers who have been refused asylum but remain in Scotland cannot become 'New Scots' because of their immigration status. Whilst it is true that Scotland has attempted to temper the hostility these asylum seekers experience through the exercise of devolved powers,<sup>17</sup> it is also true – as we note below – that their status as 'parasitic guests' has been affirmed by Scottish courts.<sup>18</sup> Research on destitution and asylum in Scotland conducted in 2012 starkly observes that 'refused asylum seekers will continue to be destitute and homeless until the rules are changed, relying on voluntary and charitable support, friends and communities to meet their basic needs for survival, sometimes for years' (Gillepsie, 2012, p. 56). To date, the necessary changes have not occurred and asylum seekers in Scotland and other UK nations continue to face the prospect of destitution. Moreover, we posit that the notion of conditional hospitality is also embedded in Scotland's and, to be more precise the Scottish government's, plans should Scotland gain devolved powers in matters of immigration and

<sup>17</sup>For example, people who have been refused asylum remain entitled to free secondary health care on the same terms as any other ordinary resident, which is not the case in England.

<sup>18</sup>*Ali (Iraq) v. Serco* [2019] CSOH 34; and *Shakar Omar Ali against (1) Serco Limited, (2) Compass Sni Limited and (3) The Secretary of State for the Home Department* [2019] CSIH 54.

asylum or become independent. For example, the Scottish government put forward the idea of a Scottish visa as part of a wider call for devolved immigration powers (Scottish Government, 2020). Yet visas can be said to epitomise conditionality as they indicate ‘which migrants are seen as “desirable”’ (Czaika and De Hass, 2017, p. 902). It follows that Scotland’s ambition is one of greater conditional hospitality rather than unqualified welcome. Its hospitable vision does not challenge the host-centred bias that goes to the core of hospitality laws, thereby leaving Scotland’s ‘unwanted guests’ exposed to inhospitality.

The COVID-19 pandemic reveals the inherently universal nature of vulnerability, ours and that of the Other, and underscores the unevenness of our globalised world. As such, it offers a momentous opportunity to transform our relationship with the Other and tackle the world’s asymmetry. Yet, the COVID-19 pandemic has not signified a hospitable shift in Scotland as the asylum accommodation ‘crisis’ acutely demonstrates. Rather, the pandemic lays bare the chasm between Scotland’s self-depiction and vision as a hospitable host and the reality of asylum seekers’ everyday lives, as the tragic events of June 2020 powerfully show. On 26 June 2020, Badreddin Abadlla Adam was shot dead by police after he stabbed six persons in an incident at the Park Inn hotel in Glasgow city centre. Mr Abadlla Adam and other asylum seekers had been moved by Mears – the asylum accommodation provider – to closed hotels because of the COVID-19 pandemic restrictions (Qureshi *et al.*, 2020). Below we stress that the move took place notwithstanding repeated concerns about the use of hotels for people in the asylum system (Alderson, 2020). This tragedy has exposed deep flaws within the asylum support system.

In 2018, 10 per cent of the UK’s asylum population was accommodated in Glasgow, Scotland’s sole dispersal area.<sup>19</sup> Asylum accommodation is a reserved matter and an integral part of the UK’s hostile environment. The UK government’s approach to accommodation for asylum seekers reflects its construction of asylum seekers as ‘parasitic guests’. Dispersal is on a no-choice basis – something the UK government’s website makes perfectly clear: ‘You cannot choose where you live. It’s unlikely you’ll get to live in London or south-east England’ (UK Government, 2021). The dispersal policy was never conceived of with asylum seekers’ vulnerability in mind and was never intended to operate as a resource-building mechanism. Asylum policy and legislation construe accommodation as a roof above asylum seekers’ heads; it is not a ‘home’. Asylum accommodation is not about sharing the UK host’s space and co-habiting with asylum seekers; it is about enabling survival without ‘taking the risk’ of ‘deparasitising’ the latter’s status. Accommodation is temporary and its transient nature is intensified in the case of asylum seekers whose claims have been refused – something that evictions starkly expose. In the summer of 2018, Serco, which had been contracted by the UK Home Office to provide asylum accommodation, adopted a new practice of changing locks – the so-called ‘Move On Protocol’ – which enabled it to evict asylum seekers whom it considered had no continuing entitlement to accommodation without court process. Asylum seekers who have received a negative asylum decision are only eligible for Section 95 support for twenty-one days.<sup>20</sup> They may apply for Section 4 support if they are destitute and satisfy a range of conditions. They must, *inter alia*, show that they are taking steps to return to their country of origin as they no longer have the right to remain in the UK.<sup>21</sup> The ‘Move On Protocol’ was unsuccessfully challenged in the Scottish courts. Upholding a first instance decision,<sup>22</sup> the Inner House of the Court of Session held that eviction without a court order was not unlawful under the common law nor under Articles 3 (prohibition of torture, inhuman or degrading treatment) and 8 (right to respect for private and family life) of the European Convention on Human Rights.<sup>23</sup> The Court’s reasoning is consonant with the construction of asylum seekers as ‘parasitic guests’. The judgment underscores that ‘[t]he agreement under which [the asylum seeker]

<sup>19</sup>In September 2019, there were about 5,000 asylum seekers in Glasgow (Migration Scotland, 2019).

<sup>20</sup>Asylum Support (Amendment) Regulations 2002, SI 2002/472, Reg. 3.

<sup>21</sup>Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005, SI 2005/930, Reg. 3.

<sup>22</sup>*Ali (Iraq) v. Serco* [2019] CSOH 34.

<sup>23</sup>*Shakar Omar Ali against (1) Serco Limited, (2) Compass Sni Limited and (3) The Secretary of State for the Home Department* [2019] CSIH 54.

occupied the property made clear that her occupancy was temporary only, for the limited duration of the period during which her asylum claim was being assessed'.<sup>24</sup> It further emphasised that 'occupancy was precarious, in the absence of any obligation to pay rent'.<sup>25</sup>

Enduring concerns over accommodation standards offer further evidence of asylum seekers' treatment as 'parasitic guests'. For example, families should normally be provided with self-contained accommodation (UK Home Office, 2021). Yet, in practice, families with small children can stay in hostel-type accommodation and some lone-parent families may be housed with unrelated families, though nuclear families are normally kept together (Refugee Council, 2021). 'Asylum accommodation has been repeatedly criticised for failing to provide security, respect for privacy and basic levels of hygiene and safety' (Refugee Council, 2021). Commenting on asylum accommodation standards, the House of Commons Select Committee on Home Affairs stated that they were 'hugely disappointed that the Government ha[d] not taken up the Committee's recommendations on improving the standards of accommodation' (House of Commons, 2018, p.). Consequently, in addition to facing 'homelessness' in the sense of being 'without shelter', asylum seekers can remain 'homeless' in the sense that the nature of the shelter provided does not satisfy the criteria of 'housing' and is not likely to be conducive to feelings of 'home' (Fox O'Mahony and Sweeney, 2010, p. 296).

Across the world, the COVID-19 pandemic is rendering us all more vulnerable. Yet this reality has not prompted a reassessment of asylum seekers' characterisation as 'parasitic guests'. The pandemic has not been seized upon as a 'Levinasian moment' that brings UK hosts closer to their asylum-seeking guests so they feel obliged to take up responsibility and offer shelter. Quite the contrary – the pandemic has dramatically exposed the persisting failings and ensuing inhospitable nature of the UK asylum accommodation system. In Scotland, the decision of the private accommodation provider (Mears) to move asylum seekers with no recourse to public funds from their 'home' to unsuitable hotel accommodation exemplifies the UK's asylum accommodation system's unresponsiveness to asylum seekers' vulnerability. As UK-wide and Scotland-specific public health campaigns placed growing emphasis on the need to socially distance, asylum seekers were moved to accommodation that did not allow for social distancing (Qureshi *et al.*, 2020, pp. 22–24). Furthermore, these 'en masse' moves took place without any assessments of asylum seekers' particular vulnerabilities (Christie and Baillot, 2020). Dispersals to Glasgow were eventually suspended to assist Mears to source suitable accommodation for asylum seekers in hotels (Bulman, 2020). The fact that private companies running asylum accommodation are only accountable to the UK Home Office, and not to local authorities and other service providers, has been identified as a major problem (Scottish Refugee Council, 2021a).<sup>26</sup> The fact that the UK government's decision to privatise asylum accommodation in 2010 was not brought about by the need to fix problems, but by its desire to cut the budget of the then United Kingdom Border Agency (Darling, 2016, p. 489) explains why privatisation was not accompanied by a rethink of asylum accommodation, including a reassessment of the relationships between local authorities in dispersal areas, private accommodation providers and the UK Home Office. Tellingly, in April 2021, the UK Home Office resumed evictions of refused asylum seekers after a pause of almost one year because of the COVID-19 pandemic (Taylor, 2021). This decision is currently being challenged in the English High Court (Taylor, 2021). Unsurprisingly, the UK and Scotland's failure to 'grab' the pandemic as a hospitable catalyst is not peculiar to Scotland and the UK. For example, 'asylum seekers who were brought to the Australian mainland from offshore detention [centres] for medical treatment' during the pandemic were placed in crowded hotel accommodation with no opportunities for physical distancing (Shakespeare-Finch *et al.*, 2020, p. 665). Moreover, asylum seekers and refugees on temporary visas were excluded from the Australian government's financial aid package to support people during the COVID-19 pandemic (Shakespeare-Finch *et al.*, 2020, p. 665). Similarly, '[t]he German

<sup>24</sup>*Ibid.*, para. 46.

<sup>25</sup>*Ibid.*

<sup>26</sup>The New Scots Strategy underscores the need to strengthen relationships between local authorities, private accommodation providers and the UK Home Office (Scottish Government *et al.*, 2018, p. 31).

Government's overall management of the pandemic did not consider marginalised groups, such as asylum seekers and refugees' (Tollarek *et al.*, 2020, p. 3). The same authors observed that '[t]hese groups were hardly covered by the national pandemic plan, except for a general (and questionable) notion that there might be 'non-compliance due to cultural differences' (*ibid.*). They also pointed out that 'mass quarantine [of asylum seekers and refugees] in collective accommodation as a response to the COVID-19 pandemic was legally, ethically and epidemiologically highly questionable' (*ibid.*, p. 4).

The realities of asylum accommodation in Scotland cast doubt on its hospitality and ability to respond to asylum seekers' vulnerability. It is certainly the case that in the absence of devolved powers over asylum support, and more broadly over the whole asylum process, Scotland can only hope to mitigate the effects of the UK's hostile environment. Whilst recent events paint a bleak picture, it is also true that there have been attempts to make Scotland (more) hospitable. For example, research shows that Glasgow was the most successful dispersal area in overcoming initial hostility towards asylum seekers, through community preparation and information sharing that brought together integration networks, local authority teams and third-sector groups (Darling, 2016, p. 493). The Scottish government, with multisectoral support, has called upon the UK government to discharge its duties towards asylum seekers (Campbell, 2019) in line with the hospitable vision set out in the New Scots Strategy – also a multisectoral effort. The Scottish government has also sought to use its devolved powers to expand asylum seekers' partaking in the redistribution of welfare. For example, all refused asylum seekers in Scotland have access to free NHS secondary health care,<sup>27</sup> which is not the case in England.<sup>28</sup> During the COVID-19 pandemic, the Scottish government has provided funding to ensure that all those who are street homeless are accommodated, including refused and destitute asylum seekers (Christie and Baillot, 2020). This is not to say that Scotland should not be held accountable for the exercise of its devolved powers. However, it remains vital that the UK government responds to the realities yielded by the present constitutional settlement and the asylum-related policies it has devised. Critically, a lack of Home Office direct funding to local authorities and services in recognition of their status as dispersal areas continues to hamper the deployment of a vulnerability-sensitive approach to devolved resilience-building services for asylum seekers in Scotland such as education, support for asylum seekers with community care needs and families who are not eligible for Home Office support<sup>29</sup> and support for unaccompanied asylum-seeking children.<sup>30</sup> In the next section, we explore how our ethical vulnerability analysis can transform Scotland's relationships with asylum seekers so that Scotland can aspire to become a radical hospitable outlier.

## 5 Transforming Scotland into a radical hospitable outlier

Asylum seekers' lived experience in Scotland reveals an everyday that shakes Scotland's self-depiction as a hospitable country to the core and challenges its ability to make its welcoming discourse a reality for its asylum-seeking guests. We attribute Scotland's struggle to open its door to asylum seekers and respond to their vulnerability to its understanding of what it means to be hospitable and to the reach of the UK's hostile environment. Against this inhospitable backdrop, we argue that the COVID-19 pandemic provides a momentous opportunity – a Levinasian moment – that brings hosts face to face with guests and forces hosts to reflect critically on humanity – theirs and their guests' – and to reconsider their responses to their guests' vulnerability.

<sup>27</sup>In Scotland as well as Wales, refused asylum seekers are entitled to free secondary health care on the same terms as any other ordinary resident.

<sup>28</sup>In England, only those refused asylum seekers who receive Section 4(2) support from the Home Office or Section 21 support from a local authority or support under Part 1 (care and support) of the Care Act 2014 are entitled to free secondary health care.

<sup>29</sup>Respectively Social Work (Scotland) Act 1968, s. 12 (general social welfare services of local authorities) or s. 13a (residential accommodation with nursing); and Children Act (Scotland) 1995, s. 22 (promotion of welfare of children in need).

<sup>30</sup>Children (Scotland) Act 1995, ss. 29 (after-care) and 30 (financial assistance towards expenses of education or training and removal of power to guarantee indentures, etc.).



We posit that our ethical vulnerability analysis prompts a fundamental paradigm shift in migration laws and policies that humanises them as they become entrenched in the lived experience and the realities of international migration. The proposed theoretical framework does so by subverting the rapport between ethics and the politics of migration, which in turn subverts the premise of migration laws and policies and thus reconfigures relationships between guests and hosts. Migration laws and policies' accountability to the ethics of hospitality cause the parasitic guest who must be controlled to be replaced by the vulnerable migrant subject whose humanity demands of the host that she practise unconditional hospitality and take responsibility for her vulnerability. The theoretical argument that is championed does not conceptualise ethics as a 'moral device' that checks on the accountability of politics; it is much more proactive as ethics empowers and influences laws and policies to become a place of resistance. This can be achieved in two ways.

First, Scottish hospitality laws should already respond to the asylum seeker and her demand for a home and social justice before she arrives in Scotland. Or, in other words, Scottish hospitality laws should already embody the asymmetrical relationship with the Other. Within the context of this paper, this would mean that the Scottish government has the power to legislate for providing accommodation to asylum seekers that fulfils the criteria of being a home so that the iterability of the guest–host relationship can be achieved. Second, a Levinasian and Derridean ethical moment in the law requires that the law must revisit, each time it has the opportunity, the 'original' violence and illegitimacy of Scottish migration laws.<sup>31</sup> The law has a tendency to close itself off from the violence it has committed against asylum seekers when it sets out the rules of conditional hospitality. The only way Scottish hospitality laws can open up to asylum seekers and welcome them is by reflecting upon the paradox between conditional and unconditional hospitality. Hospitality laws are steeped in a language and practice that are flawed and unjust, creating conditions that reduce the status of the guest to that of a parasite. For Scottish laws to be more hospitable, Scotland must deal with its own past and seek to readjust for its violent past that created 'hospitality' conditions in order to be recognised as a legitimate guest. The unconditional hospitality, which Derrida admits is never achievable, lies in a constant opening-up and welcoming of the ethics of the radical vulnerability of the asylum seeker into the law. Or more simply put, unconditional hospitality is more than just extending a warm and generous welcome to the asylum seeker. From a Levinasian and Derridean perspective, it also requires opening up asylum laws to the scrutiny of the asylum seeker whose vulnerability obliges the law to be open and welcoming, which ultimately requires holding existing laws of conditional hospitality accountable in the courts of law. From our standpoint, the abovementioned ruling of the Court of Session on the evictions of refused asylum seekers constitutes a missed opportunity to affirm Scotland's asylum-seeking guests' humanity and make Scotland a more hospitable space. Yet the judiciary can be instrumental in challenging hostile environments; the case-law of the Constitutional Court of South Africa on post-apartheid eviction laws provides a particularly apposite example.<sup>32</sup> Ethical vulnerability analysis enables guests to affirm their claim to social welfare as the hosts' co-habitees, thereby compelling hosts to reconsider their policies on welfare provision for asylum seekers.

With ethical vulnerability analysis, welfare provision for asylum seekers becomes central to the practice of *unconditional* hospitality and key to building asylum seekers' resilience. Social provision for asylum seekers remains instrumentalised, but it is no longer deployed to serve the objectives of hospitality laws; rather, it is there to help respond to the asylum-seeking Other's vulnerability. This reinvigorates the role of social welfare and consequently requires that asylum support goes beyond enabling mere survival. Practicing hospitality towards asylum seekers demands that asylum support be elevated to a life-affirming resource – quite literally responding to Levinas's plea 'you shall not kill'. Accordingly, social welfare for asylum seekers must be instrumental in the host's space becoming their space too. In other words, social welfare provision becomes central in inducing and empowering

<sup>31</sup>This argument has been inspired by Jacques de Ville (2007).

<sup>32</sup>See e.g. *Port Elizabeth Municipality v. Various Occupiers* 2005 (1) SA 217 (CC) and *City of Johannesburg v. Rand Properties (Pty) Ltd and Others* 2007 (1) SA 78 (W).

the feeling of home (Fox O'Mahony and Sweeney, 2010, p. 285). The roof above asylum seekers' heads must give way to a home that is characterised as a place that in its turn will also provide a welcome to other newcomers. Importantly, the deproblematism of asylum seekers' vulnerability and dependency that comes with our ethical vulnerability analysis places on the host an imperative duty to include asylum seekers in the mobilisation and redistribution of social welfare as welcomed human fellows. Put differently, asylum seekers are given an authoritative voice that empowers them to assert their humanity and reclaim their vulnerability and dependency in a space they share with hosts so that a space of conviviality is emerging – a place where to live with the other is to cohabit.

## 6 Conclusion

In this paper, we call for a profound rethink of social welfare provision for asylum seekers that is rooted within a radical transformation of the relationship between guests and hosts, which dislodges migration policies' hostile premise. We recognise that investigations into (in)hospitality require a multi-tiered approach, ranging from theoretical to practical contributions, and our focus on the theoretical does not seek to downplay the significance of the practical. Our purpose is to demonstrate that hospitality is also a thinking space. In Dufourmantelle's words, 'to think is to invite, to offer a shelter to the other, within ourselves; the other as the possibility to be(come) yourself' (Dufourmantelle, 2013, pp. 13–14). The dialogue we have created between fuller and radical vulnerability analyses and Levinas's and Derrida's ethics of hospitality shows that in order to provide shelter and hospitality to asylum seekers, we first need to accept that our humanity is an expression of accepting the Other and that in order to become full human beings, hospitality must be offered to those who need it. This requires an understanding of hospitality as being part of a life-cycle that affirms the basic experience of nourishment and shelter. Hospitality, however, also includes the rituals of letting go and mourning. This means that unconditional hospitality requires breaking with familiarity and allowing the 'stranger' to change the rooted and place-based ideologies that accompany our migration policies, such as border politics and the entrenched problematising of migrants, including asylum seekers, and migration. It might be tempting to rebuff this radical proposition as overly idealistic and thus unrealistic. However, we submit that a dose of idealism is precisely what we need. It compels us to concede that 'our institutions and practices may not be all that they should be' (Carens, 1996, p. 166); it opens up a space to challenge the entrenched hostile premise of migration laws and policies worldwide and presents us with a much-needed theory of change.

Paradoxically, COVID-19 makes us all acutely aware of the importance of the home – a place where we can feel safe, protected and welcome. However, in order to extend this feeling of safety to asylum seekers, we must think about the conditions of hospitality from the place of the other and the meaning of what an unconditional welcome would look like during a 'once-in-a-lifetime' pandemic. From our ethical vulnerability analysis perspective, this requires a letting-go of our sense of borders and territory. In a rather ironic way, COVID-19 reinforces the idea that paradigmatic events must make us more welcoming. In order to fight the virus and build resilience in the face of this momentous moment, we must open the doors widely to welcome the other. Although states may close borders on health grounds, they must still provide access to asylum to those in need (Crawley, 2021). For humanity to survive the pandemic, we must approach each and everyone with kindness, empathy, generosity and open arms.

Our ethical vulnerability analysis compels Scotland to question its self-proclaimed hospitality in light of the everyday experiences of its asylum-seeking and other guests as well as its commitment to furthering hospitality. In other words, Scotland must ask itself whether it *really* wants to become a hospitable outlier – a radical outlier. A cynical take on Scotland's positioning as a hospitable outlier could suggest that, paradoxically, it is the UK's hostile environment that empowers Scotland to promote hospitality towards asylum seekers and other migrants as it enables Scotland to blame the UK government for the inhospitality that 'its guests' experience without having to make its hospitable vision a reality. It is true that the present constitutional settlement enables the Scottish government

to point the finger at the UK government. However, it is also true that the Scottish government's sustained hospitable discourse has been transposed into politics, albeit with significant limitations. Whilst we can safely hypothesise that Scotland's present understanding of hospitality does not envisage a leap from conditional to unconditional hospitality, we may posit that Scotland genuinely supports a more hospitable environment. However, until it becomes independent or – at the very least – until it gains devolved asylum and immigration powers, Scotland's hospitable vision can neither be fully achieved nor fully tested.

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