

Comment: Why the International Vegan Rights Alliance looks to human rights to emancipate nonhuman animals

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Background and philosophy of the International Vegan Rights Alliance (IVRA)

In 2012, I introduced the idea of using law to promote veganism at the Luxembourg *International Animal Rights Conference*. Sometime previously, I had written a largely uninformed, polemic response to the removal of examples concerning veganism from the Equality and Human Rights Commission's (Draft) Code of Practice. This Code of Practice was published as a guide to help employers understand and apply new Equality legislation. It referred to veganism as an example of a non-religious philosophical belief that was likely to be within the scope of equality law:

A person who is a vegan chooses not to use or consume animal products of any kind. That person eschews the exploitation of animals for food, clothing, accessories or any other purpose and does so out of an ethical commitment to animal welfare. This person is likely to hold a belief which is covered by the Act.¹

The Draft Code of Practice explained that large companies with extensive resources could accommodate vegans, and thus comply with the new

legislation by providing separate kitchen facilities and equipment, including colour coded cutlery and cleaning items. The guidance advised that smaller companies with fewer resources should also show respect for those with needs relating to sincerely held convictions and ensure provisions were made.²

As a long-standing vegan animal rights activist frustrated with the institutional disregard for the basic rights of nonhuman animals, and as a mother who had raised three vegan children during the 1980s, I was overjoyed that these examples had been included in the explanatory guidance to equality law. The European Court of Human Rights had heard a UK case about veganism in the early 1990s³ and, seemingly, without analysis, discussion or a contest from the UK, the Commission (as it was then) found that on account of ethical convictions relating to the welfare of nonhuman animals, veganism was a belief that came within the scope of the right to freedom of conscience under Article 9(1) of the European Convention on Human Rights. Despite Article 9 being applicable to human individuals, this finding arguably acknowledges that ethical responsibility to other animals is somewhat uncontentious.

¹ The Equality and Human Rights Commission, 'Employment Statutory Code of Practice: Draft for Consultation' (The Equality and Human Rights Commission 2009, 32) available at [https://www.elaweb.org.uk/sites/default/files/docs/Draft%](https://www.elaweb.org.uk/sites/default/files/docs/Draft%20Employment%20Code%20of%20Practice%201109798532.pdf)

[20Employment%20Code%20of%20Practice%201109798532.pdf](https://www.elaweb.org.uk/sites/default/files/docs/Draft%20Employment%20Code%20of%20Practice%201109798532.pdf) accessed 3rd April 2018.

² Ibid (252).

³ H v United Kingdom (1993) 16 EHRR CD 44.

Since equality law has its roots in the principles and provisions of human rights, I felt that protection for vegans gave the animal rights movement additional power, and that there was real potential for change, not through the dissemination of more philosophical concepts relating to the legitimate moral standing of nonhuman animals and their basic rights, but on the grounds of protection for human beings whose lives are directed by the ethical conviction that it is wrong to appropriate, exploit, oppress or abuse nonhuman life. Since nonhuman animals are designated property, commodified and denied basic rights in law, I felt that protection for vegans could have transformative potential because the legal claims of vegans, first and foremost, present the moral standing and basic rights of nonhuman animals.

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The passages relating to veganism were, however, removed from the final version of the Code of Practice for employers. This was the impetus for a determined effort to bring about a global discussion of veganism in law and I embarked on a research PhD to embed veganism in human rights and equality law discourse.

This course of action led me to consider, in my thesis, the concepts and principles in the idea of human rights: what grounds the exclusion of other animals from the framework for protective rights and how and why we can speak of the legal equality of vegans. It also allowed me to critically assess current postmodern human rights literature that, despite having its roots in deconstruction, has thus far failed to deal with the

⁴ As is obvious from the way we care about animals, support the RSPCA, develop hundreds of treaties in the interest of other animals, decide freedom of expression cases in their favour and criminalise cruel acts. The problem is the lack of logic in our recognition of ethical responsibility, the

human-nonhuman boundary and animal rights, failed to identify the intersection of human and nonhuman rights or acknowledge that the inclusion of vegans brings human rights to a threshold where the moral standing of nonhumans is, paradoxically, visible. At the outset of my studies, I also formed the International Vegan Rights Alliance.

The idea behind forming a vegan legal alliance was to develop a supportive and collaborative network of vegan legal professionals who appreciated the transformative potential of using law to promote veganism. After all, doesn't emancipation for nonhuman animals begin with changing ourselves, our institutions and our system of justice? The idea was supported by a web site and a series of presentations given in various parts of the world to activists, lawyers and academics.

The outcome is a global network of active vegan legal professionals and supporters, writing about various vegan law issues, lecturing in educational settings, and taking legal actions on behalf of vegans. In addition, the completed PhD thesis, which talks about a 'vegan jurisprudence of human rights', grounds and justifies the legal accommodation of vegans by highlighting the important philosophical foundations that explain why the identification of universal suffering is the bedrock of the human rights enterprise. Importantly, my work also explains why the accommodation of vegans under the article 9 right to freedom of 'individual' conscience violates the concept of universal suffering in that it does not acknowledge nor respect the fact that it is already a profound social good to extend ethical responsibility, care about, and not harm, other animals.⁴

Since, in my view, veganism is a manifestation of an existing, broad ethical regard for other animals, there should be no concept of a case concerning ethical responsibility to nonhuman animals being adjudicated as a matter of protection for personal and private conscience.⁵ My thesis exposes and explains the

exclusion of nonhuman animals from justice and the oppressive thematization that perpetuates their subjugation and oppression.

⁵ Interestingly, Judge Pinto's dissenting judgment *Herrmann v Germany* App No 9300/07 (ECtHR, 26th June 2012)

original violence of exclusive human rights for nonhuman animals and what needs to be done to give expression to natural, inclusive justice. In the absence of a much needed reorientation of the ethics of human rights, however, the right to freedom of conscience, as represented in the international Bill of Rights⁶ and in Article 9 of the European Convention on Human Rights⁷, has utility for vegans because it is the ground upon which the moral standing of nonhuman animals is brought to bear upon the idea of exclusive human rights and human rights practice. Claiming vegan rights under the right to freedom of conscience foregrounds the existing social acknowledgement of the moral standing of nonhuman animals and re-presents their basic right to be free from imposed arbitrary power and oppression.

So, what are the human rights philosophy and the international human rights principles that ground the idea of rights for vegans? And what can we hope to achieve internationally and regionally?

Grounding 'vegan rights' in philosophy

We can conceptualise rights for vegans by acknowledging our shared concern with the amelioration suffering. Philosopher Emmanuel Levinas explains, in a complex philosophy, how the authentic expression of suffering others impacts on us before we employ reason. He argues that we are not primarily rational, autonomous and self-legislating, but that we are essentially predisposed to acknowledge and respond positively in the face of suffering. Levinas argues that we have no choice but to respond to the authentic expression of precarious, mortal others. The 'suffering other' speaks an unspoken question 'here I am, how will you respond?' It is a moment of awareness that motivates us to ethical action: as is clear in the idea of human rights.

Levinas suggests that the idea of human rights could only ever have come about because human beings

highlights the importance of an Article 9 right to freedom of conscience to provide protection for animals in the absence of other, formal recognition of their basic rights.

⁶ The International Bill of Rights is the combination of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the

recognise duty in the face of the precarious, mortal other. The first right is not the right of the self but the right of the precarious, mortal other not to suffer further from the acts or omissions of subjects. This original duty to others is said, by critical human rights scholars,⁸ to have been derailed in the development of 'individualised' human rights. They argue that human society has become obsessed with individual claim rights for selves, rather than emphasise duty to others. In contrast, however, I would argue that the 'individual' claims of vegans are not claims for the self; they are claims made in recognition of the original moral imperative to respond to suffering others. In my view, the legal claims of vegans represent the original idea that grounds protective rights: that we are naturally motivated to ethical action in the face of suffering.

But modern human rights are, of course, confused. They respond to the immeasurably horrific events of World War Two in recognition of duty in the face of universal suffering, but they have retained the powerful enlightenment idea that the primacy of human reason is why nonhuman animals cannot be beneficiaries of protective rights. For Emmanuel Levinas, human reason is but secondary to the ethical event intrinsic to becoming aware of the authentic expression of mortal others. This philosophy inspires the conclusion that in the first instance, we are profoundly affected by the suffering of nonhuman animals, but we have created oppressive themes and categories to justify prejudice and deny them their basic rights.

In the absence of a framework for protective rights that includes nonhuman animals, vegans can, however, take advantage of the primacy of reason in human rights. The provision, in the international bill of rights, for the right to freedom of conscience, allows everyone the absolute right to work out their own religious or nonreligious ethical convictions. It prohibits coercion into a belief system that is not of ones' choosing and

International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 9.

⁸ For examples, see the various human rights works of Costas Douzinas, Upendra Baxi, and William Paul Simmons.

lays the foundations for the rights of parents to institutional support to raise their children according to their own convictions. The right to freedom of conscience imposes strict limitations on interference. Interference can only be justified if there is a law that is necessary in a democracy for a very good reason, such as for public order, health or morality, or in recognition of the rights and freedoms of others. This right is honoured by Article 9 of the European Convention of Human Rights and made accessible in the UK in the Human Rights Act 1998.⁹ Importantly, manifestation of belief, free from unlawful interference, under the right to freedom of conscience applies to anyone whose lives are directed by compelling convictions, whether religious or non-religious in nature.

What can we hope to achieve internationally and regionally?

Globally, the application of the right to freedom of conscience is, of course, inconsistent. Even in Europe, in Austria for example, vegans are excluded from legal provisions that would ensure that their children have access to suitable food at school.¹⁰ Vegans around the world are contesting their exclusion from protective measures that would ensure they receive, for example, equal advertising rights or appropriate food in public authority contexts, such as schools, prisons and hospitals. Actions are currently underway, for example, in England, Canada, Turkey, France, Germany, Austria and Italy, and all are grounded by the primary principle of the right to live according to life-directing ethical convictions.¹¹

Regarding the importance of right to freedom of conscience, the European Court of Human Rights has been very consistent in its approach when deciding

cases from prisoner applicants who have been denied suitable food that aligns with their convictions regarding compassion to 'all living beings'. Though, under new efficiency measures, the Court has the power to throw out 'trivial' matters, it regards the provision of food according to ethics an important matter for human rights, has considered these cases and decided consistently in favour of applicants on the grounds that providing suitable food can be critical to ensuring the right to freedom of conscience.¹²

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In the United Kingdom, vegans have some institutional support. Lord Walker, in *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246, commented that vegetarianism is an uncontroversial example of a belief coming within the scope of law. The Equality and Human Rights Commission explicitly includes veganism in the dissemination of information about duties under human rights provisions,¹³ and it is very likely that vegan convictions, though as yet untested, will be found to be within the scope of current equality law: veganism has already been cited as relevant in a successful equality case concerning an applicant who lost his job because he was against fox hunting.¹⁴ My colleague, Barbara Bolton, has contributed further discussion on vegan equality in the

⁹ United Kingdom: Human Rights Act 1998 [United Kingdom of Great Britain and Northern Ireland], 9 November 1998.

¹⁰ Austrian Maj Jur Petr Kudelka has written about this and will speak at the IVRA 2018 Conference. See: <https://www.youtube.com/watch?v=d1FgBX9W6Tk>

¹¹ See for example Jeanette Rowley, 'Vivisectioning veganism: the double-edged sword of dairy's exclusive ownership of words' <http://www.lancaster.ac.uk/law/blogs/staff/vivisectioning-veganism/> and Barbara Bolton

'Dairy's Monopoly on Words: the Historical Context and Implications of the TofuTown Decision' <https://effl.lexxion.eu/article/EFFL/2017/5/7>

¹² See *Jakóbski v Poland* App no 18429/06 (ECtHR, 7 December 2010) and *Vartic v Romania* (no 2) App no 14150/08 (ECtHR, 17 March 2014).

¹³ Equality and Human Rights Commission: <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion>

¹⁴ *Hashman v Milton Park Dorset Limited* [2011] EqLR 426 (ET)

UK in her article addressing a recent discriminatory job vacancy, posted by the National Health Service.¹⁵

The idea of using law to promote veganism and protect vegans is important in order to liberate a dogmatic society that has entrenched arbitrary power and prejudice against other living beings; nonhuman animals that are oppressively thematised, commodified and subjected to unimaginable, off-the-scale violence for human profit. It is a fact that human society has already acknowledged the authentic, unspoken expression of nonhuman animals that says 'I am here': we see them; we know they are living in community with us and we have observed and recognised their 'sentience' in treaties and domestic laws. But we have failed to respond ethically to the question posed in that moment of recognition: 'what will you do now?'

The inclusion of vegans in human rights and equality provisions is a productive paradox. Inclusion creates a space for vegans to re-present the authentic expression and natural moral standing of nonhuman animals to human justice to obtain the ethical response, 'yes your claims are uncontentious, nonhuman animal suffering matters and justice will be done in the light of their moral standing'. We may not yet know the extent of the utility of the legal claims of vegans, but in the absence of a framework for animal rights or inclusive protective rights on the grounds of universal suffering, the demands and successful claims

of vegans, despite being adjudicated as individual matters of conscience, can contribute to dismantling speciesist prejudice because they help shift the balance of power by bearing heavily on exclusive human rights.

About the IVRA

The International Vegan Rights Alliance is a grassroots, not-for-profit network of individuals, and the foundational and leading authority on the subject of veganism and law. The principles and facts that ground the existence of the IVRA have been promoted since 2012 to encourage the growth of a network that can advocate in a new way for nonhuman animals. This knowledge base is enhanced by network members from around the world, who have unique and specialist knowledge of the relationship of veganism to law in their respective countries.

The ethos of the IVRA is that veganism is the lived expression of ethical responsibility to nonhuman animals. Under international law vegans are entitled to a social order that respects their right to live according to the ethical conviction that it is morally wrong to appropriate, abuse and exploit nonhuman animals. The IVRA is the first vegan rights pressure network that aims to raise awareness of the legal recognition of veganism and how vegans can be accommodated under the terms of international and European rights and equality legislation.

¹⁵ Barbara Bolton, 'In the Courts: Vegan Rights in the UK' <https://l2b.thelawyer.com/vegan-rights-uk/>