

Tony Bland as a 'novel being'

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Introduction

- *Airedale NHS Trust v Bland* [1993]
- Inconsistent reasoning on the interests of this novel being
- An alternative approach & its relevance to other novel beings

Airedale NHS Trust v Bland

- Tony was in a PVS
(persistent/permanent vegetative state)
- Higher brain ceased to function
- Unable to see, hear or feel pain
- Sleep, wake & sometimes even turn over
- With proper care they can survive for decades



Court decisions

- Stopping food and water by tube ('artificial feeding')
- High Court (Nov 1992), Court of Appeal (Dec 1992), House of Lords (Feb 1993):

it was lawful (ie not murder) for his doctors to remove
remove 'artificial feeding'



House of Lords

- Anyone other than treating Tony would commit murder if they removed life-sustaining treatment from him
- Only murder for doctors to withdraw life-sustaining treatment if they have a legal duty to provide it
- There is only a duty if it is his best interests,
- **but** it was not in Tony's best interests to continue to receive 'artificial feeding'
- **Therefore**, food & water could lawfully be removed

Tony's interests

- The House of Lords insisted that
 - their decision rested solely on what was in the patient's best interests, rather than those of the wider community
 - the relevant question was whether treatment, rather than death, was in the patient's best interests

Judges' views

- **Lord Keith:** 'to an individual with no cognitive capacity whatever, and no prospect of ever recovering such capacity in this world, it must be a matter of complete indifference whether he lives or dies...
'existence in the persistent vegetative state is not a benefit to the patient'
- **Lord Goff:** 'the condition of the patient, who is totally unconscious and in whose condition there is no prospect of any improvement, is such that life-prolonging treatment is properly regarded as being, in medical terms, useless'
- **Lord Lowry:** it was a fallacy to consider 'that feeding in order to sustain life is necessarily for the benefit of the patient'

Judges' views

- Lord Browne-Wilkinson: it was 'pointless to continue life support'
- Lord Mustill: 'The distressing truth which must not be shirked' is that Tony Bland 'has no best interests of any kind'
- **Thus**, Tony had no interest in the continuance of life-sustaining care
- **But** then why is he protected by the law murder?

An alternative approach

- **Sui generis status** for humans between **brain-stem dead** (legally dead) & **sentient** (to whom the best interest test had previously being applied)
- *Re A* [1992]: a 20-month brain-stem dead baby was 'dead for all legal, as well as medical, purposes'
 - Continued ventilation not required by baby's interests & 'quite unfair to the nursing and medical staff of this hospital'
- *Re B* [1981], *Re C* [1990], *Re J* [1991] applied the best interest test

An alternative approach

- Protected by law of murder but interest in continued life could be outweighed by others' need for life-prolonging resources
- **Missed opportunity(?) to:**
 - (a) avoid the fiction that a human in a PVS has equal status to a human with cognitive function
 - (b) explicitly recognise a legal status between full and none

Thank you for listening

