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ME VOICI, HERE I AM, HERE I STAND, I CAN DO NO OTHER[1] ⋆

ABSTRACT. This article offers a Levinasian reading of the case of *Airedale N.H.S. Trust v Bland* (1993). My contention is that the judicial reasoning that gave rise to the decision that Anthony Bland should die was driven by an ontological imperative. I submit from a Levinasian perspective the decision was ethically indefensible because it failed to recognise *Anthony Bland* as *the other*.

KEY WORDS: Anthony Bland, death and the other, justice, Levinas

INTRODUCTION

The judgment in the case of *Airedale NHS Trust v Bland* (1993)[2] raised perhaps some of the most disturbing ethical issues to have been considered by our judiciary in recent years. Amongst the plethora of literature emanating from the decision one particular commentary, written by Marinos Diamantides,[3] has undoubtedly provided the inspiration for my own reading of the case. Diamantides portrays Anthony Bland as subverting the legal process by being beyond the reach of its understanding. Co-opted into a metaphor for the law, which Diamantides portrays as a living corpse trapped within its own 'still life', Anthony Bland is synonymous with the frozen letter of the law. The law's response to Anthony Bland is evidence that it suffers from a juridical version of Persistent Vegetative Syndrome;

⋆ My thanks to Costas Douzinas and Marinos Diamantides for their advice, support and inspiration.

[1] The title of this paper is an elision of the Levinasian proclamation 'Here I am' with Luther's statement of defiance at the Diet of Worms 'Here I stand.' The intention is to convey the consistency of the unequivocal, non-negotiable ethical statement. For Levinas it is the being and therefore the purpose of my existence: "To say here I am (me voici). To do something for the other. To give. To be human in spirit, that's it." E. Levinas, *Ethics and Infinity* (Duquesne University Press, 1995), 97. As with Luther, Levinas recognises the instant of the sublime ethical decision when there arises the choice of no choice. The ontological possibility of choice is negated by my ethical responsibility to the other.

[2] *Airedale National Health Service Trust v Bland (1993) 2 W.L.R 316*.

[3] M. Diamantides, "Ethics in Law: Death Marks On A 'Still Life' A Vision Of Judgement As Vegetating", *Law and Critique*, Vol VI, no 2, 1995.

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only by being insensate and dead to his condition could the law maintain that Anthony Bland possessed a will. Diamantides concludes that the case is one of tragic absurdity, in so far as the judges remain agents of knowledge. In this, there is a triumph of sorts, arguing that the judgment can be interpreted as an involuntary 'substitution' of the judge for the other. It is this that for Diamantides gives rise to the ethical possibility of the law, unknowing and in spite of itself, yet inescapably accountable to the other. This paper will suggest an alternative reading of the case. Anthony Bland was as unknowable as any other can be; to argue otherwise, indeed would be to succumb to the metaphor as described by Diamantides. The case of Anthony Bland remains an irreducible tragedy because the judgment violated a fundamental Levinasian tenet that, before the choice of life and death, there is no choice but life.

THE ABANDONMENT OF THE OTHER

> . . . for me to catch sight of the possibility of justice, a new situation is required: someone has to call me to account.[4]

My reading of the case leads me to the conclusion that the legal judgment that Anthony Bland should die was unethical because the judges sought to efface his otherness. In the absence of his voice they claimed that the mechanism of the law permitted them to speak on his behalf, to understand his condition and to use this knowledge to argue, for his death, for himself. The sense of abandonment of Anthony Bland, the other in need, permeates through the text of this decision. Levinas observes:

> One always dies alone, and everywhere the hapless know despair. And among the hapless and forlorn, the victims of injustice are everywhere and always the most hapless and forlorn.[5]

I will be suggesting, in the course of this paper, that by adopting the Levinasian notion of alterity it is possible to claim that in their conduct and through their language, the presiding judges discarded the ethical obligation that from a Levinasian perspective, was Anthony Bland's due. From the outset I intend to present that ethical obligation as a responsibility to rescue Anthony Bland[6] from the juridical project that reduced his otherness to a legal citation.

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[4] E. Levinas, *Difficult Freedom: essays on Judaism*, trans. S. Hand (Athlone Press, 1990), 40.

[5] E. Levinas, "Nameless" in *Proper Names*, trans. M. Smith (Athlone Press, 1996), 119.

[6] One should not discount the frightening, Kafkaesque, possibility that the judges might have been influenced, at the unconscious level, by the unhappy coincidence of a name that

In *Otherwise Than Being* Levinas writes that if there were just two of us in the world, my responsibility would be absolute, flowing one way "antecedent to questions" but, with the arrival of the third, my responsibility becomes limited and I am entitled to ask:

> What do I have to do with justice?[7]

My responsibility for the other exceeds the call of justice. I owe more to the other than justice can deliver. This is why Levinas rarely speaks of justice *per se* because he is not content to be held within its boundaries. While always acknowledging and affirming the need for institutional justice as the evidence of the survival of ethics, the "ought" in the world of "is", Levinas is troubled by its insufficiency. He explains that:

> If I am alone with the Other, I owe him everything; but there is someone else. Do I know what my neighbour is in relation to someone else? Do I know if someone else has an understanding with him or his victim? Who is my neighbour? It is consequently necessary to weigh, to think, to judge, in comparing the incomparable. The interpersonal relation I establish with the Other, I must also establish with other men; there is thus a necessity to moderate this privilege with justice. Justice, exercised through institutions, which are inevitable must always be held in check by the initial interpersonal relation.[8]

I may never be alone with the other and with the arrival of the third I am faced with the dilemma of choice. Whereas I was free to be unfree, obligated to the other without expectation of reciprocation, justice is now necessary, society has appeared on the scene and it is her presence that brings about the need for checks, measures and the process of calculation that exemplify and define institutional justice. The distress of the other becomes the hope of/for me in that she is my possibility to be selfless. Surely the contribution of the individual gesture, as a beacon of light, in the pervading darkness of conformity has never been so significant, so needed, after a century of unprecedented mass extermination and genocide.

For Levinas there is a sense of mourning, of loss, that accompanies his realisation that if society cannot be just, it will be haunted by a sense of what justice should be. Justice can never be just enough for the other. It is rational that justice should be thought in terms of safeguards for myself,

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served as an all too apt description of Anthony Bland's condition. To the judges the name 'Bland' may have represented futility, blankness and vacancy. By a happy coincidence the English word name contains the French word *ame* (spirit). By refusing to appropriate the name of Bland, a case name that was turned against Anthony, and by always referring to him as Anthony Bland, I am acknowledging his spirit in an effort to resist the subsumption of name and spirit into legal text.

[7] E. Levinas, *Otherwise Than Being*, trans. A. Lingis (Martinus Nijhoff Publisher, The Hague, 1981), 157.

[8] E. Levinas, *Ethics and Infinity* (Duquesne University Press, 1995), 90.

but it is only transcendental consciousness that can catch a glimpse of an unachievable, yet imperative, justice for the other that compels us to mourn for what can never be. Yet the sadness does not overwhelm the hope or desire for a justice that is so extraordinary and unconditional. It finds solace and exoneration in the potentiality and actuality, of a solitary act of heroic compassion, that exceeds all institutional and collective efforts at being just. The justice of the one surpasses the justice of the many. It is a spirit that lights up the dark and is characterised by:

> . . . the will that undertakes to do something despite the paralysing obstacles in its way; the hope that lights up a life in the absence of reasons for hope; the patience that bears what can kill it.[9]

Of course inevitably the other must die, as all others must die, and yet I cannot and must not accept the immutability of this fact. I cannot die for the other in substitution, and I cannot take away her dying from her. The other will die but her death places upon me an irrefutable obligation, namely:

> The deepening of my responsibility in the judgment that is borne upon me is not in the order of universalisation: beyond the justice of universal laws, the I enters under judgment by the fact of being good. Goodness consists in taking upon a position in being such that the Other counts more than myself. Goodness thus involves the possibility for the I that is exposed to the alienation of its powers by death to not be for death.[10]

Thus ethically I am enjoined to choose life. My freedom has been stolen from me because I am being asked to choose, although in an ethical sense there is no choice. The struggle for existence can drive out my sense of the ethical not least because of the presence of a third party. In the world of being I am free to turn my back on the other and disobey the commandment that is in the appearance of the face. The hope for ethics lies not so much in the order that institutional justice brings but in the possibility that this order may succumb to that 'initial interpersonal relation', that encounter with the other that can and, on occasions, does succeed in bursting through the fetters of the law. The case of *Airedale N.H.S Trust v Bland* (1993) however is *not* one of these occasions. Perversely, what was deemed not to be life had to be allowed to die for the sake of that non-life.

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9 *Supra* n.7 at 228.

10 E. Levinas, *Totality and Infinity: An Essay on Exteriority*, trans. A. Lingis (Martinus Nijhoff Publisher, The Hague, 1979), 247.

A DEATH WITH DIGNITY?

You who live secure, In your warm houses, Who return at evening to find, Hot food and friendly faces: Consider whether this is a man, Who labors in the mud, Who knows no peace, Who fights for a crust of bread, Who dies at a yes or a no.[11]

The facts of the case are well known: as a result of the catastrophic events that took place at Hillsborough Stadium in Sheffield, Anthony Bland

. . . sustained catastrophic and irreversible damage to the higher centres of the brain, which has left him since April 1989 in a condition known as persistent vegetative state (PVS).[12]

His grip on life was slim, but was to become even more tenuous when those entrusted with his care applied to the High Court for a declaration that they

. . . (1) might lawfully discontinue all life sustaining treatment and medical support measures . . . and (2) might lawfully discontinue . . . medical treatment except for the sole purpose of enabling him to end his life peacefully with the greatest dignity and the least pain, suffering and distress . . .[13]

In arriving at their decision the judges addressed a number of key issues. It was necessary, they reasoned, to draw a distinction between sustaining Anthony Bland's life and providing medical treatment. The judges also had to determine which of these two roles the Airedale Health Trust (the Trust) were fulfilling. If the former was the case then its withdrawal would suggest that the resulting deterioration in Anthony Bland's condition would be due to natural causes, rather than a consequence of an omission of the care that doctors were duty bound to provide with all the implications that this carried with regard to their professional conduct.

It was felt necessary to establish what constituted good medical practice; to decide whether, in the event of Anthony Bland's death, the doctors concerned could be held to be guilty of his murder; to assess whether the perceived lack of future quality of life suggested that his interests were best served by being 'allowed' a death with 'dignity' and finally, but certainly

[11] P. Levi, "Shema" (1946) *Collected Poems*, trans. R. Feldman and B. Swann (Faber and Faber, 1992). The word *Shema* is a Hebrew word meaning "Hear" and is the first word of a prayer that traditionally Jews throughout history recite at their darkest hour, for example when being burned at the stake by the Spanish Inquisition and in the gas chambers and concentration camps of Nazi Germany. The words seem particularly appropriate when writing about Anthony Bland, although in reality his fate was decided as soon as the NHS Trust sought Declarations, in theory at least, his fate hung in the balance until all the various appeals had been heard, and depended on whether the judges would grant the Declarations that were sought, making him literally a man "Who dies at a yes or a no."

[12] *Supra* n.3 at 1993 2 W.L.R, 317.

[13] *Supra* n.3 at 1993 2 W.L.R, 317, A, B.

not least in the consideration of the court, was the need to take into account the distress caused to Anthony Bland's relatives through the prolongation of his suffering.

The header notes for the case record the principal reasons given by the judges for dismissing the appeal as follows. Anthony Bland's

> '. . . existence in the persistent vegetative state was not a benefit to the patient' [and this was clearly held to override] '. . . the principle of the sanctity of life, which was not absolute.' [It was emphasised that this view was formed not on purely legal grounds but on advice from] '. . . a large body of informed and responsible opinion'.[14]

The judges did not seek to deny or negate that the sanctity of life principle was a material consideration, but it is clear from the arguments that they advanced that it was one among a package of considerations which had to taken into account. There is clear evidence that the judges were of a consensus that the principle had to be contextualised. Summarising the submissions of the *amicus curiae,* Sir Stephen Brown noted that:

> He (had) submitted . . . that there is no inherent conflict between having regard to the quality of life and respecting the sanctity of life: on the contrary, they are complementary: the principle of the sanctity of life embraces the need for full respect to be accorded to the dignity and the memory of the individual human being.[15]

Indeed, as Sir Stephen Brown had noted, Anthony Bland's case had been undermined by his own legal representative whose submissions ". . . in effect, supported the plaintiff's case" not least because of his keenness to avoid ". . . an absolutist or dogmatically legalistic approach." The legal battlefield, the site of the decision as to whether Anthony Bland should live or die, was to "be contemporary medical ethics and good medical practice."[16]

From the outset, then, Anthony Bland was isolated alone in his otherness, denied recognition as a present living being and accorded respect only as a being who had once shared and expressed common human emotions, as the other who had once been acceptable as the same. In short, Anthony's passivity and vulnerability invited not Levinasian compassion, expressed as the duty of responsibility, but the antagonism and fear that accompanied the incomprehension of an institutional system confronted with the unclassifiable. For Anthony belonged to the category of neither the living nor the dead. In the eyes of the law, however, the only category to which he could unquestionably belong was that of the dead. If Anthony Bland was not dead, he should be.

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14 *Supra* n.3 at 1992 2 W.L.R, 317, C, D.

15 *Supra* n.3 at 1992 2 W.L.R, 329.

16 *Supra* n.3 at 1992 2 W.L.R, 328, 329.

It was to this logical end that the judges consciously, or otherwise, steered their legal arguments. The sanctity of life as a sole consideration belonged to absolutism and dogma. Butler-Sloss LJ, for example, refuted an argument

> . . . that there was nothing to balance against the sanctity of life [and stated that] . . . to place pain and suffering in a unique category, the existence of which may justify foregoing the preservation of the sanctity of life, does not appear to me to be justifiable.[17]

Clearly there is force to the argument. To preserve life against the will of the other presents alterity with a conundrum. It opposes the absolute ethics of the face's command "do not kill me" to the absolute ethics of suffering accompanied by the plea "in mercy, kill me. I cannot go on." How can the competing choice be reconciled. In a sense we must acknowledge that it cannot. The best we can say is that not only can I kill the other but I may have to kill the other although my actions, mercifully intended and thus entirely defensible, remain an ethical violation. I may kill the other for her sake but it remains murder, in an ethical sense, nonetheless.

Yet no plea for death came from the lips of Anthony Bland. Furthermore, it was not at all certain that he was suffering any degree of physical discomfort. The judges, themselves, failed to present an entirely consistent picture of Anthony Bland's physical and mental state and fluctuated between suggestion that he was capable of experiencing some degree of pain and the alternative that he was entirely oblivious of his condition. The spectre of pain, however, was largely introduced to demolish the sanctity of life as an absolute principle. Anthony Bland was not to die on this account but rather, now that the door was ajar, because the prolongation of his existence would not guarantee any appreciable quality of life. Thus, his condition was depicted in stark and nihilistic terms by Judge Hoffman who described it as follows:

> . . . Anthony Bland has no consciousness at all. The parts of his brain which provided him with consciousness have turned to fluid. The darkness and oblivion which descended at Hillsborough will never depart. His body is alive, but he has no life in the sense that even the most pitifully handicapped but conscious being has a life.[18]

It cannot be denied that the judges sought to approach Anthony Bland but what they encountered, and could not perceive in any other way, was tragedy, the human condition *in extremis*. Their encounter was not with the pitiful vulnerable other but with the other of total and insurmountable alienation. It prompted them towards a solution that removed the horror of that encounter, and tidied the matter up. Thus their approach to Anthony

17 *Supra* n.3 at 1992 2 W.L.R, 345.

18 *Supra* n.3 at 1992 2 W.L.R, 350.

Bland constituted an ethical violation because it effaced his otherness and subdued his *différence* by presuming to know what was best for him, by claiming to know what, pure and simply, was unknowable. The unpalatable fact is that in a court of law judges were prepared to entertain the notion that a man could be starved to death and, not only were they prepared to consider this notion, but they proceeded to sanction it.

Any decision needed to convey the notion that, at its heart, was a concern for Anthony Bland's best interests. How could Anthony Bland's best interests be determined when Anthony Bland himself, in his current condition, could be assumed to have no view on the matter? The answer was to employ the legal device of 'substituted judgment'.

The test involves an attempt to move closer to those wishes as they might reasonably be presumed to be, by a temporal movement away from the person in his current condition in order to figuratively restore him to his former competence. This temporal displacement of the patient seeks 'through a detailed inquiry into a patient's views and preferences' to establish the evidence required by the surrogate decision maker.

Neither of the two judges who made specific reference to substituted judgment expressed particular reservations concerning its appropriation within the English legal system. Hoffman's argument that it might ". . . be subsumed in the English concept of best interests"[19] is effectively what happened to the doctrine in this case, as the judges failed to address sufficiently the possibility that a substituted judgment might, intentionally or otherwise, misrepresent the patient's wishes. This could happen if substituted judgment becomes no more than substituted interest and the interest of the third (as family, as doctor, as health trust) appropriates, and prevails over, the interests of the other. The relatives of the incompetent patient transpose their distress on to the patient. Now they can speak with authenticity on his behalf. But it is an inauthentic voice that has been created.

Substituted judgment is all too likely to substitute the voice of those seeking a Declaration from the courts, as the accommodation of ontological necessity, in place of the authentic voice of otherness. But is not substitution a Levinasian concept? It is, as the very *antithesis* of the legal practice of substituted judgment. Levinas explains that:

> Responsibility in obsession is a responsibility of the ego for what the ego has not wished, that is for the others. This passivity undergone in proximity by the force of an alterity in me is the passivity of a recurrence to oneself which is the alienation of an identity betrayed. What can it be but a substitution of me for the others? It is not, however, an alienation, because the other in the same is my substitution for the other through responsibility, for

[19] *Supra* n.3 at 1992 2 W.L.R, 358.

which I am summoned as someone irreplaceable. I exist through the other and for the other, but without this being alienation I am inspired. This inspiration is the psyche. The psyche can signify this alterity in the same without alienation in the form of incarnation, as being-in-one's skin, having-the-other-in-one's-skin.[20]

In other words one is for the other not through an empathy or knowledge that is gained through the loss of one's own identity or a sense of knowing what it is like to be the other, but because alterity preserves the otherness of the other which is beyond reduction to the same. The I for the other is without precondition, without terms of contract, but as

. . . the here I am, answering for everything and for everyone. [who as a] . . . self in being is exactly the not being-able to-slip away from an assignation that does not aim at any generality.[21]

I respond to the other not simply because she is other but because in the other there is need. It is when the other is at her most defenceless, most vulnerable, that I am most in her thrall. The more urgent and pressing her demand, the more I cannot slip away.

. . . I am responsible for a total responsibility, which answers for all the others and for all in the others, even for their responsibility. The I always has one responsibility more than all the others.[22]

In response to an interviewer's question as to what we should understand by the other's death Levinas replied:

I think that in responsibility for the Other, one is, in the final analysis, responsible for the death of the other. What is expressed [by the face] as demand in it certainly signifies a call to giving and serving – or the commandment to giving and serving – but above this, and while including it, the order is to not let the Other alone, be it in the face of the inexorable. The fear for the death of the other is certainly at the basis of the responsibility for him.[23]

This response to the need in the other is in diametrical opposition to the response of the judges. The initial approach to Anthony Bland and the flight into horror from the nightmarish Sartrean other are brought about by the way in which judgment invites the judges to slip away from ethical face-to-face responsibility, which is smothered beneath legal reasoning, legal precedent and expert medical opinion. It was Lord Goff who most clearly enunciated the relationship of the law to the medical profession when he declared:

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20 *Supra* n.6, at 119.
21 *Supra* n.6 at 314, 127.
22 *Supra* n.7 at 99.
23 *Supra* n.7 at 119.

> It is nevertheless the function of the judges to state the legal principles upon which the lawfulness of the actions of doctors depend; but in the end the decisions to be made in individual cases must rest with the doctors themselves.[24]

Once again this interpretation of the law's position suggests an almost indecent haste to fall into line with a professional body's thinking, especially as what was being proposed was surely nothing less than a groundbreaking new way of dealing with PVS patients. More evidence of doubt on the part of the judges might have been a more appropriate response in the face of this, hither-to, unique proposal.

The medical findings are emphatic and untroubled to any admitted degree by self-doubt. The law's response is weak, almost muted. It does not merely make concessions, it wilts and shrivels away. For example, Mr Lester, acting in the capacity of *amicus curiae,* acknowledged to the court that

> Anthony Bland's case is difficult because at first sight, it seems to require the court to reject the vital principle of the sanctity of life in favour of value judgments as to the quality of the further artificial prolongation of the life Anthony Bland.[25]

This conclusion could, however, only be drawn from a 'first sight' consideration of the case, because the concept amounted to more than obligation to preserve human life regardless of circumstances and regardless of the pain, suffering and distress that a dogmatic attachment to the principle might cause. Accordingly, Mr Lester argued that the quality and the sanctity of life were not irreconcilables but rather that they were complementary. In his view the sanctity of life principle accorded full respect to "... the dignity and memory of the individual."[26]

The employment of this argument meant, if accepted, that the concept had now taken on an elastic character and that life was to be sustained only if it had value that could be acknowledged. If that value lay beyond the perception of the law, then the conclusion must be drawn that the quality of life concept prevailed and that the patient had a greater interest in his dignity in the memory of others than in the mere holding on to life. Once again the language of medicine and law conspired to project Anthony Bland, while still acknowledged in medical terms to be living, as a thing of the past and whose humanity existed only in the memory. Thus Sir Stephen Brown was able to confidently declare that Anthony Bland had no feelings and was incapable of drawing any experience from his surroundings. Tellingly, he pronounced that Anthony in the view of his "...

[24] *Supra* n.3 at 1992 2 W.L.R, 374, B, C.
[25] *Supra* n.3 at 1992 2 W.L.R, 329, A.
[26] *Supra* n.3 at 1992 2 W.L.R, 329, B.

parents and family [was dead]" and ". . . all that remains is the shell of his body."[27]

As a shell of a body Anthony Bland was only in memory and appearance human, and therefore, the judges concluded, the absolute sanctity of life principle did not need to be slavishly adhered to. Butler-Sloss recognised how the law might be perceived when she sought to ensure that this representation did not gain currency. If the absolute test of sanctity was not to be the unique consideration then, inevitably, the law would need to apply a qualitative test in respect of the value of life to the individual concerned. A gesture of reassurance was the reiterated recognition that ". . . even in a case of the most horrendous disability"[28] the prospect of terminating a life was not to be contemplated. On the other hand, it was clear that the law should not be seeking to extend the life of a terminally ill individual beyond what could be regarded as a tolerable existence. It needed to be borne in mind that the courts, in reaching their decision as to what might constitute 'tolerable', had to consider what would be tolerable to the child rather than the decider.

One curious argument that Butler-Sloss advanced was that, in view of the legal position that an incompetent patient had the right to have her interests in retaining her dignity in the memory of those she had held dear in her life (and thus enjoyed the privilege of the representation of her adjudged views based on what they would have been had she been competent), not to act in accordance with these principles on behalf of Anthony Bland would be ". . . an affront to his right to be respected."[29] She had reached this conclusion because

> I was dismayed to hear the argument of the Official Solicitor that, if Mr Bland suffered a cardiac arrest or a renal failure, it would be the duty of the doctors to perform a heart bypass operation or in kidney treatment, a kidney transplant. I cannot believe that a patient in the situation of Mr Bland should be subjected to therapeutically useless treatment contrary to good medical practice and medical ethics which would not be inflicted upon those able to choose.[30]

The point might be made that it is a presumption to conclude that a non-PVS incompetent patient was in a privileged position apropos Anthony Bland, especially if the issue, as Butler-Sloss conceded, was not merely a matter of pain and suffering. If such distress was not a material factor and only a matter of dignity, it would be quite possible to invert Butler-Sloss's argument to suggest that it was Anthony Bland who was in a privileged

27 *Supra* n.3 at 1992 2 W.L.R, 330, G.

28 As discussed by Judge Taylor in the case of *Re: J* 1991 FAM 33, C.A.

29 *Supra* n.3 at 1992 2 W.L.R, 348.

30 *Supra* n.3 at 1992 2 W.L.R, 348.

position relative to that of the non-P.V.S incompetent patient; by virtue of the fact that, until the law determined otherwise, it was she who enjoyed safeguards on the presumption for life. The invoking of precedents such as *Re: J* (1991)[31] demonstrates the tendency of the judicial process to work towards closure. The mindset of the judges has made the outcome inevitable; their pronouncements, however, do open up the text to scepticism. We may find cause for such scepticism, for instance, in the references made to the human dimensions. In the words of Butler-Sloss, these make ". . . this a tragic case", although she emphasised that there is a necessity for the

> . . . dispassionate consideration of all the necessary components of the issues before us. [According to Butler-Sloss] Each court seized of these issues has an awesome task to face. In doing so we have to rid ourselves of emotional overtones and emotive language which do not assist in elucidating the profound questions which require to be answered.[32]

Such an objective judgment is one that reduces my response to the call of the other. The judges repeatedly open their judgments by emphasising the personal human tragedy of Anthony Bland's condition before swiftly moving to render it of no account due to his insensitivity and incompetence. Now while the legal sense of incompetence is less pejorative than in its everyday usage, it is hard to escape the conclusion that its employment in the terminology of law serves to reinforce an image of Anthony Bland as not one of us, not competent and, therefore, alien and excluded.

Euthanasia was briefly touched upon by the judges, but only to deny its existence. For example, in the words of Sir Thomas Bingham:

> . . . it is important to be clear from the outset what the case is, and is not, about. It is not about euthanasia, if by that it meant the taking of positive action to cause death. It is not about putting down the old and infirm, the mentally defective or the physically imperfect. It has nothing to do with the eugenic practices associated with Fascist Germany.[33]

Despite the insistence of the judges that Anthony Bland was at the forefront of their concerns and, as such, the subject matter of their considerations, it was only as *matter* that he largely figured. As acutely as any abandonment sensed by Levinas was the abandonment that befell Anthony when the judges argued that if, as they perceived it, he enjoyed no quality of life he had no entitlement to life at all. Indeed death was to be his privilege for the sake of his dignity and to spare him the pain and suffering that it was supposed he could not feel.

Sir Thomas Bingham did not state whether this practice accorded with a less stringent definition of euthanasia. While not explicitly denying that

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31 *Supra* n.27 at 1991 Fam. 33, C.A.

32 *Supra* n.3 at 1992 2 W.L.R, 341, G, H.

33 *Supra* n.3 at 1992 2 W.L.R, 334.

the withholding of artificial feeding and administration of life sustaining drugs, the clear implication was that it should not be considered as such. A clue to the judge's dilemma was provided by Judge Hoffman who posed the following series of questions.

> Is the court to assume the role of God and decide who should live and who should die? Is Anthony Bland to die because the quality of his life is so miserable? Does this mean that the court would approve the euthanasia of seriously handicapped people? And what about the manner of his death? Can it ever be right to cause the death of a human being by deliberately depriving him of food. [He concluded that] . . . this is not an area where any difference can be allowed to exist between what is legal and what is morally right. The decision of the court should be able to carry conviction with the ordinary person as being based not merely on legal precedent but also upon acceptable ethical values.[34]

Hoffman was able to construct an 'ethical argument' which began with the notion that although Anthony Bland may be properly termed a 'living organism' he is, to all intents and purposes, dead. The only reason for maintaining that he is alive is because human intervention has arrested the natural cause of events. Without medical advances Anthony Bland would, in the past, have died within a short period of time as a consequence of his injuries. Hoffman's 'move' serves to distance both law and medicine from ethical responsibility for the consequence of his judgment. Anthony Bland is being returned to his 'natural' state of incompetence and total dependence. His argument seeks to expel the spectre of euthanasia by its submission that there is no killing, only a release allowing him to slip away even though this can only be done through the process of starvation.

The judges cast themselves into the role of the Sartrean other, the other who sees the shame of Anthony Bland, the scandalising other to whom he is such an affront. At least Anthony Bland is spared the scandal of the other's look but he remains the other's shame because of what he is/not. Anthony Bland is a reminder of their mortality. They do not wish to confront this reality and seek an escape through termination when Anthony Bland will be dead and thus no longer this haunting presence. However, as Levinas reminds us

> . . . with the appearance of the human – and this is my entire philosophy – there is something more important than my life, and that is the life of the other. That is unreasonable. Man is an unreasonable animal.[35]

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[34] *Supra* n.3 at 1992 2 W.L.R, 350.

[35] T. Wright, P. Hughes and A. Ainley, "The Paradox of Morality:an interview with Emmanuel Levinas", contribution to *The Provocation of Levinas*, ed. R. Bernasconi and D. Wood (Routledge, 1988), 172.

THE UNREASONABLENESS OF JUSTICE

Justice does not result from the normal play of injustice. It comes from outside, through the door, above the fray; it appears like a principle external to history. Here there is a moment where someone plays without winning. Grace begins here.[36]

The case of Anthony Bland is one that has a particular resonance in the context of alterity. Not that I can say that alterity provides a magic key to unlock the truth or to enable us to arrive at a right decision. Nor do I suggest that Anthony Bland's life should have been perpetuated at any costs whatsoever. Yet, perhaps alterity does provide us with an alternative ethical insight that does not succumb to the closure of legal discourse. Anthony Bland did not die for his sake, he was in no pain and beyond all concerns of dignity, but for the sake of others. Indeed, he had to die because he, as other, was both an embarrassment and an inconvenience. In the absence of any notion of proximity the judges could only perceive him as a thing, an entity, that must be removed. His death was held to be necessary (albeit regrettable) and therefore, in the circumstances, and in the eyes of the law, ethical. The Levinasian philosophy of alterity encourages us to call the law to account, to constantly whisper in its ear 'Remember the other.'

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[36] *Supra* n.34 at 40 and 176.