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The Rationing of Essential Resources in Times of Crisis: *Logan's Run* and the 'Science-fictional' Right to Life Under Article 2 of the ECHR

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Abstract

We argue that the right to life—for example under Article 2 of the European Convention—has become an increasingly fragile thing, prone to sharp rationing by domestic law and policy makers, almost to the extent seen in certain works of dystopian science fiction. The near-future novel *'Logan's Run'* (1967) depicts a brutally austere regime, that is 'justified' in law on the basis that finite, scarcening resources must somehow be preserved, to enable survival. Over—population means that human rights are now fictive however—there are neither family life rights nor privacy rights, and human dignity is in short supply. An all-powerful AI 'being' governs via algorithms to ration and curtail lifespans, so that no one is allowed to be older than 21. This rule is enforced via 'voluntary' submission to euthanasia, and the intervention of a murderous militia for those who do not comply. As ever, patriotic behaviour is key. Arguably, not dissimilar crisis thinking was seen during the pandemic, with various resources diverted or triaged towards the worthiest citizens—those with the best chances of survival—through the use of such things as 'frailty algorithms.' Recent UK case law is then analysed to gauge the extent to which dystopian reasoning might be encroaching upon the effectiveness of human rights protections, post-pandemic.

Keywords Right to life · Rationing · Dystopia · Algorithms · Pandemic · *Logan's Run*

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Introduction

‘Do you ever wonder if the thinker makes mistakes?’ (Logan’s Run (1967) p. 13)

As Ward (2015) has noted, quite frequently, ‘reality moves against the rhetorical pretence of universal human rights. It always has.’¹ This article argues that the right to life is an increasingly fragile concept, not least in terms of how it has been interpreted—indeed rationed—by domestic law and policy makers. Certain works of dystopian fiction may be seen as especially relevant to this argument, given that this genre has long tended to offer up highly individualised representations of societal injustice, negligent law-making, and systemic rule breaking. The austere yet reasoned, legalised regimes depicted in such novels are at times not very far removed from those that are currently making decisions on how best to ration the rights and freedoms associated with health, wellbeing, and longevity. The duty to protect finite, scarcening resources—or some common greater good—is often cited in health care law jurisprudence and dystopian narratives, both of which might be framed as ‘largely the product of the terrors of the twentieth century’ (Moylan 2000).² Concerns over issues such as over-population, global conflict, or pending ecological disaster, or indeed the state’s inability to adequately manage scarce goods (food, shelter, health care, fertility, or medical treatment) can be seen in several works of dystopian science fiction. Almost invariably, human rights, if present at all, may be so sharply rationed that they become an irrelevant luxury. Harsh sociopolitical regimes grounded in abject rights violations are then justified in the eyes of the ruling elites or algorithm-led entities, who decision-make on the basis of an acute or chronic need to prevent—or avoid the repetition of—some impending existential crisis (See for example, Atwood’s *The Handmaid’s Tale* (1985), Lowry’s *The Giver* (1993), Ishiguro’s *Never Let Me Go* (2005), Howie’s *The Silo Trilogy* (2013)).

We argue here that Nolan and Johnson’s novel *Logan’s Run* (1967) particularly typifies the way in which many such societies are set amongst new-yet-old, re-jigged justice systems that seek to improve upon the earlier administrations which had been in force prior to the occurrence of some cataclysmic event. Bleak backdrops of perennially worsening want—underscored by a socially acceptable level of chronic inequality—are often present too. These stark landscapes tend to enable and then perpetuate a substantial clutch of human rights violations, including discriminatory treatment, inequality, and harmful, intergenerational indignities.³ These may be justified on the basis of some innate or manufactured sociocultural norm, coupled with a communal desire or duty to contribute to a perceived greater good, such as the preservation of dwindling essential resources. It is often necessary also to predict and influence human behaviours during these times of crisis via the use of dispassionate algorithms: these are likely to result in the sort of unavoidable othering

¹ Ward (2015).

² Moylan (2000).

³ See further Callahan (2012), Clough and Brazier (2014).

required to effect apparently equitable distributions, which prioritises the survival of the ‘worthiest’ citizens over those who are seen as somehow less deserving, or less capable of survival within their rights-poor, resource-limited community.

The second half of the article looks at how such issues were managed in law and policy within the UK both throughout and after the recent pandemic: the selected case law touches upon the right to life and the issue of human dignity against a backdrop of burgeoning scarcity. We suggest that the right to life was at times essentially subject to the sort of ‘algorithm-led’ allocation processes more commonly found in works of dystopian science fiction, not least *Logan's Run*, which prized and preserved youth, whilst emphasising and enforcing the need for regime-compliance and loyalty to the state.⁴ We posit too that, under such a template for ‘crisis times’ resource rationing, a fair and equitable distribution of scarce resources might well require the rationing of justice itself, with key entitlements being justifiably (in law and policy, if not in ethics) directed away from more vulnerable, identifiably less robust ‘others.’ A corollary, patriotic duty to stigmatise, exclude, or indeed ‘out’ anyone who does not comply with new regulations or norms of behaviour might also be needed, as seen within the novel and, sadly, in much of the rhetoric used during the recent pandemic.

‘Justified’ Rationing and a Time-Limited Right to Life: *Logan's Run* as Template?

‘He stared in fascination at the Hourglass, at the phosphorescent crystals in the thick globe which gave each infant his birthright—the radioactive time flower. He stared at his own hand, blinking red-black, red-black...He’d received *his* crystal in a room like this: it had embedded the flower in his right palm, and the crystal had decayed on schedule...turning the stigmata inexorably from yellow to blue to red—and now, soon, to black.’ (*Logan's Run*, p 110)

Some works of fiction hold sharp lessons and clear warnings for law and policy makers on the likely consequences of jettisoning or rationing public access to human rights protections. The most effective of these tend to remind the reader—who at times must essentially serve as a sort of judge or juror—that the notion of ‘humanity’ can be a delicate thing. It can be easily displaced when social necessities require that certain, usually key, aspects of human nature must be somehow kept under control. The premise of *Logan's Run*—that overpopulation and ageing must be prevented at all costs to preserve humanity’s precarious existence—is both timely and telling. Like many of the best works of dystopian science fiction, it challenges the reader to come up with an alternative solution, and to reflect upon what form a meaningfully juridical right (to life, in this case) might take in times of crisis. It also calls into question the nature and protective remit of human rights law, ostensibly asking whether or not the increasingly fragile notion of a right to life is capable of

⁴ See further Daly (2020), Donnelly (2020).

existing against a backdrop of harsh—but legally sanctioned and justified—resource rationing.⁵ The novel's focus on the need for 'excluded others' (those who have aged out of state protections, the day they turn 21) offers a useful critique of many non-fictional, domestic systems of social justice that rely upon a not dissimilar logic. It highlights how certain types of inherent, ingrained unfairness might simply be tolerated where a blunt rationing—of various 'goods'—is needed for continued survival. Laws that pragmatically frame certain fundamental rights as mere social privileges (or indeed luxuries) are not fictive: 'frailty algorithms' can justify blunt restrictions on the right to medical treatment. Their use calls to mind the usual tropes of science fiction: high barriers to health, removal or loss of familial connections, limits on food and shelter, and the loss of longevity.⁶

As Klein et al (1977) noted, since the 1960s, science fiction writing generally became much darker in tone and remit, largely 'focussing on the sufferings of humanity.'⁷ Likewise, many such works are representative of a 'thinly veiled picture of the present' (Franklin 1990).⁸ The genre may be seen as having predicted many current global controversies, given the escalating crises involving refugees and displaced persons, harshening reforms to immigration laws, and deep cuts to social security and health budgets seen over the past decade within various jurisdictions. In other words, the introduction of certain laws and policies that might seem profoundly unjust within works of fiction now seem quite capable of being framed as entirely normative features of modern democracies. Justified inequalities and state-sanctioned discrimination—not to mention the rights-excluding othering of vulnerable sections of the population—can clearly be seen where human rights violations represent the best means of preserving dwindling supplies of already-inadequate resources. And yet, such shifts in thinking (and in the legal regulation of human behaviours) are not new. As Frank (2010) observed, similar changes to our 'sense of public and private spheres and the related concepts of personhood' were previously seen after the various revolutions of the.

'...eighteenth and early nineteenth centuries...Capitalism created private selves and outward signs. It created a chaotic public world from which people

⁵ Article 2 of The European Convention on Human Rights 1950 defines the right to life as follows:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence

~~(b) in order to effect a lawful arrest~~ or to prevent the escape of a person lawfully detained, and

(c) in action lawfully taken for the purpose of quelling a riot or insurrection." (available https://www.echr.coe.int/documents/convention_eng.pdf, date accessed 01.05.23).

⁶ On the genre more generally see Franklin (1990), p 23 who, albeit in relation to science fiction cinema, notes the effectiveness of the frequent lack of a 'functioning democracy' (p. 22) with 'cities of the present ...reduced to rubble' or 'ivy covered ruins.'

⁷ Klein et al. (1977).

⁸ Franklin, op cit n 4, p 23.

needed protection and which redirected their energy inward towards control of the domestic sphere.’⁹

The shift to internalised controls and self-policing may be accompanied by a widespread ‘fetishization of commodities’¹⁰ which in turn can help blur the lines between personhood, identity, and the sense of self-worth that might be tied to the ability to possess—or withhold from others—certain highly valued items. When resource-rationing is a core concern, the ability to identify particularly dangerous others also becomes key: these ‘strangers’ or ‘non-citizens’ will very likely have an abject lack of much-needed things and, crucially, few (if any) basic rights to enable a pursuit of scarce things. As Frank (2010) has asked, ‘How can we know the strangers among us?’¹¹ A ‘successful’ allocation of diminishing resources will often mean that a vulnerable, or ‘non-citizen’ section of the population has been denied easy access to an adequate supply of some significant commodity: vaccines, social security, food, warmth, life expectancy, dignity, or justice itself. The worrying presence of unwelcome others—framed as dangerous or unworthy strangers—could be used to justify the making of egregiously harsh decisions, not least in respect of overly sharp rationings, or unfair resource allocations, that might otherwise amount to breaches of fundamental human rights.¹²

Logan's Run (1967) in many ways sets out a template for rationing via a highly visible form of othering that should resonate uncomfortably with those who advocate for human dignity. Fatal otherness is physically evidenced in the novel via a palm-implanted crystal (a ‘flower’) which suddenly changes in colour as the wearer ages (from yellow to blue, then red, at 7-year intervals) warning the rest of the overpopulated world that citizenship and lifespan can be time-limited commodities. Set in 2116, the maximum age that citizens are permitted to attain is 21, at which point their ‘stigmata’ device begins to blink red and black, signalling that their *Lastday* has arrived: after 24 h, the crystal will turn charcoal, reminding them that they must return to dust, and requiring the wearer’s immediate and quiet submission to voluntary euthanasia (and cremation) via the euphemistically named *Sleepshops*. The décor and ethos of these premises in many ways represent wider society within the novel, which is reliant upon subterfuge and a willingness on the part of its citizens to self-cull at a young age. Insidious delusions, denials, and drugs are also needed here: the shops are decked out with.

‘...gaily painted interiors, the attendants in soft pastel robes, the electronically augmented angel choirs, the skin spray of Hallucinogen, which wiped away a confused look of suffering and replaced it with a fixed and joyful smile.’¹³

⁹ Frank (2010).

¹⁰ Ibid.

¹¹ Ibid p 5.

¹² See further Farmer (2003), Fineman (2008).

¹³ Nolan WF and Johnson GC ‘*Logan's Run*’ (1967) p 14. The use of drugs is seen throughout the novel, as recreational devices or as a means to truth-finding.

This dystopian system has addressed the need to avoid the adverse consequences of dangerously high levels of overpopulation, such as famine and illness: frailty and ageing are anachronistic, removed from human experience via abolition rather than cure, and seen as illegal and horrific, despite some persistent, ambiguous fables. The mythical, enigmatic figure of Ballard, absent yet increasingly present throughout, is pivotal to the narrative. He is said to be: 'The world's oldest man. A story to frighten children with. A legend. A subject for folk chants. Was there actually such a man—the force behind Sanctuary?'¹⁴ His rumoured existence has come to symbolise rebellion and criminality, but for law-abiding citizens attempting escape to the legendary Sanctuary is a shame-filled alternative to passively submitting to death at 21, as required. To flee the system, former citizens (having 'aged-out' of state protections) must law-break and 'run for their lives, out of bounds, against the clock, and the powers that be, demonstrating a kind of eco-citizenship by seeking to incite a social revolution.'¹⁵ To do so is to commit the most heinous of crimes, sparking a penalty of agonizing execution by the Deep Sleep Operatives ('*Sandmen*') once captured. The main character Logan 3 is himself an increasingly disillusioned Sandman frantically living out his own *Lastday*, on a self-imposed mission to quash the whispered-of rebels. He summarises early on just how he has managed so far to carry out his order-keeping role, as a resource-rationing agent of the state: 'Fill up with coldness and hate. Build the image of a jackal, a warped coward running from justice. Weak, spineless, selfish. Living beyond his time.'¹⁶ He pretends initially to be a runner in a bid to find and destroy Sanctuary, so that 'his existence would be justified; he'd be a world hero; his life would end in glory.'¹⁷ The shame associated with running is reinforced via repeated messages from bystanders and omnipresent signage of the need for civil obedience: '*Duty. Don't Run!*'¹⁸ Historical re-enactments—by androids—of the American Civil War are likewise used as opportunities to reinforce the need for patriotism and unquestioning sacrifice, through a

'...willingness to die for one's country to preserve it. The Civil War was fought by seventeen and eighteen-year-olds, men willing to die for their cause. They did not question their duty or flinch from the face of death. They sacrificed themselves willingly, gloriously...remember, there were no runners at Fredericksburg!'¹⁹

Even those who seem to have rebelled in some small way against the system, by existing beyond or on the very outskirts of civilisation, still adhere to this underpinning ethos of a shortened, limited life. The fearsome group of feral adolescents ('cubs' aged 7–13) who dwell in the ruined Cathedral district, for example, despise

¹⁴ Ibid p 42.

¹⁵ Matrix (2013).

¹⁶ The weapon used is termed a *Homer*, based on its ability to home in on a runner's body heat and burn through their nervous system. p. 25.

¹⁷ p. 32.

¹⁸ p. 114.

¹⁹ p. 115.

as cowards those runners who pass through their area, hunting, torturing, and murdering them (and indeed some of the Sandmen who have given pursuit). Here, where there is very little to fight over, there are still odd inequalities to be found and tied to 'ageing': the cubs can tolerate and benefit from the strength-enhancing drug (*Muscle*) that tends to be fatal to the so-called adults (aged 14–21), allowing them to overpower them in street fights. The message is clear throughout: ageing equates to frailty and weakness. These disenfranchised, blue-flowered youths are rebelling against the very system that will eventually curtail their existence, but their attitudes, and homicidal behaviours still mirror those of the older 'reds' who uphold the law. They similarly reverse exile back into society any who age out, as soon as their palm crystal turns from blue to red, signifying the arrival of unwelcome 'adulthood.' As Logan reminds their leader his days are as numbered as those of the 'reds' who will soon turn 21: '... no cubs at fourteen, Billy.'²⁰

Clearly, such a constriction of the lifespan has led to significant 'dehumanizing and disenfranchising' (Matrix 2013). Aside from the systems of legalised murder, discrimination, and torture at the heart of the story—in essence verging on genocide—corollary horrors hover on its edges. Despite the emphasis upon hedonism and physical beauty- and the apparent absence of ill-health—this is a dark, disturbing dystopia, where many rights violations are blatantly paraded.²¹ The city's 'glass-house'—is a legalised, brightly lit quasi-brothel 'awash in sexuality' at night for those who may be 'lonely or bored or oversexed.' It is filled with adolescents, and an absence of child rights: 'A girl with a blue palm swayed towards Logan...at thirteen, a year away from womanhood.'²² Just as the palm flower's light can quickly change colour to shame and other into obedience those who are ageing, so too does the glasshouse suddenly and unpredictably illuminate its see-through chambers to reveal the activities of its customers:

'Caught in the act of lovemaking, a couple would suddenly find themselves tangled in wash of silver, or gold, or red, yellow or green. Other couples, around, above and below, would be able to watch them from the glass floors, walls, ceilings. Then the light would die - to spring on in another chamber.'²³

This uplighting negates any right to dignity or privacy, tying in with the losses of family life needed to enable this society. Such voyeurism also achieves the aim of state surveillance—and public shaming—discouraging citizens from engaging in certain illegal 'games,' such as 'peeping' through windows, where trysting couples are unknowingly filmed in their own darkened, private living units.²⁴ These illicit

²⁰ P. 53.

²¹ There are repeated, disturbing glimpses of child abuse: as one minor character reminisces, 'I tried a boy. Eleven. He was good for a while but I got so I hated his young face. I'm fifteen and a woman needs a man.' (p. 35).

²² Though framed as ostensibly consensual under this society's laws, the sexual activities of those who visit the place are further subject to voyeurism and privacy violation, with see-through rooms suddenly lighting up to expose the activities of the occupants (p. 20).

²³ *ibid.*

²⁴ p. 38.

activities mask the work of the secretive underground networks that helps runners escape the system in search of Sanctuary, however. Though there is clearly resistance against the duty to put oneself to ‘sleep,’ other rights violations (torture, forced adoptions, child abuse, and neglect) seem to have been tolerated for generations. Lack of privacy is also, it seems, a price worth paying to preserve life. As Matrix (2013) observed, often

‘...the only way to avoid environmental collapse is a biopolitics of the population in which birth and mortality are strictly monitored and managed, not only via state surveillance, but via continuous self-examination.’²⁵

Such internalised scrutiny permits violence against unwelcome ‘others’ and ensures an individualised duty to conform, grounded in the duty to ensure humanity’s survival. Well behaved citizens must and *should* gaze constantly inwards and be accepting of the higher wisdom and strategies of the self-repairing artificial intelligence (‘the Thinker’) that still governs them from afar. They continually check their palms for any changes in status and remind themselves—and the reader—of the over-arching need to obey: as Logan notes of an anxious character who has reached his *Lastday*: ‘He was a good citizen, and good citizens made a stable world.’²⁶ Despite his growing terror, this compliant victim concedes that his voluntary death is a matter both of necessity and national duty: ‘I have my pride. The system is right, I know that. World can only support so much life.’²⁷ Such an altruistic pronouncement might not be out of place during a pandemic, where ventilators, vaccines, or hospital beds are suddenly scarce items, to be preserved where possible for those with the best chances of survival. An absence of kinship bonds and familial connections may also make for a docile population of de-humanised individuals, who must conform or face harsh penalties such as exile or execution. Little room is left for rights or for key aspects of the human condition such as grief, remorse, or the propensity to rebel against injustices. It is perhaps Jessica’s rare connection with her brother (despite their early childhood separation) that enables her to reject the system, retain a sense of identity, and eventually convert Logan to her cause. As she stresses to an ‘aged’ Ballard near the novel’s end, Logan has saved her life. The right to life (and, arguably, some measure of human dignity) has been fought or negotiated for throughout the course of the narrative. It is eventually afforded to these two runners, but only via an unlikely, fantastic escape from a corrupt system which is clearly dooming itself into eventual extinction.

Significantly, *Logan’s Run* also gives the reader a glimpse of what life—in the sense of a barely scraped-together existence—looks like for those who have somehow managed to survive outside of the community’s AI-designed structures and societal rules. Beyond the shelter and hedonism of the cities, the consequences of over-population, wars, and pollution have led to ruined landscapes and lawlessness: survivors are few and they have had to develop strange customs and cruel

²⁵ Matrix op cit n p. 8.

²⁶ Logan’s Run p. 12.

²⁷ Ibid p. 13.

rituals or engage in murder or cannibalism. One notable ‘success’ (of sorts) is that of ‘Box’ a vaguely half-human creature who has carved out a superficially civilised living space for himself, via horrific fusion with technology (and a psychopathic mindset).²⁸ As one of several ‘constructed horrific beings’²⁹ in the novel, he has embraced the prevailing wisdom that lives *must* be sacrificed, willingly, to enable an eked-out existence for privileged others. Everywhere, there are further diminutions of human dignity, beyond those seen in the urban centres. Torture and exclusion of the vulnerable is inevitable and rights are fictive. Likewise, the concept of justice has been reduced to its most basic function: it exists only to control the behaviours and thoughts of those deemed to be *other*—and therefore ‘less than’—those who abide by the strictures of the system. Survival has been achieved in the face of an acute crisis, but at an increasingly unsustainable cost. And yet, such a system could, arguably, be said to still fit within a wider notional system of ‘human rights that viewed rights not as espousing radical ethical individualism but rather as essential for the promotion of the common good.’ (McCrudden 2008).³⁰

The following section looks to some of the case law that relates to the UK’s rationing of medical treatment and services—as it has potentially impacted upon our understanding of the concept of the right to life—both during and after the Covid-19 pandemic, comparing and contrasting the relevant legal frameworks for resource allocation with the futuristic, dystopian systems that have been used to ration and curtail similar ‘rights’ within the novel *Logan’s Run*.

Human (in)Dignity or ‘justified’ Discrimination? Pandemic-led Rationings and/of the Right to Life

‘..an insidious dystopia in which children are forced to pay for the mistakes and shortcuts taken by long-dead generations of adults...’ (Daniel H Wilson, 2015)³¹

Arguably, the dystopian rationings seen in novels such as *Logan’s Run* are not completely removed from the thinking behind some of the so-called ‘frailty algorithms’ adopted by health providers in the recent pandemic.³² Put bluntly, where hospital beds, ventilators, or vaccines were in too-short supply, triaging and prioritisation of the fittest was used to allocate resources. When done on the basis of advanced age or infirmity (or disability) such a system may be framed as a justifiable form of discrimination, sanctioned by decision-makers as the best means of

²⁸ It is unsurprising that a half-man, half-machine creature (‘Box’) has managed to do achieve longevity amongst the ice, with self-crafted artworks reminiscent of humanity’s ability to sometimes produce beautiful things. Likewise, it seems entirely plausible that he should seek to brutally murder the two main characters who have sought to question the system.

²⁹ Carroll (1990).

³⁰ McCrudden (2008) 3.

³¹ Wilson (1967).

³² See further Supady et al. (2021).

preserving dwindling public resources.³³ Such a strategy has profound implication for those deemed to be vulnerable however, making weakness a thing to be feared.³⁴ Indeed, the early stages of the pandemic saw high levels of care home fatalities, with infection rates there rising disproportionately.³⁵ Brutal ‘new norms’ of near-dystopian isolation or self-sacrifice (e.g. the increased emphasis on asking for DNAR forms to be signed) emerged: incurable, ‘unworthy’ forms of vulnerability appeared resistant to the influence of human rights laws and principles, not least human dignity. Again, as in *Logan’s Run*, self-policing was often key, as was watching the behaviours of one’s neighbours, maintaining social distancing, mask-wearing, vaccination, and so on. The rhetoric of war-time heroism—and patriotic duty—seemed to underscore further which sections of the population were more or most deserving of treatment and a greater life expectancy: a ‘new eugenics’ (Hoskin and Finch 2020) was evident.³⁶ As the High Court noted in *University College Hospitals Foundation Trust v MB* (2020) some hospitals could easily find themselves in situations where they would have to choose between treating or admitting two near-identical patients, simply on the basis of which one of them might have the ‘better claim.’³⁷ This might occur even where a decision to stop providing in-patient care could result in ‘extreme distress or ...give rise to significant risks’ to the health or life of one of them. Resultant ‘violence against the weak and the poor’³⁸ (Frey 2020) was also observed, however. As the UK’s Equality and Human Rights Commission Consultation on vulnerable groups further noted,

‘...lack of virus testing and personal protective equipment (PPE) for people in care homes and for care workers, [was] putting disabled and older people at heightened risk of exposure to coronavirus, and reports of individuals in care homes *being told they cannot go to hospital*.’³⁹

³³ See further *McDonald v. the United Kingdom* ECHR 141 (2014); *Maguire, R v His Majesty’s Senior Coroner for Blackpool & Fylde & Anor* [2023] UKSC 20 (21 June 2023).

³⁴ See further Harwood R ‘Did the UK response to the COVID-19 pandemic fail frail older people?’ (2020) <https://www.bgs.org.uk/blog/did-the-uk-response-to-the-covid-19-pandemic-fail-frail-older-people/>;

Heri (2020), Horton (2020).

³⁵ Morciano et al. (2021).

³⁶ Hoskin Janet and Finch Jo ‘Covid-19, disability and the new eugenics: Implications for social work policy and practice’ *Social Work 2020–21 under Covid-19* (2020) (available at <https://sites.google.com/sheffield.ac.uk/sw2020-21-covid19/editions/4th-edition-2-june-2020/covid-19-disability-and-the-new-eugenics-implications-for-social-work-pol?authuser=0#h.jwket5th8jzy>).

³⁷ *University College Hospitals Foundation Trust v MB* [2020] EWHC 882 (QB).

³⁸ Frey, Isabel ‘Herd immunity’ is epidemiological neoliberalism.’ *The Quarantimes* (2020) (available at: <https://thequarantimes.wordpress.com/2020/03/19/herd-immunity-is-epidemiological-neoliberalism/>), arguing that laissez-faire ‘herd immunity’ might be understood as a harsh form of ‘epidemiological neoliberalism’ grounded in a belief in the advantages of free markets and de-regulation to permit survival of the fittest.

³⁹ Equality and Human Rights Commission ‘Executive summary: Evidence to the Women and Equalities Committee inquiry on coronavirus (COVID-19) and the impact on people with protected characteristics’ (2020); Equality and Human Rights Commission ‘How coronavirus has affected equality and human rights: Is Britain fairer?’ (2020) (available https://www.equalityhumanrights.com/sites/default/files/equality_and_human_rights_commission_how_coronavirus_has_affected_equality_and_human_rights_2020.pdf).

The Department of Health and Social Care's *Ethical Framework for Adult Social Care* (March, 2020) further highlighted the need for clear core principles in decision-making: 'alongside ethical considerations, every decision [would] require consideration of individual wellbeing, overall public good *and the resources that are available*' (emphasis added).⁴⁰ The repeated focus upon rationing does not align well with the UN Committee on Economic, Social and Cultural Rights (CESCR) statement,

...if States do not act with within a human rights framework, a clear risk exists that the measures taken might violate ESCRs and increase the suffering of the most marginalized groups. No one should be left behind in taking the measures necessary to combat this pandemic (2020: 2).⁴¹

It seems fair to argue that the UK government took steps to diminish its own responsibility in certain areas.⁴² The concept of the protected characteristic (under The Equality Act 2010) had brought about some advances in respect of non-discrimination policies, greater equality of treatment, and improved access to human rights protections. The Act's definitions echo pandemic risk factors for infection and non-survival: gender, ethnicity, disability, and age were all relevant in relation to identifying potentially fatal 'frailties.' These were determinants too as to whether any one person or group in particular should be shielded away from the rest of society, for their own protection. Socio-economic factors cannot be ignored, and yet health-threatening weaknesses arising from prolonged eras of austerity,⁴³ deprivation, or exclusion are not deemed to be protected characteristics under the legislation. Poverty, homelessness, and low-paid work can clearly expose an already-vulnerable person to increased dangers particularly in respect of reinforcing the inability to simply somehow 'stay safe' during contagions by, for example, avoiding risky situations, working from home, or finding a safe space in which to endure the difficulties and dangers of repeated lockdowns.⁴⁴ In terms of crafting rights-led policies and adhering to health-equitable, justice-grounded processes it seems that it is quite easy to mix up 'measures to target treatment to those who can best benefit, with rationing.'⁴⁵

⁴⁰ <https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care/responding-to-covid-19-the-ethical-framework-for-adult-social-care>

⁴¹ Reiterating their 2019 statement (on the need for sustainability); UN Committee on Economic, Social and Cultural Rights Statement, "*The Pledge to Leave No One Behind: The International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development*" UN Doc. E/C.12/2019/1 (5 April 2019). <https://www.conectas.org/wp/wp-content/uploads/2020/04/ESCRCommitte-COVID.pdf>

⁴² See further Newdick et al. (2020), Newdick (2004), Oppenheimer et al. (2002).

⁴³ Cusato et al. (2020) p 3.

⁴⁴ <https://www.gov.uk/guidance/full-list-of-local-covid-alert-levels-by-area> (accessed 29 October 2020).

⁴⁵ Harwood (2020).

Speedily amended NICE guidance (NG159) on hospital admissions, critical care, and the Clinical Frailty Scale (CFS) notes that Do Not Attempt Resuscitation orders (DNARs) should not automatically be used for younger people, or for persons with stable long-term disabilities (e.g. cerebral palsy), learning disabilities, or autism (March, 25th 2020). It is noteworthy that an open letter containing such guidance plainly acknowledged that there were already profound deficiencies within the UK's health and social care systems, prior to the onset of the pandemic: 'the health of some people who have a learning

Where the primary aim of decision-makers is to preserve finite resources—particularly those which tend to involve some curtailment of the right to life—then a clear conflict of interests (both legal and ethical) arises (CASCAIDr, 2020).⁴⁶

Court of Protection Guidance (January 2020) of the time reminded us that various inalienable human rights are enshrined within the European Convention. The withdrawal—or withholding—of clinically assisted nutrition and hydration would be included within these. British Medical Association (BMA) Guidance from 2020 was also succinct: ‘...neither age nor disability are in themselves relevant criteria for making decisions about treatment.’⁴⁷ This suggests that rationing policies based largely on age or disability levels would likely be unlawful, given also the scope for personal biases to creep in (via value judgements on the perceived worth—or otherwise—of any individual’s quality of life). The pandemic exacerbated existing inconsistencies in the law: the principle of non-discrimination, for example, cannot be said to offer meaningful levels of protection to those who are frail or aged, and denied access to treatment on the basis of their enhanced vulnerability. Human rights advocates could do worse however than look to the details of the various formulae that emerged during the pandemic. If fundamental infringements were permitted in respect of care homes on the basis that hospitals had to be saved *at all costs*, this has significant implications for our understanding of the right to life and how it might best be interpreted and protected in times of crisis (and indeed afterwards). It is not beyond the realms of possibility that most decision-making processes could in the future be re-framed as justifiable, proportionate and reasonable responses to almost any crisis that might be deemed ‘unprecedented.’

In relation to protecting substantive rights, the duty to preserve scarce or finite resources has now perhaps become an all-encompassing one, leaving little to no room for discussions of just how the principles of human dignity or non-discrimination might be meaningfully accommodated within such a heavily qualified human rights template. Given chronic global austerities and an increasing population level, any future decisions on who to treat (or *not* treat) must however be tied to fundamental human rights principles. Human dignity is a core value that should not be side-lined—or disguised as—a call for increased patient autonomy, resource- preservation, or an indeterminate greater good. Nor should it, much like the notion of meaningful health-justice, be subject to the sort of harsh rationing that make sense as an algorithm but ignores completely the human condition and our need for basic

Footnote 45 (continued)

disability and / or a diagnosis of autism may be at risk from ...inequities in access to and delivery of appropriate and timely assessment and treatment for physical health conditions.’ See also the specific NHS guidance on the management of people with learning disabilities and autism which clinicians are strongly recommended (but presumably not obliged in law) to refer to: https://www.england.nhs.uk/coronavirus/wpcontent/uploads/sites/52/2020/03/C0031_Specialty-guide_LD-and-coronavirus-v1_-24-March.pdf.

⁴⁶ Cascaidr ‘Ten things that all care home managers should know’ (2020) available <https://www.cascaidr.org.uk/uploads/Ten%20things%20that%20all%20care%20home%20managers%20should%20know%20FINAL.docx>; See also *Critical Care Guidance* by the Court of Protection (January 2020) available at <https://www.bailii.org/ew/cases/EWCOP/2020/2.html> (09.05.20.).

⁴⁷ <https://www.bma.org.uk/advice-and-support/covid-19/ethics/covid-19-faqs-about-ethics> (13.10.20).

dignity.⁴⁸ If states become immune to their human rights obligations, (JCHR, 2020, para 76) then the prognosis for rights protections becomes increasingly bleak:

‘...on some of the most important measures of health, the four nations of the United Kingdom perform worse than our nearest neighbours. Even with coronavirus out of the picture, Britain is the sick man, woman and child of Europe.’⁴⁹ (Horton 2020)

The ongoing, longer-term human rights impacts of the pandemic seem set to be far-reaching: frayed or lost family ties, higher levels of chronic ill-health and new disabilities, and worsening poverty. Again, as in *Logan's Run*, the right to family life was, for many, one of the most sorely tested (and easily dispensed with) entitlements, what with harsh bans on having contact with one's relatives both routinely and at important points in the life cycle: marriages, births, deaths, and funerals. We become increasingly frail when denied the things tend to define or enhance our humanity: kinships, human contact, a sense of community and an adequate quality of life.

As Daly (2020:2) further observed, there clearly was a ‘parallel pandemic in care homes to that playing out in hospitals.’ The use of patriotic or health-heroic rhetoric placed a further onus on vulnerable persons to self-ration or deny their need for help or support so that the greater good might be better served. Clearly, socio-economic justice is not guaranteed by the mere presence of human rights frameworks.⁵⁰ As Heri (2020,702) has also argued, international human rights law can often fail to address or uncover ‘assumptions and biases that prevent it from adequately capturing real-life harms and inequalities.’ Domestic laws and policies can worsen, ‘fracture,’ or deform the notion of innate human vulnerability: these should be regarded as indicators of state failings. It is difficult to imagine any future forms of stark rationing being classed as ‘manifestly without reasonable foundation’ given the need to ensure that finite resources should be preserved for those deemed most deserving: the least frail or vulnerable, or by extension, those who are deemed less aged.⁵¹

McDonald v United Kingdom (2014) though disappointing, did at least suggest that express references to the state's equality duty should be made by the courts in certain hard cases. Substantial compliance with statutory obligations seems here to have been achieved largely on the basis that the funding decision in question was ‘exclusively concerned with the interests of elderly and disabled people’⁵² And yet, if harsh policy decisions have the potential to adversely—and frequently—affect large groups of people, rather than impacting mainly upon particularly vulnerable

⁴⁸ See further JCHR 2020 para 72–75, statement by the Department for Health and Social Care (DHSC) (15 April 2020) which states that “it is unacceptable for advance care plans, including Do Not Attempt Resuscitation orders, to be applied in a blanket fashion to any group of people.” As such, any automatic imposition of such notices ‘without proper patient involvement is unlawful. The evidence suggests that the use of them in the context of the Covid-19 pandemic has been widespread.’

⁴⁹ Horton op cit n 34.

⁵⁰ Moyn (2018).

⁵¹ See further Ian Loveland (2017).

⁵² Auburn (2016).

individuals, and only rarely, it seems that dignity-led regard for equality needs to be much more clearly enshrined in law. In sum, to be somehow frail (via age, disability, or social disenfranchisement) is to be especially vulnerable to being irreversibly othered. This is particularly so where rights themselves appear to have been rationed as part of a ‘greater good’ blueprint that claims to offer the best means of ensuring survival or preserving a reasonable standard of living. In respect of life-quality and lifespan, numerous health law scholars have highlighted however the effects of inequitable resource allocations and the need for just (re)distributions, to maintain some basic level of human dignity. As Marmot (2020) reiterated, there are clear overlaps between life expectancy, disability, health standards and regional deprivation.⁵³ Horton (2020) too observed that ‘differences in life expectancy hold a mirror up to the inequalities across our nation.’⁵⁴

There is however no absolute statutory obligation on the state to actively provide all of its citizens with adequate medical treatment.⁵⁵ Likewise, claims involving fundamental rights violations under the European Convention (ECHR) seldom support the notion of a truly juridical right to adequate health or a longer, better-quality life. Much of the Strasbourg jurisprudence suggests that such matters tend to fall within a highly flexible margin of appreciation, allowing signatory states to organise and oversee their own systems as they see fit. Indeed, in *Lopes de Sousa Fernandes v Portugal* (2017) it was suggested that ‘the allocation of public funds in the area of health care is not a matter on which [the ECtHR] should take a stand.’⁵⁶ As Pritchard-Jones (2015) observed, there is much to learn from cases involving difficult rights issues, especially where courts appear to opt for silence. There seems perhaps to be a growing judicial ‘disinclination to engage with substantive discussions of dignity and autonomy.’⁵⁷ Clearly, however, Article 2 ECHR rights will still be engaged where some

‘... systemic or structural dysfunction in hospital services [has] resulted in a patient being deprived of access to life-saving emergency treatment where the authorities knew about or ought to have known about that risk and failed to take the necessary measures to prevent that risk from materialising, thus put-

⁵³ The Marmot Review (2020) found that since 2010 worrying deteriorations in public health standards—and widening health inequalities are in evidence: https://www.health.org.uk/sites/default/files/upload/publications/2020/Health%20Equity%20in%20England_The%20Marmot%20Review%2010%20Years%20On_full%20report.pdf, p. 13: Moreover, adequate health and life expectancy rates within England’s poorest communities (in the North West, North East, East and West Midlands, Yorkshire and the Humber, and in deprived areas of London) are deteriorating: ‘the protective role of the state in supporting people is being reduced and realigned away from more deprived areas and communities.’ (p.33).

⁵⁴ Op cit n 34.

⁵⁵ In *R v Secretary of State for Social Services, ex p Hincks* (1980) 1 BMLR 93.

⁵⁶ See further *Lopes de Sousa Fernandes v Portugal* [2017] ECHR 1174 para 166.

⁵⁷ Pritchard-Jones L ‘Night-Time Care, Article 8 and the European Court of Human Rights: A Missed Opportunity’ *Journal of Social Welfare and Family Law* (2015) (37) 108 p.111. See also useful analysis by Lewis Graham, ‘The European Court of Human Rights and the Emerging Right to Health’ (OxHRH Blog, 11 May 2017) <https://ohrh.law.ox.ac.uk/the-european-court-of-human-rights-and-the-emerging-right-to-health>.

ting the patients' lives, including the life of the particular patient concerned, in danger.'⁵⁸

The recent decision in *Milner v Barchester Healthcare Homes Ltd* (2022),⁵⁹ though horrific in terms of the abusive treatment of an elderly and highly vulnerable lady, offers one tiny glimmer of hope. The Court found that although Article 2 of the European Convention on Human Rights ('the right to life') had been engaged in relation to the defendant's failure to manage a choking risk, the operational duty (to take reasonable steps) had not been triggered: this was based on the reasoning that the conceptual risk to the late victim had never presented a 'real or immediate risk' to her life.' In relation to the corresponding Article 3 claim (on freedom from 'torture, inhuman or degrading treatment') the ill-treatment included inappropriate restraints, segregation from other residents, and being left in an unhygienic condition. On the issue of meeting Article 3's extremely high threshold, the Court held that it could not determine that matter at this stage: to attempt to do so would essentially involve holding a 'mini-trial' which was not permitted. Significantly, the claimant demonstrated sufficient *locus standi* to bring the claims as an indirect victim, given her a clear and 'strong moral interest.' Likewise, the claim could well serve a wider public interest, given that it 'straddles healthcare and personal care.'⁶⁰ The facts, in brief, are as follows:

Mrs Elsie Casey, a 94-year-old childless widow, had spent four years in the Home, prior to her passing away in 2017 from pneumonia and dementia.⁶¹ Susan Milner ('the Claimant') was her long-time family friend and next of kin,⁶² having served as Deputy for the victim's property and affairs, since 2013: she was also named as the meaningful person at the Pre-admission and Admission Assessment stages. A Deprivation of Liberty Safeguards ('DOLS') had also been authorised under the Mental Capacity Act 2005, with the Claimant serving as the representative in connection with this. Put bluntly, Mrs Casey had been acutely vulnerable, and

⁵⁸ See further *Aydođdu v. Turkey* ECHR [2016] (application no. 40448/06)). See further Lavrysen Laurens, 'Medical negligence after *Lopes De Sousa Fernandes*: A blank check to the member states with respect to the substance of the right to life?' (2018) *Strasbourg Observers* <https://strasbourgobservers.com/2018/02/08/medical-negligence-after-lopes-de-sousa-fernandes-a-blank-check-to-the-member-states-with-respect-to-the-substance-of-the-right-to-life/Tto> find that there has been a 'denial of access to life-saving emergency treatment,' four factors must be present: (1) Acts and omissions of the health-care providers must have gone beyond mere error or medical negligence, with providers—in breach of their professional obligations—having denied a patient emergency medical treatment despite being fully aware that their life was at risk in the absence of that treatment (2) The impugned dysfunction must be objectively and genuinely identifiable as systemic or structural so as to attribute it to State authorities (3) There had to be a link between the impugned dysfunction and the harm sustained (4) The dysfunction must have resulted from the failure of the State to meet its obligation to provide a regulatory framework in the broader sense.

⁵⁹ *Milner v Barchester Healthcare Homes Ltd* [2022] EWHC 593 (QB) (22 March 2022).

⁶⁰ *Ibid* Para 36.

⁶¹ There was neither a post mortem nor an inquest. [para 2].

⁶² As the Court noted, 'Susan's mother and Elsie had been lifelong friends. Susan grew up considering Elsie and her husband Norman as part of the family. She was referred to as "Aunty Elsie". She and her husband were Godparents to Susan's daughter, Cheryl.' [para 3].

severely ill-treated, in the years leading up to her death. The concerns listed in the Particulars of Claim included her being 'unable to access the toilet and being left in a soiled state for prolonged periods'⁶³ of time. It was noted therein too that.

'...there were failures in assisting Elsie to mobilise, such that her mobility declined dramatically whilst at the Home. She was at risk from other residents at the Home, which staff managed by isolating her. She was exposed to inappropriate methods of restraint by untrained staff, compromising her dignity and well-being. She was not provided with appropriate care and assistance in relation to her nutrition and hydration; it is likely that she was often left thirsty and hungry.'⁶⁴

There were risks from falls and choking which often manifested in reality and resulted in injury. The actions of a concerned whistle-blower led to unannounced inspection by the Care Quality Commission ('CQC') and a subsequent safeguarding alert, with the local authority then undertaking an investigation. Both of these bodies furnished reports in 2017 which were highly critical of the poor care standards endured by the residents.⁶⁵ It was noted that, the Home had been neglectful and had clearly placed Mrs Casey 'at increased risk of harm.'⁶⁶ Following her death, Milner lodged a claim for damages as an indirect victim of breaches of Articles 2 and 3 of the European Convention on Human Rights (ECHR).⁶⁷ Article 2 relates to the right to life,⁶⁸ with Convention-signatory states being under an obligation to not unlawfully deprive their citizens of life. Article 3 prohibits the use of 'torture, inhuman and degrading treatment'⁶⁹ and seems to be increasingly referred to in cases involving lapses in health and social care both within the UK and elsewhere (with varying degrees of success).

Several issues arise here. Firstly, there is the matter of whether or not the fundamental rights enshrined within Articles 2 and 3 ECHR were engaged, given the facts: secondly, there is the question of whether Milner had *locus standi* to bring such claims, given that she was not legally or genetically related to the late victim.

⁶³ Ibid [para 5] There were persistent failures to deal with other aspects of her personal care, including chiropody and skincare. She was often encountered by Susan in an unkempt and unhygienic state. There was a prolonged failure to address her dental and oral health.'

⁶⁴ Ibid para 5.

⁶⁵ The ill-treatment 'was censured in forthright terms' by external agencies para 48.

⁶⁶ Ibid Para 6.

⁶⁷ Via ss. 7–8 of the Human Rights Act 1998. Under s. 73 of the Care Act 2014, Barchester are deemed to be a public authority for the purposes of s 6 of the Human Rights Act 1998.

⁶⁸ "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained, and
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

⁶⁹ "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Article 2 claim was struck out, but the Court took pains to stress that *locus standi* was demonstrated here, despite the absence of legal, familial or genetic connection. The Article 3 claim was not summarily dismissed, given the Claimant's moral interest and the wider public interest. Though there was no case to answer in respect of her right to life, the question of the unrelated claimant's *locus standi* was discussed. It was held that this issue would have been resolved in court, given the fundamental nature of the right to life, and the very close relationship (though non-familial in the legal sense) that had existed between the deceased and the claimant. It was framed as akin to a mother-daughter bond or a de facto fosterage,⁷⁰ having been bolstered by the various legal ties and responsibilities arising via a property Deputyship and the workings of a Deprivation of Liberty Order. This small but significant recognition of the importance of familial and social ties perhaps reflects an increased post-pandemic awareness of the need for—and right to—to meaningful connections. As in *Logan's Run*, it is the presence of such emotional bonds, rather than explicit legal provisions or even policies on safeguarding, that perhaps seems more likely to offer protections against indignity—and loss of life—in the face of pragmatic, algorithmic reasonings and justifications.

Conclusion

Within dystopian settings, the interlinked, overlapping concepts of justice, rights, and human dignity can easily be made subject to harsh rationings: only those beings deemed 'human enough' to be worthy, autonomous rights-holders will be afforded any chance of accessing fundamental freedoms, or basic levels of subsistence. Certain aspects of the human condition may have to be held in check, via memory or mood-altering drugs (*The Silo Trilogy*; *The Giver*), by self-censure or sociocultural stigma (*Never Let Me Go*), or through harsh yet legalised sanctions, such as the death penalty, permanent exile, or some form of torture (*The Handmaid's Tale*). As discussed above, *Logan's Run* features all of these measures, to ensure compliance with a brutal—but arguably necessity-driven—scheme for survival. Key losses may also play a part in keeping human nature—and our dangerous emotional responses, and tendency to rebel or revolt—in check and under tight control. The careful regulation of certain truths, and the rationing of access to information, may have to be tightly managed by those who hold power. The use of non-human 'thinker' or algorithm that can dispassionately oversee and facilitate our fragile future, may be needed. It is ironic then, that very often the original rationales for new systems may be long since forgotten: they might be no longer able to sustain an adequate *quality* of life, grounded in principles of dignity, fairness, and equity.

Works of fiction that contain an 'ironic abhorrence of the law' can at least be said to offer some 'aspiration to just norms of law and an insistence that perennial

⁷⁰ See further Lang J in *Daniel Daniel v St George's Healthcare NHS Trust & Anor* [2016] EWHC 23 (QB) at 42.

deviations from such norms are neither inevitable nor inexplicable.’⁷¹ As Schramm noted (albeit of Victorian literature), ‘fiction must make space for itself by denigrating the narrow, exclusionary emphasis of the law and seeking to recover those stories which the law ignores as inadmissible or irrelevant.’⁷² Such ‘strategies of persuasion’⁷³ can seek to mirror the style and methods of the courtroom, with dark, personal testimonies evidencing—if not challenging—entrenched, systemic inequalities that might otherwise become almost completely rights-resistant. Individual testimonies do matter, even though many of the legal mechanisms designed to capture them can lack ‘the engaging quality’ that literary fiction has. This is especially so when it comes to gaining the attention of the public and relaying increasingly uncomfortable narratives that highlight the human impacts of injustice, inequality, and marginalisation.⁷⁴ The perennial dangers associated with having a ‘population that is docile and quantified as machine-readable,’⁷⁵ become more pronounced in times of crisis, whether financial, medical, or existential. Various dystopian fiction tropes—especially those that relate to the need for ardent, virtuous self-sacrifice or ‘survival of the fittest’—can be seen within much of the recent domestic decision-making on how best to use dwindling resources. As in *Logan’s Run*, for harsh rights rationing to be acceptable to most citizens, it seems that those who are already often the most vulnerable must also somehow be deemed ‘other.’ This in turn can lead to more abject forms of social exclusion, an irreversible loss of agency, and non-access to fundamental rights, including perhaps the right to life. All of this can be said to be utterly dystopian in nature, and very far removed from the principle that human dignity must be regarded as a core value, in any fundamentally just society.

Whether truly equitable models of social justice can ever be achieved against an ever-worsening landscape of chronic want, remains to be seen. In the meantime, those laws, policies, and rights violations depicted in novels such as *Logan’s Run* will continue to make for particularly uncomfortable reading. They serve as both warnings and reminders to decision-makers and jurists of the need to ‘think rather more deeply about rights, about humanity and about the necessary tensions that play along their margin.’⁷⁶

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⁷¹ Weisberg (2016).

⁷² Schramm (2000).

⁷³ Ibid. Schramm highlights the ‘long tradition of English writers, including Daniel Defoe, Samuel Richardson, Henry Fielding, Charles Dickens, and George Eliot, who felt the need to ground their fictional endeavours in the conditions or sanctions which govern the telling of truthful tales in a court of law.’ She notes also how many scholars of Holocaust literature, such as Weisberg, *ibid.*, seek to ‘define testimony in this context in broad terms, to include both factual accounts of war-time atrocities and fictionalised responses which can also ‘bear witness’ to cultural upheaval and genocide.’ (p.1).

⁷⁴ Ward op cit n 1.

⁷⁵ Moylan, op cit n 2.

⁷⁶ Ward op cit n 1, p 2.

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