

**Towards a Vegan Jurisprudence:
The Need for a Reorientation of Human Rights**

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Abstract

The objective of this thesis is to develop a new way of thinking about the theory and practice of human rights to accommodate the demands of vegans for basic moral rights for nonhuman animals. The work firstly outlines the ways in which the claims of vegans, under the right to freedom of thought and conscience, are largely unsupported by existing human rights because they are typically outweighed by the wider interests of the majority. Drawing on the work of Emmanuel Levinas, the thesis considers arguments that ground the nature of vegan claims in the ethics of alterity. It specifically utilises the argument that the basis of human rights recognises ethical responsibility to the precarious, mortal other.

Upendra Baxi cautiously supports the application of Levinas' philosophy to the ethics of law, and there is a slowly growing body of literature in this regard. This thesis is the first human rights work to show that Levinas' ethics of alterity can also be applied to nonhuman others, and that human rights arguments can include claims that the avoidable suffering of nonhuman animals is a human rights wrong.

The argument developed within this thesis allows a reconceptualisation of the human rights demands of vegans as claims representing a well-established ethical regard for nonhumans. Looking to Levinas' ethics of alterity not only illustrates a new approach to human rights litigation to accommodate vegans but also grounds the protection of other animals and allows for a reconceptualisation of the very idea of human rights.

'So strong is man's aversion to all killing ...'

Leo Tolstoy, 'Introduction' in Howard Williams, *The Ethics of Diet: An Anthology of Vegetarian Thought* (White Crow Books 2009) 39.

Declaration

1. I declare that the work contained herein has been entirely composed by me and is the product of my own intellectual effort. In addition, I confirm that no part of this thesis has been submitted for any other degree or professional qualification.

2. Extracts from parts of this thesis have already been published:

Jeanette Rowley, Human Rights are Animal Rights: The Implications of Ethical Veganism for Human Rights published in Critical Perspectives on Veganism edited by Jodey Castricano and Rasmus R. Simonsen, 2016, The Palgrave Macmillan Animal Ethics Series reproduced with permission of Springer Nature, Springer International Publishing AG Switzerland.

I declare that this published material was not co-authored, was composed entirely by me and was the product of my own intellectual effort.

J. K. Rowley

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Chapter 1

Introduction

The subject of this thesis

The subject of this thesis is the relationship of veganism to human rights. Veganism is unique in that whilst other disadvantaged groups – for example, women, religious minorities or disabled people – make human rights claims for themselves, the claims of vegans represent, first and foremost, the moral standing of nonhuman animals.¹ In the dominance of a culture that is based on the consumption of other animals, vegans experience unfair treatment and discrimination in personal, social and employment contexts. Some of these experiences motivate human rights claims under the right to freedom of conscience: for example, by a vegan in public authority employment who is required to wear uniform items that are made from the skin or hair of nonhuman animals. In such circumstances, vegans experience coercion and feel required to assimilate into a way of life that is not aligned with their ethical orientation.

Veganism has no official definition for the purposes of law. The definition promoted by The Vegan Society² states that it is:

[a] philosophy and way of living which seeks to exclude—as far as is possible and practicable—all forms of exploitation of, and cruelty to, animals for food, clothing or any other

¹ In recognition of a well-established observation that prejudice against nonhuman animals is reinforced by language, this thesis will support expressions such as ‘nonhuman animal(s)’, ‘nonhuman(s)’ and ‘other-than-human animal(s)’ but may sometimes use ‘animal(s)’ interchangeably with these terms.

² There are many Vegan Societies around the world, but The Vegan Society established in the UK in 1944 is considered to be the leading vegan authority. See <<https://www.vegansociety.com/take-action/ask-vegan-trademark>> accessed 28 June 2017.

purpose; and by extension, promotes the development and use of animal-free alternatives for the benefit of humans, animals and the environment. In dietary terms it denotes the practice of dispensing with all products derived wholly or partly from animals.³

This thesis asks whether there is an ethical theory that – when applied to the human rights system of the European Court of Human Rights (‘the Court’ or ‘the ECtHR’) – supports the claims of vegans. This focus on the ECtHR relates to the inadmissibility of a case brought by a vegan in 1991⁴ and the statement of the ECtHR’s Commission (as it was prior to the 1998 ECtHR restructure) in that case which indicated that the vegan convictions regarding animal products are within the scope of Article 9 of the European Convention on Human Rights (‘the Convention’).⁵

What is problematic about this case is the acknowledgement that nonhumans have sufficient moral standing to validate the human rights claims of vegans but that rights are exclusively human and deny that nonhumans have any basic rights. This thesis frames this problem in terms of a tension in human rights between the prioritisation of individual human reason and the mission of human rights to acknowledge and deal with suffering. In this regard, it foregrounds the ethics of human rights.

The ECtHR is the judicial body that hears cases about alleged violations of the Convention. It builds upon the human rights work of the United Nations (UN) and

³ The Vegan Society, ‘Definition of veganism’ <www.vegansociety.com/go-vegan/definition-veganism> accessed 5 May 2016.

⁴ *H v UK* (1993) 16 EHRR.

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Article 9.

gives effect to some human rights provisions that are contained in the Universal Declaration of Human Rights ('the UDHR' or 'the Declaration').⁶ This is a regional, international human rights treaty that is ratified by the member states of the Council of Europe.

The Convention lists the basic rights and fundamental freedoms of every person. It is a 'living instrument' that evolves through the addition of new Protocols which extend and further clarify existing provisions. Its terms also evolve and are clarified through the judgments of the Court. Given this evolutionary potential, this thesis examines whether there is a way to reconceptualise the idea of basic rights to better accommodate veganism.

1.1 The research questions

The human rights claims of vegans are raised as a matter of freedom of conscience but are claims that represent the moral imperative to attend to nonhuman animal suffering. As such, the primary research question of this thesis concerns the ethical orientation of the human right to freedom of conscience. It seeks to ascertain if there is a way to accommodate veganism by thinking about this right differently. The thesis responds to the primary question through four subsidiary questions. Firstly, what is the essence of veganism and what are the human rights claims of vegans? Secondly, what are the normative legal values and principles that determine the relationship between current human rights and veganism? Thirdly, is there an ethical theory that has utility for the claims of vegans? And finally, what is the essence of such a theory, how might it have utility for vegans and how might it be applied to human rights to support the claims of vegans? The argument

⁶ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A) (III) (UDHR).

developed from an exploration of these questions will now be explained.

1.2 The argument developed in this thesis

The argument developed in the thesis is presented in four stages. The first stage argues that veganism is an ethical commitment to the moral standing of animals and that it represents a moral imperative to attend to their suffering. Observing that other animals suffer, vegans aim to live their lives without harming animals or consuming products derived from their living or dead bodies. Veganism can, thus, be regarded as an uncompromising response to suffering and a manifestation of ethical responsibility to the moral standing of nonhuman others that re-presents their authenticity. On this view, the human rights claims of vegans emerge from the inclusion of other animals in the moral community. The claims of vegans are grounded by responsibility and, first and foremost, present the suffering of other animals as a matter of justice. As such, the claims of vegans are uniquely claims for others rather than for themselves.

The second stage argues that the claims of vegans are primarily claims for nonhuman others supported by certain animal welfare measures (such as the sentient status of nonhuman others in law and related regulations concerning their treatment), but that they are claims which are also limited by certain legal principles such as the current primacy of protection for personal and private beliefs of conscience under Article 9 of the Convention. Noting an existing widespread social, political and legal concern for nonhuman animals that supports veganism as the representation of an already existing profound moral regard for animals, the argument is made that the existing human rights approach to the claims of vegans is ineffective and inadequate. It is argued that their claims should be assessed

differently than as matters concerning disadvantage in relation to personal and private conscience. In this regard, the stage identifies the need to explore an inclusive philosophy that can ground the existence of fundamental rights for a community of individuals that suffer.

The third stage explains that Emmanuel Levinas' ethics of alterity constitute a theory of asymmetrical ethical responsibility that supports the claims of vegans. It observes that asymmetrical ethical compassion is intrinsic to a humanity that is bound in community through an innate regard for suffering others. Developing existing discourse on the utility of Levinas' philosophy for human rights, the stage applies the principles of Levinas' philosophy to nonhuman animals on the basis that they are legitimate, suffering others who demand an ethical response and to whom the human subject responds. The stage identifies that Levinas' ethics of alterity offer a stronger level of protection for nonhuman animals than is explicated in current animal rights literature.

The fourth stage argues that Levinas' ethics of alterity, when applied to animals and human rights, have utility for the claims of vegans. On this view, nonhumans have five basic rights which can be viewed in three groups: the right to life and liberty, the right to self-defined identity and the right to support and assistance. These basic rights of nonhumans ground the claims of vegans; claims judged not on the basis of the right to freedom of personal and private conscience but as the expression of a moral imperative to respond to nonhuman suffering as a matter of ethical justice.

The conclusion of this thesis is that Levinas' ethics of alterity constitute an ethical theory that has value for the human rights claims of vegans because it is

capable of explaining and underpinning the moral and legal standing of animals. This conclusion has significant implications for Article 9 jurisprudence. Rather than framing Article 9 as a provision that supports veganism as a matter of personal and private conscience, this conclusion allows a response to Article 9 that recognises the claims of vegans in the context of an existing empirical ethical regard for other animals and their suffering. It rejects the idea that the claims of vegans are matters that belong in the domain of personal and private conscience and allows Article 9 to become the vehicle through which the moral imperative to attend to the suffering of nonhumans is transported into human rights. It is a response to Article 9 that recognises nonhuman suffering to be a fundamental matter of ethical responsibility to a humanity that is first and foremost ethically responsive to the suffering of others.

1.3 Personal motivation and audience for the research

The personal motivation for this research stems from a longstanding interest in the relationship between human society and the status of nonhuman animals. A specific interest in the human rights claims of vegans was fuelled in 2010 by the observation of a tension in the UK concerning the status of veganism as a qualifying belief under Article 9 of the Convention and the role of the UK Equality and Human Rights Commission.⁷

The Equality and Human Rights Commission has a statutory duty to oversee human rights and monitor equality initiatives and had made it clear in its *Draft Code of Practice for Employers*, that veganism comes within the scope of the protected

⁷ Jamieson Alastair, 'Vegans should be protected from discrimination, says equality watchdog: Vegans and atheists should have the same protection against discrimination as religious groups according to guidance on new equality laws proposed by Harriet Harman' *The Telegraph* (2010) <<http://www.telegraph.co.uk/news/religion/7392222/Vegans-should-be-protected-from-discrimination-says-equality-watchdog.html>> accessed 9 March 2010.

characteristic 'Religion and Belief'.⁸ In the Draft Code of Practice it gave example scenarios featuring vegan employees. These examples sought to explain to employers the steps that could be taken to accommodate the needs of vegans. These useful examples were removed from its final published *Code of Practice* on the basis that they were not 'realistic' and that different examples would better 'reflect the principles in relevant case law'.⁹ It was felt that the removal of the examples was contrary to the principle of inclusion, because it meant that the legal status of veganism was relegated in the dissemination of important information, and that vegans were denied a point of reference to support their requests for accommodation of needs.

The research is likely to be of interest to vegans and animal rights activists because it opens up new ways to debate the relationship between humans and other animals, to articulate claims and to develop political campaigns. It will also be of interest: to human rights scholars who are interested in the ontology or ethical orientation of human rights or the construction of a moral foundation for human rights; to those interested in exploring the philosophy of Emmanuel Levinas; and to those interested in the debate on human/nonhuman rights.

1.4 The context for the research: the situation for vegans

There are varied responses to veganism in case law and by public authorities.

In addition to being regarded as within the scope of the Convention, veganism has

⁸ Equality and Human Rights Commission, 'Employment Statutory Code of Practice (Draft for Consultation)' (Equality and Human Rights Commission 2009) 32, 252, accessed June 2010. The website of the Equality and Human Rights Commission (<https://www.equalityhumanrights.com/en>) no longer carries a copy of this document. An online copy can be viewed at <<https://www.elaweb.org.uk/sites/default/files/docs/Draft%20Employment%20Code%20of%20Practice%201109798532.pdf>> accessed 12 October 2017.

⁹ Equality and Human Rights Commission, 'Employment: Statutory Code of Practice' <<https://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice>> accessed 27 June 2017. A request under the UK Freedom of Information Act 2000 was used to find out why the examples had been removed. The author has retained these documents on file.

been referred to, in a UK court, as a component of a broader positive philosophy within which to raise children.¹⁰ In the UK, vegan children have nevertheless been required by law to receive vaccinations made using substances derived from nonhumans.¹¹ In *Rukavina v Croatia*,¹² the court heard that a multidisciplinary team of experts had been brought in to respond to the applicant's allegations that his ex-wife was putting the health of his daughter at risk by 'keeping her on a vegan diet'.¹³ The specialist team was composed of a psychologist, a psychiatrist, a paediatrician and a social worker. It reported to the court that the child was healthy but that her mother's insistence on a vegan diet put her at risk regarding her 'normal psychophysical development'.¹⁴ There was no discussion about the ethical orientation of the specialists. Similarly, in *Genna & Dennis*, the Family Court of Australia was required to assist disputing parents and employed the services of a dietician as the final arbiter of what the child should eat when in the father's care. Again, there was no discussion as to the dietician's ethical orientation.¹⁵

In France, the judiciary authorised the removal of a child from vegan parents on the grounds that the child was in danger.¹⁶ In other jurisdictions too, the word 'vegan' is conflated with child abuse.¹⁷ Generally, in health care, veganism has been

¹⁰ See comments in *S (CHILDREN)* [2012] EWCA Civ 210. This case concerned vegan children taken into foster care due to the volatile relationship of the parents. The alternative lifestyle and loving environment in which the children were raised was acknowledged as very positive for them.

¹¹ *F v F* (Welfare of Children: Immunisation) [2013] EWHC 2683 (Fam). The court declares the MMR vaccination should be given to vegan children of divorcing parents and warns that an order will be issued if they cannot agree. See also a similar case: *BC v EF* (Parental Responsibility: Immunisation) [2016] EWFC 69 (05 December 2016). In this case the extensive research undertaken by the mother and presented to the court was remarkable but the court declared that the vaccine was in the best interests of the child and that the mother's view was not balanced.

¹² *Rukavina v Croatia* App no 770/12 (ECtHR, 6 January 2015). The father cited the mother's preference of a vegan diet for their young daughter as emotional abuse.

¹³ *Rukavina v Croatia* App no 770/12 (ECtHR, 6 January 2015), point 56.

¹⁴ *Rukavina v Croatia* App no 770/12 (ECtHR, 6 January 2015), point 28.

¹⁵ *Genna & Dennis* [2010] Fam CA 1161 (30 November 2010).

¹⁶ The Connexion, 'Vegan mother has baby taken away' (*The Connexion*, 8 Jan 2014)

<https://www.connexionfrance.com/Archive/Vegan-mother-has-baby-taken-away> accessed 28 June 2016.

¹⁷ *Melville v Muller* 2006 BCSC 895 (CanLII): No evidence that eating a vegan diet is detrimental.

problematised as an extreme diet or a manifestation of psychological disorder.¹⁸ In Switzerland, a soldier was not allowed to join the army on the grounds that his veganism was an unsuitable ethical orientation.¹⁹ A vegan in the United States of America (US) felt obliged to define her ethical orientation as Hindu in order to receive an alternative medical test in place of a standard type that used derivatives of cows' blood.²⁰

A high-profile case in the UK was the case of Joe Hashman, whose employment was unlawfully terminated on the basis of his commitment, as a vegan, to actively oppose fox-hunting. Southampton Employment Tribunal Centre held that his belief in the sanctity of life and anti-fox-hunting was within the scope of protection.²¹ Similarly, a belief in vegetarianism as a manifestation of a perceived relationship with nonhumans has also been accepted as coming within the scope of equality law.²²

1.5 The current status of literature in the specific area

In 2003, Sara Soifer identified that veganism created an 'emerging and difficult dilemma' for law. Since the outset, six years ago, of research for the present thesis, interest in the idea that veganism presents to law an intersection of human

¹⁸ *WCAT-2012-02217 (Re)*, 2012 CanLII 54414 (BC WCAT) (Canadian Workers Compensation Appeal Tribunal). The case was brought to determine compensation for food supplements following injury sustained in the workplace. See also *H (Re)* 2011 CanLII 63119 (ON CCB). This case concerned the legal capacity of a 15-year-old girl and medical intervention.

¹⁹ Christopher Harres, 'Vegan Soldier Rejected by Swiss Army for Failing to Wear Leather Boots' (*International Business Times*, 26 January 2016) <<http://www.ibtimes.com/vegan-soldier-rejected-swiss-army-refusing-wear-leather-boots-2280206>> accessed 20 July 2016.

²⁰ Sarah Soifer, 'Vegan Discrimination: An Emerging and Difficult Dilemma' (2003) *Loyola of Los Angeles Law Review* 1709. See also *Friedman v Southern California Permanente Medical Group* 102 Cal, App 4th 39, 125 Cal Rptr 2d 663 (2002), in which an offer of employment was withdrawn when the applicant refused to be vaccinated against mumps. The Californian Supreme Court confirmed the decision of the lower court that veganism was not within the scope of protective regulations.

²¹ *Hashman v Milton Park Dorset Limited* [2011] EqLR 426 (ET) See also Wardrop Murray, 'Foxhunting Views Placed On Par With Religion After Landmark Legal Ruling' (*The Telegraph*, 9 March 2011) <<http://www.telegraph.co.uk/news/uknews/law-and-order/8368934/Foxhunting-views-placed-on-par-with-religion-after-landmark-legal-ruling.html>> accessed 20 July 2016.

²² *Alexander v Farmtastic Valley Ltd and Others* [2011] 2513832/10 (ET).

and nonhuman moral standing has grown within the academy. In 2015, a request was received for written material – on the relationship of veganism to human rights – for a proposed edited collection of critical perspectives on veganism. This was published in 2016.²³ Also in 2016, Ralph Müller-Amenitsch published *Vegan im Recht* (Vegan Rights) in Germany,²⁴ and in 2017, Carlo Prisco published *The Right to Vegetarianism*, in which he makes a connection between the ways law is developing in response to a historical ethical regard for nonhumans and a growing demand to eat a vegan diet.²⁵ Though Prisco’s approach is entirely different from the one taken in this thesis, in that he emphasises more comprehensively the historical human interest in animals’ wellbeing and the development of a moral imperative not to eat them, he independently observes the way in which positive law for vegans gives expression to the moral standing of other animals, their exclusion from basic moral rights and how these circumstances challenge the orthodoxy of human rights. These scholarly contributions indicate the development of new ways of articulating the moral and legal standing of other animals. Importantly, they bring new insights to debates about the legitimacy and validity of exclusive human rights in the context of a moral imperative to consider the suffering and exclusion of nonhuman animals.

1.6 The context for the research: wider human and animal rights scholarship

Some human rights scholars – for example, Costas Douzinas, Connor Gearty and Michael Hass – have recognised the importance of dealing with animals within

²³ Jeanette Rowley, ‘Human Rights are Animal Rights’ in Jodey Castricano and Rasmus R Simonsen (eds), *Critical Perspectives on Veganism* (Palgrave Macmillan 2016).

²⁴ Ralf Müller-Amenitsch, *Vegan im Recht* (Ventil 2016) ISBN 9783955750657.

²⁵ Carlo Prisco, *The Right to Vegetarianism* (Hamilton Books 2017). In this work, Prisco reclaims the use of the word vegetarianism as meaning a plant-based diet that excludes all animal products.

the context of human rights.²⁶ Gearty argues that an ethically minded public requires the idea of human rights to be revisited because it identifies naturally with nonhuman animal suffering. For Gearty, '[t]he raw fact of an animal suffering should be enough in itself to engender strong feeling of solidarity and underpin joint campaigns...'.²⁷

The argument for an integrated debate concerning nonhuman and human rights issues resonates with some animal rights scholars, such as Kelly Oliver, Alasdair Cochrane and Anne Peters.²⁸ Though there are a number of positions and approaches in this combined scholarship, it is fair to say that it is predominantly anthropocentric in nature and relies on nonhuman sentience as the ground for inclusion. None of the existing literature deals with the human rights claims of vegans or their presentation of suffering, and none of it considers potential implications. This thesis considers the human rights claims of vegans for the moral standing of nonhumans, in recognition of an ethical interface between human and animal rights debates.

1.7 The context for the research: wider human rights scholarship

Upendra Baxi has no doubt that the target of human rights is suffering. In assessing the ethics of human rights, Baxi, Costas Douzinas, William Paul Simmons and Joseph Indaimo express the utility of the philosophy of Emmanuel Levinas' ethics

²⁶ Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Hart Publishing 2000); Conor Gearty, *The Hamlyn Lectures: Can Human Rights Survive?* (Cambridge University Press 2006); Michael Hass, *International Human Rights: A Comprehensive Introduction* (2nd edn, Routledge 2014).

²⁷ Gearty (2006) 154.

²⁸ Kelly Oliver, 'What Is Wrong with (Animal) Rights?' (2008) 22(3) *Journal of Speculative Philosophy* 214; Alasdair Cochrane, 'From Human Rights to Sentient Rights' (2013) 16(5) *Critical Review of International Social and Political Philosophy* 655 doi:10.1080/13698230.2012.691235; Anne Peters, 'Global Animal Law: What It Is and Why We Need It' (2016) 5(1) *Transnational Environmental Law* 9.

of alterity.²⁹ Though these scholars believe that Levinas' philosophy pertains to inclusion on the basis that human rights are first and foremost a recognition of others, none develop a discussion as to whether Levinas' theory can be applied to nonhuman animals as legitimate others and what implications this may have for the human rights claims of vegans. This research goes beyond two current thresholds in existing literature: it challenges the anthropocentric assumptions of current human rights, and it offers a new way to speak of nonhuman animal rights. It also contributes to the debate on the validity of rights in general. By examining the inclusive potential of Levinas' philosophy, it first develops the existing idea that human rights theory recognises duty to the other. It then argues that nonhumans are legitimate others and that the claims of vegans present ethical claims for the other.

1.8 The context for the research: animal rights scholarship

Given that this thesis identifies ethical responsibility to nonhumans as the grounds for the human rights claims of vegans, it is worth introducing the various strands of animal rights theory and explaining why it does not ground the argument for a reorientation of human rights on sentience.

An attempt to bridge the gap between human rights and animal rights was recently undertaken by Alasdair Cochrane.³⁰ He argues for a reorientation from human rights to sentient rights on the basis that suffering is the universal principle to ground protective rights. This reliance on primacy of the sentience of animals is historically relevant and typical of other literature that advocates for the moral and

²⁹ Upendra Baxi, *The Future of Human Rights* (3rd ed, 2nd impression, Oxford University Press 2009b); Costas Douzinas, *The End of Human Rights* (2000); William Paul Simmons, *Human Rights Law and the Marginalised Other* (Cambridge University Press 2014); J A Indaimo, *The Self, Ethics and Human Rights: Lacan, Levinas & Alterity* (Routledge 2015).

³⁰ Cochrane, 'From Human Rights to Sentient Rights' (2013) 16(5) *Critical Review of International Social and Political Philosophy* 655 doi:10.1080/13698230.2012.691235.

legal standing of nonhumans.

This thesis does not ground its argument in the well-established idea that sentience should ground protective rights. One reason for this is that the concept of sentience is subject to the parameters of anthropocentric human reason that deny absolute moral standing for animals. For example, the supremacy of human reason in Peter Singer's utilitarian and Tom Regan's inherent value approach to animal rights ultimately fails nonhumans.³¹ Though both of these thinkers recognise the significance of animal suffering and the socio-political conditions that sully the moral standing of nonhumans, both ultimately retain the view that nonhumans can be considered less important than humans. They claim that since humans have observable complex cognitive abilities – for example, language abilities, memory, and a perception of desires, goals or the future – it is possible to identify and implement human superiority: Singer on utilitarian grounds and Regan on the grounds that it is not possible to give an explanation of the inherent value of nonhumans. For Singer, human interests will always outweigh those of nonhumans, and for Regan, inherent value is related to being a 'subject of a life', defined as any normally developing mammal aged one year or more.³² In the absence of an articulation of the philosophical grounds for the significance humans give to sentient others, both authors retain the notion of arbitrary human privilege.

Mark Rowlands and Alasdair Cochrane argue that animals have interests and consciousness but do not explain the ethical pre-conditions that confirm their

³¹ Peter Singer, *Animal Liberation* (1st paperback edn, Thorsons 1983); Tom Regan, *The Case for Animal Rights* (2nd edn, Routledge 1988).

³² Regan (1988) 247.

absolute moral standing.³³ Consequently, the moral and legal standing of animals always succumbs to human privilege on the grounds that meeting the interests of humans will always be a priority. This discourse is problematic for establishing the rights of animals. Robert Garner, for example, has suggested that it may be permissible to experiment on animals.³⁴ He puts forward the argument that as long as an animal's interests are met and no pain or suffering is endured, it may be acceptable to conduct experiments or perform amputations on animals in the interests of human advantage and progress. As such, arguments put forward for animal rights on the basis that sentient animals are in possession of consciousness or interests do not guarantee their protection and are thus inadequate to ground the claims of vegans.

A similar problem arises when ascribing a moral status to animals using Martha Nussbaum's capabilities approach.³⁵ This approach involves attributing a hierarchy of importance and significance to nonhuman life and the retention of the resource status of nonhumans. The idea that a normative code of conduct can be developed from the recognition of sentience is thus subject to an anthropocentric categorisation of nonhumans that does them a disservice.

A different problem emerges in the recent 'political turn' in animal rights. This body of theory recognises the emphasis on nonhuman interests and sentience in

³³ Mark Rowlands, *Animal Like Us* (Verso 2002); Mark Rowlands, 'Making Light of the Ethical? The Ethics and Politics of Animal Rights' (Penultimate Version. To appear in Andrew Woodhall and Gabriel Garmendia da Trindade (eds), *Ethical and Political Approaches to Nonhuman Animal Issues: Towards an Undivided Future* (Palgrave Macmillan)). This version available at <https://www.academia.edu/24880242/Making_Light_of_the_Ethical_The_Ethics_and_Politics_of_Animal_Rights> accessed 4 July 2016; Alasdair Cochrane, 'Do Animals Have an Interest in Liberty?' (2009) 57(3) *Political Studies* 660.

³⁴ Robert Garner, 'Abolitionism: Anatomy of an Ideology' Conference Presentation (International Animal Rights Conference, Luxembourg, 13-16 September 2012).

³⁵ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press 2007).

traditional animal rights theory and promotes a notion of selfhood rather than personhood as the grounds for establishing inviolable basic rights. On these grounds, the uniqueness and subjectivity of others is acknowledged, but positive obligations and rights remain grounded in the idea that the self is paramount.

On the notion of respect for selfhood, Sue Donaldson and Will Kymlicka explain a model for practical justice based on a notion of animal citizenship in which nonhuman animals are co-opted into organised human society.³⁶ Domestic animals become equal (to human) citizens, wild animals have their own territories over which they are sovereign and liminal animals (those who chose to live at the margins of human society without interaction) also have basic rights. Citizenship is built upon the basic premise of human moral sentiments and pro-social dispositions and intends to offer nonhumans an immediate and practical (rather than theoretical) solution to their oppression. But this political turn in animal rights thinking retains and promotes the primacy of an autonomous self as the basis for rights. In so doing, it cannot guarantee that self-seeking human beings will endeavour to extend ethical regard for all nonhuman others in all situations and circumstances. Hence what is needed is an explanation for why, in the first instance, this body of theory recognises the subjectivity of nonhuman others. Without this, there is every possibility that even this very well-thought-out approach to the inclusion of nonhumans in human justice will give way to anthropocentric hierarchy and prejudice.

Prioritisation and relegation of sentient beings is also a problem for the application of vulnerability theory to animals. This approach, built upon the ideas of Martha Fineman, grounds rights for animals in vulnerability and dependence but

³⁶ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford University Press 2011).

does not specify the moral grounds for the basic rights of animals, apart from by expressing their vulnerability.³⁷

These historical and contemporary accounts of animal rights seek to accommodate the moral standing of nonhumans in a human system of justice. They fail, however, to identify robust ethical grounds for basic rights that would generate absolute pre-conditions for the treatment of nonhumans. As such, current animal rights theories fail to provide a suitable philosophical basis to support the human rights claims of vegans. What these theories have in common is that they implicitly observe, but fail to explore, the fact that humanity is, first and foremost, responsive to nonhumans. It is this responsiveness that is paramount to this thesis. Its originality is that it explains a philosophical theory that both supports the moral standing of other animals and explains their basic rights and the absolute pre-conditions for their inclusion into a human system of justice. It then offers a reconceptualisation of human rights to support the claims of vegans.

1.9 The claim to originality

This thesis makes an original contribution to human rights discourse by applying the ethics of alterity to nonhumans and considering their implications for animals, humans and human rights. Existing postmodern, realist, deconstructionist and posthuman human rights literature identifies the elimination of suffering as the mission of human rights. In this regard, it promotes the utility of Levinas' ethics of alterity, but it does not consider the exclusion of nonhumans or the impact of veganism in human rights. The thesis applies the established principle insights of

³⁷ M A Fineman, Emory University, 'Vulnerability and the Human Condition' <<http://web.gs.emory.edu/vulnerability/>> accessed 22 July 2016.

Levinas' ethics of alterity to nonhumans to explain that their precarious mortality, understood through a concept of ethical responsibility to suffering, grounds their moral and legal standing. The moral standing of nonhumans is then used, for the first time, to reconceptualise the claims of vegans as ethical responsibility under Article 9 of the Convention.

Importantly, the thesis argues that ethical responsibility in the face of suffering is an inherent concern of humanity, that it is central to the claims of vegans, that their claims are limited in exclusionary human rights and that Levinas' philosophy on the ethics of alterity has utility for the claims of vegans because it can be applied to nonhuman animals to promote their moral and legal standing.

Thus, to ground the moral and legal standing of nonhumans, the thesis looks beyond the sentience of animals by applying the principles of Levinas' ethics of alterity. In so doing, it resolves the struggle in animal rights theory by identifying the grounds on which nonhumans have moral standing: that they qualify as unique others who express their authentic presence to human subjects for a response. In this light, the thesis presents veganism as a non-reductive and non-oppressive response to their precarious existence and suffering. It argues that to accommodate the claims of vegans, the right to freedom of conscience can be reconceptualised as the presentation of an ethical response to the precarious existence of animals and their basic rights. The thesis concludes that Levinas' ethics of alterity have transformative, inclusive potential for the evolution of human rights.

1.10 Structure of the thesis

The thesis addresses the question of whether there is an alternative ethical orientation for human rights that would better accommodate the claims of vegans.

In so doing, it explores the nature of veganism, the human rights claims of vegans, the normative principles and values intrinsic to the relationship of current human rights to veganism, whether there is an alternative philosophical model for human rights that can deal more favourably with the claims of vegans, what this philosophy entails, and what broad implications such a model may have. The thesis addresses these questions in a logical progression of chapters. Following this step-by-step approach, it culminates in the affirmative stance that Levinas' ethical theory has utility for the claims of vegans. The thesis then outlines the implications for the moral standing of animals and vegans and for the existing orientation of human rights.

Chapter 2 examines the nature of veganism, what vegans believe, and the human rights claims of vegans. From an examination of a broad range of literature, it explains that veganism is the practical, lived expression of indistinguishable human and nonhuman moral standing. It is observed as a culture that responds to ethical responsibility to nonhuman others. As such, veganism is a term that expresses the moral imperative to attend to nonhuman suffering. The chapter then conceptualises the human rights claims of vegans as claims that present the moral imperative to attend to suffering nonhuman animals. These claims are directed at state authorities and address a reviled requirement to assimilate into a dominant culture of animal consumption, to which veganism is opposed. From an assessment of existing case law, it concludes that the claims of vegans are assessed as matters of personal and private conscience, rather than on the presentation of ethical responsibility to suffering.

Chapter 3 examines the extent to which individual conscience, community and suffering feature in human rights. It finds that though there is evidence that

human rights are a result of a concern with suffering, they have been built upon a branch of moral philosophy that explains human nature in terms of individual autonomous rational agency. The chapter observes that on these grounds, nonhumans are denied basic rights and that the vegan presentation of ethical responsibility is subject to an orthodoxy of individual human autonomy that does not recognise or promote the need to deal with suffering or the widely accepted moral standing of other animals.

On the basis of the argument that the orthodoxy of autonomy is problematic for the claims of vegans, the chapter recommends consideration of an alternative philosophy. This philosophy is Levinas' ethics of alterity. It defines human nature as essentially and universally compassionate and innately responsible to others in recognition of a universally shared perception of the negative forces of mortality.

Chapter 4 explores the principles of Levinas' ethics of alterity and its currency in contemporary human rights discourse. It explains that human rights scholars identify Levinas' philosophy as an opposing emancipatory thesis. In this thesis, Levinas argues that a dominant, entrenched Western philosophy of human reason has created a constraining and unethical totality. Levinas argues that rather than the ability to reason, responsibility to the other is the primary characteristic of humanity. The recognition of responsibility rather than autonomy is observed in the human desire to welcome and live in community with others. For Levinas, the pre-social connection between others is evidence of ethics. Humanity is ethical through non-abstract face-to-face encounters that facilitate responsibility. The chapter explains that ethical responsibility is the acknowledgment of the unique other combined with a desire to extend compassion. It involves respecting individual experience of life in

the world and obligates a subject to support another.

Chapter 4 goes on to explain that the fundamental ideas in the ethics of alterity are critical because the Levinasian other has moral standing as the other to whom the subject is obliged to respond. The other presents themselves in a 'saying' without a 'said': 'It is me in my world. Here I am, how will you respond?'. It is in this context that the human rights claims of vegans can be reconceptualised as ethical claims of conscience that cannot be subject to speciesist notions of human supremacy that permit and validate legal concepts that moderate duty. These concepts – such as the primacy of individual conscience concerning duties to nonhumans, priority of human personal disadvantage, and legitimate aim and proportionality – when considered through the lens of the ethics of alterity only serve an oppressive totality that subjugates nonhuman others.

Levinas' ethics of alterity do not explicitly concern other animals. Despite emphasising that one cannot know the inner world of the other who is totally different from oneself, and that, in an encounter, the other must not be subject to oppressive themes and categories of convenience that would be constructed by the reason of the subject, Levinas did not develop a robust discussion of nonhuman otherness. Accordingly, the next chapter, Chapter 5, asks whether nonhumans are legitimate Levinasian others: others who generate ethics and to whom the subject is ethically responsible. Chapter 5 goes on to examine philosophical contributions from authors in the field of critical animal studies. It interrogates the exclusivity of Levinas' ethics of alterity and concludes that nonhumans are in possession of moral standing and should be considered in matters of justice. As such, nonhumans are brought to the moral community as those who are owed asymmetrical, direct duties of ethical

responsibility. Such a responsibility requires the acknowledgment and recognition of nonhuman uniqueness, a prohibition on killing and intentional harm, the recognition of a duty to permit individual experience of life, and the acknowledgement that responsibility espouses a duty to assist nonhuman others in face-to-face relationships. The chapter concludes that the extension of moral community to nonhumans has specific advantages for the claims of vegans.

Chapter 6 discusses the implications emerging from the argument that the ethics of alterity concern asymmetrical ethical duties to nonhumans. With a particular focus on the European system of human rights, it firstly outlines, in abstract, how a reoriented framework for human rights might be conceptualised. It then explains the basic moral and legal entitlements of nonhumans.

Chapter 7 concludes the thesis, explaining that the basic rights of nonhumans constitute ethical pre-conditions on which the claims of vegans can be accommodated through a reconceptualisation of Article 9 of the Convention. It considers the implications of this conclusion and the challenges and merits of further developing a vegan jurisprudence of human rights.

Chapter 2

What is veganism and what is the existing jurisprudence on veganism?

Introduction

The primary objective of this chapter is to define veganism, identify the claims vegans make and explain existing jurisprudence on veganism. It examines what veganism is, what vegans believe, how veganism is represented in literature, how vegans frame their arguments in terms of human rights and how vegan claims have been dealt with in court. The purpose of addressing these questions is to understand vegans, their concerns and the grounds for their human rights claims. To provide responses to the questions raised, a range of secondary literature is reviewed and assessed.

The structure of this chapter firstly gives a definition of veganism and examines veganism in the academy. It then explains the evolution of veganism, identifies the characteristics of vegans and explores their convictions regarding nonhuman animal suffering, before examining the human rights claims of vegans in the context of their concerns for suffering nonhuman animals.

The chapter concludes that veganism is a response to the suffering of other animals, that it represents the indistinction of moral standing between human and nonhuman animals, and that the human rights claims of vegans are motivated by ethical responsibility to others rather than by personal benefit. It also concludes that the claims of vegans for nonhuman others are resisted by an orthodoxy of autonomy that adjudicates the right to free conscience in terms of personal disadvantage.

2.1 The definition of veganism

Veganism has no deity and no official definition for the purposes of law.³⁸ The definition promoted by The Vegan Society emphasises that veganism is a response to the exploitation and cruelty inflicted on other animals.³⁹ It builds on the original ideas about what veganism meant to early advocates. In the 1940s, veganism was defined more specifically as '[t]he principle of the emancipation of animals from exploitation by man', which meant 'to seek an end to the use of animals by man for food, commodities, work, hunting, vivisection, and by all other uses involving exploitation of animal life by man'.⁴⁰ The current broad definition of veganism suggests that it is a philosophy that deals with intersecting issues. Suggesting a relationship between these broad issues locates veganism as a critical perspective on the status of nonhuman animals and social justice. The definition denounces the exploitation of nonhumans and, at the same time, relates exploitation to human wellbeing and the health of the natural environment. That the exploitation of animals is related to human health and issues concerning the environment is given credence in wider literature. In these critiques on ethics and social justice, veganism is promoted as conceptually and strategically important.

2.2 How veganism is represented in literature

In recent years, academic interest in the culture of veganism has become

³⁸ There is an ongoing attempt to secure Europe-wide rules on food labelling that take into account the needs of the vegan community. In the UK, the Food Standards Agency recommends that veganism should be taken into account for food labelling purposes. It advises that '[t]he term 'vegan' should not be applied to foods that are, or are made from or with the aid of, animals or animal products (including products from living animals)'. It also recommends notifying consumers about possible cross-contamination: 'Manufacturers, retailers and caterers should be able to demonstrate that foods presented as 'vegetarian' or 'vegan' have not been contaminated with non-vegetarian or non-vegan foods during storage, preparation, cooking or display'.

³⁹ Current definition available at The Vegan Society, 'Definition of veganism' <www.vegansociety.com/go-vegan/definition-veganism> accessed 5 May 2016.

⁴⁰ The Vegan Society, 'History' <<https://www.vegansociety.com/go-vegan/definition-veganism>> accessed 5 May 2016.

more visible and is gaining traction.⁴¹ This academic interest in veganism is related to the expansion of topics under the umbrella term 'Animal Ethics' and developments in Animal and Critical Animal Studies.⁴² In 2016, vegan scholars at Oxford University held the first 'Towards a Vegan Theory' conference, which posed questions about vegan identity, culture, politics and coherence, the way veganism challenges the animal/human binary and how veganism challenges current theoretical practices.⁴³ The Oxford conference description illustrates the contemporary self-reflexive evaluation of veganism and neatly summarises the trajectory of the academic production of knowledge emerging from the broad topics being addressed by a growing vegan community.

The dietary element of veganism is supported by a range of sources. The British Dietetic Association and the American Dietetic Association show support for the diet of vegans and also refer, in their literature, to the serious disadvantages of eating meat.⁴⁴ In addition, the many problems resulting from farming other animals and the cost to the environment and human health are noted by many authors and incorporated into official reports published by the UN. They are,

⁴¹ Veganism as a subject of academic interest at Portsmouth University, for example. There is also historical and sustained interest in the sciences on the implications of the dietary aspects of veganism. See, for example, early work by F R Ellis and T A B Sanders, 'Angina and Vegan Diet' (June 1977) 93, (6) *American Heart Journal* 803.

⁴² For example, the Palgrave Macmillan Animal Ethics Series has recently extended its range with the publication of *Critical Perspectives on Veganism*. See Jodey Castricano and Rasmus R Simonsen (eds), *Critical Perspectives on Veganism* (Palgrave Macmillan 2016).

⁴³ Towards a Vegan Theory: An Interdisciplinary Humanities Conference (CFP description posted by Louise Squires 4th December 2015) <<http://asle.org.uk/cfp-towards-a-vegan-theory-university-of-oxford-may-2016-call-deadline-14-feb-2016/>> accessed 27 May 2016. NB This link appears to be no longer available. An alternative website that explains the conference is Torch: The Oxford Research Centre in the Humanities <<http://torch.ox.ac.uk/towards-vegan-theory>> accessed 29 June 2017.

⁴⁴ The American Dietetic Association has now changed its name to Eat Right: Academy of Nutrition and Dietetics. See for example, Alexandra Caspero, 'Building a Healthy Vegetarian Meal: Myths and Facts' (*Eat Right: Academy of Nutrition and Dietetics* 28 January 2014) <www.eatright.org/resource/food/nutrition/vegetarian-and-special-diets/building-a-healthy-vegetarian-meal-myths-and-facts> accessed 13 May 2016; and the British Dietetic Association, 'Complimentary Feeding (weaning)' <<https://www.bda.uk.com/foodfacts/WeaningYourChild.pdf>> accessed 13 May 2016.

therefore, well-established.⁴⁵ Some authors conclude that veganism is the only sensible, viable option for human health and for the preservation of human societies.⁴⁶

This growth of interest in veganism has motivated a body of critical discourse that includes the idea that veganism is a form of ethical, human identity that challenges current anthropocentric dominance. Philosopher Matthew Calarco has described veganism as moral indistinction because, in his view, veganism is a way of life through which moral responsibility to both human and nonhuman animals is enacted in practice.⁴⁷ Sociologist Bob Torres describes veganism as the ‘daily lived expression of ethical commitment and of protest’ because it responds to intersecting oppressions that are maintained in the interests of a capitalist economy that exploits entrenched prejudice against nonhumans.⁴⁸ Adopting a cultural movement perspective, Breeze Harper argues that ‘[v]eganism is not just about the abstinence of animal *consumption*; it is about the ongoing struggle to produce *socio-spatial epistemologies* of consumption that lead to *cultural* and *spatial* change’.⁴⁹ These views conceptualise veganism as educational and a matter concerning social justice.⁵⁰

2.2.1 Veganism as social justice

⁴⁵ See, for example, Professor Richard Lacey, *Unfit for Human Consumption: Food in Crisis: The Consequences of Putting Profit Before Safety* (Souvenir Press 1991); Peter Singer and Jim Mason, *The Ethics of What We Eat: Why Our Food Choices Matter* (Rodale Inc 2006); and United Nations Food and Agriculture Organisation, ‘Livestock’s Long Shadow – Environmental Issues and Options’ (United Nations FAO Corporate Document Repository 2006).

⁴⁶ Jon Wynne-Tyson, *Food For a Future* (Davis-Poynter Ltd 1975); Erik Marcus, *Meat Market* (Brio Press 2005) and Michael Klaper, ‘Plant-only medicine man’ (*Vegsource.com* 2010 video clip) <www.vegsource.com/news/2011/09/dr-klaper----plant-only-medicine-man-video.html> accessed 13 May 2016.

⁴⁷ Matthew Calarco, ‘We Are Made Of Meat: Interview With Matthew Calarco’ (Interviewer Caffo L 2013) 1 (2) *Relations: Beyond Anthropocentrism* <www.ledonline.it/index.php/Relations/issue/view/3> accessed 18 September 2015.

⁴⁸ Bob Torres, *Making A Killing: The Political Economy of Animal Rights* (AK Press 2007) 134.

⁴⁹ Amie B Harper, ‘Race as a ‘Feeble Matter’ in Veganism: Interrogating Whiteness, Geopolitical Privilege, and Consumption Philosophy of ‘Cruelty-Free’ Products’ (2010) 8(3) *Journal for Critical Animal Studies* 5.

⁵⁰ For example, Torres (2007).

Veganism remains grounded in the moral standing of nonhumans but has also evolved to become conceptually and strategically important in the expression of broader social injustice. The sentient status of nonhumans is registered as relevant to the foundations of justice, and progress is argued to rely on exposing the relationship between animal suffering and the imposition of arbitrary power and oppression – and on recognising the broad social ramifications of this relationship. Veganism is cited in the disciplines of ethics, philosophy, health, feminism, environmental studies, intersectional theory and queer studies as having social and political significance.⁵¹ It is argued by human rights Professor Gary Francione as being the ‘moral baseline’⁵² of the movement for animal rights because it ‘represents a rejection of the commodity status of nonhumans and recognition of their inherent value’.⁵³ It has been cited, since at least the mid-1970s, as a positive response to intersecting oppressions of capitalism,⁵⁴ and is relevant in longstanding philosophical comment on the wrong of eating other beings.⁵⁵

Veganism is also represented in feminist thinking on social justice.⁵⁶ The ground-breaking work of Carol J Adams in 1990 analysed the relationship between meat-eating and patriarchy,⁵⁷ and in her thesis, five years later, Adams comments that ‘the vegan diet is becoming increasingly popular because of the intersection of

⁵¹ These streams of thought were certainly indicated in vegan literature by 1991. See Kathleen Jannaway, ‘Abundant Living in the Coming Age of the Tree’ (*Movement for Compassionate Living*, 1991) <www.mclveganway.org.uk/Publications/Abundant_Living.pdf> accessed 6 May 2016.

⁵² Gary Francione, *Animals as Persons: Essays on the Abolition of Animal Exploitation* (Columbia University Press 2008) 234.

⁵³ Francione (2008) 109.

⁵⁴ For example, Jon Wynne-Tyson (1975).

⁵⁵ Prisco (2017).

⁵⁶ A range of insights are available in Carol J Adams and Lori Gruen (eds), *Ecofeminism: Feminist Interactions with Other Animals & the Earth* (Bloomsbury 2014).

⁵⁷ Carol J Adams, *The Sexual Politics of Meat* (Polity Press 1990).

health and ethics...'.⁵⁸ Marti Kheel also argued during this time that the oppressive pressure to comply with the norm of meat-eating is managed and maintained by force in patriarchal society.⁵⁹ By 2008, the ecofeminist branch of feminist discourse had established that veganism was most relevant to an examination of the root causes of social problems. In the context of theory on the patriarchal marginalisation of veganism, Kheel queries the tendency within our culture to ask: 'Why are you vegan?' rather than: 'Why do you eat other animals?'.⁶⁰

The historical ecofeminist search for an explanation of female oppression in patriarchy includes the idea that a naturally compassionate human identity is subjugated under patriarchal rationalism and its creation of dualisms. For at least three decades, feminists have argued that care and compassion for others is intrinsic to human nature but is denied in a patriarchal distinction between reason and emotion. The feminist objection to rationalism inspired Val Plumwood's attempt to articulate a notion of human identity that was on a continuum with nature. It led her to suggest the naturalness of compassion as a manifestation of identifying with others at the level of responsibility.⁶¹ This idea remains significant in current ecofeminist theory. Recently, Deane Curtin has argued that compassion grows out of insight into the connectedness of self and others, including nonhuman animals.⁶² She argues that we could not be human, social or moral, without the basic ability to

⁵⁸ Carol J Adams, *Neither Man nor Beast: Feminism and the Defence of Animals* (The Continuum Publishing Company 1995) 219, n20.

⁵⁹ Marti Kheel, 'From Heroic to Holistic Ethics: The Ecofeminist Challenge' in Gretta Gaard (ed), *Ecofeminism: Women, Animals, Nature* (Temple University Press 1993).

⁶⁰ Marti Kheel, 'Toppling Patriarchy With a Fork – The Radical Potential of Veganism, Lecture by Marti Kheel; Part 2 - Why Aren't More People Vegan?' ([video clip] Internet Archive Community Video website 2008b) <www.archive.org/details/toppling_patriarchy_part_2_of_8> accessed 16 January 2012.

⁶¹ Val Plumwood, 'Nature, Self, and Gender: Feminism, Environmental Philosophy, and the Critique of Rationalism' in Robert Elliot (ed), *Environmental Ethics* (Oxford University Press 1995).

⁶² Deane Curtin, 'Compassion and Being Human' in Carol J Adams and Lori Gruen (eds), *Ecofeminism: Feminist Interactions with Other Animals & the Earth* (Bloomsbury 2014) 39.

identify others and develop a sense of shared, meaningful experience. For Curtin, compassion is intrinsic to being social and demands nothing less than a paradigm shift in dominant food practice norms in the interests of liberating humans and animals from intersecting oppression. For Richard Twine, this ecofeminist discourse challenges anthropocentric thought.⁶³

Veganism is, thus, presented in literature as an important culture in opposition to the dominant and normative consumption of nonhumans. It recognises the moral standing of nonhuman animals and is argued to express an interconnection with nature and as presenting a challenge to patriarchy and anthropocentrism. Its dietary norms are regarded to be healthy and environmentally friendly and are explained as the lived response to ethical responsibility. These ideas are utilised in discourse to argue that veganism is an anti-oppressive, ethical practice for social justice. In 2016, the ideas were central to the first pro-intersectional vegan conference that explored the intersectionality of abuse of power and the politics and utility of veganism.⁶⁴ Topics included the relationship of speciesism⁶⁵ to feminism,

⁶³ Richard Twine, 'Ecofeminism and Veganism: Revisiting the Question of Universalism' in Carol J Adams and Lori Gruen (eds), *Ecofeminism: Feminist Interactions with Other Animals & the Earth* (Bloomsbury 2014). Twine's intersectional perspective is comprehensive. Spearheading the recent return to explore intersecting oppression through the use of Barbara Noske's 'Animal Industrial Complex', Twine observes a '... partially opaque network of relations between governments, public and private science, and the corporate agricultural sector. Within the three nodes of the complex are multiple intersecting levels and it is sustained by an ideology that naturalises the human as a consumer of other animals. It encompasses an extraordinary wide range of practices, technologies, identities and markets'. See Richard Twine, 'The Industrialisation of Animals: What Happened to Ethics?' (*The Scavenger*, 12 December 2010) <www.thescavenger.net/social-justice-sp-24912/animals/538-the-industrialisation-of-animals-where-are-the-ethics-89912.html> accessed 1 June 2016.

⁶⁴ Vegfest UK <<http://london.vegfest.co.uk/intersectional>> accessed 17 October 2016.

⁶⁵ The term 'speciesism' refers to prejudice towards nonhumans. It is commonly associated with the philosophy of Peter Singer but was in fact a term coined in the 1970s by Richard Ryder. Richard D Ryder, *Victims of Science: The Use of Animals in Research* (Davis-Poynter 1975). Singer attributes to Richard Ryder his interest in and use of the concept of speciesism as prejudice towards nonhumans in Singer (1983) 27, n 4. See also, Richard Ryder, 'Speciesism Revisited' (*Think*, 2nd June 2004) 83-92, doi 10.1017/S1477175600002840; and Richard Ryder, *The Political Animal: The Conquest of Speciesism* (McFarland Jefferson 1998).

racism, ageism, classism and the issues of the LGBTQI+? community.⁶⁶

What these strands of discourse have in common is that they all recognise the oppression of nonhumans and a disregard for their suffering as the cause of wider social injustices. They recognise that veganism is resistance against oppression and that it speaks to duty and responsibility most notably in the face of suffering. This observation resonates with the impetus for the growth of the vegan movement.⁶⁷

2.3 The evolution of veganism

In 1944, The Vegan Society was founded in Leicestershire by Donald Watson and 25 members.⁶⁸ It emerged from a small group of non-dairy vegetarians whose aim was to 'state a case for a reform that ... is moral, safe and logical'.⁶⁹ The term 'vegan' was a contraction of the word 'vegetarian'.⁷⁰ It was suggested by Donald Watson, as an interim description of the beliefs of a non-dairy-eating vegetarian. This short word has been described as meaningful, purposeful and steadfast.⁷¹

The evolution of veganism, as distinct from vegetarianism, stems from a rift in

⁶⁶ LGBTQI+? is a comprehensively inclusive acronym that refers to the multiplicity of gender identities and possible sexual orientations. It unites lesbian, gay, bisexual, transgender, queer, intersex gender variance and any other identity not easily represented by a letter or single word.

⁶⁷ The symbolic value of veganism is also observed by Cory Lee Wren, 'Human Supremacy, Post-Speciesist Ideology, and the Case for Anti-Colonialist Veganism' in Daniel Moorehead (ed), *Animals in Human Society: Amazing Creatures Who Share Our Planet* (University Press of America 2016).

⁶⁸ Donald Watson is globally recognised as a pioneer of the modern vegan movement. For an insight into his life and thoughts, see George D Rodger, 'Interview with Donald Watson On Sunday 15 December 2002' <www.vegansociety.com/sites/default/files/DW_Interview_2002_Unabridged_Transcript.pdf> accessed 5 May 2016.

⁶⁹ Donald Watson, 'The Vegan News' (*The Vegan Society*, November 1944 No 1, para 10) <https://issuu.com/vegan_society/docs/the_vegan_news_1944> accessed 5 May 2016.

⁷⁰ Watson (1944) para 9.

⁷¹ Fay K Henderson, 'Vegan Values' (International Vegetarian Union [IVU]. *The Vegetarian*, Winter 1947 No 4, 29 – 30) <www.ivu.org/history/world-forum/1947vegan.html> Additionally, psycholinguist and philosopher Stanley Sapon (1924-2010) has noted a degree of 'linguistic chaos' and 'crippling ambiguity' regarding the definition of vegetarianism as a moral statement. The word 'veganism' produces fewer ambiguities, although it may indicate differences in motivation or strategy. Sapon emphasises that a clear definition of vegetarianism or veganism ought to indicate much more than what popular culture currently promotes, and that the ethical movement for compassionate living may be adversely affected by popular notions of veg*ism and dietary fads circulated in popular media. Cited in Karen Iacobbo and Michael Iacobbo, *Vegetarians and Vegans in America Today* (Praeger Publishers 2006) 182-183.

ethical values concerning the use of other animals for human consumption.⁷² In the 1940s, it appears that some pure vegetarians were open to the use of nonhumans for food if they were not killed. This rift was the impetus for Donald Watson and likeminded strict vegetarians to establish The Vegan Society in the UK.⁷³

This break-away group of strict vegetarians adopted an uncompromising approach to practising moral responsibility to nonhumans. The Vegan Society emphasised the suffering of living animals as important in dietary ethics. For Watson and the 25 founding members, there existed ‘very strong evidence’ that the production of dairy products involved ‘much cruel exploitation and slaughter of highly sentient life’.⁷⁴ Whilst vegetarianism remained concerned with the immorality of killing only, veganism identified the injurious practices associated with producing food from living animals and promoted an enhanced concept of ethical responsibility to them. To subject nonhuman animals to a life of confinement in which they would endure constant suffering was regarded to be unethical and abhorrent to humanity. This rationale, which this thesis refers to as the ‘suffering’ narrative of veganism, is supported by the 1965 Brambell Report, which observes the sentience of animals used in the dairy industry.⁷⁵ This report documents that the process of producing and taking milk from cows for humans requires the separation of the mother and baby cow, which is likely to be traumatic due to their close bond.⁷⁶

⁷² John Davis, ‘The History of Vegetarianism’ (Public Lecture. West Midlands Vegan Festival Wolverhampton October 29 2011).

⁷³ Watson (1944) para 10.

⁷⁴ Watson (1944) para 1.

⁷⁵ Francis W R Brambell, Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems. ‘Report of the Technical Committee to Enquire into the Welfare of Animals Kept under Intensive Livestock Husbandry Systems’ (Her Majesty’s Stationery Office [ca. 1965]).

⁷⁶ Cows are continually impregnated to maintain milk production. Following birthing, their calves are removed and killed within three days. The natural lifespan of a cow is around thirty years, but they are typically diseased, lame and rendered useless at around six years of age. They are then killed and processed in food production. More detailed information on the commodification and production of cows can be found at Compassion in World

Maintaining that ‘our present civilisation is built on the exploitation of animals just as pre-civilisations were built on the exploitation of slaves’,⁷⁷ Watson believed that ‘the spiritual destiny of man is such that in time he will view with abhorrence the idea that men once fed on the products of animals’ bodies’.⁷⁸ Vegetarianism was regarded as a ‘half-way house’ and was distinguished from what was perceived to be the ‘truly human, civilised diet’ of veganism.⁷⁹

Veganism thus emerges as a lifestyle adopted by those who believe that the essence of human identity involves a compassionate, responsible duty in the face of suffering, and that this duty concerns nonhuman animals. On this view, the ethical orientation of humanity necessarily recognises ethical responsibility to nonhumans. By articulating this notion of ethics, the 25 founding members of The Vegan Society were making a profound statement that resonated widely. Its non-reductive, uncompromising philosophy inspired a global movement.

The growing culture of veganism has coordinators, groups and societies in 49 countries.⁸⁰ Following the formation of The Vegan Society in the UK in 1944, the first overseas vegan society was formed in California in 1948. Four years later, in 1960, the American Vegan Society was established.⁸¹ Though accurate statistics are difficult to ascertain, it is estimated that in 2007 there were around 180,000 vegans living in the UK.⁸² In 2016, a Mori Poll commissioned by The Vegan Society indicated that 542,000 people in the UK are now vegan, and half of these are in the age range 15-

Farming, ‘The Life of: Dairy Cows’ <www.ciwf.org.uk/media/5235185/the-life-of-dairy-cows.pdf> accessed 5 May 2016.

⁷⁷ Watson (1944) para 1.

⁷⁸ Watson (1944) para 4.

⁷⁹ Watson (1944) para 3.

⁸⁰ Vegan World Network <www.vegansworldnetwork.org/world_vegan_directory_vcountries.php> accessed 3 November 2011.

⁸¹ American Vegan Society, ‘History’ (para 4) <www.americanvegan.org/history.htm> accessed 12 October 2011.

⁸² Imaner Consultants (b), ‘Vegan Statistics’ <www.imaner.net/panel/statistics.htm#reveal> accessed 5 May 2016.

34.⁸³ In the US, available statistics indicate that around 1% of the population could be following a vegan diet.⁸⁴ A speculative estimate in 2013 suggests that 55% of the UK population could be vegan by 2020.⁸⁵

2.4 The characteristics of vegans

Research studies about veganism or the vegan lifestyle are few in number.⁸⁶ Available literature suggests that veganism promotes an 'extended code of ethics' that transcends what would ordinarily be conferred by human beings upon other human beings and selected species of other animals.⁸⁷ The vegan code of ethics revolves around reverence and respect for all life. It recognises the interconnected nature of life on Earth and that living beings have instincts, abilities and desires to fulfil and have purpose in the context of interconnected oneness.⁸⁸ Vegans share a worldview in which other animals are not regarded as sources of food. This world view is 'represented by a belief in the equality of human and nonhuman animals'.⁸⁹ Veganism has been described as a culture in the context of an 'ethos of enlightened morality', through which the vegan lives a life of 'ethics in practice'.⁹⁰ It is said to be a philosophy of life, rather than a religion, in which 'vegan principles influence every

⁸³ The Vegan Society, 'There are three and [a] half times as many vegans as there were in 2006, making it the fastest growing lifestyle movement' (*The Vegan Society*, 17 May 2016) <<https://www.vegansociety.com/whats-new/news/find-out-how-many-vegans-are-great-britain>> accessed 1 June 2016.

⁸⁴ Imaner Consultants (b), 'Vegan Statistics' <www.imaner.net/panel/statistics.htm#reveal> accessed 5 May 2016.

⁸⁵ Rushprnews, 'Statistics: 55% of Population on Mainly Vegan Diet by 2020 Predict Vegfest UK' (*rushprnews* 25 April 2013) <rushprnews.com/2013/04/25/statistics-55-of-population-on-mainly-vegan-diet-by-2020-predict-vegfest-uk> accessed 12 May 2016.

⁸⁶ This is also noted by: Barbara McDonald, 'Once You Know Something, You Can't Not Know It: An Empirical Look At Becoming Vegan' (2000) 8 (1), 1 *Society & Animals*; Matthew Cole and Karen Morgan, 'Vegaphobia: Derogatory Discourse of Veganism and the Reproduction of Speciesism in UK National Newspapers' (2011) 62 (1), 134 *The British Journal of Sociology*; and Rachel MacNair, 'McDonald's 'Empirical Look At Becoming Vegan'' (2001) 9 (1), 63 *Society & Animals*. A specific 'Vegan Theory' is now emerging and has been formally introduced to the Academy by the 'Towards a Vegan Theory' Conference held at Oxford University in May 2016 <<https://veganththeory.org/>> accessed 1 June 2016.

⁸⁷ Victoria Moran, *Compassion, The Ultimate Ethic: An Exploration of Veganism* (3rd edn, The American Vegan Society 1991) 13.

⁸⁸ Stanley M Sapon, 'Vegan values: a philosophy of vegan values' (2007-2009) <www.veganvalues.org/> accessed 4 December 2011.

⁸⁹ McDonald (2000) 7.

⁹⁰ Moran (1991) 14.

aspect of daily living in very constructive and pragmatic ways'.⁹¹

Research suggests that a vegan lifestyle is adopted following conscious and purposeful, logical, rational thought.⁹² Larsson, Ronnlund, Johansson and Dahlgren state that the conscientious and reflexive decision to become vegan is seriously evaluated and constitutes a crucial part of what Giddens labels a 'life project'.⁹³

Living a vegan lifestyle is believed by vegans to enhance health, contentment and productivity.⁹⁴ Vegans are 'self-directed, goal-directed learners'⁹⁵ and are said to share an inner knowledge of the rightness of veganism, despite sharing no other common characteristics in their background or life circumstances.⁹⁶ Vegans are also 'convinced of the moral rightness of their direction'.⁹⁷ Rather than being oversentimental and emotional about other animals, vegans have been found to be moralistically oriented and opposed to all forms of exploitation of other animals, and to embody genuine philosophical concern for all sentient life; a concern unrelated to the more common humanistic affection for other animals.⁹⁸ This view of veganism is said to explain what separates vegans from 'animal lovers'.⁹⁹

Available research regarding the characteristics of vegans supports the idea of a human identity predisposed to an asymmetrical, compassionate consideration for the suffering of other-than-human life. It suggests a human identity capable of perceiving a cross-species ethics of compassion, which is extended to nonhumans

⁹¹ J Stepaniak, *Being Vegan: Living With Conscience, Conviction and Compassion*. (Lowell House, a division of NTC Contemporary Publishing Group Inc. 2000) 12.

⁹² McDonald (2000).

⁹³ C L Larsson, U Ronnlund, G Johansson and L Dahlgren, 'Veganism as a status passage: the process of becoming a vegan among youths in Sweden' (2003) 41 *Appetite* 61, 66.

⁹⁴ Moran (1991) 14.

⁹⁵ McDonald (2000) 12.

⁹⁶ Moran (1991) 15.

⁹⁷ McDonald (2000) 12.

⁹⁸ Steven Kellert, 'Attitudes Towards Animals' (*Vegetarian Times*, Sept-Oct 1978, 15). Vegans were not separated from vegetarians in this three-year study.

⁹⁹ Wynne-Tyson cited in Moran (1991) 39.

beyond typical and normative behaviours (such as those concerning 'owning' and loving pets). On this view, vegan ethics appear to operate at a posthuman level of moral indistinction.

2.5 Veganism as the moral baseline of animal rights

Veganism gives expression to the moral imperative to attend to the suffering of nonhuman animals. A primary concern of vegans is that sentient, nonhuman animals should be liberated from human abuse.¹⁰⁰ This paramount principle grounds Gary Francione's view that ethical veganism is the moral baseline for animal rights.¹⁰¹ Francione's abolitionist perspective has global appeal for ethical vegans, who agree that veganism is a moral imperative.¹⁰² On this view, there are no justifiable grounds for the commodification and exploitation of nonhuman animals. It grounds the moral standing of animals in their sentience and rejects the idea that the rights of animals are dependent on observable, humanlike, cognitive abilities.¹⁰³ Abolitionist vegans are opposed to killing and suffering for human gains and to the property status of animals and do not believe in welfare reforms to justify their continued exploitation. They demand total emancipation and believe that sentience alone is sufficient for moral and legal standing.¹⁰⁴

¹⁰⁰ The current vision of The Vegan Society is 'a world in which humans do not exploit other animals'. The Vegan Society 70 Anniversary, 'Ripened by Human Determination' (*The Vegan Society*, 2014) <<http://www.vegansociety.com/sites/default/files/uploads/Ripened%20by%20human%20determination.pdf>> accessed 7 October 2016.

¹⁰¹ US Human Rights Professor, Gary Francione. For details of this approach, see Professor Francione's comprehensive website: <http://www.abolitionistapproach.com/>. Other prominent philosophers, such as Tom Regan and Peter Singer, also believe that not eating animals is a moral imperative.

¹⁰² The term 'abolition' is used widely in the animal rights movement, apparently in the same way as it was during the anti-slavery campaigns. It is the perspective adopted by those who campaign for a total abolition of the use of nonhumans by human beings. The use of the word 'abolition' is contentious to some vegans because of its relationship with the anti-slavery movement.

¹⁰³ As is the strategy of the Nonhuman Rights Project. See <http://www.nonhumanrightsproject.org/>

¹⁰⁴ Gary Francione's version of abolitionist animal rights does not advocate human intervention to prevent harm to animals from other animals, or to prevent harm to animals from other sources. This limitation of duty is based on the idea that law does not impose a duty on individuals to prevent harm to human others and is a principle that can also be applied to a consideration of human obligations to nonhumans. This view is contested by a growing number of vegans who believe humans owe a duty to assist and support nonhumans. The issue has

2.6 What vegans believe

There are four beliefs of vegans that emerge from the above survey of relevant literature. Firstly, they believe in respect for life and in interconnection. Vegans believe that human life is connected to other life and that all life has moral standing and should receive compassionate, asymmetrical, ethical consideration. This belief can be summarised as a belief in the moral rights of animals. Secondly, they believe that a wide variety of other animals experience pleasure and pain and that their sentience is of particular ethical significance. Thirdly, vegans believe that the appropriation of life for human gain is immoral. They reject the established idea of a hierarchy of life that justifies the resource status of other animals. They believe in equality of moral standing and advocate the abolition of the resource and property status of animals. Finally, vegans believe that their conscious, daily, practical manifestation of principled values is ethics in practice that, for some, includes an awareness of intersecting issues.

Veganism can, thus, be explained as a culture that is concerned with ethical justice. It centres on respect for mortal life but is a culture that is sensitive to conceptualising additional unethical practices within a framework of intersection. At root, veganism demands the recognition of nonhuman animals as sentient beings with moral standing, the abolition of harmful practices that cause their suffering and that they become beneficiaries of basic rights.

In addition, and importantly for human rights claims, veganism is a culture of

recently become a topic of considerable debate that extends to the idea that wild animals are owed a human duty to assist. For example, Julius Kapembwa (doctoral researcher at the University of Reading) is currently defending the position that duties are not required, whilst Catia Faria (post-doctoral researcher at Pompeu Fabra University, Barcelona, Spain) and Alasdair Cochrane argue that duties do exist, that humans already assist some animals and that some welfare intervention already takes place. The problem, they argue, is that beneficial, positive intervention is speciesist and, therefore, inconsistently applied. For discussion, see Alasdair Cochrane, *Animal Rights Without Liberation: Applied Ethics and Human Obligations* (Columbia University Press 2012).

ethics in practice in response to a moral imperative to attend to suffering and accommodate nonhuman others as a matter of ethical justice.

This view of veganism pertains to the statement that the suffering of nonhuman animal remains a primary reason for the adoption of veganism.¹⁰⁵ It reflects the historical significance of concern for suffering as a significant motivational factor in the evolution and growth of veganism. This will now be explored further in a suffering narrative of veganism.

2.7 The suffering narrative of veganism

From the outset, veganism has been associated with the suffering of nonhuman animals. A primary concern of The Vegan Society was animal suffering and dietary ethics, which already had a long-established history. Literature indicates, for example, that the Ancient Greeks were aware that a vegetarian diet could sustain healthy human life.¹⁰⁶ Medical professionals in the nineteenth century were aware of the benefits of avoiding foods derived from nonhumans,¹⁰⁷ and it was well-known that a longstanding issue of importance for social reformers was the suffering of animals raised and slaughtered for food. In this regard, Howard Williams notes that Ghandi, Tolstoy and Henry Salt were among those who supported dietary reform.¹⁰⁸ It is also documented that Percy Bysshe Shelley advocated veganism on the basis that '[t]he advantage of a reform diet is obviously greater than any. It strikes at the

¹⁰⁵ The Vegan Society, 'Why Go Vegan' <<https://www.vegansociety.com/go-vegan/why-go-vegan>> accessed 15 February 2017.

¹⁰⁶ See for example, Plato, *The Republic* (380BC Desmond Lee tr, 2nd edn, Penguin 1987) 123-124.

¹⁰⁷ Dr William Lambe, quoted in John Davis, 'Veganism from 1806' (Vegsource 2011, para 2) <www.vegsource.com/john-davis/veganism-from-1806.html> accessed 6 May 2016. Dr Lambe is presented as a fervent campaigner for the adoption of a plant-based diet and publisher of positive reports on the benefits for good health, including the beneficial effects on cancers. See Howard Williams, *The Ethics Of Diet: A Catena of Authorities Deprecatory Of The Practice of Flesh Eating* (University of Illinois Press 1883/2003).

¹⁰⁸ Others include Mark Twain, Queen Victoria, Jung and C S Lewis. See Jon Wynne-Tyson, *The Extended Circle: An Anthology of Humane Thought* (3rd edn, Sphere Books Ltd 1990).

root of evil'.¹⁰⁹ John Davis also notes that Shelley had joined a vegan commune in 1813.¹¹⁰ While a significant body of historical literature on dietary ethics concerns the promotion of a more humane society in response to the visual experience of suffering, philosopher Gary Francione sums up his view of veganism in the twenty-first century: 'Being vegan provides us with the peace of knowing that we are no longer participants in the hideous violence that is animal exploitation'.¹¹¹

2.8 Animal suffering and the production of food

In the introduction to Williams' *The Ethics of Diet*, Leo Tolstoy recounts the sickening witness accounts of the treatment and slaughter of nonhumans for food.¹¹² He argues that we cannot pretend not to know the 'horribly revolting' details of the suffering of those mercilessly butchered, nor the greed, social conditioning and justification by religion or by simple habit that accompanies it.¹¹³ For Tolstoy and many other reform thinkers, killing nonhumans for food involves an act that is contrary to the moral feeling¹¹⁴ and is a practice that will be regarded by 'an age more enlightened and more refined' with 'astonishment and horror'.¹¹⁵

For these early thinkers, the daily visibility of nonhuman suffering caused by the butchering hands of humans inspired debates about the essence of humanity. Leo Tolstoy remarks that the immorality of eating nonhuman animals was known

¹⁰⁹ Percy Bysshe Shelley, cited in Williams (1883/2003) 228. Interestingly, Williams notes the friendship between P B Shelley, Dr Lambe, J F Newton (whose children 'scarcely touched animal food' (Williams 202)) and Lord Erskine. Lord Erskine went on to present the Cruelty to Animals Bill to Parliament: *HL Deb 15 May 1809 vol 14 cc553-71*.

¹¹⁰ Davis (2011) para 4.

¹¹¹ Gary Francione, *Animal Rights: The Abolitionist Approach ... and abolition means veganism* <<http://www.abolitionistapproach.com/quotes/>> accessed 15 August 2015.

¹¹² Leo Tolstoy, 'Introduction – The First Step' in Howard Williams *The Ethics of Diet: An Anthology of Vegetarian Thought* (White Crow Books 2009).

¹¹³ Tolstoy (2009) 39-44.

¹¹⁴ Tolstoy (2009) 45. Tolstoy also alludes to a gender issue being significant in this act that is contrary to moral feeling. See the details regarding killing and the 'kind, refined lady' in Leo Tolstoy, 'Introduction – The First Step' in Williams (2009) 44.

¹¹⁵ Williams (1883/2003) xxv.

long ago and that it survives simply because ‘we refuse to look at what we do not wish to see’.¹¹⁶ Dietary reform, Williams argues, is deeply founded upon (*inter alia*) ‘[h]umaneness, in the two-fold meaning of Refinement of Living and of what is commonly called ‘Humanity’’.¹¹⁷

Williams argues that attempts to ‘reclaim humanity’ from the diet of ‘slaughter and foul living’ dates back as far as the eighth century BC.¹¹⁸ For Williams, abstinence was a selfless act of revolt in the interests of the ‘irrefragable principles of Justice and Compassion – universal Justice and universal Compassion – the two principles most essential in any system of ethics worthy of the name’.¹¹⁹

During the many decades since these early accounts of the brutal treatment and suffering of animals, human sentiment towards nonhumans has encouraged a plethora of welfare measures, at least within Europe.¹²⁰ The sight of suffering experienced from animals being killed has also become obscured from public view in contemporary society. Slaughterhouses are predominantly built in remote locations and, similarly, butchery is no longer primarily carried out in public view.¹²¹

Despite these developments and the prevalence of sentiment for other animals, there remain many accounts of hidden suffering. In October 2011, in the UK,

¹¹⁶ Williams (2009) 45.

¹¹⁷ Williams (1883/2003) xxvii.

¹¹⁸ Williams (2009) 47.

¹¹⁹ Williams (1883/2003) xxx. Imaner Consultants (a) record that 87% of all vegans, 90% of UK vegans and 77% of American vegans are vegan for ethical or moral reasons. Imaner Consultants [b]) ‘Vegan Profile’ <www.imaner.net/panel/profile.htm> accessed 12 May 2016.

¹²⁰ For example, see Michael Hass, *International Human Rights: A Comprehensive Introduction* (2nd edn, Routledge 2014). For a critical perspective on the utility of welfare measures see Paola Sobbrío, ‘The Relationship Between Humans and Other Animals in European Animal Welfare Legislation’ (2013) 1 (1) *Relations: Beyond Anthropocentrism* doi: 10.7358/rela-2013-001-sobb. Sobbrío argues that all welfare measures serve only to ensure the continued exploitation of animals. Other critics also argue that welfare measures are inadequate and create the false impression that animals raised for food are happy. The expression ‘happy meat’ has emerged in this context.

¹²¹ The industrial processing of the bodies of animals takes place out of sight, usually in remote locations. Early work in this area includes Noelle Vialles, *Animal to Edible* (Cambridge University Press 1994). For more contemporary research, see various works by Francesco Buscemi.

Animal Aid reported that their ninth undercover slaughterhouse investigation found continuing, brutal, deliberate cruelty. Images recorded on CCTV cameras include: slaughterhouse workers stubbing cigarettes into the faces of pigs, pigs being beaten, kicked and punched, pigs being dragged along by their ears, and stunning tongs used in a callous and incompetent manner so that the pigs suffered painful electric shock and fell to the ground screaming.¹²² In 2017, further Animal Aid video footage highlights the suffering nonhuman animals are forced to endure immediately prior to their death.

A slaughterman is shown in one clip picking up a frightened sheep by her fleece and physically throwing her over a gate. The animal was so terrified that she attempted to escape through a blood gully, only to be discovered cowering behind the bleeding-out bodies of her strung-up peers. The slaughterman also attempted to subdue a frantic sheep by deliberately placing electrical stunning tongs around the animal's abdomen. Other incidents caught on camera include a lamb, who was hiding behind a mechanical arm, being dragged out by the hind legs. One animal was pushed with such force that they were overturned and left in this situation

¹²² Animal Aid, 'You can help stop this suffering' (2011) 165 *Outrage* supplement Winter 2011. In science that seeks to locate 'intelligence' in other-than-human species, pigs are known to be in possession of complex abilities: Lori Marino and Christina M Colvin, 'Thinking Pigs: A Comparative Review of Cognition, Emotion, and Personality in *Sus Domesticus*' (2015) *International Journal of Comparative Psychology* 28 available at <http://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1042&context=acwp_asie> accessed 12 May 2016.

for some time.¹²³

2.8.1 The extent of suffering

The scale of suffering in modern industrialised farming is documented by Gail Eisnitz. Eisnitz explains how, in 1997, 420,000 hogs died on one Oklahoma farm. Eisnitz calculates that, during this year, 48 hogs died every hour from stressful industry conditions. In the context of expressing a suffering narrative of veganism, the following extract is unedited. As such, the reader is cautioned to expect graphic details:

These and millions of other hogs on corporate factory farms didn't die naturally. They died as a result of the hostile, stressful, disease-promoting conditions inside these massive factories. Or they died because, in a business where product uniformity is more important than anything else, they didn't make weight. Or they died because after permanent immobilization inside tiny crates for years, they could no longer stand. Unable to reach their food troughs, they starved to death. And many died violently. Thousands of piglets that were sick or didn't grow fast enough were beaten to death. The industry calls this thumping or PACing: the industry acronym for 'Pound Against Concrete'. Others were flushed alive from waste pits into manure lagoons. Pregnant sows were beaten with gate rods, wrenches, and hammers; others

¹²³ Animal Aid, 'Calls for Tough Action Against Cruelty in Stockport Slaughterhouse' (*Animal Aid*, 9 May 2017) <<https://www.animalaid.org.uk/calls-tough-action-cruelty-stockport-slaughterhouse/>> accessed 15 May 2017

had their throats cut while they were still alive, some had cesarians performed on them while they were still alive and fully conscious. And thousands, unable to walk, were dragged by their ears and feet and deposited in piles, where they were simply left to die slowly of starvation or dehydration.

'We've thumped as many as 120 pigs in one day. We just swing them, thump them, then toss them aside. Then, after you've thumped ten, twelve, fourteen of them, you take them to the chute room and stack them up for the dead truck. And if you go in the chute room and some are still alive, then you have to do this whole procedure all over again. There've been times I've walked in that room and pigs would be running around with an eyeball hanging down the side of their face, just bleeding like crazy, or their jaw would be broken. I've seen them with broken backs, where they've been knocked unconscious for a few minutes, but then they're trying to get up again'.

'Some of those guys thump them, then they just stand on top of their throats. Whether it's to keep them from moving or to suffocate them, they stand on top of their throats and wait til they die. They break their jaws and everything while they're doing it.'

'You can't really swing the bigger pigs. One time I walked in and the guys were using two by fours and hammers and gate

rods and everything else to kill them pigs.’

‘We had a total of 138 one day’, said a woman at another farm. ‘And the guys who were supposed to thump them didn't kill them all. I went back in that room after they'd left, because I was supposed to pick up all the dead bodies, and there were pigs with blood just running down their heads. And they were up walking around. Here these animals had the courage to make it through the first thumping, and here I have to go and thump them again’.¹²⁴

2.9 The rationale for suffering

In the latter part of the twentieth century, Jim Mason explained that the methods used in the processing of nonhumans for food vary from species to species, but that the principles were the same. The objective, he maintained, was to keep costs to a minimum and maximise profit.

Maximum profit was achieved, in part, by using innovative techniques to ensure optimum productivity. This meant that the reality for nonhumans used for the production of food was that they existed in crowded, barren, restricted and unnatural environments, that they were stressed and frustrated and that they were fed additive-laced, unnatural diets. Mason cites the condition for veal calves as an

¹²⁴ Gail Eisnitz, ‘From Farm to Fork: Presentation by Gail Eisnitz’ (*Compassion Action for Animals*, 1999) <www.exploreveg.org/issues/farmtofork.html> accessed 23 November 2011. This source appears to have been moved. A version is available at <www.animalliberationfront.com/Practical/FactoryFarm/From%20Farm%20to%20Fork.htm> accessed 3 May 2016. For additional accounts of animal suffering, see also Compassionate Action for Animals, ‘Embrace Your Empathy’ <www.exploreveg.org/stories/> accessed 17 October 2016. A brief search of social media also confirms that suffering exists on a huge scale. Bill Winders and David Nibert say that ‘some of the worst forms of mistreatment of other animals in agriculture have been ameliorated somewhat by reforms in Europe ...’. Bill Winders and David Nibert, ‘Consuming the Surplus: Expanding ‘Meat’ Consumption and Animal Oppression’ (2004) 24 (9) *International Journal of Sociology and Social Policy* 76, 91. For a critical discussion of welfare measures, see Sobbrío (2013).

example of the harsh conditions newborn babies had to endure. These newborn calves, born surplus to the dairy industry, were taken from their mothers and ‘turned into anaemic neurotic animals to provide the luxury-grade ‘milk-fed veal’’.¹²⁵ In fact, the calves suffered intense distress caused by separation from their mothers, were tied in small confined spaces to restrict movement and were fed a replacement diet of dried milk, starch, fats, sugar, antibiotic and other additives. This replacement diet was deficient in iron to facilitate the necessary white flesh that is caused by anaemia. White flesh was most profitable.

Peter Singer also argues that in the late twentieth century, it was not possible to rear animals for food without inflicting suffering. He observes that at the time of writing in the later part of the twentieth century, food production methods meant that nonhuman animals suffered from being castrated, from having their herds broken, from being branded, and from being transported to slaughterhouses. He explains, in one example, the more sinister details of the conditions for chickens. Chickens, who are highly sociable creatures with a need for a specific social order, suffered light and space deprivation, causing them to attack and kill each other. In an attempt to limit the impact of their confined conditions, the birds underwent a process of ‘debeaking’. In this procedure, Singer explains that the chick’s head was inserted into a machine that slices off a portion of the beak. According to Professor Brambell, this process causes severe pain because it cuts through bone and sensitive tissue resembling the ‘quick’ of a human nail.¹²⁶ In these conditions, the birds also suffer sores and abscesses. In addition, being naturally timid and nervous, they also suffocate in ‘piling’ caused by crowding in fear, on top of one another in a corner of

¹²⁵ Jim Mason, ‘Brave New Farm’ in Peter Singer (ed), *In Defence of Animals* (Blackwell 1985) 94.

¹²⁶ Brambell (1965).

their housing. Singer argues that food producers were aware that the conditions in which the birds were kept was responsible for causing their suffering but that market forces prevented them from offering the birds better living environments.

There is overwhelming evidence that Mason's and Singer's historical observations remain prevalent in food production. Current farming practices show that animals continue to suffer cramped, confined conditions and suffer physical and psychological harm in the high-yield, low-cost food production business.¹²⁷ The harms cited, including de-beaking and many more brutal procedures, remain norms in the industrial production of nonhumans whose fate is to exist as marketplace commodities.¹²⁸

Bill Winders and David Nibert confirm these conditions in which nonhumans exist as commodified resources in a capitalist economy that is driven by efficiency and profit. They speak of exceedingly painful, brutal and gruesome deaths, factory farm horrors, miserable deprivations, grotesque deformities and rough handling. They explain that it is not uncommon for nonhumans to arrive at the slaughterhouse in pitiful conditions: for example, thirty to forty percent of chickens that reach the slaughterhouse already suffer with broken bones. They explain that in the profit-driven economic system in which they exist, the life-span of other animals is of no significance: in the case of chickens, one seventh of their natural life expectancy is not unusual. They explain that the feelings of other animals and their urges and instincts to care for their young are disregarded. They report that birth mothers are traumatised from being removed from their offspring, which often occurs within

¹²⁷ See, for example, the short video at Animals Australia: The Voice for Animals (*Animals Australia*, nd) <<http://www.animalsaustralia.org/media/videos.php?vid=factoryfarming>> accessed 16 February 2017.

¹²⁸ See, for example, the current website of United Poultry Concerns <<http://www.upc-online.org/>> accessed 16 February 2017.

hours of giving birth, and that generally, in the modern food-processing industry, a wide range of nonhumans suffer violence on an unprecedented scale.¹²⁹

Suffering is thus cited as a natural consequence of the forces of production – but literature argues that permitted cruel and painful practices do not relate to any notion of human need. Bill Winders, David Nibert and Bob Torres, for example, argue that the conditions nonhumans endure are directly related to their subjugated status and their commodification in a capitalist economy that has encouraged the consumption of them as resources through progressive advances in mechanised, industrial modes of production. Rather than being a necessity for human survival, the suffering of other animals is related to capitalist commodification that has exploited entrenched prejudice. For these authors, it is these social conditions that ground the normative, violent practices that inflict immense suffering.¹³⁰ For Hooley and Nobis, harming is standard practice despite suffering being clearly obvious, its identification being a matter of common sense and it being unequivocally evidenced by overwhelming scientific research on the cognitive, emotional and social lives of other animals.¹³¹ David Thomas, Solicitor and Director of The Association of Lawyers for Animal Welfare, argues that the outlook for nonhumans caught up in this system is bleak. He also observes a deeply entrenched, institutional, oppressive force in his claim that governments are more concerned to protect commercial interests than animals.¹³² Nibert concurs: nonhuman animals suffer because ‘it is not in the nature

¹²⁹ Winders and Nibert (2004).

¹³⁰ Bob Torres (2007).

¹³¹ Dan Hooley and Nathan Nobis, ‘A Moral Argument for Veganism’ in Andrew Chignell, Terence Cunio and Matthew C Halteman (eds), *Philosophy Comes to Dinner: Arguments about the Ethics of Eating* (Routledge 2016).

¹³² David Thomas, *The Law and Animals* (2005) 149 (7) *Solicitors Journal* <www.alaw.org.uk/articles/thelawandanimals.pdf> accessed 12 May 2016.

of capitalism'¹³³ to reduce oppressive gaps; capitalism depends on a false naturalisation and rationalisation that protects the invisibility of oppression and nonhuman pain and suffering.¹³⁴

2.10 Suffering and the scope of commodification

Sociologist Bob Torres describes how an oppressive social hierarchy, built upon domination of and prejudice against other animals, is responsible for the suffering inflicted upon them, and he notes that their suffering is on a massive scale. He argues that prejudice towards nonhumans has ruthlessly commoditised, in capitalist enterprise, numerous species of other animals.¹³⁵ Using the term speciesism, first explained by Richard Ryder,¹³⁶ as a way of drawing attention to prejudicial attitudes towards animals, Torres explains that it grounds a particularly offensive and rapacious oppressive practice that supports a broad-based capitalist economy. For Torres, it is not only food production that causes suffering. Torres argues that the prejudice against nonhuman animals is directly responsible for society being suffused with other animals as marketable, non-food products and by-products. This observation also has historical roots. In 1980, John Berger in *Why Look at Animals* remarked 'in the so-called post-industrial societies, they [animals] are treated as raw material'.¹³⁷

Products derived from other animals, for humans to either eat, wear or use, are certainly well-known and widely available for purchase. Some, such as those bearing the labels 'veal', 'genuine leather', 'pure silk' or 'fine bone china', are regarded as 'luxuries'. The extent of uses found for derivatives of dead or living

¹³³ Nibert (2002) 130.

¹³⁴ Nibert (2002) 253.

¹³⁵ Torres (2007).

¹³⁶ Ryder (1975).

¹³⁷ John Berger, *About Looking* (Pantheon Books 1980) 23.

animals is not well-known, but – as documented by The Vegan Society – various commodified extracts of animal bodies find their way into artists’ materials, tattoo dyes, glue, hairspray, photographic paper, tableware, soap and an endless range of cosmetics, household products and medications.¹³⁸ These range from the obvious, such as furniture wax made from beeswax, to the bizarre: for example, a Starbucks Frappuccino contains thousands of dead insects which have been commodified as a food colouring.¹³⁹ The particular product produced in this case is a red liquid that can be used as a dye. It is made by crushing to death and liquidising cochineal insects. It is a commonplace produce, prevalent and used in a wide range of consumables from yoghurts to lipsticks, but it appears with different names and no explanation of its origin.¹⁴⁰

On the views presented above, nonhuman animals exist as superexploited living commodities, yielding extremely high levels of revenue in capitalist culture.¹⁴¹ Nibert, Winders and Torres argue that a significant implication of this system of social relations between species is that it is not only nonhumans that suffer. They explain how prejudice towards nonhumans and their commodification has direct implications for human wellbeing. For these authors, the commodification of other-than-human animals is also directly responsible for human suffering.

¹³⁸ The Vegan Society, *Animal Free Shopper* (8th edn, The Vegan Society 2008).

¹³⁹ Kim Bhasin and Noelia de la Cruz, ‘Here’s What You Need To Know About The Ground-Up Insects Starbucks Puts in Your Frappuccino’ (*Business Insider*, 29 March 2012) <www.businessinsider.com/how-cochineal-insects-color-your-food-and-drinks-2012-3?IR=T> accessed 11 May 2016. This insect is called cochineal (food additive known as cochineal extract, carmine or E120). It is widely used in the food and cosmetic industry to colour products red. It is obtained by harvesting thousands of insects and crushing their whole bodies. The red liquid that remains is what is used as a colouring. In response to reports of severe allergic reactions to the product, in 2011 the Food and Drug Administration of the United States of America required accurate labelling to enable consumers to make an informed choice. See Food and Drug Administration, HHS, ‘Listing of Color Additives Exempt From Certification; Food, Drug, and Cosmetic Labelling: Cochineal Extract and Carmine Declaration’ (1 May 2009) <www.fda.gov/OHRMS/DOCKETS/98fr/FDA-1998-D-0032-nfr.pdf> accessed 11 May 2016.

¹⁴⁰ Often called ‘carmine’ or E120.

¹⁴¹ Torres (2007).

2.11 Intersecting human and nonhuman suffering

Nibert and Winders note that as technological advances speeded up the processing of the bodies of nonhumans, the conditions for workers worsened. From an examination of a variety sources, they highlight how factory workers came under pressure to perform manual and machine-operated slaughter and processing methods much more quickly. This literature reveals that the health and safety of slaughterhouse and processing plant employees was put in danger.¹⁴²

Bob Torres is particularly concerned with capitalist commodification and the processes of production of other animals. He argues that the process of production in capitalist enterprise is not simply about human food needs.¹⁴³ Rather, commodification and the process of production is 'tied into politics, gender, technology, and environmental quality' and depends on oppressive layers inherent in social relationships.¹⁴⁴

The observations of Winders, Nibert and Torres regarding interlinked suffering are confirmed in practice. For example, Schlosser explains how, in the US, a workforce of mostly unregistered migrant workers involved in killing and processing the bodies of other animals endured inadequate health and safety provisions.¹⁴⁵ Conditions were recognised as so terrible that in 2005, Human Rights Watch singled out the US meat industry for working conditions that violated basic human rights.¹⁴⁶ Observations such as these are not new. Noting the connection between female and animal oppression in 1995, Carol Adams reports that thousands of non-unionised

¹⁴² Winders and Nibert (2004).

¹⁴³ Torres (2007).

¹⁴⁴ Torres (2007) 15. Intersectional theory is now becoming quite mainstream in the Academy.

¹⁴⁵ Eric Schlosser, 'The Chain Never Stops' Mother Jones (July/August 2001) para 12
<<http://motherjones.com/politics/2001/07/chain-never-stops>> accessed 13 May 2016.

¹⁴⁶ Human Rights Watch, 'Blood, Sweat, and Fear: Workers' Rights in U.S. Meat And Poultry Plants' (*Human Rights Watch*, January 2005) <www.hrw.org/node/11869/section/2 Blood Sweat and Fear> accessed 13 May 2016.

black women of different ethnic origins suffered ‘filthy working conditions, sexual harassment and ignored or poorly treated employee injuries’ in meat-packing industry employment.¹⁴⁷ Adams goes on to report that ninety-five per cent of all poultry workers in the US were, at that time, black women whose job role was to scrape the insides and pull the lungs out of five thousand recently slaughtered chickens per hour.

Interlinked oppression and suffering are a particular feature of the meat-processing industry. In addition to there being a disregard for nonhumans, there is evidence that it is a culture with a widespread lack of emphasis on the care, health and safety of human employees. In the profit-driven context for the efficient, continuous processing of the bodies of nonhumans, the meat-processing industry in the US is regarded as the nation's most dangerous occupation. Currently, the US Department of Labor cites the meat-processing industry to be 2.5 to 3 times more hazardous than any other employment sector.¹⁴⁸ These circumstances also appear to be historically significant, according to the Bureau of Labor Statistics (BLS). For example, in 1999, the BLS reported that meat-packing plants have the highest rate of repeated-trauma disorders. At this time, Personick and Shirley produced evidence that those working in the meat-packing industry suffered above-average figures for injuries and illnesses – two or three times higher than figures for the total economy.¹⁴⁹ Schlosser documents the titles of reports submitted by the Occupational

¹⁴⁷ Adams (1995) 81-82.

¹⁴⁸ United States Department of Labor, ‘Meat Packing Industry’ (*United States Department of Labor*) <<https://www.osha.gov/SLTC/meatpacking/index.html>> accessed 13 May 2016. Figures and data for 1994-2014 can be found at United States Department of Labor, ‘Injuries, Illnesses and Fatalities’ (United States Department of Labor, last modified 2015) <www.bls.gov/iif/oshsum.htm#13Summary_News_Release> accessed 13 May 2016.

¹⁴⁹ Martin E Personick and Katherine Taylor-Shirley, ‘Profiles in Safety And Health: Occupational Hazards of Meat Packing’ *Monthly Labor Review* (United States Department of Labor, Bureau of Labor Statistics, 1989) <www.bls.gov/mlr/1989/01/art1full.pdf> accessed 13 May 2016.

Safety and Health Administration. They include:

Employee Severely Burned after Fuel from His Saw Is Ignited.
Employee Hospitalized for Neck Laceration From Flying Blade.
Employee's Finger Amputated in Sausage Extruder.
Employee's Finger Amputated in Chitlin Machine. Employee's
Eye Injured When Struck by Hanging Hook. Employee's Arm
Amputated in Meat Auger. Employee's Arm Amputated When
Caught in Meat Tenderizer. Employee Burned in Tallow Fire.
Employee Burned by Hot Solution in Tank. One Employee
Killed, Eight Injured by Ammonia Spill. Employee Killed When
Arm Caught in Meat Grinder. Employee Decapitated by Chain
of Hide Puller Machine. Employee Killed When Head Crushed
by Conveyor. Employee Killed When Head Crushed in Hide
Fleshing Machine. Employee Killed by Stun Gun. Caught and
Killed by Gut-Cooker Machine.¹⁵⁰

The US Department of Labor provides lists of similar cases.¹⁵¹ Despite the reputation of the sector and the enduring low safety record, Schlosser comments that 'nothing stands in the way of production'. Workers have accidents and 'lie unconscious on the floor as dripping carcasses sway past them, and the chain never

¹⁵⁰ Eric Schlosser, 'The Chain Never Stops' *Mother Jones* (July/August 2001) para 5
<<http://motherjones.com/politics/2001/07/chain-never-stops>> accessed 13 May 2016.

¹⁵¹ For example, Accident Search Results showing data available up to 2013 contains a list of injuries and amputations resulting from just one type of machine used in the industry. United States Department of Labor, 'Occupational Safety and Health Administration: Accident Search Results' <https://www.osha.gov/pls/imis/AccidentSearch.search?acc_keyword=%22Meat%20Slicing%20Machine%22&keyword_list=on> accessed 13 May 2016.

stops'.¹⁵²

2.12 The scope of mutual suffering

Hooley and Nobis argue that the suffering imposed on nonhumans has direct consequences for humans. They argue that animal agriculture can cause asthma and depression in humans and that the conditions in which nonhumans are raised cause bacteria and superbugs that ultimately cause harm to humans.¹⁵³ These sorts of problems were also well-known in the 1970s, as Jon Wynne-Tyson observes.

The UN also reports on the negative environmental impact of animal agriculture and the problems created for human society. *Livestock's Long Shadow – Environmental Issues and Options* made it clear that the situation has become desperate. This report, published by the Food and Agriculture Organization of the UN, concludes that the livestock sector is at the top of the list for causing the most serious environmental problems the world is facing. The report highlights that the farming of nonhuman animals causes: deforestation, land degradation, climate change, air pollution (to a degree higher than combined global transport), water shortage, water pollution, and loss of biodiversity to such an extent that '[l]ivestock's contribution to environmental problems is on a massive scale... The impact is so significant that it needs to be addressed with urgency'.¹⁵⁴

The oppressive socio-political conditions in which nonhumans suffer at the hands of humans are also believed to create a relationship between the abuse of other animals and violent crime. Based on interviews with slaughterhouse workers in

¹⁵² Schlosser (2001) para 12.

¹⁵³ Hooley and Nobis (2016).

¹⁵⁴ United Nations Food and Agriculture Organisation, 'Livestock's Long Shadow – Environmental Issues and Options' (United Nations FAO Corporate Document Repository 2006) xxi
<<ftp://ftp.fao.org/docrep/fao/010/a0701e/a0701e00.pdf>> accessed 14 May 2016.

her capacity as agricultural investigator, Eisnitz¹⁵⁵ reports that workers can develop an uncaring attitude to the extent that inflicting violence upon the animals when they are frustrated or feel pressure comes easily. Eisnitz quotes one of her interviewees: ‘...I took a three-foot chunk of pipe and I literally beat that hog to death. Couldn’t have been a two-inch piece of solid bone left in his head...’.¹⁵⁶ A further statement was: ‘...you develop an attitude that lets you kill things but doesn’t let you care...’.¹⁵⁷

Fitzgerald, Kalof and Dietz support the research of Eisnitz and suggest that the very presence of a slaughterhouse in a community exacerbates crime rates.¹⁵⁸ Their research suggests that the physical and psychological impact of slaughterhouse work results in workers having an increased propensity to violent behaviour. In addition, they are more likely to be victims of drug and alcohol abuse and suffer increased levels of anxiety.

Theologian Professor Andrew Linzey of the Oxford Centre for Animal Ethics explains that philosophers and social thinkers have long stated the connection between cruelty to other animals and that inflicted upon humans.¹⁵⁹ Linzey notes a range of historical sources as evidence representing the logic that people who are cruel to nonhumans will also be cruel to humans. In his 2009 collection of authored contributions, subjects under consideration include: the relationship between animal abuse and serial killers, the relationship of animal abuse to domestic violence, and

¹⁵⁵ Gail Eisnitz, *Slaughterhouse: The Shocking Story of Greed, Neglect, And Inhumane Treatment Inside the U.S. Meat Industry* (Prometheus Books 1997/2007).

¹⁵⁶ Eisnitz (1997/2007) 94.

¹⁵⁷ Eisnitz (1997/2007) 87.

¹⁵⁸ Amy J Fitzgerald, Linda Kalof and Thomas Dietz, ‘Slaughterhouses and Increased Crime Rates: An Empirical Analysis of Spillover from ‘The Jungle’ into the Surrounding Community’ (2009) 22 *Organization and Environment* 158.

¹⁵⁹ Andrew Linzey, ‘Does Animal Abuse Really Benefit Us?’ in Andrew Linzey (ed), *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press 2009) 1.

the importance the Federal Bureau of Investigation (FBI) attaches to the issue of animal cruelty in relation to the propensity for other immoral and criminal acts.¹⁶⁰ Linzey argues that evidence for a connection between human and nonhuman animal abuse prevails and that the links are stronger than ever.

There is support, then, for the view that entangled oppressive forces have not only created a lived ontology of servitude and suffering for other animals, but have had far-reaching consequences for wider social wellbeing. Nibert maintains that 'the oppression of other animals has been devastating for the cultural, spiritual, and economic well-being of the vast majority of humans. What is more, the oppression of devalued groups of humans has been, and remains, disastrous for other animals'.¹⁶¹

It is of great significance that entrenched prejudice towards nonhuman animals is cited as responsible for their off-the-scale suffering, but it is also significant that it accounts for a great deal of human suffering too. To address this mutual suffering, Nibert and Winders argue that those interested in securing a better status for other animals need to understand the wider capitalist framework in which the oppression of others operates and to rationalise and promote an alternative ethical system of social organisation.¹⁶²

Nibert thus concludes that the emancipation of nonhuman others depends upon the development of a more egalitarian system that includes nonhumans. In this regard, Nibert cites the utility of veganism in his theory of social justice. He agrees with longstanding abolitionist Gary Francione, who advocates that the property status and exploitative use of nonhuman beings ought to be made progressively

¹⁶⁰ Linzey (2009).

¹⁶¹ Nibert (2002) xiii.

¹⁶² David Nibert, *Animal Rights Human Rights: Entanglements of Oppression and Liberation* (Rowman & Littlefield Publishers Inc 2002) and Winders and Nibert (2004).

illegal.

Nibert and Francione believe that a paradigm shift in social justice is possible 'through prohibitions that recognise that animals have non-tradable interests and where those prohibitions do not substitute alternative forms of exploitation'.¹⁶³ For Nibert, justice requires that the 'social positions humans occupy neither compel violence, nor encourage passive complicity in oppressive practices and arrangements'.¹⁶⁴ In this endeavour, these theorists promote veganism as a starting point on the grounds that it counters the power of the oppressive, structural forces of social hierarchy, domination and prejudice. As a culture of indistinction and of protest, veganism materially and symbolically highlights the invisibility of a blind acceptance of an oppressive ontology of human and nonhuman being. In this regard, veganism is not only educational but is also a culture in opposition, with strategic value to deal with mutual vulnerability and suffering. There is evidence that such endeavours are characteristic of human nature and have proven historical social value.

2.13 The human desire to address mutual suffering

Discourse claims that problematic social arrangements are caused by prejudice towards nonhuman beings and argues that veganism has symbolic and strategic utility. This critical view raises questions about the essence of human identity and the possibility that it is subjugated by socio-political arrangements. What is implicit in the use of veganism in this discourse is the idea that human nature is, essentially, compassionate and caring, that justice concerns compassionate respect

¹⁶³ Gary Francione, cited in Nibert (2002) 251. Gary Francione promotes abolitionism rather than animal welfare. For a discussion of both perspectives, see Gary Francione and Robert Garner, *The Animal Rights Debate* (Columbia University Press 2010).

¹⁶⁴ Nibert (2002) 253.

and regard for both humans and nonhumans, and that the utility of veganism is its selfless restorative value. The idea of an extension of asymmetrical compassion to vulnerable humans and nonhumans has historical relevance in philosophical discourse and in the evolution of social justice.¹⁶⁵

Tonutti confirms that there is a long history of selfless compassion, in recognition of responsibility and provision for need, for both humans and nonhumans.¹⁶⁶ She notes that many important philanthropic and humane societies of the nineteenth century aimed to protect both children and animals from cruelty.¹⁶⁷ For example, Lewis Gompertz, secretary to the Society for the Prevention of Cruelty to Animals (SPCA), was involved in campaigning for the rights of women, the poor and nonhumans, and published his *Moral Inquiries on the Situation of Man and of Brutes* in 1824. Similarly, slavery abolitionist William Wilberforce MP was instrumental in developing the SPCA, which became the Royal Society for the Protection of Animals (RSPCA) in the UK.¹⁶⁸

The utility of veganism to discourse that seeks to address suffering is supported by philosopher Stanley M Sapon.¹⁶⁹ His words appeal to ethical responsibility and compassion expressed in the idea of moral indistinction:

[v]eganism acknowledges the intrinsic legitimacy of all life. It

¹⁶⁵ For a very readable and comprehensive introduction to the substantial body of historical philosophical literature that deals with questions concerning the human use of nonhumans, see Tom Regan and Peter Singer, *Animal Rights and Human Obligations* (2nd edn, Prentice Hall 1989).

¹⁶⁶ Sabrina Tonutti, 'Cruelty, Children, and Animals: Historically One, Not Two, Causes' in Andrew Linzey (ed), *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press 2009).

¹⁶⁷ Tonutti (2009) 95.

¹⁶⁸ Anthony Brown, *Who Cares for Animals? 150 Years of the RSPCA* (Heinemann Ltd 1974).

¹⁶⁹ Stanley M Sapon, 'A Philosophy of Vegan Values' (From all-creatures.org Articles Archive) <www.all-creatures.org/articles/sapon.html> accessed 13 May 2016. Stanley Sapon (1924-2010) was Professor Emeritus of Psycholinguistics at the University of Rochester (NY). He was a linguist, ethicist and philosopher. He was elected to the Board of the American Vegan Society.

rejects any hierarchy of acceptable suffering among sentient creatures ... Vegan ideals encompass much more than advocacy of a diet free of animal products, or a fervent defense of animal rights. Veganism excludes no sentient being – animal or human – from its commitment to compassionate, gentle benevolence.¹⁷⁰

Nonetheless, veganism exists in the context of an overarching paradigm of a widespread consumption of nonhuman animals that causes immense suffering. In this context, nonhumans exist as property and commodified human resource, and veganism is misunderstood and difficult to accommodate, coming up against resistant, dominant normative and prevalent prejudicial opinions and practices. In these conditions, vegans claim the right to endeavour to practise a non-reductive, uncompromising ethical commitment to nonhumans. For example, vegans are represented in a small body of case law on unfair treatment and discrimination in health care, in employment and in family law. In health care, vegans request suitable food and non-animal-derived medications. In employment, vegans request suitable food and synthetic uniform items and safety footwear. In detention, vegans request suitable clothing, bathroom products and food. In education, vegans request suitable food and to be exempt from conducting dissections. As consumers, vegans request suitable food, clothing and accessories.

In cases concerning veganism, such as those listed above, nonhuman suffering is invisible; it is never discussed on its own terms. If it is mentioned at all, it

¹⁷⁰ Sapon, 'A Philosophy of Vegan Values' para 7.

is framed in terms of the sentimental characteristics of the applicant. In adverse and oppressive social conditions, it is not unheard of for vegans to protest to their own detriment and even to their own death.¹⁷¹

2.14 The context for the claims of vegans

The claims of vegans are primarily for the moral standing of nonhumans set against a backdrop of entrenched prejudice. The claims of vegans also arise in the context of a widespread general societal feeling of responsibility and compassionate regard for the moral standing and suffering of nonhumans. In this regard, there are cases that strongly express the immorality of cruelty to nonhumans.¹⁷² The ECtHR has protected the right to freedom of expression concerning the expression of compassionate responsibility to animals.¹⁷³ It has rejected an application for a right to hunt foxes with hounds under the human right to freedom of conscience.¹⁷⁴ In wider society and in law, animals are not regarded as objects, and many regional

¹⁷¹ In 2001, Barry Horne, a vegan animal rights activist, died in Long Lartin Prison, Little Sutton, UK following a period of self-imposed food deprivation: BBC News, 'Animal Activist Dies on Hunger Strike' (*BBC News*, 5 November 2001) <<http://news.bbc.co.uk/1/hi/england/1639225.stm>> accessed 26 July 2016. In 2015, a disillusioned vegan prisoner in the UK refused to eat and drink (personal communication, The Vegan Society, 2015). Currently, in Turkey, Osman Evcan is suffering from being denied the right to manifest his vegan (and other) beliefs and from a lack of appropriate vegan food. Osman initiated a hunger strike in 2011: ALFSG, 'Animal Liberation Front Supporters Group' December 2011 <http://www.alfsg.org.uk/mags/SG_Dec_2011.pdf> accessed 26 July 2016. In 2009, there were around 500 vegan prisoners in the UK (The VPSG, 2009). For more information on this topic, see Vegan Prisoners Support Group <<http://vpsg.org/>> accessed 26 July 2016.

¹⁷² See, for example, the lengthy discussion on animal cruelty in the 52-page case report of *Let the Animals Live v Hamat Gader* LCA 1684/96. In this case, the Israeli Supreme Court stated that regard for nonhumans concerns our innermost feelings and any abuse disgusts us. It confirmed that we have empathy for vulnerable nonhumans and that there was a moral imperative to protect them. Available at <http://elyon1.court.gov.il/files_eng/96/840/016/g01/96016840.g01.pdf> accessed 13 May 2017.

¹⁷³ For example, the ECtHR has ensured that dissemination of the explicit brutality and graphic facts of seal hunting are not considered defamatory towards seal hunters because of a 'vital public interest in ensuring an informed public debate over a matter of local and national, as well as international, interest'. See *Bladet Tromsø And Stensaas v Norway* App no 21980/93 (ECtHR, 20th May 1999). It has also confirmed that there is no breach of the peace if blowing a horn to disrupt a fox hunt is not accompanied by any violence or threat. See *Hashman and Harrup v UK* App no 25594/94 (ECtHR, 25th November 1999). It has confirmed that matters concerning nonhuman animal welfare are in the public interest to the extent that restrictions under an Article 10 right to freedom of expression are significantly limited: 'The Court reiterates that there is little scope under Article 10 s 2 of the Convention for restrictions ...'. See *Verein Gegen Tierfabriken Schweiz (Vgt) V Switzerland* App no 32772/02 (ECtHR, 30 June 2009).

¹⁷⁴ See, for example, *Friend, The Countryside Alliance And Others v UK* App no 16072/06 and 27809/08 (ECtHR, 4th November 2009). (Though in the protection of minorities, under the ICCPR, the right to pursue traditional cultural practices may extend to hunting and trapping animals.)

constitutions provide general protection for animals.¹⁷⁵ Protection for animals exists at the level of the UN and the European Union;¹⁷⁶ animals are regarded as individual living beings capable of experiencing pain and fear and, as such, are regarded to be sapient as well as sentient.¹⁷⁷ These circumstances reflect the uncontested empirical human concern for nonhuman animals. They also correlate to the development of positive law that facilitates living with ethical regard for the lives of nonhuman others: for example, proposed developments regarding food labelling law.

There are also other areas of everyday social life that reflect the human concern with nonhuman animals. For example, the RSPCA reports that in 2015, it received 1,118,495 phone calls about animal welfare. On average, this amounts to one telephone call every 30 seconds. In the same year, the RSPCA investigated 143,004 complaints of cruelty and secured 1,781 convictions by private prosecution.¹⁷⁸ It is also estimated that in Europe, humans spend 15 billion Euros on purchasing products and services for companion animals.¹⁷⁹ In 2016, hundreds of well-wishers with their dogs in Cornwall accompanied a dog named 'Walnut' and his carer on a final outing prior to his passing by compassionately motivated euthanasia on medical grounds. As they did, thousands more around the globe walked their

¹⁷⁵ For example, the Constitutions of Brazil, India, China and Florida recognise nonhuman animals. International environmental law also emphasises concern for nonhuman animals. Such law is established in the United Nations, Africa, America, Association of Southeast Asian Nations, the World Trade Organisation, the Council of Europe and the European Union. The recognition of animal sentience in various European states is, to a large extent, related to the inclusion of animals as sentient in the Treaty of Amsterdam Amending the Treaty on European Union (Amsterdam Treaty)). Since this Treaty, Germany, Austria, Switzerland and France have all incorporated the sentient status of animals into their animal welfare legislation. In 2015, New Zealand followed suit, amending its Animal Welfare Act of 1999 primarily to reflect that animals are sentient: New Zealand Parliamentary Council Office, Animal Welfare Amendment Act (No 2) 2015 <<http://www.legislation.govt.nz/act/public/2015/0049/latest/DLM5174807.html>> accessed 18 June 2016.

¹⁷⁶ See, for example, the list of 'animal welfare' and conservation treaties and declarations in Hass (2014).

¹⁷⁷ 'Sapience' is a term used to describe the set of abilities organisms have that enable them to act or function according to their specific species and environment.

¹⁷⁸ Royal Society for the Prevention of Cruelty to Animals, 'Facts and figures: Key Information' <<http://media.rspca.org.uk/media/facts>> accessed 17 July 2016.

¹⁷⁹ The European Pet Food Industry Federation (FEDIAF) 'Fact and Figures 2014' [PDF] <<http://www.fediaf.org/facts-figures/>> accessed 17 July 2016.

companion dogs at the same time in a gesture of compassionate support.¹⁸⁰

In this context of widespread care and regard for nonhumans, activists have secured legal rights for a chimpanzee,¹⁸¹ city councils have banned the sale of fur,¹⁸² the dietary element of veganism has been validated as beneficial by dietetic and health care organisations,¹⁸³ legislation now exists on the right to be provided with vegan food in public institutions,¹⁸⁴ schools are providing completely plant-based food,¹⁸⁵ and sports personalities are speaking out against the use of animal derivatives in equipment.¹⁸⁶

The confused social and political conditions in which other animals feature in intertwined human societal arrangements affect legal responses to veganism.¹⁸⁷ Carlo Prisco notes that, generally, vegans can expect prejudice in the courtroom and that where a vegan diet requires a defence, this is unlikely to be provided by attorneys. He generalises that attorneys are scared to defend (and first to condemn) the dietary element of veganism.¹⁸⁸

The concerns of vegans that lead them to make human rights claims

¹⁸⁰ Patrick Sawyer, 'Owner 'flabbergasted' as hundreds join Walnut the whippet on his final walk after Facebook invitation' (*The Telegraph*, 12 November 2016) <<http://www.telegraph.co.uk/news/2016/11/12/hundreds-join-walnut-the-whippet-on-his-final-walk/>> accessed 14 November 2016.

¹⁸¹ Seeker, 'Zoo Chimp Has Legal Rights, says Judge in Argentina' (*Seeker*, 7 November 2016) <<https://www.seeker.com/zoo-chimp-has-legal-rights-says-judge-in-argentina-2083850453.html>> accessed 28 June 2017.

¹⁸² Fur Free Alliance, 'City of Berkeley Bans the Sale of Fur' (*Fur Free Alliance*, 10 April 2017) <<http://www.furfreealliance.com/city-berkeley-bans-sales-fur/>> accessed 28 June 2017.

¹⁸³ See, for example, British Dietetic Association, 'Food Facts Sheet: Vegetarian Diets' <<https://www.bda.uk.com/foodfacts/vegetarianfoodfacts.pdf>> accessed 21 July 2016.

¹⁸⁴ Most notably, Portugal has recently introduced legislation to this effect.

¹⁸⁵ Admin, 'Daycares in Finland are Going Vegan' (*Ecorazzi*, 18 May 2016) <<http://www.ecorazzi.com/2016/05/18/daycares-in-finland-are-going-vegan/>> accessed 21 July 2016.

¹⁸⁶ Leon Watson, 'Yorkshire's Vegan Cricket Coach Stumps Sponsors after Questioning Use of Leather Balls and Calling for Entire Dairy Industry To Be Shut Down' (*The Telegraph*, 7 June 2016) <<http://www.telegraph.co.uk/news/2016/06/07/yorkshires-vegan-cricket-coach-angers-sponsors-after-calling-for/>> accessed 21 July 2016. See also former Everton professional footballer Neil Robinson's website <<http://veganathletesforpeace.com/about/>> accessed 21 July 2016, and that of professional runner Fiona Oakes <<http://www.greatveganathletes.com/fiona-oakes-vegan-marathon-runner>> accessed 21 July 2016.

¹⁸⁷ There are a variety of cases concerning veganism in employment, family and medical contexts.

¹⁸⁸ Prisco (2017) 114. Prisco emphasises how scientific data from the American Dietetic Association helped him to litigate in the case of a young child expelled from school because the client could not provide medical certification that the child was in good health and underwent periodic health assessments.

represent the moral imperative to respond positively to nonhuman suffering. Vegans do not wish to be associated with killing or be compelled to assimilate into the dominant culture of prejudice towards other animals by being required to participate in speciesist practices. Of significance is that vegans present a moral imperative that requires practical manifestation. Their claims under the heading 'human rights' are made in the context of relationships with government authorities. They are claims that are not well understood and that are predominantly dismissed and inconsistently accommodated.¹⁸⁹

2.15 Veganism at the European Court of Human Rights: *H v UK*

The case heard at the ECtHR, *H v UK*,¹⁹⁰ concerned a vegan prisoner who brought a complaint against the UK Government under the human right to freedom of conscience.¹⁹¹ H objected (inter alia) to a requirement to work in the prison printing facility because he believed that he would come into contact with dyes that had been tested for safety on the bodies of nonhuman animals.¹⁹² As a vegan with an ethical orientation that opposes the resource status and commodification of nonhumans, the requirement to undertake duties in the print shop was not conducive to H's ethical orientation.

The Commission of the Court found that vegan convictions, with regard to animal products, come within the scope of Article 9 right to freedom of conscience

¹⁸⁹ The Vegan Society has a dedicated advocacy service in the UK to assist vegans, as does the International Vegan Rights Alliance, which has representatives in various countries. The Vegan Prisoners Support Group has been assisting vegan prisoners since 1994 and works with the UK Government National Offender Management Service to ensure that vegans in prison receive adequate and nutritious vegan food as well as vegan clothing, hygiene products and body-care products. Although insights gleaned from some of these reports can only be regarded as anecdotal for the purposes of academic discussion, they do, nonetheless, illustrate serious concerns.

¹⁹⁰ (1993) 16 EHRR.

¹⁹¹ Article 9 of the European Convention on Human Rights, 'freedom of thought, conscience and belief' is discussed in more detail in Chapter 3.

¹⁹² The UK Government had denied that the dyes were derived from nonhumans and that they had been safety-tested on nonhumans. The applicant had support from The Vegan Society for the fact that most dyes had, at some stage in their development, been tested on nonhumans.

under the Convention. Noting relevant case law,¹⁹³ it observed that this provision protects 'private and personal beliefs, and the acts which are intimately linked with these attitudes'. On this basis (as noted earlier), the Commission found that vegan convictions with regard to animal products fell within the scope of Article 9 para 1 (Art. 9-1) of the Convention.

The Commission noted that the UK had not contested that veganism is a matter of conscience and belief within the scope of Article 9, but decided against H's claim and in favour of the UK Government on two grounds. One was that the dyes were probably not tested on nonhuman animals and, therefore, were uncontentious to ethical vegans. The second ground was that even if under 9(2) there was interference in H's freedom, it was legitimate on the grounds that the prison rules existed for good order and were applied to all prisoners. Interference with H's ethical convictions was, therefore, legitimate and was considered proportional.

This case confirms that the moral standing of nonhumans and their suffering are relevant to the claims of vegans only insofar as they represent a credible, private and personal perspective. The European system of human rights accepted the credibility of such convictions, but it did not recognise the wider social and ethical regard for nonhuman animals or the moral imperative to respond to suffering, and it did not allow H the right to live with a non-reductive, uncompromising, ethical commitment to suffering animals. Instead, H's claim for the moral standing of suffering nonhuman animals suffered in the context of the centrality of the human individual in human rights and was (partially) qualified on the grounds that there was

¹⁹³ For example, *C v UK* (1983) DR 142: 'Article 9 primarily protects the sphere of personal beliefs and religious creeds, ie the area which is sometimes called the *forum internum*. In addition, it protects acts which are intimately linked to these attitudes, such as acts of worship or devotion which are aspects of the practice of a religion or belief in a generally recognised form. In protecting this personal sphere, Article 9 of the Convention does not always guarantee the right to behave in the public sphere in a way which is dictated by such a belief ...'.

an overriding interest.

This case expresses a primary function of the human right to freedom of conscience to protect only the autonomous agency of individuals to live, without unlawful interference, according to individual convictions. With regard to the claims of vegans, it is, thus, considered that an uncompromising, ethical commitment to suffering nonhumans is a matter for the private and personal conscience of individuals, and that the practical manifestation of any such commitment can be lawfully limited.

A consequence of the above finding is, therefore, that an uncompromising vegan commitment to recognising and presenting the suffering of nonhumans and their moral standing can be lawfully constrained. This conclusion raises questions about the nature of a human rights enterprise that recognises the significance of nonhuman suffering in its acknowledgment that veganism comes within the scope of human rights protection. Of particular interest is the tension between the recognition of suffering others as an ethical value in human rights and the primacy of qualified human rights protection for individual autonomous conscience. This tension will be explored in the next chapter.

2.16 Conclusion

This chapter has explained that veganism is a culture embracing an ethical commitment to the moral standing of nonhuman animals. It has explained that vegans feel compelled to live their lives avoiding harming animals or participating in their commodification. What is clear in the growing culture of veganism and literary comment is that veganism is a culture of selfless respect, compassion, duty and benevolence to other life and is a response to the suffering of nonhuman others. The

suffering of nonhumans was cited as particularly significant to the existence and evolution of veganism and to the idea that attending to their suffering is a moral imperative.

The chapter has identified that as veganism has evolved so too has critical comment on the manifestations of prejudice towards nonhumans. In this regard, current literature highlights the broad range of critiques that assess the implications of the dominant, normative practice of consumption of nonhumans. These critiques emerge from the idea that humans are ethically responsible to nonhumans and that the falsely assumed, ontological human-animal binary is responsible for a plethora of intersecting societal problems that can be addressed, in part at least, through a non-anthropocentric reorientation of the way humans respond to nonhuman suffering.

The chapter has observed that veganism is defined as indistinction in practice, a daily lived expression of ethical commitment and the embodiment of a response to ethical responsibility that can alleviate social ills. The chapter has identified that this discourse is built upon the belief that nonhuman suffering is caused by prejudice and the imposition of arbitrary power. In this regard, the chapter has identified a suffering narrative in the history and evolution of veganism.

The chapter has noted the range of contexts in which the claims of vegans arise. It has been observed that the arguments of vegans are ethically motivated and that their claims for accommodation are grounded in ethical consideration for nonhumans and their suffering. It was noted that their claims are numerous and not well understood or accommodated in a dominant culture of nonhuman animal consumption. This context for the claims of vegans renders nonhuman suffering invisible, it being rarely mentioned in cases concerning veganism and, if so, only in

the context of an applicant's personal sentiments. Nonetheless, the ECtHR recognises vegan convictions as significant in its finding that veganism comes within the scope of (qualified) human rights protection.

The chapter has highlighted that a consequence of qualified protection is that the vegan desire to extend an uncompromising, non-reductive, ethical commitment to nonhumans is compromised by lawful interference. These circumstances represent a tension in human rights between the recognition of the importance of suffering and the primacy of protection for human individuals on the basis of autonomous agency. The next chapter, therefore, assesses the observation that the moral imperative to attend to the suffering of nonhumans is constrained by the centrality of the human individual in the idea of human rights.

Chapter 3

To what extent does the existing human rights jurisprudence on veganism confirm the centrality of individual (human) self-determination in the idea of human rights?

Introduction

The previous chapter explained that veganism is a response to suffering and that vegans aim to live with an uncompromising ethical commitment to the moral standing of nonhuman animals. It was identified that vegans argue, in various areas of their lives, against a requirement to assimilate into the mainstream system of prejudice against animals and have presented nonhuman animal suffering under the human right to freedom of conscience. It was found that though the vegan concern with nonhuman animal suffering is recognised by the ECtHR, the ethical convictions of vegans can, nevertheless, be lawfully compromised on the grounds that they are deemed private and personal beliefs of conscience that must be balanced against competing aims in a democracy. The objective of this chapter is to identify the extent to which this way of dealing with veganism confirms the centrality of human individuality in the idea of human rights.

3.1 Background

The subjugated status of nonhumans is not explicitly written into human rights law. There is no explicit right to kill nonhuman animals or to disregard their suffering. Their subjugated status is, however, the context for exclusive human rights.¹⁹⁴ The human/nonhuman binary in the idea of human rights is supported by the exclusionary jurisdiction of the ECtHR, which has confirmed that it cannot

¹⁹⁴ The Council of Europe is pro-active in facilitating open discussion. It encourages young people to explore various rights in the context of liberty, culture and sustainability in relation to the natural environment. See, for example, Council of Europe, 'Compass: Manual for Human Rights Education with Young People: Makah Whaling' <<http://www.coe.int/en/web/compass/makah-whaling>> accessed 13 July 2016.

consider complaints put forward for animal rights because the Convention has no provisions for the rights of animals for it to protect.¹⁹⁵

Human rights provisions also reflect the resource status of nonhuman animals. For example, Article 27 of the International Covenant on Civil and Political Rights requires states to ensure that minorities are not denied enjoyment of their culture.¹⁹⁶ Under this provision, the Human Rights Committee, in General Comment 23, communicates the status of nonhumans as land resources and explicates that granting cultural rights may also include protecting, by law, rights (inter alia) to hunting and fishing.¹⁹⁷ This bias of human rights allows herding, trapping, hunting and killing other animals as human entitlements under the protection of culture.¹⁹⁸

When considering the oppositional culture of veganism, this legal opinion is an example of what Heiner Bielefeldt, a former UN special Rapporteur for freedom of religion and belief, describes as a 'prima facie contradiction' between the principle of

¹⁹⁵ In 2008, a committee of the First Chamber at the European Court of Human Rights examined an application for legal personhood, put forward on behalf of an ape (Matthew), by Miss Stibbe (*Stibbe v Austria* App no 26188/08 ECtHR, 4 May 2008). The committee rejected the application on the grounds of incompatibility *ratione materiae*. ('The compatibility *ratione materiae* with the Convention of an application or complaint derives from the Court's substantive jurisdiction. For a complaint to be compatible *ratione materiae* with the Convention, the right relied on by the applicant must be protected by the Convention and the Protocols thereto that have come into force.') See Council of Europe, European Court of Human Rights, 'Practical Guide on Admissibility Criteria' (2011) <http://www.justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/International/Guide_pratique_EN_G.pdf> accessed 18 June 2016. For a news report of this case, see Allan Hall, 'European Court Agrees to Hear Chimpanzee's Plea for Human Rights' (*Mailonline*, 2008) <<http://www.dailymail.co.uk/news/article-1020986/European-Court-agrees-hear-chimps-plea-human-rights.html#ixzz4FbLnbLNK>> accessed 18 June 2016.

¹⁹⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

¹⁹⁷ United Nations Human Rights Committee (HRC), 'CCPR General Comment No 23: Article 27 (Rights of Minorities)' (8 April 1994) UN Doc CCPR/C/21/Rev.1/Add.5.

¹⁹⁸ See, for example, *Chief Bernard Ominayak and the Lubicon Lake Band v Canada* Comm no 167/1984 UN Doc CCPR/C/38/D/167/1984, 10 May 1990; *Kitok v Sweden* Comm. no 197/1985, UN Doc CCPR/C/33/D/197/1985 10 August 1988; *Länsman et al v Finland* (no 1) Comm no 511/1992, UN Doc CCPR/C/52/D/511/1992, 8 November 1994; *Länsman et al v Finland* (no 2) Comm no 671/1995, UN Doc CCPR/C/58/D/671/1995, 22 November 1996; *Länsman et al v Finland* (no 3) Comm no 1023/2001, UN Doc CCPR/C/83/D/1023/2001, 15 April 2005. *Angela Poma Poma v Peru* Comm no 1457/2006 UN Doc CCPR/C/95/D/1457/2006 27 March 2009. See also the significance of culture in *Smit NO and Others v King Goodwill Zwelithini Kabhekuzulu and Others* (10237/2009) [2009] ZAKZPHC 75 (4 December 2009). The applicants' attempt to prevent the slaughter of animals at the Zulu Ukweshwama festival through the presentation of facts about grotesque animal suffering was held to be insufficient compared to the cultural significance of the ritual torment and slaughter of a bull. Without the ritual and death of the bull, there would be no symbolic transfer of power to the Zulu king and the Zulu nation would be left with a powerless king.

non-discrimination and the privileging of a particular belief system.¹⁹⁹ If killing, trapping and hunting are granted as manifestations of human rights that are to be protected by law, questions are raised regarding how veganism is to be protected when its manifestation requires the moral standing of nonhumans to be recognised. In a dominant culture of animal consumption, the neutrality of a rule of law and its application is, thus, called into question.

*H v UK*²⁰⁰ confirmed that vegan, ethical convictions for nonhuman animal suffering were within the scope of human rights protection. This finding was not in recognition that suffering itself was the mission of a rights enterprise, but on the basis that human autonomy of conscience was a paramount concern of human rights to be qualified only in the interests of competing aims within a democracy. This finding illustrates a tension in human rights between the recognition of a moral imperative to deal with suffering and the orientation of human rights in its prioritisation of individual human conscience. These circumstances warrant an examination of the extent to which human rights concern duty in a community of suffering others or primarily recognise individual human autonomy.

3.2 The problem of human rights

Confusion surrounds the idea of human rights.²⁰¹ Michael J Perry describes the focus on global human rights as the 'dominant morality of our time' and suggests that there is no clear theory of human rights, that the morality of human rights is not well understood and that the morality of human rights gives expression to an

¹⁹⁹ Heiner Bielefeldt, 'Freedom of Religion or Belief: A Human Right Under Pressure' (2012) *Oxford Journal of Law and Religion* 1(1), 24 doi 10.1093/ojlr/rwr018.

²⁰⁰ (1993) 16 EHRR.

²⁰¹ James Griffin, *On Human Rights* (Oxford University Press 2008/2013) 1.

assumed ontology of the essence of human beings.²⁰² Connor Gearty concurs, arguing that ‘the moral obligation apparently inherent in the term ‘human rights’ is not a moral truth as such; rather it is a kind of mask we assume to help keep us on the right long term path for our species’.²⁰³

Gearty argues that historical philosophical reasoning concerning human rights is merely reformist in nature rather than existing to create a human/nonhuman boundary. Citing the intellectual rejection of the Church and objective reality submitting to human subjectivity and responsibility, Gearty asserts that the main reason why humans became the creator of their own moral superiority in philosophical rights discourse was simply because the idea of a religious soul gave way to the plausibility of a conscious, autonomous mind.

Gearty puts forward the idea that human rights emerged as an ‘emancipatory force against the abuse of power’,²⁰⁴ and that there was never an explicit intention to exclude the moral standing of nonhumans. He maintains that the creation of a species boundary is an inadvertent human construct in the story of a rights discourse initiated by human beings for their own purposes. To support his views, Gearty also notes that the primacy of individual autonomy is insufficient grounds for rights to be afforded to the human species as, logically, this would preclude babies and other humans who are unable to assert their autonomy or make conscious, rational, autonomous choices. These and other similar observations concerning the logic of perceptions upon which distinctions are drawn between species are longstanding in the history of philosophical thought regarding the status of other animals in human

²⁰² Michael J Perry, *Toward a Theory of Human Rights: Religion, Law, Courts* (Cambridge University Press 2007) 4.

²⁰³ Conor Gearty, ‘Can Animals Have Human Rights Too?’ (PDF, Conor Gearty, 2007) <<http://www.conorgearty.co.uk/pdfs/Animals.pdf>> 9.

²⁰⁴ Gearty (2007) 5.

social organisation. They are documented by Primatt²⁰⁵ in the mid-1700s and given support by contemporary theorists such as Cavalieri,²⁰⁶ Regan,²⁰⁷ Ryder,²⁰⁸ Singer²⁰⁹ and Cochrane.²¹⁰

This tension between the competing ideas of rights for autonomous individuals or rights as a means to deal with suffering is clear in the history of human rights discourse. Jeremy Bentham (1748-1832), ardent campaigner against the idea of natural human rights, proclaimed that '[o]ther animals, which, on account of their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of *things*'.²¹¹ Further:

... The day has been, I grieve to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing as, in England for example, the inferior races of animals are still. The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor.* It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else

²⁰⁵ Humphrey Primatt, *The Duty of Mercy* (first published 1776; Centaur Press 1992).

²⁰⁶ Paola Cavalieri, *The Animal Question, Why Non-Human Animals Deserve Rights* (Oxford University Press 2005).

²⁰⁷ Regan (1988).

²⁰⁸ Ryder (1998).

²⁰⁹ Peter Singer, *Animal Liberation a New Ethics for Our Treatment of Animals* (Avon Books 1975).

²¹⁰ Cochrane (2013).

²¹¹ Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (first published 1789, Clarendon Press 1907) ch xv11.6 <<http://www.econlib.org/library/Bentham/bnthPML18.html#Chapter XVII, Of the Limits of the Penal Branch of Jurisprudence>> accessed 24 January 2013.

is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable, animal than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they *reason*? nor, Can they *talk*? but, Can they *suffer*?²¹²

3.3 The idea of human autonomy in the groundwork of rights

A survey of human rights literature reveals that the search for the origins of and justifications for the modern notion of universal human rights is extensive. What is most prominent in this discourse is the development of a notion of human rights as the natural rights of self-determining individuals. This notion of human identity is associated with the existence of natural law and has been heavily influenced by a Western liberal view of human nature that became most prominent during the Enlightenment.

The idea that human rights represent liberty and the natural rights of self-determining individuals is historical. Michael Hass briefly notes that a relationship between a conception of natural law and the existence of human law can be traced back at least to the Ancient Greeks.²¹³ Aristotle (384-322 BCE), for example, argued that the good governance of a nation would be one that protected human liberty by ensuring the conditions under which individuals could flourish and achieve according to their capabilities.²¹⁴ Moving forward in time, the philosophy of the Stoics of the third century AD was that nature revealed a universal truth which would emerge

²¹² Jeremy Bentham (1789) n122.

²¹³ Hass (2014) Chapter 2.

²¹⁴ Hass (2014) 24.

through rational beings respecting each other as equals. Bertrand Russell explains that for the Stoics, human life was inextricably intertwined with nature and God, and each person was thought to be directed by a Divine presence. On this view, reason is supreme and facilitates the process by which the universal moral law will become known and established. The Stoics believed that an individual has total autonomy of mind and ‘perfect freedom’ to exercise the Divine virtue he personifies.²¹⁵

Into the Middle Ages, this historical narrative of human law is entirely within an understanding of a pre-existing, natural order that concerns a God-given knowledge of Divine natural law. Since God was observed as the creator, awareness of how to live in community with regard to others would be instinctive and universal knowledge. On this view, the freedom of individuals in community ought not be limited by the state. Natural law was universal and discoverable through reason, and individuals had natural liberty and self-determination to do good and avoid evil.²¹⁶

Contemporary theorist James Griffin notes the historical significance of a perception of a natural law of the universe in the development of human law, but he observes the way in which the established perception of natural law gave way to a new, modern idea of human rights in the Enlightenment period of the eighteenth century.²¹⁷ Before this era, as Costas Douzinas explains, there was no concept of enforceable, natural, individual human rights.²¹⁸ At this point in history, the social contract philosophy of Rousseau (1712-1778), Thomas Hobbes (1588-1679) and John Locke (1632-1704) was significant in the development of a discourse on the relationship between natural rights and freedom from state interference. Rousseau

²¹⁵ Bertrand Russell, *History of Western Philosophy* (Routledge 1994) 262.

²¹⁶ In this regard, literature cites the influence of Thomas Aquinas.

²¹⁷ James Griffin, (2008/2013) 9.

²¹⁸ Costas Douzinas, ‘The Poverty of Rights Jurisprudence’ in Conor Gearty and Costas Douzinas (eds), *The Cambridge Companion to Human Rights Law* (Cambridge University Press 2012) 60.

argued that 'MAN is born free; and everywhere he is in chains'.²¹⁹ Hobbes argued that individual freedom is relinquished to government in favour of safety, social order, peace and harmony in the otherwise brutal world of unrestrained man in competition with others.²²⁰

This type of social contract theory seeks to justify the extent of state authority over individuals in the interests of social order in the wider community. In his development of a theory of natural rights, John Locke partially agreed with Hobbes but qualified the extent of individual submission to authority, arguing that men have 'a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man' and basic natural rights to 'property, life, liberty, and estate'.²²¹

These Enlightenment ideas continued the natural rights tradition; they observed humanity to be composed of equal rational individuals in community but argued that state authority was necessary to protect individuals from the power of the competitive other.

3.4 The emergence of individualised human rights

Historian Lynn Hunt describes the Enlightenment period as a time preoccupied with the idea of individuals as autonomous agents. She argues that this had significant implications for the socio-political landscape and the development of modern human rights.

The influencing factors cited by Hunt include the demise of God and the

²¹⁹ Jean-Jacques Rousseau, *The Social Contract or Principles of Political Right* (G D H Cole tr, public domain, Foederis æquas Dicamus leges 1762) <https://www.ucc.ie/archive/hdsp/Rousseau_contrat-social.pdf> accessed 3 January 2016.

²²⁰ Patrick Hayden, *The Philosophy Of Human Rights* (Paragon House 2001).

²²¹ John Locke, *Two Treatises of Government* Chpt VII (1823, 141 point 87). Available at the McMaster University Archive for the History of Economic Thought <http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/locke/government.pdf>> Accessed 6 February 2017.

emergence of secular ideas but also the prior American and French revolutions and subsequent declarations that referred to the rights of man. Hunt suggests that the Enlightenment saw the introduction and development of a different notion of human identity and a corresponding notion of 'self-evident' human rights.²²² These were inspired by new ideas about man being 'born free', rights being 'natural' and people being 'equal', and about the universal application of these concepts. Hunt argues that during the Enlightenment, the notion of individual human rights emerged.

Hunt notes that English jurist William Blackstone defined the rights of man as 'the natural liberty of mankind, that is, the absolute rights of man, considered as a free agent endowed with discernment, to know good from evil'.²²³ This definition reflected the established, historical notion of the essence of human identity but also reoriented the reason for the assumed free agency. Hunt argues that, during the Enlightenment, liberty and rights came to be justified on the basis of 'a set of assumptions about individual autonomy'.²²⁴ This was an assumption thought to guarantee the moral evolution of humanity on the grounds that each individual had within them the ability to know how to conduct themselves in community, according to a universal moral law that respected and acknowledged the natural rights of others. These ideas were greatly influenced by the philosophy of the time, not least the work of Immanuel Kant.²²⁵

For Kant, individual human reason is an a priori characteristic and must not be restrained, since its function is to observe and express universal moral law. Through reason, the moral law would be observed through hypothetical and

²²² Lynn Hunt, *Inventing Human Rights: A History* (W.W. Norton and Company Ltd.) 19.

²²³ Hunt (2007) 25.

²²⁴ Hunt (2007) 27.

²²⁵ Kant is widely referred to in human rights literature as providing the philosophical grounds for the idea of modern human rights.

categorical imperatives. The hypothetical imperative is characterised as advisory thinking about how to achieve a desired end, and the categorical imperative is an obligatory, objective course of action that is required regardless of any end. These innate commands would guide human conduct to facilitate universal human morality. Bertrand Russell explains that Kant believed the categorical imperative to be a priori all subsequent reasoning, and that it was derived from Kant's concept of universal law.²²⁶

On the basis of objective categorical imperatives, Kant envisaged humanity's moral progress to be designed by universal principles that were accessible through individual human reason. The significance of human beings as independent rational agents was, thus, established. Lynn Hunt observes the importance Kant gave to individual reason. It was the means by which each person would realise their own understanding and think independent moral thoughts to guide the moral will. Hunt also notes that autonomy and moral conduct remained tied up with community values.

Lynn Hunt speculates that the new notion of personal autonomy did not displace the centrality of community and each person's awareness of and feelings for each other. The recognition of self-evident human rights was bound up with a common 'interior feeling' of something universal that made social life possible and human rights universal. This feeling was a 'social gravitational force' that brought 'people outside themselves' to manifest a natural disposition to care about others.²²⁷ The assumed a priori nature of human reason was considered only a posteriori to unifying affectivity. Hunt describes this as a learned or imagined capacity for

²²⁶ Russell (1994) 683.

²²⁷ Hunt (2007) 65.

sympathy or empathy with suffering others. Hunt concludes that the development of universal human rights recognises individual autonomy but only insofar as it represents a prior existing, natural concern for the freedom of the other and a shared awareness of the undesirability of suffering.

Hunt's understanding of the way a common universal feeling informed the development of a human rights of the individual is not widely recognised as being explicitly entrenched or reflected in human rights practice.²²⁸ This is perhaps because Kant's philosophy focuses much more on the absolute self-governance of the individual in relation to moral conduct. A major consideration for Kant was the concept of self-legislation that emerged from his concept of human dignity.

In *The Groundwork of the Metaphysics of Morals*, Kant explains that individual autonomy is supreme because it reflects the intrinsic dignity in the command of the obligatory, categorical imperative that facilitates and gives expression to duty.²²⁹ Autonomy, Kant argues, is 'the ground of the dignity of humanity...'.²³⁰ It represents the 'inward worth'²³¹ of the ethical imperatives that are naturally accessible to the rational mind.

On Kant's thesis, individual reason represents dignity on the basis that it gives access to self-legislated morality. Further, humanity is composed of individuals who are ends in themselves because the will of rational beings is always legislative.

²²⁸ Chapter 3 of this thesis returns to the idea of otherness in human rights and the idea that the target and mission of human rights is to attend to suffering.

²²⁹ There are different versions of electronic publications of Kant's *Groundwork Of The Metaphysics Of Morals*. They are also listed with different versions of the title. The version used here is Immanuel Kant, *The Metaphysics of Ethics* (J W Semple tr, Thomas Clarke M.DCCC.XXXVI), available at <<http://philosophyfaculty.ucsd.edu/faculty/ctolley/texts/kant.html>> accessed 3 February 2017.

²³⁰ Kant (M.DCCC.XXXVI) 54.

²³¹ Kant (M.DCCC.XXXVI) 52.

3.5 The implications of autonomy for human rights

Costas Douzinas argues that the importance of human reason in Kant's thinking does not implicitly deny the otherness of human rights and that '[t]he quest for a rational justification of rights starts here'. He identifies, though, a fundamental problem generated by Kantian autonomy and the idea of innate, categorical imperatives argued to be accessible through individual rationality. Douzinas argues that the philosophy of rights came to promote self-government and the creation of legal rules that entitled the bearer to seek various personal benefits 'in pursuit of his interests'. Right-holders were entitled to personalise and privatise their claims and individuals were enfranchised 'to initiate their public enforcement; by organising their content in accordance with the desires and needs of their holders'. As such, the development of a profound dignity principle for human rights emphasised the importance of individuality and eroded the notion of natural rights as espousing respect for the autonomy and human condition of others. Human rights became derived 'of a law given by the self to itself and for itself'.²³²

For Douzinas, the centrality of Kantian rationality in the ethics of human rights has been instrumental in a counter-intuitive social construction of human identity as espousing self-seeking autonomy. This, he argues, has created an impoverished version of rights and law.²³³ Lynn Hunt is of the same opinion. She suggests that the prevalence of a notion of human autonomy meant that individuals moved further and further away from community and became increasingly independent agents, both legally and psychologically.

The primacy of autonomy prevails and is a common feature of much rights

²³² Douzinas (2012) 76.

²³³ Douzinas (2012) 76-77.

discourse.²³⁴ It is so entrenched that it grounds the legal claims of the Nonhuman Rights Project (NhRP) for the liberty and equality of a number of chimpanzees.²³⁵ But the special consideration given to human dignity and autonomy as ‘self-governance – the ability to determine one’s own actions and beliefs’²³⁶ has given further expression to an extensive range of important human characteristics that, according to James Griffin, help to give a clearer idea of what human rights are and how they are justified.

For James Griffin, a substantive account of current human rights retains strong elements of the Kantian tradition. He argues that human life differs from the lives of other animals. Human individuals are free agents who have a conception of themselves, perceive of a past and a future, aim to achieve goals; deliberate, assess, choose, experience desires and aim for a good life. Griffin argues that human individuals value their moral and legal standing as autonomous agents and rely on human rights to protect this status. On this view, current human rights protect normative agency by respecting autonomy, welfare and liberty. They confer, for example, the right to life, to security and to freedom of expression,²³⁷ and the liberty to pursue what Griffin argues to be the most appropriate defence of human rights: freedom and protection in the pursuit of a worthwhile life.²³⁸ A consequence of this understanding of human rights, as one that speaks to the dignity of human beings

²³⁴ There is also a branch of discourse that moves away from the search for moral grounds for human rights and cites metaphysical accounts as unhelpful, highly contested ground. This literature focuses instead on the utility of a pragmatic application of human rights. See, for example, Michael Ignatieff, ‘II Human Rights As Idolatry: The Tanner Lectures’ (Delivered at Princeton University 4–7 April 2000, PDF 320) <http://tannerlectures.utah.edu/_documents/a-to-z/i/ignatieff_01.pdf> accessed 10 February 2017.

²³⁵ Nonhuman Rights Project <<https://www.nonhumanrightsproject.org/litigation/>> accessed 28 June 2016. For a discussion, see Richard L Cupp Jr, ‘Focusing on Human Responsibility Rather than Legal Personhood for Nonhuman Animals’ (2016) Paper Number 2016/17 Legal Studies Research Paper Series (Pepperdine University School of Law) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2784890> accessed 22 July 2016.

²³⁶ Robert M Martin, *The Philosophers Dictionary* (2nd ed, Broadview Press 1994) 29.

²³⁷ Griffin (2008/2013) 32-33.

²³⁸ Griffin (2008/2013) Ch 8-9.

and individual autonomy, is the demise of a concept of ethical duty in the context of arbitrary abuse of power, suffering, otherness and community. It also supports the exclusion of nonhuman animals.

3.6 Human rights, dignity and personhood

For Griffin, an interpretation of 'dignity' for the purpose of understanding exclusive human rights is personhood. Griffin retains rights for human individuals who are in pursuit of a worthwhile life. He argues that they are the only beings who can perceive of what is valuable and what is not valuable to achieve such an end. He argues that the notion of autonomy that supports the idea of human rights requires complex language and human beings are the only species that comply with this requirement. He also argues that it is not the uniqueness of each individual that is important to justify human rights, but the fact that the human species alone has the dignity that grounds current human rights. Individual capability is of little significance to Griffin. It does not impact on intrinsic dignity or worth. The specific kind of autonomy Griffin elaborates as a justification for current human rights only depends on the acknowledgement that human beings 'have a capacity to recognize good-making features of human life, both prudential and moral, which can lead to the appropriate motivation and action'.²³⁹ In his account of the ethics of human rights, Griffin retains the dignity principle, grounding it in the autonomous pursuit and realisation of a subjectively valued, worthwhile life to justify the existence of current human rights. His account of current human rights has been well-received by other scholars and is considered to be critical to further discussion.

The dignity principle and the notions of autonomy and personhood are, then,

²³⁹ Griffin (2008/2013) 156.

the most notable concepts for the centrality of the human individual in the idea of human rights. Support for this conclusion can also be found in case law. For example, chief justice Aharon Barak of the Israeli Supreme Court promotes human rights on the grounds of dignity and autonomy.²⁴⁰ In *Academic Center of Law and Business v Minister of Finance*, he argues that ‘human dignity is based on the autonomy of the individual will, the freedom of choice and the freedom of action of a human being as a free agent’.²⁴¹ In Germany, the Federal Constitutional Court declared that the state has a duty to protect human dignity and that it represents the highest legal value. It is a value ‘founded on the conception of man as a spiritual-moral being, that has the potential to determine himself in freedom and develop from within’.²⁴² But the concepts of dignity, autonomy and personhood do not secure the centrality of the human individual in the idea of rights without controversy. Arguing for the personhood of chimpanzees on the basis of their complex cognitive and emotional characteristics, Michael Mountain of the Nonhuman Rights Project states that ‘[o]ur goal is, very simply, to breach the legal wall that separates all humans from all nonhuman animals’.²⁴³ The concept of dignity is also contested.

Dictionary definitions of dignity refer to the concepts ‘worth’ and ‘value’ and it is common to find dignity referred to as ‘[t]he state or quality of being worthy of

²⁴⁰ Daphne Barak-Erez, ‘Israel: Citizenship and Immigration Law in the Vise of Security, Nationality, and Human Rights’ (2008) *Int J Constitutional Law* 6(1) 184.

²⁴¹ *Academic Center of Law and Business v Minister of Finance* HCJ 2605/05, available at <http://elyon1.court.gov.il/files_eng/05/050/026/n39/05026050.n39.pdf> accessed 28 February 2017.

²⁴² *Life Imprisonment Case* (1977) 45 BVerfGE 187 (1977). English translation available at <<http://www.hrcr.org/safrica/dignity/45bverfge187.html>> accessed 28 February 2017.

²⁴³ Michael Mountain, ‘Lawsuit Filed Today on Behalf of Chimpanzees Seeking Legal Personhood’ (*Nonhuman Rights Project*, 2 December 2013) <<http://www.nonhumanrightsproject.org/2013/12/02/lawsuitfiled-today-on-behalf-of-chimpanzee-seeking-legal-personhood/> [<https://perma.cc/6BDE-85B8>]> accessed 12 December 2013.

honour or respect'.²⁴⁴ The term 'dignity' is used in many contexts to describe status or value. For example, a person can be a dignitary, and a person can behave in an undignified manner. For Professor Kass, 'the dignity of human *being* and the dignity of being *human*' is absolute.²⁴⁵ A human being has 'special dignity because he shares in the godlike powers of reason, freedom, judgment, and moral concern, and, as a result, lives a life freighted with moral self-consciousness – a life above and beyond what other animals are capable of'.²⁴⁶

Martha Nussbaum has a different view. She starts from a notion of human dignity to develop a model of justice that gives precision to the language of rights.²⁴⁷ She refers to this as the 'capabilities' approach. In this model, both humans and nonhumans have moral standing because they have needs and abilities that are essential to living a life with dignity. Case law also promotes the dignity of nonhuman animals. In *Let the Animals Live v Hamat Gader*,²⁴⁸ the Israeli Supreme Court referred to nonhuman animals as knowing how to safeguard their dignity²⁴⁹ and also said '[a]n animal, like a child, is a defenceless creature. Neither are able to defend themselves, nor can either stand up for their rights, honor and dignity'.²⁵⁰

These ideas have, thus far, not created nonhuman beneficiaries of rights, nor have they affected the centrality of human beings in the idea of moral rights. Roberto Adorno notes that human rights instruments and the decisions of national

²⁴⁴ English Oxford Living Dictionaries, <<https://en.oxforddictionaries.com/definition/dignity>> accessed 12 December 2016.

²⁴⁵ Leon R Kass, 'Defending Human Dignity' (*Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics* 2008) para 21 <https://bioethicsarchive.georgetown.edu/pcbe/reports/human_dignity/chapter12.html> accessed 12 December 2016.

²⁴⁶ Kass (2008) para 69.

²⁴⁷ Nussbaum (2007) 284.

²⁴⁸ LCA 1684/96, para 41.

²⁴⁹ LCA 1684/96, para 34.

²⁵⁰ LCA 1684/96, para 41.

and international courts show that the term 'dignity' plays several different roles and has different functions. Its primary meaning, though 'refers to the intrinsic value of human beings' and its function is to 'provide the deepest justification for human rights'.²⁵¹

Notwithstanding the challenges presented, the concepts that ground human personhood – dignity and autonomy – are also concepts that ground further specific, philosophical and socio-political reasoning that justifies the centrality of the human individual autonomy in the idea of human rights. This is most evident in the specific right to freedom of conscience.

3.7 How autonomy grounds the paramount right to freedom of individual conscience

Following the Enlightenment 'age of reason' and the growth of secularism, the nineteenth century saw the development of further liberal philosophy that emphasised the primacy of autonomy in the context of a perceived historical struggle between individual liberty and state authority. Discussing the legitimacy of power exercised over the individual, John Stuart Mill argues that 'the inward domain of consciousness' demands nothing more than absolute freedom.²⁵² This domain, Mill asserts, is that of 'the dignity of thinking beings'.²⁵³ As such, any attempt to deny an individual the development of their own opinions, beliefs and views was absolutely wrong, primarily because no one could claim knowledge of infallible, objective truth.²⁵⁴ On Mill's view, the liberty of the individual includes a social right to be free to think and be heard, and anything less would constitute a social tyranny whereby a

²⁵¹ Roberto Adorno, 'Human Dignity and Human Rights as a Common Ground for a Global Bioethics' (2009) 34(3) *Journal of Medicine and Philosophy* 223-240.

²⁵² John Stuart Mill, *On Liberty* (Penguin 1984) 71.

²⁵³ Mill (1984) 96.

²⁵⁴ Mill (1984) 77.

majority view would infuse society and permeate law and legal process. Mill's thesis is widely cited as critical to the importance and development of a right to freedom to express personal views on religious convictions. It remains an important contribution to discourse on individual freedom of expression in the context of the recognition of plurality and diversity.

This modern development of a principle of absolute, individual freedom of conscience remains central to questions about legitimate state interference. In his *Theory of Justice*, John Rawls argues that freedom of conscience is fundamental to justice because it constitutes a primary aspect of human life and denotes personal identity. In Rawls' theory, when individuals contemplate the grounds for justice from, what he refers to as, the 'original position', 'equal liberty of conscience' is an overriding principle that all will agree on because, he argues, freedom of conscience is critical to each.²⁵⁵ Rawls argues that the argument for a constitutional equality of conscience is strong. It requires 'a regime guaranteeing moral liberty and freedom of thought and belief, and of religious practice ... regulated only on the necessary grounds of public order and security'.²⁵⁶

Equality of individuality is also central to Ronald Dworkin's foundational legal justice. In a comprehensive analysis of Rawls' theory, Dworkin argues that it is legal equality that must be established prior to a Rawlsian concept of justice. Starting from a principle of legal equality, rather than freedom of conscience, Dworkin's concern, nonetheless, is to promote and support the view that there must be no constraint on individual liberty to decide what constitutes a good life.²⁵⁷ For Dworkin, this

²⁵⁵ John Rawls, *A Theory of Justice* (revised ed, Harvard University Press 1971/1999) 181.

²⁵⁶ Rawls (1971/1999) 186.

²⁵⁷ Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1978).

prohibition is strict. Individual rights are political 'trumps' against collective views and state interference. Any such interference must be justified by very special reasons.

The socio-political philosophy of Mill, Rawls and Dworkin supports the general principles of Enlightenment philosophy on autonomy and individual liberty. On their views, the free thinking of rational individuals grounds a requirement for positive law and a great degree of individual autonomy and freedom over which the state has extremely limited authority. In these views, Enlightenment ideas regarding self-governance, autonomy and human dignity are represented in arguments for strong individual rights to reign supreme against state interference with any chosen way of life or chosen religious outlook. In addition, this discourse has been developed to include an argument for social plurality as a necessary component of a value for autonomy. For Joseph Raz, autonomy is a concept that expresses the way people shape their destiny by 'fashioning it through successive decisions throughout their lives'.²⁵⁸ But, '[a]utonomy is exercised through choice, and choice requires a variety of options to choose from'.²⁵⁹ Raz argues, therefore, that 'valuing autonomy leads to the endorsement of moral pluralism'.²⁶⁰ On this basis, Raz suggests that moral pluralism is the political ideal and justification for the right to individual freedom because it supports and promotes a tolerant society.

Discourse on autonomy, liberty and individual freedom is vast, and the views above represent but a small fraction. The brief overview presented above cannot do justice to the respective theses, nor can it include a critical appraisal of additional

²⁵⁸ Joseph Raz, *The Morality of Freedom* (Oxford University Press 1988) 269.

²⁵⁹ Raz (1988) 398.

²⁶⁰ Raz (1988) 399.

critical discourse on their content and scope. Nevertheless, it sketches out a linear view of the historical justifications given for the existence of rights for individuals, of why they are important and of their utility for wider society.²⁶¹

On the discourse presented, the overarching context for the presentation of the human rights claims of vegans is clear. Individual autonomy is perceived to be a fundamental value to humanity. It is grounded on the dignity principle that is expressed through the rational and normative agency of each and every person. It ought not be limited by the state except for very important reasons, and it gives expression to the morality of pluralism in human society. The idea of individual autonomy does not itself necessarily preclude the existence of compassion for others in community, but the extent to which this historical context for human rights has shaped positive human rights law, at the expense of moral responsibility to others, needs to be assessed.

3.8 The scope of community and autonomy in human rights: the development of the Universal Declaration of Human Rights

Michael Hass notes the influence of previous eras in the incremental developments that led to the modern notion of human rights and the UDHR, which was drafted following World War atrocities.²⁶² In her discussion of the creation of the Declaration, Mary Ann Glendon observes the divergent philosophical and ethical traditions that were brought together to inform a notion of universal human rights.²⁶³ She argues that the Declaration recognises the ‘common convictions’ of humanity and predominantly emphasises that human rights should not be perceived

²⁶¹ For additional historical reading, see Maurice Cranston, *What Are Human Rights?* (Bodley Head 1973). For a very good collection on current debates, see Rowan Cruft, S Matthew Liao and Massimo Renzo (eds), *Philosophical Foundations of Human Rights* (Oxford University Press 2015).

²⁶² Hass (2014).

²⁶³ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House 2002).

as the rights of individual sole agents but as entitlements that are grounded in the fact that individuals are constituted by and through relationships with others. Though there are references to the free development of individuality and references to basic individual freedoms, she argues that the historical documents that record the development of the Declaration make it clear that community and duties to each other were to be recognised. These documents are very explicit on the point that everyone is mutually dependent.²⁶⁴

On Glendon's view, the final Declaration makes it clear that the individual is not a lone bearer of rights. There is some support for this view: the first sentence of the Preamble to the Declaration speaks of equal rights for all members of the human family. The second sentence says that disregard and contempt have led to barbarous acts against the conscience of mankind. The Preamble goes on to say that human rights aim to deal with tyranny and oppression on the basis of the dignity and worth of the human person. Article 1 confirms that '[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'.²⁶⁵

Glendon's views challenge the idea that a Kantian notion of a total autonomy of the individual as the author and legislator of her own life should ground human rights. Evidence suggests, though, that the drafting of the Declaration was fraught with conceptual difficulties regarding individual autonomy and the need to speak of rights in terms of a human family. For example, the Syrian delegation were keen to suggest that human rights were to be defined in terms of the individual because

²⁶⁴ Available at <<http://research.un.org/en/undhr/draftingcommittee/1>> accessed 28 June 2017.

²⁶⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A) (III) (UDHR) Preamble and Article 1.

rights and freedoms for individuals gave all an equal chance to develop their capacities and live as men wished to live. This would ensure that men would live in friendship with each other: it would facilitate social justice and a sense of brotherhood.²⁶⁶

On the other hand, at a meeting on the day of its proclamation, the Yugoslavian representative commented that the current text of the Declaration was objectionable. He argued that human rights should not focus on individualism but should recognise the interdependence of the individual and his community. He remarked that '[t]he text before the assembly was based on individualistic concepts which considered man to be an isolated individual ...', and that '[t]he Declaration was, in certain respects, not based on reality, because it described man as an isolated individual and overlooked the fact that he was also a member of a community'.²⁶⁷

The records of the drafting committee reveal that absolute individual autonomy was never accepted as appropriate and complete grounds for the basic human rights it was developing. What is certain is that there was widespread agreement that the rights being articulated were:

... based on the most ancient ideas of the great philosophers
and on the concept that the power of the State must rest on
the respect for the human person. [the draft] was a concrete

²⁶⁶ United Nations 'One Hundred and Eighty Third Plenary Meeting. Continuation of the Discussion on the Draft Universal Declaration of Human Rights: Report of the Third Committee (A/777)' A/PV.183, 921-923 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL4/812/23/PDF/NL481223.pdf?OpenElement>> accessed 24 February 2017.

²⁶⁷ United Nations 'One Hundred and Eighty Third Plenary Meeting. Continuation of the Discussion on the Draft Universal Declaration of Human Rights: Report of the Third Committee (A/777)' A/PV.183, 913-914 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL4/812/23/PDF/NL481223.pdf?OpenElement>> accessed 24 February 2017.

expression of that trend of thought which now shaped the conscience of nations.²⁶⁸

Human rights were, thus, conceptualised as ethically grounded in some concept of human individualism, and promoted as necessary to prevent arbitrary state power. They were devised in the absence of discussion regarding the criteria for moral standing and took human dignity, as grounds for respect, for granted. The Declaration, thus, made no reference to nonhuman moral standing and did not explicate non-abstract grounds for the prioritising of human beings. Though there is some evidence to suggest that the Declaration was grounded on the view that individuals constitute the community of humanity – and, importantly, one that is vulnerable to arbitrary abuse of power – there is no consideration of nonhumans constituting an extension to this community, of their vulnerability, or of the possibility that they suffered from the infliction of arbitrary power exercised over them. In addition, the Declaration orients strongly in the direction of rights for individuals and makes little reference to duties to suffering others in community.²⁶⁹

3.9 The Articles of the Universal Declaration of Human Rights

From the outset, the Articles of the UDHR emphasise the primacy of the individual rather than duty to others. Article 1 emphasises the nature of human identity as being born free, with the capacity to reason. It states that:

²⁶⁸ Belarmino Austregésilo de Athayde, Ninety-Second Meeting Draft Declaration of Human Rights. A/C.3/SR.92 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/NL4/804/33/PDF/NL480433.pdf?OpenElement>> accessed 24 February 2017.

²⁶⁹ For discussion regarding evidence that duties and community are overtly and adequately represented in the Declaration, see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press 1999).

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.²⁷⁰

Article 2 recognises a significance of individual characteristics. It provides that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion ...

Article 7 recognises the equality of individual characteristics and reads:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 18 deals with the right to freedom of thought, conscience and religion. It emphasises the rational character of human individuals and states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or

²⁷⁰ There are references in this Article to Enlightenment ideas concerning Social Contract Theory (Jean-Jacques Rousseau), the French Declaration on the Rights of Man, and Kant's philosophy.

belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19 explains how the primacy of rational human beings must be allowed to manifest through the right to freedom of expression. It reads:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The focus of the Declaration clearly entrenches the idea that the ethics of human rights is related to human individuals as rational subjects. Individual human beings are declared free and equal in all respects – including in respect of equality of conscience. Individuals will be equal before the law and will benefit from the principle of non-discrimination. These values are to be upheld through teaching and education, some of which will be compulsory.²⁷¹

The paramount value for freedom of conscience is, then, clear, supported by other Articles and made unequivocal in Article 18. These provisions of the UDHR that benefit individuals, are to be restricted only if there is a law that is required for good reasons in a democracy. Article 29(2) states that:

²⁷¹ Preamble and Article 26.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The notion of ethics emerging from this primary modern human rights document is one that speaks to individual freedom and autonomy. The primacy of reason and conscience and its manifestations are regarded as being so fundamental to humanity that the idea occupies a special and central place in the Declaration. Explicit and implicit in the beginning of the Declaration, and confirmed in Article 18, is a conception of human identity that is built upon the orthodoxy of autonomy²⁷² and the assumed primacy of human reason. It is presented as the principle defining characteristic of human nature.

From the outset of the modern notion of human rights, the entrenched ethical orientation concerned the individual on the basis of the capacity for reason. It is apparent that the ethical orientation of human rights did not explicitly emphasise overriding duty to others or an orientation towards protection from suffering. It is in this context that the Council of Europe developed the European Convention on Human Rights. The UN, however, enunciated further the meaning of provisions contained in the Declaration. These elaborations are worth noting for two reasons:

²⁷² This useful succinct expression can be found in the work of Simon Critchley. It is used to describe the way human reason has dominated modern Western philosophy. In human rights, it conveniently refers to the way this dominance has influenced the idea of human rights. It is the primacy of reason and its dominance that is contested and reviled in the philosophy of Emmanuel Levinas. See Simon Critchley, *Infinitely Demanding: Ethics of Commitment, Politics of Resistance* (Verso 2012) and Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (Alphonso Lingis tr, The Hague 1969/2000).

firstly, because they show the way international human rights emphasises autonomy as a central value and, secondly, because the European system of human rights aims to be consistent with accepted principles of international law and developments on common matters.²⁷³

3.9.1 The centrality of autonomy in international human rights

The UDHR is one of three legal instruments that make up the International Bill of Rights. It does not itself have the force of law and legal effect is given to its provision in two later Covenants. These are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁷⁴

The ICCPR makes it very clear that human rights are derived from the inherent dignity of the human person.²⁷⁵ Moreover, it explicitly states in Article 1 that '[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. The centrality of individuality is confirmed in Article 18, which gives legal effect to the right to freedom of conscience. Its development is clearly associated with a prior existing orthodoxy of autonomy that has become bound up with the requirement for a right to freedom to live according to deep convictions, normatively expressed as freedom of religion. Article 18 reads:

1. Everyone shall have the right to freedom of thought,

²⁷³ Arts 31-3 of the Vienna Convention on the Law of Treaties (adopted 23 May 1969) 1155 UNTS 331. Though the principle does not have to be applied retrospectively, the ECtHR has applied the principle as enunciating 'in essence generally accepted principles of international law'. See *Golder v UK* (1975) Series A no 18 at 14.

²⁷⁴ International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force on 3 January 1976) 993 UNTS 3 (CESCR).

²⁷⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Preamble.

conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Regarding the scope of autonomy protected, the UN Committee on Human Rights has provided some guidance in General Comment No. 22 of 1993, which states that:

the terms 'belief' and 'religion' are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.²⁷⁶

In addition, the freedom to have a belief necessarily requires the freedom to choose

²⁷⁶ United Nations Human Rights Committee (HRC), 'CCPR General Comment No 22: Article 18 (Freedom of Thought, Conscience and Religion)' (30 July 1993) UN Doc CCPR/C/21/Rev.1/Add.4, para 2.

one.²⁷⁷ Outlawed in this context are the use of threat, physical force or penal sanctions to force conversion from one belief to another and, importantly, *any policies or practices* that have the same effect.²⁷⁸ Under the terms of the ICCPR, this protection is applied to all beliefs – even those which are non-religious in nature.²⁷⁹ Regarding interference, the UN sets out general legal obligations in General Comment No. 31. In this document, the Human Rights Committee makes it clear that states must demonstrate the necessity of interference and only take such measures as are proportionate to the pursuance of legitimate aims.²⁸⁰

From these measures, it is clear that the ethical orientation of human rights rests very firmly on the primacy of individual autonomy. This is confirmed further in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,²⁸¹ which is more explicit regarding the scope of autonomy and its manifestation. Referring to the importance of the UDHR, this Declaration states in its introductory Preamble that:

religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed.

The 1981 Declaration is explicit on the breadth of the meaning of ‘belief’, stating, in Article 1, that a person is free to believe ‘whatever belief’ (he chooses).

²⁷⁷ UN General Comment No. 22 para 5.

²⁷⁸ UN General Comment No. 22 para 5.

²⁷⁹ UN General Comment No. 22 para 5.

²⁸⁰ UN Human Rights Committee, General Comment No. 31, para. 6. CCPR/C/21/Rev.1/Add. 1326 May 2004.

²⁸¹ Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief, UNGA Res 36/55 (25 November 1981).

The Declaration states that the concept of freedom of conscience is vital to eliminate ideologies or practices of colonialism and racial discrimination and to ensure that there is no coercion that would impair the freedom to adopt and hold a belief of choice. These developments on the Universal Declaration highlight the centrality of individual autonomy in the human rights enterprise. Individuals have inherent dignity because they have autonomy of mind, are free thinking and must be allowed to retain absolute control over their inner realm of consciousness.

There is additional evidence that the notion of individual autonomy is deeply entrenched in human rights discourse. This is expressed as the primacy of the inner realm of consciousness, known as the '*forum internum*'.²⁸² It is argued that it 'cannot be interfered with in any way'²⁸³ and that 'there are no permissible limitations to this right'.²⁸⁴ Paul Taylor suggests that the absolute element of the right to freedom of conscience is unproblematic. Although interference is declared illegitimate, he suggests that it would actually be impossible to try to attempt to control one's inner realm.²⁸⁵ Others too assume that this freedom is an 'easy case'²⁸⁶ because 'states have not considered it difficult to allow their citizens the freedom to think'.²⁸⁷ Morsink maintains that the result of the right to freedom of conscience is total freedom from a state-sponsored doctrinal position.²⁸⁸ Former Special Rapporteur Arcot Krishnaswami supports these views, maintaining that freedom of mind is

²⁸² Bahiyyih G Tahzib, *Freedom of Religion or Belief: Ensuring Effective International Protection* (The Hague, Kluwer Law International 1996) 25-7. Asma Jahangir, *Elimination of all Forms of Religious Intolerance* UN Doc A/60/399 (2005) para 49.

²⁸³ Jahangir (2005) para 49.

²⁸⁴ Jahangir (2005) para 49.

²⁸⁵ Taylor (2007) 24.

²⁸⁶ Martin Scheinin, 'Article 18' in Asbjørn Eide and others (eds), *The Universal Declaration of Human Rights: A Commentary* (Scandinavian University Press 1992) 263-264.

²⁸⁷ Scheinin (1993) 263-264.

²⁸⁸ Johannes Morsink, *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (University of Pennsylvania Press 2009) 333.

within the inner 'conscience of an individual' and noting that 'Viewed from this angle, one would assume that any intervention from outside is not only illegitimate but impossible'.²⁸⁹

It is clear that the idea of an autonomous *forum internum* and the subsequent primacy of the individual are central to the idea of human rights. They are values that ground the validity of rights and inform a paramount right to freedom of conscience. How these ideas feature in the European system of human rights will now be considered.

3.10 The European Convention on Human Rights

The Convention is a regional human rights treaty that came into force four years after the adoption of the UDHR. It has developed independently of the UN treaties. It states from the outset that it is drafted in direct relation to the UDHR in the interests of the universal recognition of the rights it declares. It aims to promote a common understanding of human rights and observes that the fundamental freedoms outlined are the basis for justice and peace in the world. As such, it lists the basic rights and fundamental freedoms of every person. As a living instrument, its principles and provisions evolve over time through the addition of new Protocols and through Court judgments that develop and clarify the meaning of its Articles.

Unlike the UDHR, the Convention does not refer to the human family, the conscience of mankind or the spirit of brotherhood required in dealings with each other. Its provisions recognise the inherent dignity of human beings and are explicated, almost exclusively, in terms of the rights of individuals.

²⁸⁹ UNCHR (A Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), 'Study Of Discrimination In The Matter Of Religious Rights And Practices' (1960) UN Doc E/CN.4/Sub.2/200/Rev.1, 16 <http://www.ohchr.org/Documents/Issues/Religion/Krishnaswami_1960.pdf> accessed 30 June 2017.

It is clear from the *Travaux Préparatoires*²⁹⁰ that the drafters of the Convention considered the centrality of individual, autonomous reason a critical component of European compliance with the principles of the UDHR. The president of the Council of Europe's Consultative Assembly announced that the aim of the Council was to recognise the fundamental principle of individual freedom.²⁹¹ Speakers emphasised the need to draw up a list of individual freedoms²⁹² in respect of the fundamental rights of the human individual.²⁹³ They advised that the Council of Europe should ensure that Europe became a guardian of the individual human being,²⁹⁴ in recognition of the prize of individual liberty.²⁹⁵ The Council would ensure a principle of non-interference with individual liberties²⁹⁶ and commit to the development of individuals.²⁹⁷ It would comply with a duty to affirm the rights of the human individual²⁹⁸ and, most significantly, would declare 'without hesitation that we stand for a concept of human rights in which the individual is supreme ...'. Against the primacy of individual freedom, everything else was considered subordinate.²⁹⁹

On behalf of the drafting committee, M. Teitgen conceptualised autonomous reason as a right required by citizens to protect from state authorities that could 'rob' a person of 'control over his intellectual faculties and of his conscience'.³⁰⁰ It was described by many speakers as a fundamental right of humanity, a 'fundamental

²⁹⁰ This is a French term meaning the preparatory historical records in the development of conventions and treaties.

²⁹¹ Council of Europe, *Collected Edition of the 'Travaux Préparatoires' Volume 1: Preparatory Commission of the Council of Europe, Committee of Ministers, Consultative Assembly 11 May-8 September 1949* (Martinus Nijhoff-The Hague 1975) 134.

²⁹² Council of Europe (1975) 44.

²⁹³ Council of Europe (1975) 46.

²⁹⁴ Council of Europe (1975) 66.

²⁹⁵ Council of Europe (1975) 78.

²⁹⁶ Council of Europe (1975) 104.

²⁹⁷ Council of Europe (1975) 126.

²⁹⁸ Council of Europe (1975) 134.

²⁹⁹ Council of Europe (1975) 130.

³⁰⁰ Council of Europe (1975) 200.

undisputed freedom' and a most 'sacred right' which must not be suppressed.³⁰¹

The centrality of human, individual self-determination in the developing European system of human rights was clearly expressed as the mission of the Convention. Though one or two drafters referred to the history of struggle and suffering in the evolution of human rights, dealing with the eradication of suffering was not a focus, nor was it emphasised as the mission and target of their enterprise. The overriding centrality of individual autonomy was declared essential, particularly for individuals to discover their ethical orientation and live according to their individually worked out convictions. This was expressed in terms of a fundamental right to religious freedom.

The importance of autonomy is represented in the Convention in the areas of free speech, freedom of association and other rights that facilitate individual self-direction. Autonomy of reason is more specifically expressed in Article 9. It corresponds to Article 18 of the UDHR and, in principle, was unanimously accepted by the drafters of the Convention. It entrenches the orthodoxy of autonomy and explains the right to freedom of thought, conscience and religion as a right with very limited grounds for interference:³⁰²

Article 9 – Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or

³⁰¹ Council of Europe (1975) 62.

³⁰² Part 1 was uncontentious to the drafting committee, and Part 2 was debated.

belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9, thus, emphasises the primacy given to human reason as a manifestation of autonomy. It recognises autonomy as a defining characteristic of humanity, observes it as paramount and responds with a declaration of an absolute right to freedom of thought that can only be limited in very special circumstances.

The intention is to recognise and permit absolute freedom of thought on matters of conscience but, in the interests of justice for a wider community, limit the practical manifestation of likely competing ethical convictions. It is on these grounds that the European Court of Human Rights heard the case of *H v UK*³⁰³ as a matter concerning the human right to freely determine one's ethical orientation.

3.11 The definition of freedom of conscience

The Convention gives general support to the entrenched orthodoxy of autonomy and recognises, specifically, the importance of establishing a protective right to freedom of conscience. Neither the Convention nor its *Travaux Préparatoires* define the terms 'thought', 'conscience' 'religion' or 'belief'. Martin Scheinin quotes the views of Karl Josef Partsch, who sums up the expression as one that covers:

³⁰³ (1993) 16 EHRR.

all possible attitudes of the individual toward the world, toward society, and toward that which determines his fate and the destiny of the world, be it a divinity, some superior being or just reason and rationalism, or chance.³⁰⁴

Liskofsky concurs that the use of the expression indicates its broad, inclusive scope.³⁰⁵

In the absence of an explicit definition, the interpretation of the meaning of these terms has been left to the ECtHR, which, in line with scholarly opinion, has taken a very broad approach to Article 9(1).³⁰⁶ Literature notes that the Court is not always consistent in its application of Article 9(2), but that it should be grounded in the orthodoxy of autonomy.³⁰⁷ The broad approach taken and the principle of no interference have resulted in the idea that a European right to freedom of conscience allows individuals to believe in anything they want to believe in.³⁰⁸ Further, as long as there is no harm to society, individuals are able to manifest self-direction as they wish and do not have to apply for protection to do so.³⁰⁹ These circumstances reflect the principle of non-interference with individual self-

³⁰⁴ Karl Josef Partsch as cited in Scheinin (2000).

³⁰⁵ Sidney Lifskofsky, 'The UN Declaration on the Elimination of Religious Intolerance and Discrimination: Historical Perspectives' in James E Wood (ed), *Religion and the State: Essays in Honour of Leo Pfeffer* (Baylor University Press 1985) 456.

³⁰⁶ In addition to veganism, other non-religious and non-traditional beliefs have been held to be within the scope of Article 9(1). For example, beliefs in Druidism (*Chappell v UK* (1987) 53 DR 241), pacifism (*Arrowsmith v UK* (1978) 19 DR 5) and atheism (*Kokkinakis v Greece* (1994) 17 EHRR 397). For a discussion, see Paul Taylor, *'Freedom of Religion': UN and European Human Rights Law and Practice* (Cambridge University Press 2005). Karon Monaghan QC also has a very readable section on this in *Equality Law* (Oxford University Press 2007). A very accessible and useful, but now dated, resource in terms of cases presented is Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (Oxford University Press 2001).

³⁰⁷ Evans (2001) 33.

³⁰⁸ For example, Evans (2001) and Taylor (2005).

³⁰⁹ See, for example, the Church of the Flying Spaghetti Monster and the right to wear a pasta sieve in a photographic image of identity on a driving licence: BBC News, 'Austrian driver allowed 'pastafarian' headgear photo' (*BBC News*, 14 July 2011) <<http://www.bbc.co.uk/news/world-europe-14135523>> accessed 13 June 2016.

determination. In the event of any interference with the practical manifestation of autonomy, applicants can apply to the ECtHR to assess the lawfulness of such interference.

3.12 Protection for freedom of conscience

Human rights protection for the practical manifestation of matters of conscience depends on whether the self-direction presented is judged to be within the scope of Article 9(1). In the absence of a clear definition of terms, the Court uses a set of criteria that has developed from case law to determine whether the belief in question has sufficient gravity to come within the scope of protection offered by the Convention. Important considerations are if the belief is 'important', 'serious', 'cogent' and 'cohesive'. In particular, there is likely to be a requirement that qualifying 'philosophical', rather than religious, beliefs must espouse convictions that are worthy of respect in a democracy, that are not incompatible with human dignity, that relate to a weighty and substantial aspect of human life and behaviour and that reflect the integrity of the person. To qualify for protection under Article 9, a non-religious 'philosophical belief' does not need to prove that it is 'a fully-fledged system of thought' but, conversely, it cannot be a 'matter of insufficient weight or substance'.³¹⁰

Following confirmation that a belief is recognised as being within the scope of Article 9(1), a defence of lawful interference will turn on whether it is within the scope of the stated restrictions, as outlined in Article 9(2). Under this sub-section, interference is permissible only if it is on the basis of a necessary, existing law that is required in a democratic society in the interests of public safety, or for the protection

³¹⁰ Discussed in *Campbell and Cossans v UK* (1982) Series A no 48.

of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9, thus, provides an absolute right to think and a qualified right to practise that takes into account the interests of the wider needs of community. It is a right that is adjudicated on the principle that any lawful interference must be grounded by a legitimate aim and that lawful interference will only cause the applicant a personal disadvantage that is proportional to the legitimate aim sought.³¹¹ This doctrine of proportionality is particularly important – as an inherent element of the Convention – in the ‘search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights’.³¹² This process aims to facilitate a fair and neutral application of the rule of law. The neutrality of principles applied is expressed in *C v UK*. Freedom of thought, conscience and religion:

primarily protects the sphere of private, personal beliefs, and not every act in the public sphere which is dictated by such convictions. It does not authorise the right to refuse to abide by legislation ... the operation of which is provided for by the Convention, and which applies neutrally and generally in terms of freedom of conscience.³¹³

³¹¹ *National Union of Belgium Police v Belgium* App no 4464/70 (ECtHR, 27 October 1975).

³¹² *Soering v UK* (1989) 11 EHRR 439. A strict test for proportionality is set out in *Handyside v UK* (1976) Series A no 24.

³¹³ *C v UK* (1983) DR 142.

3.13 Compassionate responsibility, personal disadvantage and the limits of the right to freedom of conscience

Article 9 is primarily a provision that reflects the orthodoxy of autonomy. It exists to protect individual, personal and private conscience and associated practical manifestation. The application of an assumed fair and neutral rule of law and principles, such as legitimate aim and proportionality, did not support H's presentation of ethical responsibility to nonhuman suffering beyond a mere recognition that convictions for the welfare of nonhumans come within the scope of human rights protection. This is because the emphasis, in claims of conscience that present ethical responsibility to the suffering of nonhuman animals, is on the disadvantage experienced by the human applicant in the context of the wider interest that excludes the relevance of nonhuman suffering. This is also emphasised in the later cases of *Jakóbski v Poland*³¹⁴ and *Vartic v Romania*,³¹⁵ which concern responsibility to nonhuman suffering and the provision of suitable food for the applicant prisoners. In both of these cases, responsibility to nonhuman animals was not discussed in terms of a moral imperative to attend to suffering but concerned whether the applicants were disadvantaged by the prison regimes.

This principle of adjudicating claims concerning a moral imperative to attend to suffering on the basis of individual human conscience is also made clear in *Herrmann v Germany*.³¹⁶ This was a case also brought (partly) under Article 9 by an applicant opposed to an official requirement to support the local fox hunt as a means

³¹⁴ *Jakóbski v Poland* App No 18429/06 (ECtHR, 7 December 2010).

³¹⁵ *Vartic v Romania* (no 2) App no 14150/08 (ECtHR, 17 March 2014). At the communication stage, Vartic's claim referred to veganism. This explicit ground for the claim seems to have disappeared in later case reports.

Vartic considered a higher threshold of 'significant disadvantage' under an admissibility practice criterion that was introduced by Protocol No. 14. The new criterion entered into force on 1 June 2010 and is incorporated in Article 35 paragraph 3(b) of the Convention. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Protocol 14

<http://www.echr.coe.int/Documents/Library_Collection_P14_ETS194E_ENG.pdf> accessed 14 July 2016.

³¹⁶ *Herrmann v Germany* App No 9300/07 (ECtHR, 26th June 2012) case concerning landowners' rights against the local hunt.

of land maintenance. It was decided by a majority, under a Protocol 1 right to enjoyment of property.³¹⁷

In these types of Article 9 claims, the current tools of litigation are, thus, inadequate to accommodate the actual claim presented by the applicants: that human beings are ethically responsible to nonhumans beyond the perception that moral responsibility is a matter of personal and private conscience. The assessment of lawful interference on the grounds of personal disadvantage makes no reference to the moral imperative to attend to suffering presented, and it overlooks the empirically evident practice of responsibility and compassionate regard for nonhumans that is well-established in the socio-political and public domain.

These cases illustrate that a manifestation of the orthodoxy of autonomy is that it gives primacy to the human individual, even in ethical matters that are registered in the domain of public conscience. They show that the primacy of human individuality is granted at the expense of a community of suffering others and illustrate how nonhuman suffering bears heavily on the exclusivity of rights. In this regard, the dissenting statement of Judge Pinto of Albuquerque in *Herrmann* is revealing. Pinto's partially dissenting judgment supported Article 9 as a provision to protect personal convictions. He remarked that dismissing the importance of a claim for nonhuman suffering under Article 9 by prioritising property rights constitutes circumstances that result in a *capitis diminutio*³¹⁸ of the person who is opposed on the basis of conscience, and that this is a situation not tolerable in a democracy. Though his view pertains to the established orthodoxy of autonomy, he also made an

³¹⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Protocol 1.

³¹⁸ Latin maxim referring to a significant loss of status or liberty. See Black's Law Dictionary, <<http://thelawdictionary.org/capitis-diminutio/>> accessed 22 July 2016.

additional, important point. He explained that the presentation of animals under Article 9 is an important constituent part of a clear and uncontested broad trend towards the acceptance of the moral standing of nonhumans. In this regard, he observed that the Convention and the Court offer them some form of protection. Such a statement clearly highlights a paradox and the problem of litigating cases that present nonhuman suffering on the grounds of the personal and private convictions of applicants. Pinto's statement questions the validity of the orthodoxy of autonomy and the centrality of the human individual in a protective rights enterprise.

3.14 Conclusion

This chapter has considered the extent to which the existing jurisprudence on veganism confirms the centrality of individual, human self-determination in the idea of human rights. It has identified the longstanding focus on human, individual autonomy that appears to have influenced the development of human rights, most predominantly from the writings of prominent philosophers around the time of the Enlightenment. It also observes that identification with others in community may have been inadvertently overridden by the idea of a self-legislating individual.

The chapter noted that the exclusivity of concepts such as dignity that ground the centrality of the human individual in human rights are contested in literature and case law, but that the human individual remains a central concern of both international and European human rights provisions. In particular, the chapter has drawn attention to the importance of human autonomy in the creation of a very broad, paramount human right to free conscience, under which cases representing the moral imperative to attend to nonhuman animal suffering are presented.

On the above observations, the Article 9 claims of vegans that present the

moral standing and suffering of nonhumans cannot be litigated or adjudicated in terms of nonhuman suffering or socially valued compassion. The longstanding history of a theory of human autonomy and its foundational justifications are deeply entrenched, as evidenced in literature and case law. But the observation of an interface of human and nonhuman moral standing, as acknowledged in *H v UK*³¹⁹ and the other cases discussed, demands an analysis of law and legal process so far not undertaken. In this regard, the following chapter will examine the utility of Emmanuel Levinas' ethics of alterity as a new approach to thinking about ethical responsibility to nonhuman animals and their suffering in relation to human rights.

³¹⁹ (1993) 16 EHRR.

Chapter 4

Can human rights be grounded by ethical responsibility to suffering?

Introduction

The thesis has so far observed that the idea of autonomy grounds the human rights claims of vegans, and that veganism re-presents the moral standing of nonhumans and their suffering. This chapter examines Emmanuel Levinas' ethics of alterity and his argument that ethical responsibility in the face of vulnerability is an inescapable, innate characteristic of humanity. It explains the essential elements of Levinas' thesis, his thoughts on the existence of human rights, and how his philosophical theory inspires a branch of critical human rights theory that promotes the amelioration of suffering as the mission of a protective rights enterprise.

This critical discourse, categorised as 'protest scholarship',³²⁰ develops an ethics of alterity for human rights. It argues that the essence of humanity is a desire to consider others in community and that this idea of human nature should orient the ethics of human rights. The chapter explains that Levinas' philosophy grounds a reorientation of the ethics of human rights because it promotes a human identity of innate responsibility, compassion and kindness to others in opposition to the orthodoxy of autonomy and its focus on rights for individual subjects.

The purposes of assessing this philosophy and critical human rights literature are: to ascertain the principles upon which human identity is argued to be inherently compassionate to others, to identify how this philosophy is utilised to explain the ethics of human rights, and to discover the extent to which it includes or considers

³²⁰ Marie-Bénédicte Dembour, *Who Believes in Human Rights?* (Cambridge University Press 2006).

the suffering of nonhumans (thus determining its utility for the claims of vegans).

The chapter observes that critical human rights scholars identify, in Levinas' thesis, a non-abstract, relational ethical event that can ground a concept of human rights. It explains how this is applied in current scholarship to reorient the idea of human rights away from the rights of individuals and towards a system which honours an a priori natural right of the other. The chapter finds that Levinas' ethics of alterity successfully ground responsibility and duty to others, but that current discourse excludes consideration of nonhuman others. As such, a further finding is that current discourse has significant developmental potential to accommodate the claims of vegans for the moral standing of nonhuman others. These findings inspire an alternative understanding of claims of conscience arising from the moral imperative to provide for suffering animals.

4.1 Argument so far

So far, the argument presented cites veganism as expressing a moral imperative of ethical responsibility to nonhumans. The suffering of nonhumans that is presented by vegans cannot be accommodated within the current formulation of human rights due to three factors. Firstly, exclusive human rights manifest prejudice towards nonhumans. Secondly, protection for the right to live according to conscience concerns the primacy of individual moral orientation. Thirdly, some principles of human rights – such as the orthodoxy of autonomy and the false assumption of neutrality in the application of legitimate aim and proportionality – will always function to disadvantage vegans in their presentation of suffering animals. On the basis of these obstacles, the previous chapter concluded that it is necessary to ascertain if there is another way to think about the foundation of

human rights in order to better accommodate the claims of vegans and the moral imperative to attend to suffering nonhuman animals.

This chapter firstly gives some background information on protest scholarship before examining Levinas' ethics of alterity, his justification for natural rights, and the way his theory has been utilised and developed by critical human rights scholars.

4.2 Background

The body of critical human rights scholarship that centres on duty and the suffering of others has been categorised and defined by Marie-Bénédicte Dembour as the 'protest school' of human rights.³²¹ Dembour observes that in this school of thought, human rights are 'first and foremost a language of protest'.³²² She notes that protest scholars are motivated by Emmanuel Levinas because they identify with feeling 'summoned by the suffering of the other'.³²³

Protest scholars believe that humans desire to live in community and that there is a social bond that is created by an acknowledgment of universal mutual suffering. On this basis, they firmly believe that 'human rights (a) are moral, (b) must be raised when they are not socially recognised, and (c) should concern every human being, especially those who are 'forgotten''.³²⁴ The importance of the work of Levinas to human rights scholars is that the ethics of alterity is not an abstract theory. Levinas claims that since ethics arise in encounters with others, they arise in concrete situations. As such, critical human rights scholars believe in the utility of otherness as a practical principle for enhanced social justice.³²⁵

³²¹ Marie-Bénédicte Dembour, *Who Believes in Human Rights?* (Cambridge University Press 2006).

³²² Dembour (2006) 11.

³²³ Dembour (2006) 11.

³²⁴ Dembour (2006) 245.

³²⁵ The potential limits of developing principles for justice are discussed in Desmond Manderson (ed), *Essays on Levinas and Law* (Palgrave Macmillan 2009).

Dembour cites Upendra Baxi and Costas Douzinas as two human rights activists whose work can be described as protest scholarship. In addition, the later work of William Paul Simmons can also be situated within the protest school of human rights on the basis that it emphasises that human rights should pertain to the amelioration of suffering.³²⁶ His work also looks to Levinas' ethics of alterity to ground fundamental rights for the specific purpose of giving a voice to those most forgotten.

The critique of human rights presented by these authors is based on the observation that human rights abuses are prevalent across the globe, and that despite many decades of the existence of the UDHR, suffering is widespread and immense. Their analytical approach is holistic, involving an assessment of human rights which encompasses practical utility, ontological assumptions, and congruence with emancipation. They conclude that the idea of human rights is a powerful and necessary concept to alleviate suffering, but that current thinking and practice are misguided because they focus on individuality rather than duty to others.

Protest scholarship demands that the suffering of others be addressed as a paramount concern of human rights, that otherness becomes implemented as a transcendental ethical principle for justice, and that human rights education should be reformed in line with Levinas' ethics of alterity and his notion of ethical humanity.

The remainder of this chapter explores Levinas' philosophy before reviewing in more detail how his work is applied by the specified human rights scholars.

4.3 Levinas' philosophy on the ethics of alterity

The branch of philosophy known as the ethics of alterity is principally

³²⁶ Simmons (2014).

associated with Lithuanian philosopher and theologian Emmanuel Levinas.³²⁷ Levinas' thesis on the ethics of alterity is a philosophy that rejects immanent, autonomous reason as the essence of ethical human identity.³²⁸ Levinas' contribution to philosophical enquiry can be considered Continental or modern European, in that it considers ethical responsibility and socio-political issues.³²⁹ The work of Levinas was developed following his thoughts on and analysis of the works of Husserl and Heidegger.³³⁰ Levinas' work has been categorised as phenomenology, a branch of philosophical enquiry which predominantly concerns the way in which a subject experiences and makes sense of their surrounding world.³³¹ Levinas is said to be one of 'the most profound, exacting and original thinkers of twentieth-century Europe',³³² who has 'changed the course of contemporary philosophy',³³³ with a philosophy that 'enjoys unprecedented popularity'.³³⁴

Levinas considers the essence of human identity and humanity, and the extent to which individuals are free, autonomous, atomistic subjects. Advocating the possibility of human identity being constructed by external events of relationality, Levinas departs from mainstream phenomenological theory that explains human identity in terms of the autonomous, self-made meaning of individuals who exist in

³²⁷ Peter Atterton, 'The Emanuel Levinas Web Page' <www.levinas.sdsu.edu/> accessed 10 June 2016.

³²⁸ Levinas, (1969/2000)

³²⁹ Matthew Calarco, *Zoographies: The Question of the Animal from Heidegger to Derrida* (Columbia University Press 2008).

³³⁰ Literature discussing the work of Levinas often highlights Husserl and Heidegger as influential thinkers. See, for example, John Lechte, *Fifty Contemporary Thinkers: from Structuralism to Post Modernity* (Routledge 1994) 115-119.

³³¹ Strictly speaking, this is not an accurate representation of Levinas' philosophy because the force that produces ethics does not appear to the subject while '... phenomenology describes what appears'. (Levinas 1985, 85). There is some doubt about Levinas' priority being phenomenology, ethics or theology. Levinas remarks: 'You know they often speak of ethics to describe what I do, but what interests me when all is said and done is not only ethics, it's the holy, the holiness of the holy'. Quoted in Simon Critchley, 'Introduction' in Simon Critchley and Robert Bernasconi (eds), *The Cambridge Companion to Levinas* (5th printing, Cambridge University Press 2002/2008) 27.

³³² Sean Hand (ed), *The Levinas Reader: Emmanuel Levinas* (Blackwell 1989/1996) v.

³³³ Hand (1989/1996) v.

³³⁴ Peter Atterton and Matthew Calarco, 'Editors Introduction: The Third Wave of Levinas Scholarship' in Peter Atterton and Matthew Calarco (eds), *Radicalizing Levinas* (State University of New York Press 2010) ix.

constant conflict with each other. Levinas argues that rather than interpreting events and making meaning for oneself, meaning is made through relational encounters with 'the other'.³³⁵ For Levinas, it is relational encounters that produce ethics. He argues that the other dissolves the autonomous spontaneity of the subject. Levinas explains that '[w]e name this calling into question of my spontaneity by the presence of the Other ethics'.³³⁶

As a philosophy of the 'humanism of the other',³³⁷ Levinas explains how the moral priority of the other takes precedence over an individual ego being-for-itself. This is the foundation of Levinas' theory on the ethics of alterity: ethics arise through relational encounters with different others who disrupt the will of the subject's ego. This is Levinas' entire philosophy.³³⁸

Levinas blames the history of Western philosophy for the creation of an oppressive totality of reason. He believes that the assumed supremacy of human reason has denied individuals their uniqueness and suppressed the innate human desire for dutiful relationships. He argues that this philosophical tradition and its focus on human reason have constructed an unethical totality of oppressive sameness rather than giving expression to innate otherness.³³⁹ What Levinas means is that, in the orthodoxy of autonomy, others are assumed to be the same as the observer and assumed to experience the world in the same way. In this totality of

³³⁵ The word 'other' is capitalised in Levinas' work.

³³⁶ Levinas (1969/2000) 43.

³³⁷ 'From beginning to end Levinas's thought is a humanism of the other.' Richard A Cohen, 'Introduction' in Emmanuel Levinas, *Humanism of the Other* (Nidra Poller tr, University of Illinois Press 2006) xxvi. This source is a collection of three essays in which Levinas describes how the other person creates another's being through the ethical response. The original French title of Levinas' (1972) book was 'Humanism of the other man'. This was changed to 'Humanism of the other' in the English translation (n8 xli).

³³⁸ Tamra Wright, Peter Hughes and Alison Ainley, 'The Paradox of Morality: An Interview with Emmanuel Levinas' (Andrew Benjamin and Tamra Wright trs) in Robert Bernasconi and David Wood (eds), *The Provocation of Levinas: Rethinking the Other* (Routledge 2014/1988) 172.

³³⁹ Robert Bernasconi and Simon Critchley, *Re-Reading Levinas* (The Athlone Press 1991) xi.

reason, Levinas also highlights that the uniqueness and individuality of others are also reduced by oppressive themes and categories created by reason. For Levinas, this system of social relations, as organised on the basis of the primacy of reason, only encourages disharmonious relations.³⁴⁰

The theory of an ethics of alterity challenges this dominant Western philosophical tradition of the primacy of human reason. It replaces the idea of reason being the basis for a homogeneous human identity with a vision of a heterogeneous community of unique individuals who experience, first and foremost, responsibility to others. In this theory, reason is important, but a posteriori to a naturally occurring event that creates humans as ethical. Thus, human Becoming, as explained by the principle of autonomous reason, is challenged by an alternative idea that explains Becoming in the context of relational responsibility. This idea can be described as a theory about an external phenomenological³⁴¹ process of ethical subjectivity that is facilitated by interconnected, social beings.

4.4 A brief note about reading Levinas

Reading Levinas presents certain difficulties for understanding. For example, in translation from French to English, word substitutions justified by translators may not represent the true and accurate meaning of the writer.³⁴² In addition, Levinas uses a profoundly complex style of writing. There are also problems associated with a reader's unfamiliarity with Levinas' use of concepts and with his ideas, which originate from intensely deep philosophical thinking combined with creativity – and

³⁴⁰ See Chapter 10, 'The Rights of the Other Man' in Emmanuel Levinas, *Alterity and Transcendence* (Michael B Smith tr, Columbia University Press 1999).

³⁴¹ This simplified way of explaining the ethics of alterity would not be Levinas' description of the ethical event.

³⁴² Translators frequently explain the difficulties associated with translating and their choice of substituted vocabulary.

from his fusion of philosophy with theology.³⁴³ Levinas aims to develop an eschatological³⁴⁴ philosophy of human 'being' or human identity. His aim is to explain the positive destiny of humankind in order to find a way to give hope following the atrocities of two world wars and the barbaric and pessimistic acts of humankind.

A significant difficulty is grasping Levinas' notion of responsibility. Though the subject is responsible to the other, responsibility is infinite because it is a responsibility owed to all others. As such, it cannot be fulfilled because there are many others. Richard Kearny observes that '[w]e are all responsible for everyone else – but I am more responsible than all the others'.³⁴⁵ He notes that 'not only am I more responsible than the other but I am even more responsible for everyone else's responsibility!'.³⁴⁶ Colin Davis suggests that although readers may think they understand the written text, there may still be a problem with getting the point, that Levinas leaves too many questions unanswered and that his ideas are unclear.³⁴⁷ Baxi has suggested that reading Levinas 'requires enormous exegetical labours; the dense intertextuality of his corpus remains forbidding, even for the *cognoscenti...*'.³⁴⁸ This reputation for complexity is largely responsible for scholarly avoidance, but Levinas' philosophy is as thought-provoking as it is demanding. Though it has a limited presence in critical human rights discourse, it certainly deserves much more consideration.

³⁴³ Sean Hand refers to 'this complex and challenging philosophy': Hand (1989/1996) 75.

³⁴⁴ Eschatology is the theological interest in the destiny of mankind.

³⁴⁵ Quote from the nineteenth century Russian novel on the subject of ethics, free will and morality, entitled *The Brothers Karamazov* by Fyodor Dostoyevsky, cited by Richard Kearney, *Dialogues with Contemporary Continental Thinkers: The Phenomenological Heritage* (Manchester University Press 1984) 67.

³⁴⁶ Cited in Kearney (1984) 67.

³⁴⁷ Colin Davis, *Levinas: An Introduction* (University of Notre Dame Press 1997) 132 and 144.

³⁴⁸ Upendra Baxi, 'Judging Emmanuel Levinas? Some reflections on reading *Levinas, Law, Politics*' (Book review of Marinos Diamantides (ed), *Levinas, Law, Politics* (Routledge-Cavendish 2007)) (2009a) 72 (1) *The Modern Law Review* 116. Desmond Manderson also notes the paucity of literature on Levinas and law. He relates this, to some extent, to the difficulty and time needed to engage with the complexities presented: Desmond Manderson, 'Introduction' in Desmond Manderson (ed), *Essays on Levinas and Law* (Palgrave Macmillan 2009) 4.

4.5 The essence of the ethics of alterity

For Levinas, the ethics of alterity are the first philosophy; the unique other is always and already present and acknowledged before being assessed and articulated through the reason of the subject. The other emits a non-semantic 'saying' that signifies and expresses their presence.³⁴⁹ The other metaphorically speaks to the subject with questions that demand a response. The other says 'you have entered my world. Here I am. It is me in my world. I am subject to the forces of mortality. I am vulnerable and precarious', and asks 'how will you respond?'.³⁵⁰ As such, apprehension of the unique other precedes reason. In the totality of reason, this 'saying' is reduced by 'said' oppressive themes and categories that create subservience, imperialism, domination, hierarchy and discrimination. In this system, the unique other is apprehended but reduced by the oppressive categorisation of the self on its own terms through reason. To address this problem, Levinas promotes the ethics of alterity as requiring '[a]n openness of the self to the other, which is not a conditioning or a foundation of oneself in some principle...'.³⁵¹ This openness will create a more dutiful, compassionate and ethical humanity that honours innate responsibility.

Levinas explains that innate responsibility is experienced in encounters with others, who demand a response from the subject. The subject is, thus, made responsible and is forced to respond to this responsibility. Responsibility to the other precedes all else. It is ethics itself because it is the force and the experience that creates ethical humanity and defines human identity. Levinas states: 'The fact that in

³⁴⁹ For a full discussion of 'the saying' and 'the said', see Emmanuel Levinas, *Otherwise Than Being or Beyond Essence* (Alphonso Lingis tr, Duquesne University Press 1998/2011).

³⁵⁰ Discussed in Emmanuel Levinas *Of God Who Comes to Mind* (Bertina Bergo tr, Stanford University Press 1986/1998).

³⁵¹ Levinas (1998) 181.

existing for another I exist otherwise than in existing for me is morality itself'.³⁵²

What Levinas means by this is that the self is primarily constructed by the existence of others who always require a response prior to reasoning. This idea is in stark contrast to that which explains that the essence of human identity is the ability to reason and that immanence is the source of ethics.

Levinas' thesis is grounded by the idea that human ethics are produced in the context of relational encounters within a community rather than in the context of individuality. To understand this idea, the following section will explain in some detail the essential elements of Levinas' ethics of alterity. These elements are Levinas' views on the essence of humanity and the innate characteristics of human identity.

4.6 The ethics of alterity and the essence of humanity

For Levinas, humanity manifests an important pre-social condition of human existence. This is the natural human tendency to live in community. Levinas observes that humans have an innate sociability and need to exist with each other cooperatively. He observes that humanity is composed of intertwined, interacting others who have a strong sense of duty towards each other.³⁵³ In addition, each individual is 'absolutely dissimilar', possessing an identity that is 'non-interchangeable, incomparable and unique'.³⁵⁴

Levinas argues that humanity is the result of a break with the bare, biological being of nonhuman animals in the natural world. The social system of humanity is a natural formation that stems from subjects apprehending and responding ethically to

³⁵² Levinas (1969/2000) 261.

³⁵³ Levinas (1969/2000).

³⁵⁴ Emmanuel Levinas, *Outside the subject* (Michael B Smith tr, Continuum International Publishing Group 1987/2008) 92.

multiple others. For Levinas, this is evidence that humanity is not grounded in autonomous existence. Only nonhuman animals of the natural world need autonomy to fight in a world of struggle and fear, where the self exists for the self.³⁵⁵ Instead, humanity is grounded in a compassionate a priori responsibility to others. The break with the natural order is caused by the subject recognising and acknowledging the existence, suffering and needs of different others, to whom they are obligated and have no choice but to respond. This encounter constitutes the moment of ethical transformation from what is considered basic, instinctive animality into humanity. It is in the 'breaking with this biological order of being that ethics and 'the human' arise. Thus, the human and ethics are something like miracles...'.³⁵⁶ These conditions of humanity arise from Levinas' notion of individual human identity.

4.7 The ethics of alterity and human identity

Levinas argues that individuals are unique. In his view, the 'inner world' of others cannot be known by the subject. Being composed of absolutely dissimilar beings that are incomparable and non-interchangeable, humanity represents much more than a 'common species'.³⁵⁷

Human beings are mortal subjects at the mercy of the life process and are, essentially, vulnerable and weak. This universally shared characteristic is recognised and is the reason for innate kindness and compassion offered for suffering others. The subject recognises suffering in others and, at the same time, cannot know how that suffering is experienced. Identifying shared mortality, but not understanding or knowing how the other experiences their world, the subject instinctively shows

³⁵⁵ Levinas (1961/2000) 116.

³⁵⁶ Calarco (2008) 56.

³⁵⁷ Levinas (1987/2008) 92.

compassion and regard.

In Levinas' theory, then, human beings have four essential characteristics that are denied in the totality of reason. Firstly, they are unique individuals. Secondly, they are conjoined by a pre-social sociability. This means that they are born with a predisposition to desire community. Thirdly, they have an innate ability to create responsibility and generate compassion from them. Finally, they possess an innate capacity to respond compassionately.

In Levinas' ethics of alterity, the pre-social interconnection of individuals is ipso facto ethical association. It manifests what Levinas calls 'responsibility'.³⁵⁸ It is evidenced by the way a subject responds to the other. This responsibility elicits compassion, sentiment and duty, and is the essence of ethics. Though the encounter in which ethics is produced concerns a subject and another, the ethical event is an asymmetrical responsibility to the other. Levinas describes this event as an event of transcendence in '*[l]e visage d'autrui*': transcendence in 'the face of the other'.³⁵⁹

That ethics emerge in the face of the other is a paramount element of Levinas' ethics of alterity. Levinas explains that '*le visage*' – 'the face' – is the expressive presence of the other that elicits a response from the subject. The face, as the facilitating mechanism in the production of ethics, will now be explored in more detail.

4.8 The face and the production of ethics

Levinas describes the concrete experience that is the basis for ethical humanity. It is an event in which the subject becomes ethically engaged in an

³⁵⁸ The other enables the ethical conscience of the subject. Levinas (1969/2000) 101.

³⁵⁹ Translated by Alphonso Lingis in Levinas (1961/2000) 24. The translation of '*le visage*' as 'face' is well established.

encounter with the face of the other. The face is encountered in a transcendence of the self. It halts the spontaneous ego of the subject's self. Levinas explains that '[t]he way in which the other presents himself, exceeding *the idea of the other in me*, we here name face'.³⁶⁰ It is in the face-to-face encounter that an individual becomes aware of the infinite nature of the other, their mutual vulnerability and the obligation to respond to infinite responsibility.

Levinas refers to the face not merely as a physical object, but as the most significant representation of the other's presence and expression. The other is not reducible to the physical face, its features or expressions. The face does not represent the other in its entirety because one can never grasp the other through exposure to the face. The other is individual and cannot be conceptualised. The other is infinite, but the face represents the first encounter with the living presence. It is an epiphany: '[t]here is a commandment in the appearance of the face, as if a master spoke to me'.³⁶¹ 'The face is a living presence; it is expression...'. It 'speaks' and 'is already discourse'.³⁶²

The encounter with the face is, thus, much more than a vision of the physical features of another.³⁶³ It does not appear to the subject, and the face cannot be seen. The face – that is, the Levinasian face – is not to be confused with the observation of the object that is a physical face. Levinas instructs: '[t]he best way of encountering the Other is not even to notice the colour of his eyes! When one

³⁶⁰ Levinas (1969/2000) 50.

³⁶¹ Levinas (1985) 89.

³⁶² Levinas (1969/2000) 66.

³⁶³ The 'face' has been used to represent a community of others, a cultural group and even a nation. It has been used to describe many things, from a simple value of 'being nice' to others to the idea that one can read anything into Levinas (see Fred C Alford in Baxi (2009a) below). The priority given by Levinas is that the face concerns the affective experience of an entity that is perceived as vulnerable.

observes the colour of the eyes one is not in social relationship with the Other'.³⁶⁴ He explains that 'the whole body – a hand or a curve of the shoulder – can express as the face'.³⁶⁵

Through the face, the other signifies 'exceptional presence'³⁶⁶ that transcends autonomy, themes, categories and all ontology. It is this presence that 'speaks to me'.³⁶⁷ '[I]n its mortality... the face before me summons me, calls me, begs for me... and calls me into question'.³⁶⁸ The face signifies the presence of the other, commands responsibility and expresses the first word and the commandment 'thou shalt not kill'.³⁶⁹

The face-to-face encounter is, thus, an event in which the subject experiences an infinite, unknowable presence; the signification of a mortal, vulnerable other; and a profound responsibility for the other that 'pre-exists any self-consciousness'.³⁷⁰

Levinas defines the other as a mortal subject at the mercy of the life process, capable of metaphorically 'speaking' of vulnerability and weakness. He presents the other's 'extreme precariousness':³⁷¹ an expression that communicates the vulnerability and mortality of another, who automatically, without effort or intention, takes a subject hostage and asks for a response. In reply (recognising universally shared mortality, shared suffering and vulnerability), the subject (being naturally predisposed to care and compassion), welcomes the unique other. This welcome is ethics itself. The presence of the mortal, vulnerable other overrides the

³⁶⁴ Levinas (1985) 85.

³⁶⁵ Levinas (1969/2000) and Levinas (1984) refer again to the body expressing face.

³⁶⁶ Levinas (1969/2000) 87.

³⁶⁷ Levinas (1969/2000) 198.

³⁶⁸ Emmanuel Levinas 'Ethics as first philosophy' in Sean Hand (ed), *The Levinas Reader* (Blackwell 1989b) 83.

³⁶⁹ Levinas (1985) 89.

³⁷⁰ Hand (1989/1996) 75.

³⁷¹ Levinas (1984) and Levinas (1984) 167.

ego of the subject with what Judith Butler refers to as ‘the wordless vocalization of suffering...’.³⁷² The encounter is, and induces, ethics because it disrupts the selfish ego, creating responsibility.

In the face of the other, the individual, thus, undergoes a transformation from animal to ethical and from autonomous to heteronomous. Experiencing the face of the other is a concrete ethical experience and constitutes an ethical relation which dissolves the ego and from which one cannot be released. ‘The other concerns me in all his material misery’, Levinas wrote.³⁷³ ‘[I]t is impossible for me to free myself by saying, “It’s not my concern”. There is no choice, for it is always and inescapably my concern. This is a unique “no choice”, one that is not slavery’.³⁷⁴ Levinas makes it clear that sentiment and compassion for others are paramount in ethics and evident in the original encounter. On this basis, Levinas regards suffering, vulnerability, caring and compassion as essential human attributes, inherent to ethics. Human identity is that which is predisposed to welcome the vulnerable other in all their difference. To be human, on this view, is to be responsible; and to be responsible is to be ethical.

The production of ethics, thus, depends on a face-to-face relationship between the subject and the infinite other, who cannot be known. This encounter of close proximity also creates in the subject an awareness of additional dimensions of responsibility. This is the infinity of ethical responsibility, which will now be explained.

³⁷² Judith Butler *Precarious Life* (Verso 2004a) 134.

³⁷³ Jill Robbins (ed), *Is it Righteous to Be?: Interviews with Emmanuel Levinas* (Stanford University Press 2001) 15.

³⁷⁴ Emmanuel Levinas, ‘Ideology and Idealism’ in Sean Hand (ed), *The Levinas Reader* (Blackwell 1989a) 247.

4.9 The infinity of ethical responsibility

Ethics are a result of demands made by others in close proximity. In this proximity, Levinas argues that individuals become aware of the potential demands of multiple others. He states that '[t]he third party looks at me in the eyes of the Other'. The other in immediate proximity, thus, indicates and serves all the others and alerts the subject to infinity of responsibility. Levinas remarks that '[t]he face in its nakedness as a face presents to me the destitution of the poor one and the stranger', and '[t]he presence of the face, the infinity of the other, is a destituteness, a presence of the third party (that is, of the whole of humanity which looks at us)'.³⁷⁵ Thus, an event of facing in close proximity is an event of facing not only the infinity of the unknowable other, but the infinity of responsibility for all others and the infinity of the ethical demand. On this basis, Levinas believes that responsible and dutiful people not only act ethically in relational encounters, but think ethically, knowing that there are always others to whom they owe the same ethical duty of responsibility.

4.10 Levinas' thoughts on human rights

Levinas maintains that the natural right of man is the original, a priori fact of the uniqueness or the absolute of the person.³⁷⁶ Human rights express the uniqueness and incomparable nature of each individual human being and the other's right to this status. For Levinas, human rights are the measure of all law and its ethics. Levinas believes his philosophy to be inclusive because it aims to accommodate profound difference.

Levinas believes that the right to life, identity and equality are natural rights.

³⁷⁵ Levinas (1969/2000) 213.

³⁷⁶ Levinas (1987/2008) 92.

They are a priori: 'independent of any power...' or of individual merit. As such, human rights cannot be conferred. The very fact that human rights exist already acknowledges a pre-social interconnection in which the subject is aware of and responsive to the other.

Regarding the development and implementation of a universalised system of legal justice, Levinas raises an important question which is answered by his ethics of alterity:

Legal justice is required. There is need for a state. But it is very important to know whether the state, society, law and power are required because man is a beast to his neighbour or because I am responsible for my fellow. It is important to know whether the political order defines man's responsibility or merely restricts his bestiality.³⁷⁷

In terms of legal justice, Levinas suggests that the origin of the rule of law is not to permit individual egos to fight for individualised rights against one another. Rather, a 'different 'authority'' from that established in the totality of reason is required.³⁷⁸ This is the higher authority that recognises compassionate goodness as a normative social principle. It is 'the first language', and it will reflect the pre-social a priori concern for the unique, absolutely different other, who is acknowledged in the face-to-face relation where, in the face of suffering, one is for the other.³⁷⁹

The required conditions for practical rights are those that will emerge when

³⁷⁷ Levinas (1989a) 247-248.

³⁷⁸ Levinas (1987/2008) 97.

³⁷⁹ Levinas (1987/2008) 98.

humanity has assumed the first right of absolute difference.³⁸⁰ This first right requires the 'I' to be freed from returning to the self. It requires the subject to regard the other; not simply to be aware of the other, but to Become in connection with the other. It is a relationship in which being concerned for the other – welcoming and caring for the other – is to facilitate one's own ethical being. These conditions represent the prior peace of a higher authority in which goodness is the first language of freedom.³⁸¹ Levinas insists that these conditions ground natural law and practical human rights. In a human rights based on the non-metaphysical face-to-face relation, one and the other are responsible, endowed with duty and absolved in a peaceful unity with infinity.

In Levinas' system of human rights, one regards the other from the position of unity. It is a unity with infinite responsibility, as experienced through encounters with the face. In this system, the 'I' frees itself from the ego, 'answers for the other' and does not return to self.³⁸² It is a process of natural justice which, for Levinas, also recognises responsibility as the 'original goodness in which freedom is embedded'.³⁸³ It is a way of relating in which non-indifference to the other represents a paramount aspect of human identity. It inspires and facilitates infinite responsibility. This is a liberating 'freedom in fraternity, in which the responsibility of one-for-the-other is affirmed, and through which the rights of man manifest themselves *concretely* to consciousness as the right of the other, for which I am answerable'.³⁸⁴ On this view, each-for-all, rather than one-for-self, is the ethical becoming of humanity, the foundation of basic, moral rights and the principle to be established in the operation

³⁸⁰ Levinas (1987/2008) 93.

³⁸¹ Levinas (1987/2008) 97/98.

³⁸² Levinas (1987/2008) 98.

³⁸³ Levinas (1987/2008) 98.

³⁸⁴ Levinas (1987/2008) 98

of practical human rights.

4.11 Responsibility in the face of difference

Levinas' ethics of alterity is a complex and provocative theory, which opposes the established orthodoxy of autonomy and the primacy of human reason. It offers an explanation of the essence of humanity and human identity. At the heart of this philosophy is the notion that human beings become ethical in encounters with others because being in the presence of another invokes the infinite question of 'what to do next'. It configures human identity as heterogeneous³⁸⁵ and heteronomous,³⁸⁶ and explains relational and infinite ethical responsibility.

Despite developing an ethical theory of otherness in which duties to others are paramount and infinite, Levinas did not develop a comprehensive thesis or attempt a diligent application of his ethics of alterity to human rights. His notion of the legitimacy of fundamental rights is, though, very clear. There exists an original right. It is an original right that is pre-social, grounds the very notion of rights and has grounded this notion since the inception of time. It is the right to be recognised as different.

Levinas' thoughts on justice and human rights are, thus, not comprehensive. Though he does explain how they should be grounded by the principle of otherness, they do not indicate a set of normative principles that can be used to configure current human rights. What he does say is that human rights represent the fact of a priori sociability and original responsibility. He also maintains that this notion of human rights espouses a liberating principle, in which the subject can be released from the constraints of the totality of reason to live according to a true, innate

³⁸⁵ Unique/dissimilar.

³⁸⁶ Subject to external influences that explain human Becoming and define identity.

characteristic of ethical responsibility for others.

On the principles of Levinas' philosophy, critical human rights scholars propose the ethics of alterity as a model for the existence and operation of human rights. Of particular significance is that Levinas' theory promotes the a priori nature of human sociality and responsibility as indicative of an innate desire to respond to and accommodate difference, live in community and extend compassion to others. This critical discourse will now be considered in order to identify how Levinas' philosophy is applied as the foundation of justice, to identify the scope for the inclusion of nonhumans and to ascertain its value to the vegan community.

4.12 The application of the ethics of alterity in protest scholarship

The critical human rights scholarship that observes the utility of Levinas' theory has been loosely categorised by Marie-Bénédicte Dembour as protest scholarship. In the application of Levinas' ethics of alterity to human rights, protest scholarship develops an ethics of alterity for human rights, arguing that the existence of human rights recognises pre-social responsibility but entrenches a Western philosophical focus on individuality and the primacy of reason. As such, it is argued that it has become a system that falsely represents the individual and humanity.

The value of the ethics of alterity to protest scholarship is that they facilitate the practical opportunity to entrench and act out the primary condition of ethical responsibility. This primary condition of responsibility in the presence of others is also observed as human liberation because it facilitates human freedom. It facilitates intertwined Becoming in a community of others who embrace and deploy the innate characteristic of compassion for others.

To transform the unethical totality of reason and reclaim humanity, protest

scholarship aims to locate the encounter with the face of another as the non-abstract, concrete ethical principle capable of rupturing the assumed immanence of ethics. Scholars want the primacy of reason to be replaced with the ethics of alterity and for relational encounters to be acknowledged as transcendent. In this paradigm for social relations, the absolute, inescapable, infinite duty to the other breaches the imposed order of unethical totality, and humanity realises its ethical destiny: to be primarily welcoming, caring and responsible for others, with the support of social institutions.³⁸⁷

The following sections examine the utility of Levinas' theory for realist Upendra Baxi, postmodernist Costas Douzinas and deconstructionist William Paul Simmons. These scholars are motivated by the work of Emmanuel Levinas in their search for guiding ethical principles for the existence and operation of human rights. Of particular significance will be how these authors interpret Levinas' philosophy, and whether they develop specific normative principles for the practice of a suffering narrative of human rights that may offer assistance to vegans in their claims for nonhuman others.

4.13 Upendra Baxi

Suffering is central to Upendra Baxi's understanding of human rights. He agrees with Klaus Gunther that 'human rights are best understood as the result of the process of the loss and recovery of voice with regard to negative experiences like pain, fear, and suffering'.³⁸⁸ For Baxi, this should be the context for discourse.

Baxi makes a distinction between 'modern' and 'contemporary' human rights.

³⁸⁷ Sean Hand explains how the face-to-face 'commandment breaks open immanence' and opens the 'closed order of totality.' Hand (1989/1996) 190. The preface to Levinas, (1969/2000) puts it like this: 'The first 'vision' of eschatology (hereby distinguished from the revealed opinions of positive religions) reveals the very possibility of eschatology, that is, the breach of the totality...' Levinas (1969/2000) 23.

³⁸⁸ Baxi (2009b) 199.

He rejects the legitimacy of modern human rights that emerged from the Enlightenment. He claims that the definition of man as possessing reason and autonomous will was a powerful 'peculiar ontological construction' that excluded vast numbers of human beings.³⁸⁹ He argues that the emphasis on rationality was the 'justification of the unjustifiable: namely colonialism and imperialism'.³⁹⁰ For Baxi, the primacy of individual reason produced an ideology in which hierarchy could be used by the superior as an evil weapon to dominate the inferior: modern human rights encouraged oppression and suffering.

Baxi puts forward the view that contemporary human rights emerged from a context of violence and that it is 'axiomatic that the historic mission of contemporary human rights is to give voice to human suffering, to make it visible, and to ameliorate it'.³⁹¹ He points out that human rights cannot function effectively and efficiently without sentiment or proper, compassionate consideration for others. For this reason, compassionate listening and hearing the voice of the other – to the extent that one is able to imagine with genuine concern the other's lived reality in empathetic role reversal – is a crucial and basic requirement. Baxi urges humanity to adopt this process and listen patiently to suffering others: '[t]o give language to pain, to experience the pain of the Other inside you, remains the task, always, of the human rights narratology'.³⁹² On this view, otherness is a core value in the ethics of human rights that 'seems to command consensus'.³⁹³

For Baxi, contemporary human rights are the mechanism through which humanity has formalised the fundamental, universal moral value of empathy and

³⁸⁹ Baxi (2009b) 44.

³⁹⁰ Baxi (2009b) 44-45.

³⁹¹ Baxi (2009b) 6.

³⁹² Baxi (2009b) 159.

³⁹³ Baxi (2009b) 15.

compassion for the other in its endeavour to alleviate suffering. Regarding the meaning of otherness, Baxi concurs with Levinas: otherness is that which is absolutely different.³⁹⁴

Baxi also draws on a point made by Levinas when he reiterates the importance of acknowledging that difference is the fundamental ethic of a project to furnish those who suffer with protective rights.³⁹⁵ When Levinas' ethics of alterity is introduced into human rights, the point must be made that Levinas believed that rights are required to protect each individual in their difference as 'absolutely dissimilar' and possessing an identity that is 'non-interchangeable, incomparable and unique'.³⁹⁶ Baxi applies this sentiment to human rights, upholding them as representing recognition, respect and protection of difference – not as entitlements for homogenising sameness.

Baxi does not move beyond general terms about the importance of the ethics of alterity for human rights. Whilst grounding his ethics generally in Levinas' philosophy, there is no attempt to translate Levinasian ethics of alterity into a workable political principle for social justice. He notes that scholarly work on legal theory and practice suffers a paucity of analysis from a Levinasian perspective,³⁹⁷ but that the philosophy of Levinas is complex and that there is potential for 'vulgar Levinasian' theorising.³⁹⁸ Baxi himself, perhaps on this basis, does not develop his theory of human rights in the context of a deep analytical approach to Levinas, but does ground his thesis on the moral obligation to respond to human suffering.

Baxi has faith in the human rights project. He believes it to be a culture of

³⁹⁴ Baxi (2009b) 15.

³⁹⁵ Baxi (2009b) 15.

³⁹⁶ Levinas (1987/2008) 92.

³⁹⁷ Baxi (2009a).

³⁹⁸ Fred C Alford claims that Levinas' work can say anything the reader wants to hear. Quoted in Baxi (2009a) 116.

cultures. By embracing plurality, human rights are dynamic and able to constitute new contexts as they evolve to eradicate all oppression. Further, he emphasises that what human rights can be – in the context of its dynamic nature and its ability to exist in new and unimagined paradigms – remains to be seen.

Baxi urges a reform of human rights education as a ‘first step’ in implementing otherness in human rights.³⁹⁹ This reinvigorated human rights education would promote uniqueness rather than reduce human diversity to a ‘common essence’. As such, it would advocate entrenching the ethics of alterity in a human ‘right to be different’.⁴⁰⁰

In *The Future of Human Rights*, Baxi states a belief that the mission of human rights is threatened by a discourse that creates hierarchy and excludes marginalised voices. He observes the ‘ever new bases for reconceptualising human rights as ethical imperatives’⁴⁰¹ but is similarly critical of some human rights discourse and activism. Baxi observes that animal rights activism expands human rights activism, but he also identifies an evangelicalism and romanticism in human rights that may verge on fanaticism and over-optimism. Nevertheless, noting the reality of pain and suffering, Baxi believes that the language of human rights should not disguise suffering and oppression and that human rights activism should target structural oppressive forces.

Baxi identifies the endlessly inclusive potential of what he refers to as the contemporary human rights paradigm, and, in later work, seriously reflects on the

³⁹⁹ Upendra Baxi, ‘Random Reflections on the [Im]possibility of Human Rights Education’ (*PDHRE*, no date, para 21) <www.pdhre.org/dialogue/reflections.html> accessed 11 June 2016.

⁴⁰⁰ Upendra Baxi, ‘Concepts of Human Rights’ in Upendra Baxi and Kenny Mann (eds), *Human Rights Learning. A People’s Report* (*PDHRE*, 2006, 22) <www.pdhre.org/pdhre-report-2006.pdf> accessed 11 June 2016.

⁴⁰¹ Baxi (2009b) 14.

challenge of posthuman theory,⁴⁰² noting the ‘immense significance’ for re-thinking human rights in terms of what Donna Haraway refers to as our ‘constitutive partners’.⁴⁰³ Baxi expresses support for a discourse that includes nonhuman others and understands that it ‘invites re-thinking human agency and responsibility (as well as human rights languages and logics) in a new key’.⁴⁰⁴

Baxi remains a realist. Whilst he accepts the value of a variety of posthuman contributions for the invigoration of human rights discourse, suffering and emancipation remain central to his thinking. He believes in the possibility of structural forces of oppression⁴⁰⁵ and ‘above all’ in the right to interpret human rights.⁴⁰⁶ These sentiments express otherness and a commitment to emancipation from suffering, and it is within this context that Baxi can be regarded as being supportive of a discourse that identifies nonhuman suffering to be within the scope of a politics *of* and *for* human rights.⁴⁰⁷

4.14 Costas Douzinas

Douzinas is very negative about current human rights, but believes that Levinas’ philosophy may offer a postmodern principle of justice to save them from complete failure.⁴⁰⁸ Applying directly, and in more detail, the philosophy of Emmanuel Levinas, Douzinas emphasises that the existence of human rights both recognises and represents the a priori nature of obligation to the other. Stating that

⁴⁰² See Upendra Baxi, *Human Rights in a Posthuman World* (Oxford University Press 2007).

⁴⁰³ Baxi (2007) 221.

⁴⁰⁴ Baxi (2007) 228.

⁴⁰⁵ Baxi draws on Michel Foucault: see Baxi (2009b) 66.

⁴⁰⁶ Baxi (2009b) 77.

⁴⁰⁷ A politics of human rights examines elements of power and the perpetuation of suffering. A politics for human rights looks at activism and the narratives of particular struggles. See Baxi, most notably 2009b.

⁴⁰⁸ Douzinas (2000). For a critique of Douzinas’ view of human rights, see John Morss, ‘Saving Human Rights from Its Friends: A Critique of the Imaginary Justice of Costas Douzinas’ (2003) 27 (3) *Melbourne University Law Review* 889 <<http://www.law.unimelb.edu.au/mulr/issues/previous-issues/2003-volume-27/2003-volume-27-3>> accessed 13 March 2014.

human rights concretise duty and the rights of the other person, Douzinas claims that human rights are 'the instruments of ethics'.⁴⁰⁹ Rights, he asserts, 'are a formal recognition of the fact that before my (legal) subjectivity always and already has come another'.⁴¹⁰

Douzinas, thus, concurs with Levinas and believes that human rights are pre-social. They 'exist *a priori*, independently of any legislative conferred or state authorisation because the other is a priority...'.⁴¹¹ As such, Douzinas regards the ethics of alterity to be the foundational principle of natural human rights. He believes that '[a]ll humanity and every right proceed from this primacy of ethics of being and of obligation over need or interest'.⁴¹² Douzinas believes that Levinas' philosophy has 'changed the ontological, epistemological and moral assumptions of modernity', and that human rights would benefit enormously from incorporating and promoting, specifically, Levinasian ethics of alterity.⁴¹³

For Douzinas, the obligation of human rights is to attend to suffering, empower oppressed victims and generally recognise and give priority consideration to unique, singular others. Douzinas identifies human rights, as did Levinas, as serving egoistic, same-for-self ideology rather than providing a means to eliminate suffering. For Douzinas, current human rights function as a mechanism of personal and social delusion because they encourage same-for-self claim rights and have resulted in atomistic human egos that are antithetical to the creation of a community of humanity. Douzinas argues that human rights have been derailed from their original purpose of entrenching responsibility and duty as primary principles upon

⁴⁰⁹ Douzinas (2000) 353.

⁴¹⁰ Douzinas (2000) 343.

⁴¹¹ Douzinas (2000) 352.

⁴¹² Douzinas (2000) 352.

⁴¹³ Douzinas (2000) 348.

which others would be protected from domination and oppression. He claims that rights (unfortunately) now only give legitimacy to same-for-self morality, rather than facilitate or promote compassionate duty to others.⁴¹⁴

Douzinas argues that human rights ought to transcend the subject and reclaim their purpose as functional in a community of 'unique others'.⁴¹⁵ In consideration of one's absolute duty to the other, Douzinas asserts that 'before my right and before my identity as organised by rights, comes my obligation, my radical turn towards the claim to respect the dignity of the other'. Since rights have meaning only in relation to others whose rights are established a priori to mine, then 'the right of the other always and already precedes mine'.⁴¹⁶

Douzinas agrees that the other generates an 'ethical imperative'⁴¹⁷ that motivates the self to action. The self becomes the agent of the other. Rather than autonomy forming the categorical imperative, the moral will is instead constituted, made available and made responsive only in the context of the ethical demand of the other. Thus, Douzinas concurs that the ego – the self – becomes ethically and morally empowered to access freedom through responsibility in the presence of the face of the other. This freedom espouses interconnection, community and compassionate relations.

For Douzinas, a system of non-metaphysical human rights, imbued with the ethics of alterity, would entail a concept of humanity where the social bond is

⁴¹⁴ For a background discussion on the idea of human rights emerging from moral rights in human community, see Norberto Bobbio, *The Age of Rights* (Allan Cameron tr, Polity Press 1996).

⁴¹⁵ Costas Douzinas, 'Seven Theses on Human Rights: (6) Desire' (*Critical Legal Thinking: Law and the Political*, 3 June 2013, para 17) <criticallegalthinking.com/2013/06/03/seven-theses-on-human-rights-6-desire/> accessed 11 June 2016.

⁴¹⁶ Costas Douzinas, 'The End(s) of Human Rights' (2002) 26 (2) 445, 465 Melbourne University Law Review <www5.austlii.edu.au/au/journals/MelbULawRw/2002/23.html> accessed 11 June 2016.

⁴¹⁷ Douzinas (2000) 349.

changed 'to the public recognition and protection of the becoming human with others...'.⁴¹⁸ Douzinas explains that this would be a process of 'righting' which would 'open human identity to the new and unknown as a condition of its humanity'.⁴¹⁹

For Douzinas, 'otherness is not just a moment in the dialectic of the same and the different, but the transcendence of the system'.⁴²⁰ In the absence of an ethics of alterity in human rights, they fail and perpetuate suffering because they contribute to a totalising system in which everyone is caught up in a totality that perpetuates self-delusion. Individuals are constructed to be isolated, autonomous beings with self-fulfilling endeavours to pursue. In this system, there is little scope for the development of a value for duties to others. Law assimilates each and the other into an objective totality⁴²¹ by promoting an individualism that denies that we come 'into existence in common with others, that we are all in community'.⁴²²

Douzinas argues for a new non-metaphysical legal relation that does not depend on 'the past or obedience to tradition'⁴²³ but on acceptance that selves flourish through relationships with others and that the essence of humanity is to be 'near Being and care for the human as well as the other entities in which Being discloses itself'.⁴²⁴ Such a new relation will utilise the benefits of relational ethics. He thus calls for an attack on the current defining concept of humanity to protect human beings and to facilitate a compassionate humanity which is yet to come.

In Douzinas' application of Levinas' ethics of alterity, he argues that human rights will no longer function in the interests of the powerful at the expense of the

⁴¹⁸ Douzinas (2000) 215.

⁴¹⁹ Douzinas (2000) 216.

⁴²⁰ Douzinas (2002) 464.

⁴²¹ Douzinas (2000) 465.

⁴²² Douzinas (2002) 458.

⁴²³ Douzinas (2000) 215.

⁴²⁴ Douzinas (2000) 215.

disempowered. In the radical, natural law of the ethics of alterity, the recognition of difference is paramount, and human rights will facilitate a 'loving turn to the suffering and unique other that bestows on the individual her own singularity'.⁴²⁵

Levinas' ethics of alterity offers Douzinas a promising concept for a postmodern principle of justice.⁴²⁶ In this regard, he raises questions concerning who are legitimate others, owed duties and entitled to protective rights. Though Douzinas predominantly focuses his thesis on human others, he, nonetheless, advances the possibility for nonhuman otherness to feature in a suffering narrative of human rights by pointing out that:

[t]he animal rights movement, from deep ecology and anti-vivisection militancy to its gentler green versions, has placed the legal differentiation between human and animal firmly on the political agenda and has drafted a number of Bills of animal entitlements. Important philosophical and ontological questions are involved here...⁴²⁷

Douzinas identifies that in this postmodern principle of justice, the other can be 'most strange and foreign', 'most alien' and 'incomparably unique'. It also entails a goodness that 'does not exclude any other and does not try to impose the preference of the self upon the stranger'.⁴²⁸ It is a postmodern principle of justice

⁴²⁵ Costas Douzinas and Ronnie Warrington, 'Antigone's Law: A Genealogy of Jurisprudence' in Costas Douzinas, Peter Goodrich and Yifat Hachamovitch (eds), *Politics, Postmodernity and Critical Legal Studies: The Legality of the Contingent* (Routledge 1994) 221.

⁴²⁶ Douzinas (2002).

⁴²⁷ Douzinas (2000) 185.

⁴²⁸ Douzinas (2000) 355.

espousing a 'radical sensitivity' that can adapt to the 'shifting boundaries of the social' in relation to suffering.⁴²⁹ In Douzinas' postmodern theory, the other is dynamic over time and space, but is, ultimately, always an entity that generates responsibility.

Douzinas has illustrated how human rights can be grounded in suffering. In his thesis, a straightforward application of Levinas' ethics of alterity offers a generalised principle of otherness upon which human rights could function. Douzinas does not attempt to develop a critical analysis of the limitations of the ethics of alterity, but he accepts the theory at face value as having a beneficial, emancipatory function for human rights.

Douzinas applies the ethics of alterity to human rights according to his postmodern theoretical tendencies. He does not develop a discussion on the exclusion of nonhumans. This is surprising, given the opportunity within the postmodern tradition to deconstruct oppressive binaries. Nonetheless, his application of Levinas' ethics of alterity, and the development of otherness as a postmodern principle of justice, implicitly and explicitly provoke debate about the exclusion of nonhumans.

In his explanation of how suffering and the ethics of alterity could underpin human rights, Douzinas observes that they would reorient same-for-self claim rights. This is particularly revealing for the argument of this thesis, because the claims of vegans are not same-for-self. Unlike claims made by women, disabled people or same-sex couples, for example, the claims of vegans present a moral imperative to attend to the suffering of nonhuman others. In this regard, the legal recognition of

⁴²⁹ Douzinas (2000) 355.

veganism as the claims of those who seek to present the moral standing of nonhuman others alludes to the transcendental principle of justice he seeks.

In explaining that human rights should serve a humanity whose essence is compassion, Douzinas identifies that the totality explained in Levinas' philosophy includes an unjust administration of human rights that is entirely focused on individualism. In his application of the ethics of alterity, he envisages a process of 'righting' that would construct a culture of becoming ethical in the context of co-existing others. In the context of the observed problematic tradition of individualism that affects the claims of vegans, such a righting would pertain to a break of what he refers to as problematic past traditions – traditions on which the claims of those who represent animal suffering are assessed.

Douzinas grounds human rights in suffering and applies the ethics of alterity to explain how human rights can function better. He explains that otherness will function as a positive postmodern principle of justice. In his vision, a protective rights enterprise would also care for an entity in which Being discloses itself. On this basis, the ethics of alterity, as a foundation for rights, have potential to include nonhuman animals.

4.15 William Paul Simmons

Simmons believes – as do Baxi and Douzinas – that the purpose of human rights is the alleviation of suffering and that human rights must prioritise the suffering other. He concurs with Baxi and Douzinas regarding the problems created by homogenising Western philosophy and its institutions. He singles out this specific characteristic of human rights as the most important to dismantle. What Simmons wants is for human rights to 'create an anti-hegemonic discourse that will overturn

those invisible ideologies that undergird the system'.⁴³⁰

Simmons is partly influenced by Derrida's philosophy of human rights and the idea that they are founded on 'an invisible ideology that conceals an original violence'.⁴³¹ Simmons' target is to highlight the ways in which homogeneity is entrenched in legal theory, process and practice, to apply the methods of postmodern deconstruction to identify oppressive relationships, and to develop a transformative, functional principle for a paradigm shift from entrenched homogeneity to a new system of law which is based on heteronomy. That principle is the Saturated Marginalised Other.

Simmons cites Baxi as the authority for the importance of otherness in human rights. He agrees that appropriate human rights education is required and that a human rights of the other requires compassionate and patient listening to the voice of the suffering other. He does not discuss Douzinas' view of human rights or Douzinas' perspective on Levinas' ethics of alterity. Adopting a more positive and optimistic view of human rights law than Douzinas, he agrees that human rights must be constantly deconstructed in the tradition of postmodernism, but notes that thus far, despite being exposed to Levinas' ethics of alterity, postmodern thought has been unable to provide a concrete, universal principle for the just and ethical operation of human rights. Simmons develops the idea of the Saturated Marginalised Other as an exit route to current human rights limitations and conceptual difficulties in postmodern reasoning.

In his endeavour to develop human rights, Simmons is attracted to Levinas' ethics of alterity because it provides a non-abstract ethical theory from which a

⁴³⁰ Simmons (2014) 226.

⁴³¹ Simmons (2014) 5-6.

political principle for heteronomy (and the subsequent inclusion of Marginalised Others) can be developed. Simmons retains the basis of Levinas' ethics of alterity but explores the limitations of the original ethical theory in the context of a specific application of additional philosophy, political theory and literature in phenomenology. He firstly explains how human rights law, theory and practice marginalise and silence voiceless others before applying his principle to real human rights situations. In so doing, he illustrates the power of the concept of the Saturated Marginalised Other as a concrete universal principle to reinvigorate human rights and a transformational postmodern principle of justice.

Simmons believes that homogeneity, as the original violence in human rights, 'cauterises' the Marginalised Other.⁴³² By this, he means that human rights are an institution which firstly, declares the other to be rightless; secondly, dismisses the voice of the other; and finally, powerfully portrays the voice of the other as unimportant, facilitating a functional dumbing-down of feelings associated with compassion for the other's suffering.

Whilst Simmons accepts that the transcendental experience of the face-to-face relation is capable of grounding the call to question human rights and all typologies, he points out that Levinas' original ethics are limited and constrained by a number of issues. Firstly, Simmons is critical of Levinas' theological dimension.⁴³³ He points out that where deconstruction of human rights and all typologies relies on an

⁴³² Simmons (2014) 10-11.

⁴³³ Simmons notes that other authors acknowledge this problem too, citing Badiou and Fraser. Simon Critchley can also be added to the list of scholars who discuss 'the ethical subject', but who do so preferring to remove a theological dimension.

ethics of alterity that is created and sustained by God,⁴³⁴ God cannot be removed from ethics and, as such, cannot form the basis of either human rights or ethics, nor have any positive impact on the development of ethical politics. Secondly, Simmons draws attention to the equality of faces in Levinas' theory. For Levinas, all faces generate an ethical response regardless of whose they are: the face of a cold-blooded executioner and that of a homeless abused child equally call the observer to their duty to welcome and to protect. This is particularly limiting for Simmons because his objective is to secure an ethical principle to enhance the potential for emancipation of Marginalised Others. Simmons, therefore, adopts a phenomenological approach which allows him to establish a hierarchy of responses enabled by the face-to-face relation.

Through the application of Dussel's philosophy of otherness and the individualising phenomenology of Marion, Simmons is able to create a hierarchy of ethical responses by resituating the point at which the ethical transformation takes place. The phenomenology that appeals to Simmons locates and explains the ethical transformation more precisely in the observer, rather than as an inevitable, inescapable duty resulting from becoming a passive hostage through the Levinasian encounter with the face of the other. Whilst the face of the other still grounds the ethical transformation, the power producing the ethical response is subsequent to the overwhelmed ego of the observer:

The Saturated Other bedazzles the ego and

⁴³⁴ Levinas was very clear about the need to avoid locating divinity in the ethical relation: '[T]he passage from the other to divinity is a second step, and one must be careful to avoid stumbling by taking too large a step'. See Emmanuel Levinas, 'Ideology and Idealism' in *Hand* (1989a) 246.

overwhelms the ontological categories that support it...The Other cannot be comprehended by the ego's gaze, and when he or she draws near from outside the system, the ego's entire frame of reference is shaken because such epiphanies "shake the very pillars of the system that exploits them".⁴³⁵

The experience of the face of the other remains solid, as in Levinas' theory, and requires a positive response from the ego – but rather than being a result of an unknown hyper-presence related to theology, it is caused by 'provocation from the person behind the ontological categories'. 'The approach of the marginalised Other incessantly calls the *ego and* its system into question and thus calls the ego to a deeper or more saturated responsibility'.⁴³⁶ For Simmons, the Saturated Other presents the ego with information, more information and potentially a super-abundance of information, and calls for an affirmative duty to distinguish between faces. It is upon this principle that he believes the injustice of current hegemonic human rights discourse can be shattered, giving way to a focus on bringing the marginalised to the centre.

The deeply Saturated Other is the Marginalised Other who emerges from outside the hegemonic system, and it is this other to whom human rights owes the highest duty. This other – who transcends the system, its ontology and all typologies – must be given priority, because welcoming the other means not imposing existing, oppressive categories. Oppressed others ought not be 'cauterised': branded,

⁴³⁵ Simmons (2014) 115.

⁴³⁶ Simmons (2014) 115.

dismissed, ignored, silenced or required either to speak the language of the system – a system that by its nature excludes those who speak differently or, by extension, those who cannot speak the language of the system at all. Rather, a reversal of such cauterisation is the acknowledgement that the highest responsibility is owed to the Saturated Marginalised Other because there is clear transcendence of all categories and clear questions about the system.

What Simmons wants is transcendence by those who suffer the most in the totality of the current exploitative system. He wants the other who saturates the ego of the subject with expressive presence to shake the foundations of human rights. Simmons recognises that the phenomenology of the Saturated Other must be universalised for it to be applicable to human rights. He firmly believes that it is the catalyst for the development of a new system of law based on a concrete universal principle that begins from the voice of the other.

Simmons considers neither the exclusion of nonhumans in human rights nor the situation of vegans. Despite a thought-provoking consideration of the existence and operation of human rights, conducted in the tradition of deconstruction, nonhumans are typically ignored. As such, his thesis raises additional questions about the notion of saturation, the idea of the original violence of human rights, and who, in the idea of human rights, is cauterised, ignored and dismissed. Nonetheless, Simmons explains how human rights can be more responsive to suffering by explaining how otherness, as a workable principle of justice, can be implemented.

4.16 Analysis of protest scholarship

Protest scholarship rejects autonomous reason and focuses on the ethics of alterity as a compelling alternative philosophy for the ethical orientation of human rights. What is clear in the literature surveyed is the consensus that the ethical basis of human rights ought to emphasise the natural human predisposition to desire community, and it should recognise the significance of a cognitive and emotional interconnection with suffering others. Protest scholars believe that such a reorientation in the groundwork of human rights has significant potential. Baxi, particularly, notes the dynamic and evolving nature of human rights and the real possibility of such a transformation. Douzinas believes that a human rights of otherness is particularly important as a principle of justice for a critical postmodern era, and Simmons shows how the principle of otherness can work in practice to give a voice to seriously marginalised others.

Building upon the idea of an innate desire for community underpinned by an appreciation of universal, unique suffering, protest scholars have, thus, explained how suffering and the ethics of alterity can justify protective rights. This discourse is not, however, one that includes nonhumans or considers the intertwined community of human and nonhumans. Despite this, Douzinas explicitly remarks that the animal rights movement has a legitimate and valid contribution to make to debates about the ontological foundations of exclusive human rights.

What the protest school of human rights takes from Levinas is that suffering (and the human response to it) is a truism and that this is the non-abstract foundation of the ethics of alterity. A human rights which fails to accommodate this, as Douzinas argues, is denying humanity the opportunity to reach its full potential, because it creates the conditions in which egos become self-satisfying, atomistic and

ever more separated from their natural predisposition to live in community and extend compassion to others.

The philosophy of ethics that protest scholarship advances is, thus, a theory of ethical subjectivity in which humanity is predisposed to a motivational force in the face of suffering. That force is responsibility, and it is generated by innate compassion. In other words, to be human is to be responsible and compassionate. On this view, responsibility and compassion are synonymous with humanity. This is true, whichever phenomenological theory one accepts. If the motivational force that moves one towards responsibility for the other – to welcome, to care, to empathise with the other – resides in the phenomenological, external realm (as in Levinas' original ethics), one becomes compassionately engaged at the moment of the face-to-face relation. If, as preferred by Simmons, the motivational force resides within the ego but is facilitated subsequent to the overwhelming category-denying, typology-denying phenomenological experience, then one is also moved to compassionate action at the same relational moment. On the basis of this notion of ethical subjectivity for a system of fundamental rights of the other, the question of responsibility in the face of nonhuman animal suffering is relevant and important.

For the purposes of recognising the utility of protest scholarship for nonhuman others and veganism, it is not necessary to surmise the origin of the ethical force in metaphysical terms. As Simon Critchley notes, for the purposes of advancing a theory of ethical subjectivity, if the experience of a radical ethical demand is acknowledged and accepted, then it is not necessary to engage with the unknowability of that force.⁴³⁷

⁴³⁷ Simon Critchley, *Infinitely Demanding: Ethics of Commitment, Politics of Resistance* (Verso 2012) 55.

What is advanced in protest scholarship is that the radical demand of the other causes conscious awareness of, firstly, a perception of a concrete self (which can be named the ego), and an awareness of the concrete other (defined as that which cannot be known but which brings an infinite ethical demand which one is compelled to welcome). In this light, protest scholarship advances a theory of ethical subjectivity in which human beings are what Critchley regards as ‘hetero-affectively’⁴³⁸ constituted. The ethical subject exists as a split subject whose autonomy is always appropriated by the infinite demands of infinite others but who ‘is defined by commitment or fidelity to an unfulfillable demand, a demand that is internalized subjectively and which divides subjectivity’.⁴³⁹ For Critchley, this is the ‘experience of conscience’.⁴⁴⁰ In this context, protest scholarship, in its acknowledgement of hetero-affective demand and the overwhelming desire to meet this demand with care and responsibility, locates human conscience as central to the development of its ethics. Central to this consciousness are interconnected and intertwined individuals in community and the extension of compassionate responsibility for the suffering other. Though this discourse does not consider compassion and responsibility in the face of nonhuman suffering, it holds promise for their inclusion.

4.16.1 The significance of compassionate responsibility

A consciousness of compassion and responsibility in the face of the suffering is under-developed in protest scholarship. For Baxi, Douzinas and Simmons, it is both implicit and explicit that compassionate responsibility in the face of suffering is

⁴³⁸ Critchley (2012) 11.

⁴³⁹ Critchley (2012) 11.

⁴⁴⁰ Critchley (2012) 11.

related in important ways to the existence, origin and ethics of human rights.⁴⁴¹ Compassion, in relation to suffering, is a long-established principle of consideration in ethical discourse, recognised in the early writings of Jean-Jacques Rousseau⁴⁴² as the 'pure emotion of nature', and in various other works as characteristic of moral sense theory. In contemporary theory on human rights and justice, the concept of compassion has secured its own discursive niche as the politics of compassion,⁴⁴³ which 'links the universal and the particular in that it assumes a shared humanity of interconnected, vulnerable people and requires emotions and practical, particular responses to different expressions of vulnerability'.⁴⁴⁴

Whilst the concept of compassionate responsibility has for a long time been related to notions of justice,⁴⁴⁵ it also appears to suffer from an ambiguity which revolves around its related terms – sentiment, sympathy, pity and empathy – and their use by various authors to suit their purposes.⁴⁴⁶ Porter explains that the popular perception of compassion is a combination of feelings, empathy and co-suffering that espouses the capacity to feel and share suffering.⁴⁴⁷ Lynn Hunt uses 'empathy' to represent pro-active identification with others, preferring to avoid 'sympathy', which she feels often indicates pity, may imply condescension and may misrepresent true

⁴⁴¹ Costas Douzinas identifies historical compassion in the humanitarian movement. See Costas Douzinas, 'The Many Faces of Humanitarianism' (2007) 2, 1 *Parrhesia* <parrhesiajournal.org/parrhesia02/parrhesia02_douzinas.pdf> accessed 11 June 2014.

⁴⁴² Jean-Jacques Rousseau, *Discourse on Inequality* (1754) (G D H Cole tr) <<https://www.aub.edu.lb/fas/cvsp/Documents/DiscourseonInequality.pdf879500092.pdf>> accessed 11 June 2016.

⁴⁴³ Elisabeth Porter, 'Can Politics Practice Compassion' (2006) 21 (4) *Hypatia*, 97-123. See also Elisabeth Porter, *Peacebuilding: Women in International Perspective* (Oxon 2007) and Didier Fassin *Humanitarian Reason: A Moral History of the Present* (Rachel Gomme tr, University of California Press 2012).

⁴⁴⁴ Porter (2006) 99. For a theory of vulnerability as the grounds on which to explain and justify universal human rights, see Brian S Turner, *Vulnerability and Human Rights* (The Pennsylvania University Press 2006).

⁴⁴⁵ See, for example, Richard H Bell, *Simone Weil: The Way of Justice as Compassion* (Rowman & Littlefield Publishers 1998).

⁴⁴⁶ There is a body of human rights literature that examines ethics in human rights theory and promotes a sentimental education in human rights. The works of pragmatist Richard Rorty and Jose-Manuel Barreto may be of interest to some readers.

⁴⁴⁷ Porter (Oxon 2007) 101.

feelings of equality.⁴⁴⁸ For Sylvester, '[E]mpathy taps the ability and willingness to enter into the feeling or spirit of something and appreciate it fully in a subjectivity-moving way'.⁴⁴⁹

By anchoring compassionate responsibility as an innate feature of consciousness, protest scholarship advances a view in which suffering is acknowledged by the subject, who is then able to imagine suffering and what is being suffered and is motivated to action. This is particularly the intention of Simmons in the creation of a phenomenological hierarchy of human rights for the Saturated Marginalised Other. In this context, compassion 'helps us recognise our justice obligations to those most distant from us'.⁴⁵⁰ The limitation of Simmons for vegans is, of course, that nonhumans do not currently feature as beings in the category of those most distant from us. When considering compassion and those most distant, a significant point to be made from the position of Levinas' ethics of alterity is that the influence of the other over the subject is a priori and must not be dismissed or reduced by categories and themes created by human reason. Nonetheless, the ideas of Simmons are a strong example of the way in which protest scholarship has potential for the claims of vegans with regard to nonhuman marginalisation and suffering.

Levinas' ethics of alterity have, thus, not been extensively developed and applied in a critical human rights discourse of compassion in the face of suffering. As Richard A Cohen remarks, on the basis that Levinas' philosophy is a theory of human emancipation from an unethical totality of reason, his work 'demands nothing less

⁴⁴⁸ Lynn Hunt, *Inventing Human Rights* (Norton & Company 2007) 65.

⁴⁴⁹ Christine Sylvester, *Feminist International Relations: An Unfinished Journey* (Cambridge University Press 2002) 256.

⁴⁵⁰ Grace Clement, *Care Autonomy and Justice: Feminism and the Ethic of Care* (Westview Press 1996) 85.

than a fundamental reorientation of Western spirit – philosophy, logic, rhetoric, praxis, ontology, science, art, politics, religion – in the light of morality and justice’.⁴⁵¹ Levinas’ morality and justice involve a system of ethics in which one is for the other and in which others are defined as ‘incomparable ones’.⁴⁵² In this regard, the utility of Levinas’ thesis for an emancipatory rights enterprise can be considered further in terms of whether it can be developed to accommodate compassionate responsibility for suffering nonhumans.

The idea of responsibility in the face of difference has significant potential for a system of fundamental rights that can support the claims of vegans, because it offers the potential to extend the scope of responsibility to other-than-human vulnerability. Of significant appeal is, firstly, that Levinas’ ethics of alterity is a philosophy of ethical becoming in community. This is explained in terms of a pre-social, innate desire to compassionately welcome the unique other. Secondly, in Levinas’ ethics of alterity, there must be no reduction of the other. What Levinas means is that the subject must not impose the products of their reason upon the other. They must not develop, through rational activity, any oppressive themes and categories that would reduce the other. This principle has the potential to construct a positive approach to other-than-human life. A final point is that Levinas’ ethics of alterity do not begin from a point of suffering, sentience, vulnerability or precariousness. These are concepts that facilitate understanding of the demand created in the original ethical encounter. They are terms created subsequently through reason. The ethical obligation to the other is, thus, not dependent on

⁴⁵¹ Richard A Cohen, ‘Foreword’ in Emmanuel Levinas, *Otherwise than Being or Beyond Essence* (Alphonso Lingis tr, Duquesne University Press 1998/2011) xi.

⁴⁵² Emmanuel Levinas, *Otherwise Than Being or Beyond Essence* (Alphonso Lingis tr, Duquesne University Press 1998/2011) 16.

whether we grant sentiency or vulnerability, but is grounded by the voiceless saying of the being that expresses its presence and demands to be included in calculations of justice. It is an event and a responsibility that makes sense in the context of an innate universal human desire to live in non-violent community with others who also experience life in the world.

Taking into account the profound intertwined relationship of human and nonhuman beings, these principles have the potential to transcend the species boundary. They confirm that, in the context of a pre-social responsibility for the other, a constant and universal characteristic of humanity is the primacy of a compassionate welcome for others who are both vulnerable to mortality and who may be impacted further by the entry into and presence of the subject in their worlds – whether their suffering, sentience or precariousness is understood by the subject. This principle has the potential to ground broad rights for animals that would support the claims of vegans.

4.17 Conclusion

This chapter set out to ascertain whether human rights could be grounded in suffering. It has explained that Levinas' ethics of alterity ground the origin of human rights in the right to exist as a unique entity. This idea is then supported by a concept of innate, compassionate responsibility that is extended by the subject to the other. It has observed that the value of Levinas' thesis is that it challenges entrenched Western philosophy on the centrality of individual human autonomy and the ontological assumptions at the heart of human rights.⁴⁵³ It promotes the idea that the origin of basic rights is the observation that there are already others with whom I

⁴⁵³ For a well-regarded explanation of the dominant opposing narrative that centres on human reason and autonomous agency, see earlier, Griffin (2008/2013).

co-exist.

The chapter has explained that critical human rights scholars argue that the mission and target of human rights are to acknowledge community and respond to the human desire to care about the suffering of others. The chapter has identified that this discourse does not develop a discussion of nonhuman suffering or the moral standing of nonhuman others and that the exclusion of other animals from the debate remains unexplained. As such, the development of an ethics of human rights that recognises compassionate responsibility in the face of the other, the human desire to live in community, and the human desire to respond to the unique other's suffering require further examination.

In his introduction to *Totality and Infinity*, John Wild notes that Levinas' ideas about an alternative way of being were 'not yet fully explored'; an observation which encourages debate and developmental scholarship.⁴⁵⁴ In this context, the ethics of alterity – as a philosophy that grounds moral standing on a non-abstract, concrete principle of intertwined, relational experiences – underpin an important debate regarding to whom we owe ethical duties.⁴⁵⁵ This is a particularly pertinent point given the exclusion of nonhumans from a critical rights discourse that intends to honour the weak, marginalised, suffering other. As Deborah Bird Rose notes, '[t]o ask to whom, or to what, does one come face-to-face is to ask to whom or to what am I responsible? This is the question of our time'.⁴⁵⁶

Given that the ethics of alterity recognise the primacy of the unique suffering other, and that critical human rights discourse utilises this philosophy to consider the

⁴⁵⁴ John Wild, 'Introduction' in Levinas, (1969/2000) 15.

⁴⁵⁵ David Clark, 'On Being the Last Kantian in Nazi Germany: Dwelling with Animals After Levinas' in Jennifer Ham and Matthew Senior (eds), *Animal Acts: Configuring the Human in Western History* (Routledge 1997) 168. Levinas' work insistently raises this fundamental question.

⁴⁵⁶ Deborah Bird Rose, *Wild Dog Dreaming: Love and Extinction* (University of Virginia Press 2011) 13.

ethics of human rights, the next chapter asks whether the ethics of alterity concern nonhuman animals. This examination will determine whether Levinas' ethics of alterity can inspire and accommodate fundamental rights for nonhumans. If so, the fundamental rights of nonhuman animals will then provide the grounds for the moral imperative to feature in litigation of cases concerning the presentation of ethical responsibility to nonhuman suffering.

Chapter 5

Do the ethics of alterity concern nonhuman animals?

Introduction

Despite Levinas' claims that the other is 'absolutely foreign', 'refractory to every typology, to every genus, to every characterology, to every classification...', it is significant that the face of the other is explicitly that of man. Levinas confirms that '... it is only man who could be absolutely foreign to me...'.⁴⁵⁷ This suggests that nonhuman others do not possess the required face and that their exclusion from the protective rights grounded by the ethics of alterity can be justified.

This chapter thus examines how Levinas explains the grounds on which one is in possession of face, and explores other literature that analyses and comments on Levinas' philosophy. The primary objectives are to determine whether it can be argued that nonhumans are in possession of Levinasian face and whether they present their Being to humans, elicit responsibility and are owed ethical duties. This is necessary in order to determine whether Levinas' ethics of alterity include nonhuman others and, thus, have utility for the claims of vegans in human rights.

The following section will give some background to existing literature before examining in some detail Levinas' thoughts about nonhuman animals. The chapter will then discuss the work of other authors who have engaged with the debate on who or what can possess face and its relationship to ethical duty.

5.1 Background

A review of the literature on Levinas' ethics of alterity and nonhuman animals

⁴⁵⁷ Levinas (1969/2000) 73.

reveals significant academic interest. Over the last few decades, academics working in the fields of philosophy, animal rights and environmental ethics have contributed to the development of a substantial discourse that has created areas of research revolving around different strands of Levinas' thinking. Questions raised include the nature of ethics; the moral status of anything other than human; who, or what, generates ethical responsibility; how Levinas' account of responsibility might influence environmental thought and politics; the importance of human language to his ethics; and his general notion of 'man' and 'nature' and how it corresponds to and differs from existing philosophical discourse.

Scholars ascertain the value of Levinas' work in an attempt to explain the conditions under which nonhumans can be declared moral subjects.⁴⁵⁸ Within this body of literature, there is no reference to the relationship of the moral standing of nonhumans to that of humans in the context of explaining fundamental, natural rights; nor is there a critique of current human rights and the claims of vegans that present the moral standing of nonhuman others. There is, therefore, a need to examine whether Levinas' ethics do indeed present an intersection of human and nonhuman moral standing for the purposes of assessing the scope of fundamental rights that recognise suffering others.

⁴⁵⁸ David Wood argues that Levinas' philosophy is a powerful and refreshing development in ethical subjectivity. It comes to the 'scene as rain to the cracked earth of a parched landscape'. David Wood, 'Introduction' in R Bernasconi and D Wood (eds), *The Provocation of Levinas: Rethinking the Other* (Routledge 2014/1988) 3. David Wood questions Levinas' retention of anthropocentric tendencies in posthuman philosophy: David Wood, 'Comment ne pas manger—Deconstruction and Humanism' in H Peter Steeves (ed), *Animal Others: On Ethics, Ontology and Animal Life* (State University of New York Press 1999). Derrida questions Levinas' retention of humanism by excluding animals: Jacques Derrida, 'Eating well', or the calculation of the subject: An interview with Jacques Derrida' in E Cadava, P Connor and J-L Nancy (eds), *Who Comes After the Subject* (Routledge 1991). Llewelyn examines the significance of human language for ethical subjectivity: John Llewelyn, 'Am I Obsessed By Bobby? (Humanism of the Other Animal)' in Robert Bernasconi and Simon Critchley (eds), *Re-reading Levinas* (Indiana University Press 1991). Edward Casey and Alphonso Lingis examine the face in relation to the environment in the context of moral imperative and 'practical necessity': Edward Casey, 'Taking a Glance at the Environmenting World' in D J Martino (ed), *Confluences: Phenomenology and Postmodernity, Environment, Race, Gender* (Duquesne University Silverman Phenomenology Centre 2000) and Alphonso Lingis, 'Practical Necessity' (1998) 20/21(2/1) Graduate Faculty Philosophy Journal 3.

An apparent consensus among early scholars of Levinas is that, though the compulsion to welcome the unique, singular, vulnerable other in Levinas' ethics of alterity represents infinite responsibility, frees the subject from the domination of unethical totality and provides the rupture necessary for humanity to move to its ethical destiny, it does not apply to nonhuman, unique, singular others. Though the face is a living presence, it speaks and is already discourse, nonhuman others appear to be denied the expressive, ego-suspending presence that is the face of the other.⁴⁵⁹ No infinite presence is seen to be expressed through an encounter with their being, and they cannot, thus, generate an ethical relationship. For Levinas, the face of the nonhuman is not a face 'whose exceptional presence is inscribed in the ethical impossibility of killing him...'.⁴⁶⁰ Early scholars of Levinas, thus, concluded that he ascribed to nonhumans a status of 'things' that are brought into presence only by humans.

The identification of a profound limitation in Levinas' thesis concerns his idea that animals exist as things: human beings are unknowable but everything else is knowable as things. Things are not enigmas; they do not express a presence and they have no face. They do not, therefore, create ethical responsibility and are owed no ethical duties.

A consequence of this interpretation is that a direct application of Levinas' ethics of alterity is not relevant or helpful for the nonhuman environment, nor for a philosophy of ethics that necessarily needs to disrupt humanism and avoid dogmatic

⁴⁵⁹ Levinas (1969/2000) 66.

⁴⁶⁰ Levinas (1969/2000) 87.

anthropocentrism.⁴⁶¹ Nevertheless, through deeper contemporary analysis and interpretation, Levinas' philosophy is also considered 'one of the best equipped'⁴⁶² to oppose the entrenched, dismissed status of nonhumans, to ground the case for moral inclusion and to articulate the undeniable, compassionate event that takes place in the presence of a suffering nonhuman other.⁴⁶³

In addition to literature assessing Levinas' original philosophy on ethical responsibility, there are two publications that stand out to scholars interested in the moral standing of nonhumans. One is a short essay which Levinas wrote in 1975, titled *The Name of a Dog, or Natural Rights*.⁴⁶⁴ This essay concerns Levinas' reflections on his encounter with a war camp dog during his incarceration as a prisoner of war in Nazi Germany. The second, *The Paradox of Morality*, is a publicised transcript of an interview with Levinas that took place in 1986 at Warwick University in the UK.⁴⁶⁵ In this interview, Levinas is asked specifically whether nonhumans are in possession of face. It was a question to which Levinas could not respond with a categorical answer. These two publications reveal areas of tension in Levinas' original thesis on ethics that require analysis and evaluation. The next section will begin by outlining Levinas' explanation of the difference between unknowable human beings and knowable things, before moving on to examine these two significant publications.

⁴⁶¹ Calarco (2008) insists that philosophy today is faced by the animal and that non-anthropocentric philosophy is the way forward.

⁴⁶² Peter Atterton, 'Levinas and our Moral Responsibility to Other Animals' (2011) 54(6) *Inquiry* 633.

⁴⁶³ Jacques Derrida claims that it is undeniable that a suffering nonhuman generates an ethical demand: Jacques Derrida, *The Animal That Therefore I Am* (David Wills tr, Marie Louise Mallet ed, Fordham University Press 2008) 28.

⁴⁶⁴ Levinas (1963/1990) 151.

⁴⁶⁵ Wright, Hughes and Ainley (1988).

5.2 Things do not have face

Levinas explains his rationale for the separation of man and things in *Totality and Infinity*.⁴⁶⁶ Things can be known because they do not present the idea of infinity. What Levinas means is that knowledge of things can be held in the consciousness as absolute and finite. Things are given meaning to humanity only in the context of their construction and function. They are constructed as meaningful, but they do not produce an ethical response. Things do not possess the required transformative power that ruptures the spontaneous will or autonomy of the individual. Levinas explains these relationships as ontological.⁴⁶⁷

The difference between being in a relationship with the other and being in a relationship with a thing is that the other cannot be reduced to understanding; the relationship with the other is, therefore, a pre-ontological relationship – one which Levinas refers to as the ethical event.⁴⁶⁸ Levinas believes that humans have transferred the meaning of suffering onto animals through the creation and event of human ethics.

This idea is problematic to a consideration of whether nonhumans are in possession of face. Levinas appears to overlook the idea that other animals may be more than things, explaining that nonhuman animals are things which are brought into meaning in current totality but which essentially have no value in themselves. Prompted to discuss the situation of other species in the interview of 1986, Levinas explains that the being of other animals is to struggle for survival in a Darwinian world without ethics. Levinas believes that animals function with total autonomy in

⁴⁶⁶ Levinas (1969/2000) 74.

⁴⁶⁷ Emmanuel Levinas, 'Is ontology fundamental?' in Adriaan Theodoor Peperzak, Simon Critchley and Robert Bernasconi (eds), *Emmanuel Levinas: Basic Philosophical Writings* (Peter Atterton tr, Indiana University Press 1951/1996) 10.

⁴⁶⁸ Levinas defines this relationship in theological terms: 'A relationship of prayer which can be termed religion'. Levinas (1951) 8.

the natural world because they have to survive: '[i]t is a question of might'.⁴⁶⁹ In this negative world, '[a]n animal's need are inseparable from struggle and fear...'.⁴⁷⁰ There can, therefore, be no asymmetrical duty to others. The natural world is the enemy against which the self must exercise autonomous might for its own protection. The possession of face in this world could only disadvantage animals as they would be obliged to consider others before themselves. In the natural order, the self exists for itself, not for the other.

It is on this understanding of the natural world of animals and of the world of humans that Levinas explains the emergence of ethics and ethical human beings. Humans have created ethics in their break from animality through an encounter with the face of the other. This elevates the subject beyond the simple being of species in nature. It is an event through which the human animal is released from the wild; it becomes ethical and capable of developing a dutiful, ethical humanity.

That the face is 'exceptional presence',⁴⁷¹ already discourse and expresses the first word and the commandment 'thou shalt not kill'⁴⁷² is not a relevant element of an ethical subjectivity that speaks to responsibility to nonhumans. Though discourse is the 'experience of something absolutely foreign', Levinas insists that 'it is only man who could be absolutely foreign to me'.⁴⁷³ In this light, nonhumans are things because things 'exist for themselves'.⁴⁷⁴

The expressive power of the face in Levinas' thesis is, thus, not the face of a nonhuman. Levinas maintains a strict but inadequately explained boundary between

⁴⁶⁹ Wright, Hughes and Ainley (1988) 172.

⁴⁷⁰ Levinas (1969/2000) 116.

⁴⁷¹ Levinas (1969/2000) 87.

⁴⁷² Emmanuel Levinas, *Ethics and Infinity: Conversations with Philippe Nemo* (Richard A Cohen tr, Duquesne University Press (1985) 89.

⁴⁷³ Levinas (1969/2000) 73.

⁴⁷⁴ Levinas (1969/2000) 74.

the autonomy of animals and the heteronomy of humans. This stance remains constant in Levinas' original and later writing, but comes under intense scrutiny following his recollection of a personal encounter with a dog. In this encounter, Levinas appears to acknowledge responsibility through the affective presence of nonhumans.

5.3 Levinas responds to the face of the nonhuman other

Levinas' commitment to distinguishing between responsibility to humans and to things in his original philosophy becomes intriguing in light of his later essay *The Name of a Dog, or Natural Rights*.⁴⁷⁵ In this essay, Levinas recounts his experiences with a dog named Bobby, which occurred while he was interned by the Germans in a World War Two prisoner of war camp. This essay has generated significant interest and is widely discussed in current literature. Though it appears an ambiguous, unclear account of Levinas' intentions, it is claimed that the 'chief dividing line between the human and the animal threatens to vanish' in Levinas' own ethical discourse as a result.⁴⁷⁶

In this essay, Levinas is thinking about his experiences as a Jew in a Nazi-controlled war camp. His thinking combines the ideas of strong and weak species, the horrors of nature and the horrors of war. He sees 'devouring within species' as a sight which represents the 'horrors of war'. He comments that such barbarism of nature is represented by the 'plunge of your fork into your roast' to the extent that one may wish to limit 'the butchery that every day claims our mouths' and become vegetarian.⁴⁷⁷ Levinas states that the purpose of this essay is to reflect on the dog,

⁴⁷⁵ Emmanuel Levinas, *Difficult Freedom: Essays on Judaism* (The John Hopkins University Press 1990).

⁴⁷⁶ Calarco (2008) 57.

⁴⁷⁷ Levinas (1990) 151.

Bobby. For David L Clark⁴⁷⁸ and John Llewelyn,⁴⁷⁹ the combinations of Levinas' reflections represent an 'analogy between the unspeakable human Holocaust and the unspoken animal one'.⁴⁸⁰

Clark argues that Levinas comes close to realising mutual oppression. He raises the possibility that Levinas brings into close proximity the suggestion of two forms of prejudice – one against the Jews and one against animals – and that Levinas may even identify that they 'are in some way comparable'.⁴⁸¹ At the same moment that Levinas considers prejudice, he reflects on his fond memories of Bobby, the stray war camp dog.

Levinas explains that he was a soldier in the French army, captured by the Germans in World War Two and working in a forest as a prisoner of war. He expresses his feelings when passers-by 'stripped us of our human skin. We were subhuman, a gang of apes'.⁴⁸² Levinas explains that the prisoners were 'thinking creatures', but that they 'were no longer part of the world'. They were 'beings entrapped in their species; despite all their vocabulary, beings without language'. They wondered: '[h]ow can we deliver a message about our humanity which, from behind the bars of quotation marks, will come across as anything other than monkey talk?'.⁴⁸³ He then goes on to describe his encounter with Bobby. His description and choice of vocabulary give the reader the impression that he acknowledges the signification of the dog prior to the application of reason:

⁴⁷⁸ Clark (1997).

⁴⁷⁹ John Llewelyn, 'Am I Obsessed By Bobby? (Humanism of the Other Animal)' in Robert Bernasconi and Simon Critchley (eds), *Re-reading Levinas* (Indiana University Press 1991).

⁴⁸⁰ Llewelyn (1991) 235.

⁴⁸¹ Clark (1997) 45.

⁴⁸² Levinas (1990) 153.

⁴⁸³ Levinas (1990) 153.

And then, about halfway through our long captivity, for a few short weeks, before the sentinels chased him away, a wandering dog entered our lives. One day he came to meet this rabble as we returned under guard from work. He survived in some wild patch in the region of the camp. But we called him Bobby, an exotic name, as one does with a cherished dog. He would appear at morning assembly and was waiting for us as we returned, jumping up and down and barking in delight. For him, there was no doubt that we were men.⁴⁸⁴

In this passage, Levinas remarks that the dog 'entered' the lives of the prisoners. That he wanted to 'meet' them, that they gave him a name and that he waited to greet them, expressing his joy. These elements of Levinas' reflections are inconsistent with the idea that animals could be things that do not ask for a response.

Much attention has been given to Levinas' essay about Bobby. It expresses the way Levinas felt about being degraded as less-than-human by the Nazis. Of relevance to critics is the way Levinas' thought is influenced by unacknowledged, traditional assumptions about nonhuman life, and the lack of logic in his later thinking.

5.4 Levinas' denial of a nonhuman face

Levinas' essay arguably represents anthropocentric dominance. The essay

⁴⁸⁴ Levinas (1990) 153.

was a reflection written thirty years after the event, and many years after Levinas' development of the ethics of alterity. Yet, Levinas insists on drawing an arbitrary distinction between himself and Bobby, despite acknowledging the unconditional, voluntary welcome of the nonhuman other and his personal extension of warmth whereby he proceeds to name 'a cherished dog'.⁴⁸⁵

Rather than consider any notion of mutual, intertwined oppression, or consider the ways in which Bobby may be expressing the presence that says 'it is me',⁴⁸⁶ Levinas, without further thought, displays a conventional, anthropocentric attitude in his dismissal of Bobby's welcome.

The dog's response to the prisoners was, for Levinas, evidence that the Jews were animalised and trapped as a 'species' in a particularly abhorrent ideology. Reduced to a perceived condition of animality by the German soldiers, Levinas looked to the dog for affirmation that he was a subject (a man) of the human community. The dog, through his greeting, did not distinguish between soldiers and prisoners; which, for Levinas, affirmed his status as a man. It was a greeting that reminded him that he was a member of the human race. Bobby displayed indifference in his welcome to indistinguishable human beings, despite the Nazi hierarchy of valid and invalid others.

What Levinas does not do is analyse the way in which the question 'to whom am I responsible' is raised in mutual oppressions. As Clark points out, '[t]he unstated analogy between the murder of Jews and the killing of animals in effect creates a rhetorical neighbourhood in which animals and humans dwell and summon each

⁴⁸⁵ Levinas (1990) 153.

⁴⁸⁶ For an extended discussion about the meaning of 'the saying' 'here I am' or 'it is me', see Emmanuel Levinas, *Otherwise Than Being or Beyond Essence* (Alphonso Lingis trs, Duquesne University Press 1998/2011). For a specific analysis of language and the question of whether the ethics of alterity concern animals, see Atterton (2011).

other into responsibility'.⁴⁸⁷ Though Levinas denies Bobby a status of legitimate otherness, he, nonetheless, clearly believes in the response-enabling, expressive presence of nonhumans and that they communicate their Being.

Clark provides a thorough, in-depth discussion and analysis of Levinas' short essay. He claims that 'Levinas's experience of Bobby is informed by conventional assumptions about animality that make it impossible for him straightforwardly to attribute dutifulness to a creature that is not human'. He urges that the dog is an 'enigma' for Levinas that presents an indeterminacy of ontological and moral status. As such, Bobby 'triggers Levinas's most dogmatic claims about nonhuman life and tests the limits of their coherence'.⁴⁸⁸

5.5 Levinas' incomplete philosophy

Clark thus maintains that Levinas' essay about Bobby essentially animalises animals. The essay is profoundly '[I]aden with animalistic rhetoric'.⁴⁸⁹ In – perhaps inadvertent – traditional, anthropocentric, exceptionalist style, Levinas reconfigures the animal to configure the human. Clark also believes that if Bobby spoke for the other without face, then it would also mean that Levinas regards other species as having some kind of transcendence.⁴⁹⁰ Further, if such speaking is possible and Bobby, without face, expresses presence, then Levinas' ethics of alterity – in which unique, singular others are owed responsibilities and duties – form the foundation for the acknowledgement that encounters with other beings are indeed ethical encounters.⁴⁹¹

⁴⁸⁷ Clark (1997) 54.

⁴⁸⁸ Clark (1997) 1.

⁴⁸⁹ Clark (1997) 42.

⁴⁹⁰ Bobby can be observed to suspend the autonomy of Levinas.

⁴⁹¹ Ralph Acampora is in agreement with Clark's assessment that Levinas' ambivalent anthropocentrism requires the development of ethics that goes 'past Levinas to pursue the neighbourly status of nonhuman animals to

In the interview at Warwick University in 1986, the integrity of Levinas' philosophy is directly challenged. When prompted to consider the possibility that nonhuman (as well as human) beings may express the ethics-inducing presence, Levinas himself alludes to the possibility that his philosophy is essentially incomplete. The question posed was: 'But is there something distinctive about the human face which, for example, sets it apart from that of an animal?'. Levinas replies:

One cannot entirely refuse the face of an animal. It is via the face that one understands, for example, a dog. Yet the priority here is not found in the animal, but in the human face. We understand the animal, the face of an animal, in accordance with *Dasein*. The phenomenon of the face is not in its purest form in the dog. In the dog, in the animal, there are other phenomena. For example, the force of nature is pure vitality. It is more this which characterizes the dog. But it also has a face.⁴⁹²

In response to another question about whether a nonhuman animal is the other who will be welcomed, Levinas replies:

I cannot say at what moment you have the right to be called face. The human face is completely different and only

broaden our corporal attention (beyond the face as such) – so as to become aware of *whole-body* encounters and their ethical significance'. Ralph R Acampora, *Corporal Compassion: Animal Ethics and Philosophy of Body* (University of Pittsburgh Press 2006) 88.

⁴⁹² Wright, Hughes and Ainley (1988) 169. In this response, Levinas uses Heidegger's term *Daesin* to mean simply Being. Levinas' ethics of alterity are a recognition of a break with this natural Being.

afterwards do we discover the face of an animal. I don't know if a snake has a face. I can't answer that question. A more specific analysis is needed.⁴⁹³

Levinas' concept of face is, thus, regarded as ambiguous, unclear and confused. Despite representing a deeply committed approach to developing a philosophy of ethics which addresses vulnerability, scholars have identified inconsistencies in Levinas' logic. In this confusion, conclusions cannot be drawn on whether Levinas recognised that vulnerable, mortal, suffering, nonhuman others experienced an 'inner life'⁴⁹⁴ that 'expresses itself'⁴⁹⁵ in a request for an ethical response.

Scholars thus conclude that Levinas' thesis is unfinished, incomplete and did not consider whether the Levinasian other can be nonhuman.

On this view, Levinas' restrictive ethics are controversial because it is clear, on an everyday common sense level, that people (generally) care and limit, as far as possible, any potential harm to nonhuman others and (to some extent) the natural environment by deploying a pro-active, conscious effort to limit the spontaneous, unrestricted ego. As such, and accepting an element of Levinasian phenomenology,⁴⁹⁶ the snake does indeed possess the Levinasian face because it can be argued to generate the ethical responsibility required that limits the pursuits of the ego.

⁴⁹³ Wright, Hughes and Ainley (1988) 172.

⁴⁹⁴ Levinas (1969/2000): the inner life is indispensable to Being (240) in the separation of the Same (54).

⁴⁹⁵ Levinas (1969/2000) 51.

⁴⁹⁶ I use the term loosely, recognising that the welcome of the face cannot be understood in the traditional sense of phenomenology as a philosophical method: John Wild (2000).

5.6 Inconsistencies in Levinas' logic

On a very general level, it can safely be assumed that a consensus view would be that the snake asks for a response and ought not to be harmed.⁴⁹⁷ Further, the idea that a dog has some sort of 'secondary' face but that a more specific analysis is required to determine whether the snake has face would seem to indicate a, perhaps, inadvertent and unaddressed hierarchy of life forms and Being within Levinas' thought,⁴⁹⁸ betraying the idea of a universal expressive 'presentation which consists in saying 'It's me'...'.⁴⁹⁹

Peter Atterton emphasises the strength of evidence found in Levinas' work for the conclusion that the mere presence of the unique other is revealed through the silent representation of the face. In his view, Levinas' response to Bobby was thought and language that 'presupposes the originality of the face...'.⁵⁰⁰ This, precisely, he argues, is the instrumental foundation of Levinasian ethics. Responsibility for the other is at the level of revealed presence.⁵⁰¹ Atterton argues that:

Levinas's own arguments concerning the otherness of the

⁴⁹⁷ Animal rights activist and philosopher Brian Luke believes that it is innate to human Being to care for nonhuman animals. It is 'the normal state of humans generally'. See Brian Luke, 'Justice, Caring, and Animal Liberation' in Josephine Donovan and Carol Adams (eds), *The Feminist Care Tradition in Animal Ethics* (Continuum Press 1996) Chapter 5, 86. Similarly, Gary Francione argues that no one thinks of animals as things: Gary Francione, 'Animal Welfare and the Moral Value of Nonhuman Animals' in E Anderson, A Bjork, K Jennbert and A-S Lonngren (eds), *Exploring the Animal Turn: Human-Animal Relations in Science, Society and Culture* (Pufendorf Institute: Lund 2014).

⁴⁹⁸ Calarco also discusses this briefly: Matthew Calarco 'Deconstruction is Not Vegetarianism: Humanism, Subjectivity, and Animal Ethics' (2004) 37 *Continental Philosophy Review* 175.

⁴⁹⁹ Levinas (1969/2000) 296. David Wood is also critical of Levinas for developing a philosophy of absolute singularity, yet judging nonhumans by human standards when it comes to representing Being. See David Wood, 'Comment ne pas manger—Deconstruction and Humanism' in H Peter Steeves (ed), *Animal Others: On Ethics, Ontology and Animal Life* (State University of New York Press 1999) 19.

⁵⁰⁰ Peter Atterton, 'The Talking Cure: The Ethics of Psychoanalysis' in Peter Atterton and Matthew Calarco (eds), *Radicalizing Levinas* (State University of New York Press 2010) 188, (quoting Levinas (1969/2000) 202).

⁵⁰¹ For a similar discussion on this issue, see also B Plant, 'Welcoming Dogs: Levinas and the Animal Question' (2011) 27(1) *Philosophy and Social Criticism* 49.

Other militates against interpreting ethics exclusively in terms of human interests and values, and, furthermore, that Levinas's phenomenology of the face applies to all beings that can suffer and are capable of expressing that suffering to me.

Consequently, where a nonhuman being's expression is affective, 'there is no justification for refusing to extend it moral consideration'.⁵⁰²

Given that Levinas' philosophy is written from a theological perspective and presents (what he believes to be) the destiny of humanity, it is perhaps unsurprising that he establishes human supremacy and hierarchy of being through a fusion of ethics with his theological values. His notion of otherness, from this perspective, is very restrictive. It is not certain, however, that a theological account of ethics must necessarily adhere to an anthropocentric hierarchy or exclude nonhumans. This is highlighted by Lucy Larkin's consideration of theology and otherness.

For Larkin, otherness is the context of relationships in a world where 'God, humanity and nature are inextricably intertwined and interconnected'.⁵⁰³ Larkin argues that in the interconnected natural world, the face of the singular, unique other is a face representing God, and that such facing is not limited by human supremacy and hierarchy of being. When one faces nature, one faces God compassionately in a web of interconnected being. For Larkin, this theologically based facing requires nothing less than an acknowledgement that even in God's world, nonhumans possess face.

⁵⁰² Atterton (2011) 633.

⁵⁰³ Lucy Larkin, 'Turning face-to-face with Limobius Mixtus' (2002) 7(1) *Journal for the Study of Religion Nature and Culture, Ecotheology* 30, 31.

Larkin thus retains a notion of God but rejects supremacy and hierarchy. In so doing, she interprets Levinas as the basis for a compassionate, ecotheological perspective and for a claim that loss of biodiversity is actually a diminishment of God.

Levinas' humanism of the other, which explains the 'disruption of egoism, of a life that centres on the self...'⁵⁰⁴ does not adequately explain why it is that nonhumans are not in possession of face. For critic Peter Atterton, the precise basis of whose face has priority, what constitutes a pure face and the characteristics of being in possession of face are not made clear by Levinas. He consequently argues that Levinas' remarks do not constitute the last word on whether nonhuman beings are owed the same moral consideration as human beings.

Atterton maintains that Levinas' theory is an insufficient basis upon which to withhold moral consideration from other beings, because compassion and consideration are secondary to the original encounter in which a subject acknowledges the presence of the others who seek a response. To apprehend, observe, encounter, to consider at all, or to extend a thought to a nonhuman means that the subject-hostage ethical encounter has already taken place. On this view, Atterton notes the limits of an ethics of alterity that is grounded by theological influences.

For Atterton, Levinas' hierarchy of Being and apparent difficulty in assigning a universal moral duty to all expressive life is a denial of the presence of face. This dilutes the ethical response the encounter requires. Thus, Levinas is accused of a form of anthropocentric, verbal violence against those (nonhumans) who reveal their living presence. On this point, Atterton insists that Levinas' ethics would be better

⁵⁰⁴ William Edelglass, James Hatley and Christian Diehm (eds), *Facing Nature: Levinas and Environmental Thought* (Duquesne University Press 2012) 5.

developed in isolation from dogmatic, theological, anthropocentric theorising.⁵⁰⁵ In the absence of this, Levinas' perspective can only result in the construction and maintenance of powerful, unethical, essentialist views, which Levinas already acknowledges as existing in the unethical totality of which he is critical. Derrida takes a similar view, claiming that in denying nonhumans face, Levinas puts the animal 'outside the ethical circuit',⁵⁰⁶ which is surprising:

... coming from a thinking that is so 'obsessed' (I am purposefully using Levinas's word), so preoccupied by an obsession with the other and with his infinite alterity. If I am responsible for the other, and before the other, and in place of the other, on behalf of the other, isn't the animal more other still, more radically other, if I might put it that way, than the other in whom I recognize my brother, than the other in whom I identify my fellow or my neighbour? If I have a duty [*devoir*] – something owed before any debt, before any right – toward the other, wouldn't it then also be toward the animal, which is still more other than the other human, my brother or my neighbour?⁵⁰⁷

Perhaps in the context of Levinas' dire circumstances, it is unsurprising that, upon his encounter with Bobby, he may have wished to avoid theorising about the

⁵⁰⁵ Atterton (2011).

⁵⁰⁶ Derrida (2008) 106.

⁵⁰⁷ Derrida (2008) 107.

possibility of a continuum of life.⁵⁰⁸ To have done this, and potentially acknowledge the limitations of his own thesis, may have revealed an unwelcome and uncomfortable logic in Nazi ideology: tying a knot in the Möbius strip⁵⁰⁹ of life is the 'greatest force of history and the inspiration for systematic violence'.⁵¹⁰ Nevertheless, the commandment 'thou shalt not kill' can be interpreted as 'thou shalt not put to death or thou shalt not take the life from that which lives and breathes'. If Levinas' ethics take their impetus from such a commandment, then, surely, as Donna Haraway remarks, '[T]hou shalt not make killable'⁵¹¹ is a reinterpretation fundamental to the debate of who possesses face and ethical responsibility. As such, the concept warrants consideration within a much broader appreciation of the way a living being expresses its presence than Levinas allows. An important critic of Levinas in this regard is Jacques Derrida, who applies a deconstructionist approach to Levinas' ethics of alterity to explain ethical responsibility to nonhumans.

5.7 Derrida's response to the status of animals in Levinas' ethics of alterity

Jacques Derrida's deconstruction of Levinas' early works⁵¹² drew significant scholarly interest in Levinas' ethics of alterity and inspired much interdisciplinary scholarship on 'the question of the animal'. Derrida is responsible for a comprehensive interrogation of Levinas' work, including assessing the implications of

⁵⁰⁸ Levinas was a prisoner of war because he was a Jew. Members of his family were killed by the Nazis.

⁵⁰⁹ The Möbius strip was discovered by German mathematicians and is an infinite, non-orientable surface.

⁵¹⁰ Historian and friend of Costas Douzinas, Joanna Bourke discusses this in the context of what it means to be human. She is in favour of nonhuman animals being 'persons', of the singularity of Being, and of the unknowability of another's Being. Joanna Bourke, *What it Means to be Human: Reflections From 1791 to the Present* (Virago Press 2011) 378.

⁵¹¹ Donna Haraway explores 'knowing' and 'Being'. She believes it to be wrong to separate the 'world's beings into those who may be killed and those who may not': Donna Haraway, *When Species Meet* (University of Minnesota Press 2008) 80.

⁵¹² Calarco, Atterton, Bernasconi and Wood all credit Derrida as the first influential figure in drawing attention to the work of Levinas. See Peter Atterton and Matthew Calarco, 'Editors Introduction: The Third Wave of Levinas Scholarship' in Peter Atterton and Matthew Calarco (eds), *Radicalizing Levinas* (State University of New York Press 2010); and David Wood, 'Introduction' in Robert Bernasconi and David Wood (2014/1998).

his philosophy for nonhuman others. In his critique, Derrida insists that Levinas' philosophy of the other is fundamentally flawed because it does not take into account the concrete suffering of a vulnerable, nonhuman other. Following an analysis of Levinas' famous essay about Bobby, Derrida responds with a scathing attack on Levinas for retaining a Cartesian⁵¹³ tradition and incorporating this into his ethics of alterity, in which difference is paramount and signified.⁵¹⁴ He is dumbfounded by Levinas' attempt to ascribe to the dog a status as nothing more than *a something*, capable of imitating a signifier but with nothing to signify. For Derrida, the dog clearly expressed the required presence in order for it to address a respondent by saying: 'Here I am, it is me, a precarious being in my world'. Derrida asks:

If I am responsible for the other, and before the other, and in place of the other, on behalf of the other, isn't the animal other more other still, more radically other, if I might put it that way, than the other in whom I recognize my brother, than the other in whom I identify my fellow or my neighbour?⁵¹⁵

Derrida concludes that Levinas' philosophy is insufficient for an ethics of the wholly different, unique other because it is not a philosophy that advocates 'thou

⁵¹³ Descartes is famous for insisting that nonhumans felt no pain. He famously used thousands of dogs in live dissections to prove they had no nervous system but then used a similar number to disprove his theory. That animals have awareness of pain and suffering is commonly accepted and, in addition to other cognitive experiences, is declared highly significant to their Being by the 2012 Cambridge Declaration on consciousness <<http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>> accessed 27 July 2016.

⁵¹⁴ Derrida (2008) 117.

⁵¹⁵ Derrida (2008) 107.

shalt not kill' in general, but a philosophy that retains the value for not killing (specifically human) beings. As such, Derrida accuses Levinas of failing to observe that the nonhuman other has an affective, disruptive force on human autonomy. For Derrida, this disruptive force occurs prior to any discourse on animal ethics. Whilst for Levinas the immortality of the precarious human condition was what spoke before all else, Derrida urges that the nonhuman other presents an enigma⁵¹⁶ regardless of whether it suffers, and that this fact should be paramount in responding holistically to 'the animal question'.

In a complex philosophy, Derrida suggests that violence is already done to nonhumans even before the possibility of an ethical encounter. This violence is in the very idea and naming of the heterogeneous group known as 'animal'. Derrida is alluding to the oppressive themes and categories of ideology which Levinas would refer to as those emergent in the totality of reason.

Derrida's deconstruction, thus, raises questions about the construction of 'the animal' in Levinas' philosophy and, moreover, the construction of what it is to be human. He comments on the false homogenisation of groups and the disservice done to those excluded. He maintains that throughout history, nonhumans have been subjected to various negative, violent narratives. He takes it for granted that this is clear: '... no one can today deny this event – that is, the *unprecedented* proportions of this subjection of the animal'.⁵¹⁷ This subjugation of nonhumans, he argues, is representative of other false ontologies, which function as negative, exclusionary narratives in the history of humanism. Arguing that the humanist tradition relies and

⁵¹⁶ Derrida (2008) discusses the effect of being subject to the glare of a cat. He asks later: 'What is the living character of Being?' (155).

⁵¹⁷ Derrida (2008) 25.

depends on multiple sacrifices, he thus observes that Levinas continues a tradition of profound humanism by failing to 'sacrifice sacrifice'.⁵¹⁸ Derrida postulates that the society of humanism is logocentric, phallogocentric and, importantly, carnophallogocentric.⁵¹⁹ an ideology in which carnivorous virility is falsely assumed to be intrinsic to human identity,⁵²⁰ the violence of which is dissimulated and made invisible by strategic mechanisms of humanity's disavowal. Regarding the construction of the subject, he argues:

Authority and autonomy ... are, through this schema, attributed to the man (*homo and vir*) rather than the woman, and to the woman rather than to the animal. And of course to the adult rather than to the child. The virile strength of the adult male, the father husband, or brother ... belongs to the schema that dominates the concept of subject. The subject does not want just to master and possess nature actively. In our cultures, he accepts sacrifice and eats flesh. I ask you who would stand any chance of becoming a *chef d'Etat* (a head of State), ... declaring him- or herself to be a vegetarian?⁵²¹

5.8 Derrida: the face and suffering

Derrida's perspective highlights and addresses the limitations in Levinas'

⁵¹⁸ Jacques Derrida, 'Eating well', or the calculation of the subject: An interview with Jacques Derrida' in E Cadava, P Connor, J-L Nancy (eds), *Who Comes After the Subject* (Routledge 1991) 113.

⁵¹⁹ Derrida (1991) 113.

⁵²⁰ Much scholarly work is available on veg*ism in relation the domain of sociology of food and eating.

⁵²¹ Derrida (1991) 114.

thinking which lead to his apparent uncertainty about whether a snake has face.⁵²²

What interests Derrida is the way in which the suffering of nonhumans is a disruptive, ego-limiting and compassion-generating event. Derrida refers to the way in which even thinking about what humanity does to nonhumans generates a universal truth:

Everybody knows what terrifying and intolerable pictures a realist painting could give to the industrial, mechanical, chemical, hormonal, and genetic violence to which man has been submitting animal life for the past two centuries. Everybody knows what the production, breeding, transport, and slaughter of these animals has become. Instead of thrusting these images in your faces or awakening them in your memory, something that would be both too easy and endless, let me simply say a word about this[:] 'pathos.' If these images are 'pathetic,' if they evoke sympathy, it is also because they 'pathetically' open the immense question of pathos and the pathological, precisely, that is, of suffering, pity, and compassion; and the place that has to be accorded to the interpretation of this compassion, to the sharing of this suffering among the living, to the law, ethics, and politics that must be brought to bear upon this experience of

⁵²² Derrida (2008) 109.

compassion.⁵²³

It is at the level of compassion in the face of innate and universal suffering that Derrida believes nonhumans should be considered in any discourse which claims to advocate for the unique, wholly different other. In this regard, Derrida refers to the words of Jeremy Bentham to propose a protocol.⁵²⁴ Bentham had objected to the way a developing ontology of rights discourse excluded nonhumans in its emphasis on subjects being in possession of language and reason: archaic ideas, Derrida notes, 'from Aristotle to Heidegger, from Descartes to Kant, Levinas, and Lacan'.⁵²⁵ For Derrida, '[t]he *first* and *decisive* question would rather be to know whether animals *can suffer*'.⁵²⁶ This question concerns the real elements of, firstly, identity, secondly, powerlessness and thirdly, mortality: identity, as in being constituted by precarious vulnerability; powerlessness to avoid such vulnerability; and suffering and mortality as that which 'belongs to the very finitude of life, to the experience of compassion, to the possibility of sharing the possibility of the nonpower ... the anguish of this vulnerability, and the vulnerability of this anguish'. In this question, we put our trust not in Levinas' face, but in 'what is undeniable'.⁵²⁷ Derrida explains:

No one can deny suffering, fear, or panic, the terror or fright that can seize certain animals and that we humans can witness ... Some will try ... to contest the right to call that *suffering* or *anguish*, words or concepts that would still have

⁵²³ Derrida (2008) 26.

⁵²⁴ Llewelyn (1991) also favours Bentham's proposal.

⁵²⁵ Derrida (2008) 27.

⁵²⁶ Derrida (2008) 27.

⁵²⁷ Derrida (2008) 28.

to be reserved for man ... 'Can they suffer?' leaves no room for doubt. In fact, it has never left any room for doubt; that is why the experience that we have of it is not even indubitable; it precedes the indubitable, it is older than it. No doubt either then, of there being within us the possibility of giving vent to a surge of compassion.⁵²⁸

For Derrida, the response is undeniable: 'yes they suffer, like us who suffer for them and with them', and this response precedes all other questions.⁵²⁹ It is a question of sentiment and compassion, not pity. It is a question concerning human responsibility, obligation, necessity and constraint, from which there is no escape. 'The animal looks at us, and we are naked before it. Thinking perhaps begins there'.⁵³⁰

5.9 Derrida and signification

Although Derrida identifies the human sensitivity to suffering, his statement that thinking begins, perhaps, with the human perception that 'animals look at us', represents a deeper level of analysis that centres on the initial signification of nonhuman authenticity. The legitimate, authentic other in possession of face would, in Derrida's view, certainly include nonhumans but would ultimately be ahuman⁵³¹ following a process of comprehensive, anti-anthropocentric deconstruction of the

⁵²⁸ Derrida (2008) 28.

⁵²⁹ Derrida (2008) 28.

⁵³⁰ Derrida (2008) 29.

⁵³¹ Derrida (2008) 132. Ahuman theory takes an abolitionist stance against using the word 'animal' or promoting the idea of 'nonhumans'. An overview of research in this area can be found at Suzanne Becker, 'Patricia MacCormack Talks About Ahuman Theory, Importance of Non-Specieist Ways' (*Daily Nexus*, 6 November 2013) <<http://dailynexus.com/2013-11-06/patricia-maccormack-talks-about-ahuman-theory-importance-of-non-specieist-ways/>> accessed 16 March 2014.

influences leading to categorical distinctions between beings of the world.⁵³² Implicitly supportive to this extent, but also very critical of Levinas's thesis, Derrida grounds the affective, disruptive force of nonhumans in their ability to signify their authenticity. Whereas for Levinas, ethics emerge in a human to human 'compassionate response to the vulnerable suffering other',⁵³³ Derrida does not exclude the legitimate human apprehension of the authenticity and signification of nonhumans. As such, Derrida observes and argues for the universality of cross-species vulnerability to which human beings are sensitive. Derrida thus concurs with other pro-animal scholars: nonhumans have undeniable Levinasian face through which they generate ethical responsibility. What is also consistent is that all scholars support the foundational idea that the other expresses their authenticity and presence through a signifying saying that requires a response before the said, created through reason, is deployed.

A close reading of the distinction Levinas makes between the 'saying and the said',⁵³⁴ reveals that the 'saying' is the primary expression of the other revealed through an encounter with the face. Levinas was clear, as observed above, about the way in which the original expression manifests itself: it is through '[t]he face, pre-eminently expression'⁵³⁵ that presence is passed to the recipient. Spoken language is subsequent to and in the service of ethical responsibility. Levinas states: 'Saying opens me to the other, before saying something said, before the said that is spoken in this sincerity forms a screen between me and the other. It is a saying without

⁵³² Agamben advocates a jamming of the anthropological machine to reorient humanity on a more ethical path. Giorgio Agamben, *The Open Man and Animal* (Kevin Attell tr, Stanford University Press 2004).

⁵³³ William Edelglass, 'Levinas on Suffering and Compassion' (2006) 45(2) *Sophia* 43.

⁵³⁴ This clarity was given by Levinas in *Otherwise than Being*, after his seminal ideas of the other were developed in *Totality and Infinity*: '... my exposure without reserve to the other, which is saying ...' 168.

⁵³⁵ Levinas (1969/2000) 178.

words ... silence speaks'.⁵³⁶ This confirms that the ethics of alterity do not begin from an appreciation of suffering. They begin when the unique other signifies their authentic presence to the subject. In this encounter, the subject is aware of precarious mortality and is created ethically responsible to the welfare of the other. Whether the other is actually suffering at that moment is irrelevant to obligatory, ethical responsibility.

The consensus view, that Levinas' original ethics of alterity cannot accommodate nonhumans, has, thus, both inspired and provoked a range of responses.⁵³⁷ For some scholars, nonhumans are authentic, based on a literal, analytical or deductive interpretation of Levinas. For others, such as Derrida, nonhumans are authentic others but on different grounds – in Derrida's case, because it is undeniable that nonhumans signify themselves in the context of universally shared understanding of vulnerability and mortality.

These responses to Levinas seek to locate the face in nonhumans and to establish their value as moral subjects to whom human beings owe ethical duties. On this basis, the discourse implicitly promotes the face itself as representing value. The value of the entity possessing face is that they have moral standing and are owed ethical duties. Commenting on the inconclusive nature of this discourse, Diane Perpich notes that in Levinas' frustrating and difficult texts there seems to be 'neither an assurance that animals have a face nor the conviction that they do not'.⁵³⁸ Perpich suggests an alternative way to think about responsibility to animals: through a removal of the ethical value of the face itself. She suggests that the face

⁵³⁶ Emmanuel Levinas, *Of God Who Comes to Mind* (Bertina Bergo tr, Stanford University Press 1986/1998) 74.

⁵³⁷ All of these examine Levinas in terms of the face producing ethics where there is 'cause and effect'. See Casey (2000) and Alphonso Lingis, 'Practical necessity' (1998) 20/21(2/1) Graduate Faculty Philosophy Journal 3.

⁵³⁸ Diane Perpich, *The Ethics of Emmanuel Levinas* (Stanford University Press 2008) 151.

neither creates nor is the recognition of value and puts forward the idea that 'the ethical mode in which the other faces me opens the possibility of valuing without itself existing as a value. Whatever does this work, I will suggest, can be or have a face'.⁵³⁹

5.10 The basis for ethics

Observing the scholarly debate on whether animals possess the required Levinasian face, Diane Perpich focuses on the idea that ethical responsibility emerges from ethical openings that are negotiated in the social realm. Perpich argues that '... it is simply not the case that without an animal face we will have no responsibility to or for animals'.⁵⁴⁰ Arguing that both consensus and positive Levinas scholars share a common misconception regarding Levinas' thinking, Perpich suggests that questions about animals, in Levinas' philosophy, are essentially questions about what humans value and how such valuing is socially negotiated.⁵⁴¹

What Perpich means is that in prioritising the human face, Levinas is not suggesting that the ethical does not extend to anything else. In fact, she observes that in the interview with the Warwick University students, Levinas states that 'the ethical extends to all living beings',⁵⁴² and that not wanting to make animals suffer is

⁵³⁹ Perpich (2008) 152.

⁵⁴⁰ Perpich (2008)160.

⁵⁴¹ Perpich makes a distinction between ethics and politics in Levinas' work. I am using the idea of politics as 'social' in this instance, because Perpich distinguishes between ethics and politics inasmuch as humans are social political animals that have ethical ideas. Distinguishing ethics and politics in this specific way leaves aside developments in politics as a discipline. For example, Bunch discusses the characteristics of Levinas' political realm in the context of Foucauldian ideas about biopolitics and developments made by Agamben. Both scholars argue that human subjectivity is violated by powerful biopolitics. Mary Bunch takes this idea and applies it to the posthuman call for an ethics to challenge biopolitics and to Levinas' ethics of alterity. She does this through a discussion of Bobby and of Levinas' statement about Bobby being 'Kantian'. She argues that if Bobby was the only ethical being in Levinas' world, then bare being is related to the ethics of alterity and subsequently to a posthumanist ethics that can challenge biopolitical power. The area of biopolitics is important in studies concerning the animal question, but it is broad in scope and would detract from the present discussion. See Mary Bunch, 'Posthuman Ethics and the Becoming Animal of Emmanuel Levinas' (2014) 55(1) *Culture, Theory and Critique* 34.

⁵⁴² Wright, Hughes and Ainley (1988) 172.

the 'prototype'⁵⁴³ of human ethics. Perpich suggests that in stating that '[V]egetarianism, for example, arises from the transference to animals of the idea of suffering...'⁵⁴⁴ Levinas does not intend to subjugate nonhumans. Rather, Levinas is merely indicating that since it is humans who are subject to the miraculous break with animality, it is they who create the conditions in which ethics exist and they who subsequently create the categories. In the face-to-face encounter that ruptures pure Being (Perpich indicates that this can be anything that opens the subject to valuing), ethics then flow through the discursive negotiations intrinsic to the social and political community of humanity.⁵⁴⁵

This open discourse is central to the evolution of ethical humanity in Levinas' philosophy. Levinas speaks of the importance of accommodating difference, the individuality intrinsic to human being, and the need to confront subjective certainty by listening to the views of the other. It is this democratic, socially negotiated valuing aspect of Levinas' philosophy that appeals to Perpich. Levinas states:

The dawn of truth comes up, and the first gesture of universalization is made, when I become aware of the coherent discourses that are different from mine and stand alongside my own, and when I search for a common language ... To respect the other is, before all else, to refer to the other's opinions.⁵⁴⁶

⁵⁴³ Wright, Hughes and Ainley (1988) 172.

⁵⁴⁴ Wright, Hughes and Ainley (1988) 172.

⁵⁴⁵ As discussed previously, Levinas is aware that the infinity of responsibility via the entry of the third person requires adjudication. Justice is born from the necessary political sphere. See Levinas (1998).

⁵⁴⁶ Levinas, 'Exclusive Rights' (1990) in *Difficult Freedom* 239: Following the initial ethical moment, communication is used to advance helpful relationships.

What Levinas is suggesting is that from one-to-one communication to the multitude and plurality of social communications, a careful listening is required to negotiate and accommodate individual valuing that leads to consensus. Though each individual may have singular valuing, universal values will evolve. Perpich understands this and locates Levinas' ethics in this context. What is subjectively valued will be registered through democratic discourse and socially negotiated in the interests of community.

On Perpich's reading of Levinas, ethics arise in the social context of human beings because it is they who make sense of compassionate relationships that emerge from the immediate proximity of the face of the other. An entity may be intrinsically valueless apart from in the way they are constructed by humans. They are, nonetheless, valued and this value is presented to the social order of society. The valued entity is, thus, registered and becomes a negotiated, ethical principle of humanity. In this way, the human appears as a priority because it is the only way through which humanity can justify and argue respective ethical positions. In Perpich's reading of Levinas, though the human face necessarily takes priority as a vehicle for ethical discourse, it is certainly not the *form* of the ethical address. The form of the affective address is categorically the affective address that halts the spontaneous drive and brings the ego into question through its capacity to open valuing in the subject.

Levinas' argument is that humanity is essentially compassionate and responds to frailty, vulnerability and suffering. This, he points out, is evident in the face-to-face encounter and is the source of ethics. On Perpich's thesis, ethics are a result of human communication but remain subsequent to an influencing, a priori affective

moment with the face.

From the above accounts of how ethics emerge, whether in the face-to-face encounter or from social negotiation, it is clear that nonhumans have long been incorporated into the socio-political system of humankind. As such, they have constituted the affective ethical address and have subsequently been submitted to social negotiation as ethically valued entities.

Levinas maintains that careful listening to ethical openings are the 'dawn of truth ... and the first gesture of universalization'.⁵⁴⁷ In this regard, the human response to nonhumans has long been an ethical matter of collective conscience and is a social truth that is not (or is no longer) a matter of personal and private conscience.

5.11 Conclusion

This chapter set out to establish whether the ethics of alterity concern nonhumans. It concludes that the logic of Levinas' philosophy applies equally to humans and nonhumans, and that the ethical significance of nonhumans is widely socially registered.

The chapter noted that Levinas distinguishes humans from nonhumans and designates them as 'things' that can be understood ontologically. Human beings, on the other hand, cannot be understood ontologically and express a presence that transcends the autonomy of the subject with a demand for a response. This transcendence, according to Levinas, suspends the ego of the subject and indicates the presence of a precarious, mortal and unique other whose wellbeing is in jeopardy. In the ethics of alterity, human beings experience the face of the other and

⁵⁴⁷ Levinas, 'Exclusive Rights' (1990) in *Difficult Freedom* 239: Following the initial ethical moment, communication is used to advance helpful relationships.

respond respectfully and compassionately.

Of significance to the argument of this chapter is that Levinas could not clarify or confirm who or what is in possession of face. He suggested that his ideas needed further analysis. Moreover, in his essay about 'Bobby', it is clear that he found himself responding to animals in a way that did not denigrate them as mere 'things'. This is observed by David Clark, who argues that the dog Levinas named Bobby signified his authentic presence, and that Levinas responded to this. Peter Atterton also argues that Levinas' response to Bobby was thought and language that presuppose the originality of the face.

The conclusion of this chapter is, thus, rooted in Levinas' own admission that further analysis was required and in the arguments of other philosophers working in the domain of animal ethics. They recognise the value of Levinas' thesis for the moral standing of nonhumans but are critical of some aspects of his philosophy. Peter Atterton puts forward the idea that Levinas' thesis is limited by religious and anthropocentric dogma and is logically capable of grounding the moral standing of nonhumans. Scholars in this field argue for the authentic signification of nonhumans, emphasising that they are also unique, singular others who express the required precarious mortality that Levinas maintains is universally shared and understood and that creates ethical humanity. If, as Levinas maintains, ethics arise in the non-abstract face-to-face encounter, then, based on an examination of existing literature in animal ethics, it cannot be concluded that only humans possess face. The obligation to respond to an a priori affective address that emanates from unique, singular, mortal others, suggests that the existing human concern with nonhumans is also in response to their prior signification.

The conclusion of this chapter also relies on Jacques Derrida's scathing attack on Levinas for his failure to explicitly include animals as beneficiaries of his ethics of alterity. Derrida argues that the indisputable nature of the human concern with nonhumans is precisely because humans conceive of their real suffering. Noting the historical concern with animal suffering, this fact, he observes, is indisputable evidence of the authentic signification of animals, to which humans respond.

Considering the debate on whether the ethics of alterity concern nonhumans, Diane Perpich foregrounds the idea that philosophy does not need to establish whether nonhumans are in possession of the obligatory face as a precondition for the production of human ethics. On her reading of Levinas, Perpich puts forward the view that the obligation to the face itself is not the source of ethics. Ethics, she argues, are a human construct resulting from the function of the face, which is to create multiple ethical openings. These are then negotiated in a democracy. If the face cannot be categorically identified in the signification of nonhumans, it does not mean that humans have no obligation to treat animals ethically. Referring to the face as functioning to open the possibility of valuing, Perpich suggests that what is ethical is socially negotiated, following a priori ethical openings that create value in the other entity. On this view, humans are ethically opened by being aware of nonhuman subjection to the forces of mortality. Such ethical opening is also alluded to by Judith Butler: '[t]o respond to the face, to understand its meaning, means to be awake to what is precarious in another life or, rather, the precariousness of life itself'.⁵⁴⁸ On this account, the ethical treatment of

⁵⁴⁸ Judith Butler. Butler is well aware of the problem of transference: 'It has to be an understanding of the precariousness of the other'. She takes up the notion of affective presence as an 'undoing' of the subject. Judith Butler (2004a) 134 and Judith Butler, *Undoing Gender* (Routledge 2004b).

animals does not depend on a categorical affirmation that ethics emerge in the presence of the face, or that nonhumans are in possession of a specifically Levinasian face. It merely depends on whether the acknowledgment of ethical opening to the predicament of nonhumans is so pervasive that it has become a normative value. On the basis of an undisputed acknowledgement of other sentient beings that are intertwined with human society, it is empirically evident that humans recognise the authenticity and signification of nonhuman animals and have come to value and express a normative interest in their ethical treatment.

The conclusion of the chapter is, thus, supported by wider literature that examines whether nonhuman others have moral standing in Levinas' ethics of alterity. This scholarship seems to have reached a threshold where it is no longer contested that ethical facing concerns nonhumans. Nonhuman animals are included in the ethics of alterity because they have expressed their vulnerability and subjection to the forces of mortality, asked for a response and created ethical responsibility. This is so, whether or not they have specifically Levinasian face.

This conclusion raises a particular question in consideration of a rights enterprise built upon the ethics of alterity: if nonhumans have moral standing in the ethics of alterity, and the ethics of alterity is suggested as an alternative model for the existence and operation of fundamental rights, do the human rights claims of vegans have gravity thus far unacknowledged? This question is especially relevant given that the entity that signifies its authenticity and facilitates ethical humanity transcends the totality that is the orthodoxy of autonomy and *all* its categories. This observation has profound implications for the idea and practice of exclusive human

rights – and for litigation in claims that present ethical responsibility to nonhumans.

The following chapter considers the ramifications of the conclusion outlined above. It assesses the implications of including the moral standing of nonhumans in a protective rights enterprise and explains the positive impact it has on claims presented by vegans.

Chapter 6

What are the implications of including nonhumans in an ethics of alterity for the practice of human rights?

Introduction

If, as concluded in the previous chapter, Levinas' ethics of alterity can be applied to nonhumans, then we must understand the ethical obligation of humans to nonhumans in terms of a pre-social innate human desire to extend compassion to those we encounter that we know to be subject to the forces of mortality and to be vulnerable to oppression and additional, imposed suffering. Anything less is to deny the original, autonomy-suspending, ethical encounter with the unique other.⁵⁴⁹ Such a denial betrays authentic, non-abstract witnessing. It protects and perpetuates an anthropocentric totality of reason that reduces and subjugates the unique other's expression of presence. This assertion does not offend humanity. Rather, it enhances the idea that a human being is fundamentally moral⁵⁵⁰ and that a declaration of protective rights articulates the ethical demands of others in community.⁵⁵¹

This chapter assesses the implications for human rights of the conclusion that the ethics of alterity concern nonhuman animals. Of particular significance is how this conclusion impacts on the claims of vegans under Article 9 of the European Convention on Human Rights. In this regard, the chapter argues that the human

⁵⁴⁹ In the case of nonhumans, this is true whether we perceive them to have ethical value themselves or their ethical value has been socially negotiated. They are already of profound significance to human beings.

⁵⁵⁰ 'The central fact is that man is fundamentally a moral being, that the light we have is imperfect does not matter so long as we are always trying to improve it.' Eleanor Roosevelt, 'On the Adoption of the Universal Declaration of Human Rights' (video clip of speech, 9 December 1948) <https://www.youtube.com/watch?v=g5qcqYNFrkE> accessed 26 July 2016.

⁵⁵¹ 'Human rights can be seen as primarily ethical demands. They are not principally 'legal,' 'proto-legal' or 'ideal-legal' commands. Even though human rights can, and often do, inspire legislation, this is a further fact, rather than a constitutive characteristic of human rights.' Amartya Sen, 'Elements of a Theory of Human Rights' (2004) 32(4) *Philosophy & Public Affairs* <<http://www.jstor.org/stable/pdf/3557992.pdf>> accessed 26 July 2016.

rights primacy of individual, personal and private reason and conscience should not be applied to claims that represent the moral standing of nonhuman others. This assertion is based on the fact that compassion and care for nonhuman animals are prevalent and should be recognised as within the domain of ethical imperatives, rather than as qualified, inessential, optional, secondary, unnecessary or voluntary modes of regard. This argument is grounded by the basic, normative principles that are explained in the ethics of alterity. These are that human beings observe legitimate alterity, deploy otherness and recognise moral standing through a priori responsibility to the transcendent other.

This chapter firstly outlines how a system of protective rights, built upon the ethics of alterity, can be envisaged in abstract. It then explains and gives examples of how the principles of the ethics of alterity may inform a rights enterprise that accommodates the moral standing of nonhumans. These examples will illustrate how the ethics of alterity will benefit the human rights claims of vegans in their presentation of responsibility to nonhumans. The chapter concludes that in a system of protective rights built upon the ethics of alterity, the human rights claims of vegans are successful. A secondary conclusion of this chapter – and the thesis in general – is that the ethics of alterity offer nonhumans a stronger level of protection than is currently envisaged in contemporary moral theory on animal rights. This is based on the idea that transcendence by nonhumans also contests the oppressive themes and categories in the unethical totality of reason.

6.1 The abstract development of a rights enterprise that includes nonhumans

In an ethics of alterity that commits to the a priori apprehension of others, nonhuman animals are included on the basis that they are universally recognised as

vulnerable beings subject to the forces of mortality. They appeal through an affective address, require a response and create responsibility. For a concept of universal suffering to ground rights, a shift in the telos of the rights enterprise is required. This involves replacing the supremacy of human individuality that is justified in terms of the orthodoxy of autonomy, acknowledging the 'otherness' of humanity and conceding that the moral community already extends to the (inadequate) consideration of nonhuman others.

Such a shift speaks to a human identity that is already aware and appreciates that unique, singular others have lives that are already precarious and will inevitably suffer from the pursuits of unrestrained egos. In this regard, the rejection of the primacy of a rational self as a priori in favour of an awareness of alterity facilitates acceptance of heterogeneity. This notion of human identity then promotes a foundational principle: that it is encounters with unique others that create an ethically responsible, social and political humanity.⁵⁵²

In this reconstructed notion of human identity, responsibility to otherness is a paramount characteristic. It is born in the 'compassion of being'.⁵⁵³ As a philosophy of the essence of human beings, the ethics of alterity credits humanity universally with unlimited compassion for others, on the basis that the life force presented reveals uniqueness and the presence of a subjective experience of being at the mercy of mortality. Alterity provokes a response which is, for Levinas, a response indicating Being-for-the-other before Being-for-the-self. The other transcends the

⁵⁵² The presence of others is already presumed in the creation of human rights. It is in the context of an awareness of others that such an enterprise could emerge. What is explicated by the present system is individualism on the basis of assumed a priori reason. The dignity of humanity resides in a notion of a priori reason rather than an a priori encounter with others in a shared world. For Levinas, this represents 'Intersubjective Reduction' because it represents the ego of basic Being: Levinas (1998/2006) 86.

⁵⁵³ Levinas (1985) 10.

self of the subject, and such transcendence is, for Levinas, 'conscience'.⁵⁵⁴ Being for-the-other before being for-the-self is a consciousness brought about in the 'event of ethics'.⁵⁵⁵

Recognising the importance of otherness indicates an ethical requirement to 'do good',⁵⁵⁶ but not a 'doing good' in which the 'I' assumes a positive⁵⁵⁷ value in recognition of others.⁵⁵⁸ Rather, as Levinas urges, it is a requirement for the recognition that otherness is 'morality itself'.⁵⁵⁹ On this basis, the 'I' does not have a right, but it has duties for which limits may be sought through adjudication.

Grounding rights on this idea of ethics requires an understanding of the 'naturalness' of extending compassion to others. Rather than identifying compassion as indulging in egotistical acts of personal charity, individuals are aware of the formative, transcendental nature of an encounter with another.⁵⁶⁰ In this regard, the subject is responsible to individual, human and nonhuman others equally on the basis that their alterity is something they encounter; that it transcends their autonomy and any internalised, oppressive themes and categories that are created a posteriori to the original encounter.

Through the development of the ethics of alterity, as a model for a reoriented system of protective rights that concerns nonhuman others, human identity is

⁵⁵⁴ Levinas (1969/2000) 261.

⁵⁵⁵ Levinas (1985) 12.

⁵⁵⁶ Levinas (1969/2000) 261.

⁵⁵⁷ Or, indeed, a superiority.

⁵⁵⁸ Levinas' ethics are not concerned with mere acts of individual kindness, although daily doing good is evidence of the innate capacity to offer generosity to the other. Levinas' ethics directly concern the social and political ordering of humanity by the state, because in promoting peace and non-violence, the state is obliged to 'affirm the infinite responsibility of everyone, for everyone, and to everyone' Roger Burggraave, *The Wisdom of Love in the Service of Love: Emmanuel Levinas on Justice, Peace, and Human Rights*. (Marquette University Press 2002) 177. The ethical event that reveals responsibility of each to the other is intrinsic to the nature of social humanity and the foundation of harmonious relations.

⁵⁵⁹ Levinas (1969/2000) 261.

⁵⁶⁰ I use the word 'natural' here to refer to an earlier explanation of the 'compassion of Being', ie it is natural to be compassionate.

reshaped. The paramount features of Levinas' philosophy are: firstly, an emphasis on alterity; secondly, otherness; thirdly, a priori responsibility in community; and finally, the infinity of responsibility. Each of these four principles will be discussed in turn, in relation to an abstract remodelling of a rights enterprise that concerns nonhumans. Alterity, as a characteristic of human identity, will be discussed first.

6.1.2 Nonhuman alterity in the abstract development of an ethics of alterity for human rights

One of the first principles of the ethics of alterity is the acknowledgement of singular heterogeneity. It is paramount that homogeneity is deposed in an understanding that there are unique others whose experience of living and suffering may be entirely different from that of the subject. Unique others have always been present in the world of the subject and will continue to make their presence known. The singularity of the unique other is apprehended in the face-to-face relationship and is the origin of the ethical demand made in immediate proximity.⁵⁶¹ It is in encounters with uniquely different others that humanity emerges as essentially sociable, compassionate, caring and welcoming.

The extent of heterogeneity is unlimited and requires an appreciation of the alterity of the other. This is not limited by observable differences between the subject and the other,⁵⁶² but through an appreciation of the uniqueness and singularity of the experience of being in the world. This means acknowledging and accepting other-than-human subjective experience of being in the world. It is accepted that being in the world and suffering are subjective in content. In the application of the ethics of alterity, ways of being and different elements or degrees

⁵⁶¹ Ethical responsibility and proximity are discussed in more depth below.

⁵⁶² Observing physical characteristics is not exposure to the face of another.

of suffering must not be dismissed in a process of reducing the other through oppressive categories or themes which would dismiss their subjective reality.⁵⁶³ It is through an acceptance of unique and different accounts of life experiences that the ethics of alterity aim to expand justice by observing difference. On this basis, the otherness, suffering and oppression of nonhumans enter the discourse on the ethics of exclusive human rights. At a basic level, if protective moral rights always and already recognise the other and their right to be unique, precarious and vulnerable to the subject who enters their world, then nonhumans also possess basic rights.

A remodelled system of rights – based on the ethics of alterity and including nonhumans – upholds in its foundational philosophy a reference to the uniqueness of all life. This inclusive model not only recognises, acknowledges and accommodates difference between humans but also dissolves the false human-nonhuman boundary and promotes radical difference in recognition of the continuum of life and moral standing across species boundaries.

A universal system of protective rights that acknowledges alterity would also depose the themes and categories of reason that subjugate others. This requires establishing non-oppressive and non-reductionist themes and categories that aim to emancipate rather than appropriate. This principle addresses, for example, the use of terms such as ‘vermin’, ‘pets’, ‘laboratory animals’, ‘circus animals’ and ‘farm animals’. It would do this through an a posteriori process of articulating the ethical implications of the non-abstract event of ethical responsibility to alterity. These implications certainly include an acknowledgement of alterity and a transformation of the way individual nonhuman others are addressed and referred to. Otherness, as

⁵⁶³ In the ethics of alterity, an appeal to reason to sustain oppressive categories for other life speaks only to the perpetuation of an unethical totality that has been created by an emphasis on the primacy of human reason.

a characteristic of human identity, will be discussed next.

6.1.3 Nonhuman otherness in the abstract development of an ethics of alterity for human rights

Otherness, in the ethics of alterity, expresses the essence of humanity as being composed of co-existing individuals that desire sociality and community. Otherness is utilising and extending the innate characteristic of compassion in recognition that others, whose experience of the world cannot be known, are always and already present in the world. Otherness is born in the a priori response of the subject to others and is ethics itself.

Otherness is an innate characteristic of being human. Its practical manifestation is brought about by others, who signify their difference and mortal existence. While the alterity of the other is entirely different, in that they alone know the way in which they experience life, the subject, nevertheless, recognises the universality of precariousness and vulnerability to suffering. On the basis of awareness of the other's unique inner perception of life and the acknowledgement that their experience and suffering may not be experienced as the same as theirs, the subject is opened to compassionate responsibility, and duty to the vulnerable other is paramount.

In a reformed rights enterprise, the principle of otherness means that rights are conferred only in consideration of responsibility to others. This establishes, in the ethics of rights, the idea that before the rational autonomy of the subject, there was a relational experience of affectivity which has halted the spontaneous ego and created ethical responsibility.

In a rights enterprise based on an ethics of alterity that concerns nonhuman

others, otherness is demonstrated by the enactment of a positive response to responsibility, rather than by action based on (unethical) reasoning that defines nonhuman others as means to anthropocentric ends. Otherness is demonstrated through acts of responsibility that are grounded by the human desire to offer a compassionate welcome to humans and nonhuman others alike, as unique beings of ethical concern. Otherness concerns conduct which demonstrates that the subject involved in an encounter with a unique nonhuman other does not harm or intend to harm, but does not pursue such conduct in recognition of a requirement to offer a degree of personal charity. Rather, by extending compassion to the unique nonhuman other, the subject asymmetrically and unconditionally accepts the unique alterity and subjective existence of nonhuman others, who must not be reduced to oppressive categories of convenience that are utilised to justify their appropriation. The a priori responsibility, intrinsic to otherness, will now be explained.

6.1.4 A priori responsibility to nonhumans in the abstract development of an ethics of alterity for human rights

In the application of the ethics of alterity to human rights, responsibility to otherness is asymmetrical and paramount. The a priori fact, explained in the philosophy of otherness, is the pre-ontological, pre-social responsibility that is created by the other. A response is demanded in the face-to-face relationship with the other, and it is in response to the signification of being that the subject becomes cognitively compelled to be engaged with the other, with a desire to extend compassion.

A remodelling of rights would, therefore, recognise that in a community of unique others, a priori responsibility to the other is the foundation of ethics and

grounds the duty to be compassionate. The value of rights in this context is, thus, directed away from the notion explained by Douzinas and Simmons; that rights are the means by which self-governing, autonomous beings establish claims. Instead, rights are, as Levinas urges, rights of the other. They recognise difference, innate duty and responsibility.

In a reoriented rights enterprise that recognises a priori responsibility, nonhumans are recognised as authentic beings of ethical concern because they signify their presence. As such, they generate ethical responsibility, either as entities with ethical value or, as Perpich prefers, entities whose ethical value is secured in the social domain of humanity.

On this basis, the principle of a priori responsibility protects nonhumans in relationships of close proximity with humans. The human subject, who is commanded to respond to responsibility, recognises legitimate otherness, precariousness and vulnerability, and is ethically obliged to consider duty to nonhumans – as non-reduced and legitimate others with unqualified moral standing. A system of rights that recognises a priori responsibility to nonhumans simultaneously acknowledges that they are subject to the forces of mortality and are vulnerable to suffering. They, therefore, need to be acknowledged, represented and included in a system of human ethics and accommodated in the calculation for justice. Responsibility in close proximity does not limit the extent of general responsibility. Levinas maintains that such a responsibility is infinite. The infinity of responsibility will now be addressed.

6.1.5 Infinity of responsibility for nonhumans in the abstract development of an ethics of alterity for human rights

In the development of an ethics of alterity for a system of protective rights, infinite, ethical duties are owed by humans to nonhumans. The infinite nature of responsibility in the ethics of alterity is particularly important to analyse in the context of a proposal for the philosophy of the ethics of alterity to ground moral rights.⁵⁶⁴ As such, it requires a more in-depth discussion to explain the scope of duty to nonhuman animals.

The ethics of alterity promote absolute responsibility when a subject is engaged in an encounter with the face of another in close proximity. Levinas maintains that '[i]f I am alone with the Other, I owe him everything ...'.⁵⁶⁵ Thus, any reduction of the other in close proximity dismisses and violates the principle of responsibility in the face of alterity.⁵⁶⁶ Levinas was clear that the face encountered in close proximity was, simultaneously, an event of infinite facing:

The third party looks at me in the eyes of the Other ... the epiphany of the face qua face opens humanity ... the *third party*, [is] thus present at the encounter ... The presence of the face, the infinity of the other, is a destituteness, a presence of the third party (that is, of the whole of humanity

⁵⁶⁴ I distinguish this from the development of legal rights.

⁵⁶⁵ Levinas (1985) 90.

⁵⁶⁶ In this regard, Soren Stig Andersen advocates proximity as a possible way of achieving justice for animals.

Anderson argues that the current discourse of animal rights has limitations which can be addressed through an ethico-legal conception of proximity and direct duty. Soren Stig Andersen, 'Proximity: A Levinasian Approach to Justice for Animals' (2015) 1 Global Journal of Animal Law (GJAL) <<https://ojs.abo.fi/index.php/gjal/article/view/1381/1686>> 13 June 2016.

which looks at us).⁵⁶⁷

Levinas expounds further:

It [proximity/responsibility] is the summoning of myself by the other, it is a responsibility toward those whom we do not even know. The relationship of proximity does not amount to any modality of distance or geometrical contiguity, nor the simple, 'representation' of the neighbour.⁵⁶⁸

On the basis of Levinas' explanation, Indaimo summarises proximity and its relationship to infinite responsibility to others as 'not limited to a relationship measured by space or time, or a collectivity of similarity'. Infinite responsibility, as in responsibility for unknown and un-encountered others, is, for Indaimo, essentially a '*first person* responsibility – the same responsibility as that which the self has toward the immediate other'.⁵⁶⁹ Thus, ethical duty in a personal encounter involves a simultaneous ethical encounter with multiple others.

In his explanation of infinite responsibility, Levinas promotes the ethics of alterity as not merely essential to the social and political organisation of humanity, but as a philosophy of personal responsibility that is already inherently social and political.⁵⁷⁰ It is inherently so because it is the 'fact of the multiplicity of men and the presence of someone else next to the Other, which conditions the laws and

⁵⁶⁷ Levinas (1969/2000) 213. The face in close proximity is an event of ethical opening, not a limitation of responsibility that would absolve infinite duty.

⁵⁶⁸ Emmanuel Levinas, 'Substitution' in Adriaan Theodoor Peperzak, Simon Critchley and Robert Bernasconi (eds), *Emmanuel Levinas: Basic Philosophical Writings* (Peter Atterton tr, Indiana University Press 1968/1996) 81. Also quoted in Indaimo (2015) 204.

⁵⁶⁹ Indaimo (2015) 204.

⁵⁷⁰ This point is also made by Douzinas and Indaimo.

establishes justice'.⁵⁷¹ Levinas explains: '[t]he fact that the other, my neighbour, is also a third party with respect to another, who is also a neighbour, is the birth of thought, consciousness, justice and philosophy'.⁵⁷² This birth of thought and consciousness does not preclude nor deny the existence of mortal, nonhuman others.

A system of rights built upon the principle of alterity would utilise the personal, one-to-one origin of ethics as a foundational feature of justice in social and political organisation. In so doing, it would recognise and explicate that the difference acknowledged in the face-to-face relationship, while commanding an immediate ethical response, also indicates a simultaneous ethical awareness of multiple others. The infinity of responsibility, suggested by the ethics of alterity, requires that at all times, the ethical conduct of the subject needs to orient towards limiting the impact of the subject on the other and all the others that are recognised in an event of single facing. The justice of rights would demonstrate a politics in the service of such ethics, as observed by Simmons, Douzinas and Indaimo,⁵⁷³ because '[j]ustice is the way I respond to the face that I am not alone in the world with the other' and 'ethics ... is the foundation of justice'.⁵⁷⁴ It is in this regard that Levinas, Douzinas, Indaimo and Simmons concur that the current discourse of human rights can be invigorated through an approach which recognises infinite duty to the other, rather than retaining a rights-of-the-self tradition.⁵⁷⁵

⁵⁷¹ Levinas (1985) 89.

⁵⁷² Levinas (1998) 140.

⁵⁷³ This point is made by Simmons (2014) 100, by Douzinas in the context of human rights failings (2000) 343-369 and by Indaimo (2015) 203-204.

⁵⁷⁴ Wright, Hughes and Ainley (1988/2014) 174-175.

⁵⁷⁵ For Simmons, the ethical is enacted in a phenomenological appreciation of severe human marginalisation. Levinas' ethics of alterity exceed phenomenology, but, nonetheless, can be applied normatively in this way to include nonhumans.

In stating that the whole of humanity is represented in one single facing of the other, Levinas is presenting the infinite responsibility to allow, listen and respond to the valuing being done by all beings in their singular experience of its world.⁵⁷⁶ It is an open listening in acknowledgment of the infinity of responsibility to listen to all others. Peperzak⁵⁷⁷ explains such facing. When facing the third person, they are not actually present, nor is the third person presenting a norm to entrench. The idea of infinite responsibility presented by the third person is the obligation to attend to the valuing being done in all humanity openly, responsibly and with the anticipation that listening will be infinite, along with corresponding responsibility to acknowledge and accommodate what is valued by unique others according to their dissimilarity.

Levinas insists that in calculating ethical responsibility, the multiplicity of others must not be ignored. He argues that ‘... multiplicity does not allow the — let us say does not allow me — to forget the third party who pulls me away from the proximity of the other ...’.⁵⁷⁸ It is in this regard that a human rights born of the ethics of alterity requires justice in the form of equal responsibility for infinite, incomparable individuals. Any limitation of this equality in the face of the moral standing of nonhumans would be to retain a totality of reason that subjugates nonhumans.

A system of rights of the other that espouses the principle of infinite responsibility presents an obvious problem.⁵⁷⁹ Levinas himself was aware of the difficulty of transposing the demand of the face in close proximity to the infinity of the community. He speaks of the difficulty in deciding who has the first face and of

⁵⁷⁶ Levinas (1969/2000) 213.

⁵⁷⁷ Adrienne Peperzak, *To The Other: An Introduction to the Philosophy of Emmanuel Levinas* (Purdue University Press Books Book 20 1993) 167 <http://docs.lib.purdue.edu/purduepress_ebooks/20> accessed 27 July 2016.

⁵⁷⁸ Levinas (1998/2006) 195.

⁵⁷⁹ Simmons develops the principle of saturation to assist inclusion in this regard.

the possibility of the terrible task of being forced to compare.⁵⁸⁰ He notes that:

Primary obedience is upset by the third person emerging next to the other, the third person is himself also a neighbour, and also falls within the purview of the *I*'s responsibility. Here, beginning with this third person, is the proximity of a human plurality. Who, in this plurality, comes first? This is the time and place of the birth of the question: of a demand for justice! This is the obligation to compare unique and incomparable others ...⁵⁸¹

The problem of infinite competing demands on the subject will now be considered.

6.1.5.1 Duty and limiting infinite duty to nonhumans

In the face-to-face encounter, the other is owed everything,⁵⁸² but in the practical and pragmatic accountability for one's personal infinite responsibility, it is necessary to 'weigh, to think, to judge, in comparing the incomparable'.⁵⁸³ Levinas contemplates that '[j]ustice is necessary, that is comparison, coexistence, contemporaneousness, assembling, order, thematization, the visibility of faces and thus intentionality and the intellect, and in intentionality and the intellect, the intelligibility of a system ...'.⁵⁸⁴ Justice is a remorseful system⁵⁸⁵ in which it is necessary to 'moderate this privilege of the Other'. In this regard, Levinas asks '[w]ho

⁵⁸⁰ Wright, Hughes and Ainley (1988/2014) 174.

⁵⁸¹ Levinas (1998/2006) 166-167.

⁵⁸² Levinas (1985) 90.

⁵⁸³ Levinas (1985) 90.

⁵⁸⁴ Levinas (1998/2011) 157.

⁵⁸⁵ Because it must necessarily facilitate difficult choices.

is my neighbour?'.⁵⁸⁶

In the context of administering a system of protective rights that includes nonhumans, the ethics of alterity require a commitment to a principle of infinite responsibility that is remorsefully limited. Levinas describes the balancing required in ascertaining duty and responsibility as the 'deep remorse of justice' because it necessarily requires sacrifice.⁵⁸⁷ Levinasian justice is an apologetic justice in its recognition that an ethical response to one may dissolve an ethical response to many. Nevertheless, it is a justice derived from the first conscience-opening signification.⁵⁸⁸ As such, it must be continually ethically engaged and never espouse dogma, because it is only a justice such as this that does justice to the uniquely different other.⁵⁸⁹ For Levinas, the justice of legislation is in its unwavering endeavour to establish kindness in its foundations, remain always unfinished, aspire to ethical excellence and evolve according to a progress of reason. Such a justice offers the gift of inventing new forms of dutiful coexistence.⁵⁹⁰

Where the ethics of alterity reorient and underpin a system of protective rights, the administration of justice must, therefore, 'always be held in check by the initial interpersonal relation'.⁵⁹¹ The reference to the initial relation indicates the importance, to Levinas, of justice being underpinned by the evolution of the ethics of law. He believes that this evolution will reveal an inclusive justice from emergent universal principles that are based on a compassionate response to vulnerable, mortal others who are currently marginalised or silenced. In this regard, a justice that

⁵⁸⁶ Levinas (1985) 90.

⁵⁸⁷ Levinas (1998/2006) 229.

⁵⁸⁸ Levinas (1998/2011).

⁵⁸⁹ Cohen (1998/2011) xiii.

⁵⁹⁰ Levinas (1998/2006) 230.

⁵⁹¹ Levinas (1985) 90.

responds to an infinite ethical responsibility to nonhuman others is within the spirit of Levinas' endeavour. In an ethics of alterity, it is not permissible to choose to disregard the ethical demand, and it is imperative to speak for vulnerable others who may be betrayed. Given that nonhumans are absolutely vulnerable and predominantly have no way of defending themselves, it is critical to establish ethical patterns of conduct that ground remorseful justice. Most notable are the principles of absolute duty in close proximity and infinite ethical forethought with regard to the many others that may be impacted by the pursuits of subjects.

To address the difficulty infinite responsibility presents, Levinas explains the function of a remorseful system of justice as a practical solution. The ethical approach of such a system of justice must also entrench the expression of remorse for any limitation of responsibility and duty. In an ethics of alterity for protective rights, this principle also includes remorse for the dissolution of any responsibility and duty to nonhumans.

On the basis of the above explanation of the principles of infinite responsibility, the abstract development of the argument from an ethics of alterity that concerns nonhuman others would regard infinity of responsibility as equally applicable to either human or nonhuman life. Although ethical responsibility and duty to others is bound to be limited by weighing, judging, comparing and balancing, it must be practised in a process of application that is forever in constant revision and subject to non-dogmatic reason with regard to the ethical standing of the other in the original encounter.⁵⁹² In a system of justice in which dogma cannot prevail, the current, exclusive, anthropocentric human rights system gives way to the inclusion of

⁵⁹² Levinas and Indaimo make this point: Levinas (1985) 90 and Indaimo (2015) 209.

nonhumans to avoid diluting the original ethical demand. As Levinas explains, although justice requires and establishes the state, justice itself cannot make us forget the origin of the right or the uniqueness of the other.⁵⁹³ Despite a process of necessary (but remorseful) justice, multiplicity remains a context for 'not ignoring the suffering of the other, who falls to my responsibility'.⁵⁹⁴

In the creation of a practical and pragmatic justice of infinite responsibility that does not dilute the original ethical demand, intentional and willing violence toward nonhumans would not be promoted as acceptable in any circumstances. As instructed, in close proximity, the other is owed everything. The other creates the subject dutiful and responsible. Cruel acts of reduction and subjugation are to be prohibited. Any killings done in the name of categorisation pertain to an oppressive totality that ignores and dismisses the transcendental nature of the other. In the ethics of alterity, '[t]o be in relation with the other face-to-face – is to be unable to kill'.⁵⁹⁵ As such, the principle of infinite responsibility has the potential to dissolve anthropocentric supremacy. The themes and categories currently utilised to subjugate nonhumans become obsolete because they function to reduce the other and deny their moral standing as uniquely different, legitimate others.⁵⁹⁶

⁵⁹³ Levinas (1998/2006) 196.

⁵⁹⁴ Levinas (1998/2006) 195. In this regard, the subject is also required to advocate for the other who is victim to violent acts of their other. As an example, vegans advocating for the ethical treatment of the other's other is entirely within the spirit of this aspect of the ethics of alterity.

⁵⁹⁵ Levinas (1998/2006) 10. Levinas speaks of killing as achieving a goal, such as hunting, cutting trees or slaughtering animals. 'I can want to [kill]. Yet this power is the complete opposite of power. The triumph of this power is its defeat as power. At the very moment when my power to kill is realized, the other has escaped. In killing, I can certainly attain a goal, I can kill the way I hunt, or cut down trees, or slaughter animals – but then I have grasped the other in the opening of being in general, as an element of the world in which I stand. I have seen him on the horizon. I have not looked straight at him. I have not looked him in the face ...'

⁵⁹⁶ As Douzinas argues, current human rights law is not the marker of morality because it fails to function according to the principles of alterity: Douzinas (2000) 353. Levinas' thinking on this is that violence may be necessary in justice, but it must be avoided as much as possible (1998/2006 106). Regarding state endorsement of speciesist violence towards nonhumans, a rights enterprise that utilised the principles of the ethics of alterity would require limitations on state practices. Levinas maintains that state-administered violence as justice is not always legitimate (1998/2006 105).

In the abstract development of an ethics of alterity that espouse an infinite responsibility to nonhumans, it is, thus, not for sure that human beings would take priority over nonhumans in all situations. In adjudication, the act of balancing, judging and comparing would necessarily need to be accomplished according to responsible and compassionate values. These values are intrinsic to an ethical and logical approach to the moral standing of a multiplicity of others. Legitimate, vulnerable, suffering and precarious others cannot and must not be intentionally harmed or killed on the basis of oppressive categories created in the totality of reason.⁵⁹⁷

6.2 The moral standing of nonhumans in a human rights informed by the ethics of alterity

The previous section considered the implications of an application of the ethics of alterity to nonhumans. It explained that difference, otherness and ethical responsibility cannot be reduced by the current oppressive themes of the totality of reason and that the transcendental presence of nonhumans must be acknowledged. For the ethics of alterity to undergird moral rights, there are four elements that must be entrenched. Firstly, it must uphold the idea of heterogeneous life. Secondly, it must acknowledge that the inner world of heterogeneous life cannot be known. Thirdly, it must accept that nonhumans present their being and ask for a response, and that this is a paramount, a priori event that must not be subsequently reduced by reason. Finally, it must accept that an encounter with another indicates the

⁵⁹⁷ In this regard, Cochrane (2013) argues that a system of human rights that became a system of 'sentient rights' in response to the call for animal rights would have no logical grounds on which to treat humans and nonhumans differently and that the apparatus to deal with competing claims is already in place. Cochrane makes the point that if human beings were afforded priority, it would not be on the basis of membership 'of a particular species that must always take priority, but because it protects an interest that is stronger and more compelling' than one put forward on behalf of another species.

infinity of ethical responsibility to all others. What this means for the moral and legal standing of nonhumans will now be examined.

The moral standing of nonhumans in the ethics of alterity relies on an explanation of human reason being secondary to affectivity. The ability to generate autonomous thoughts is given an important value in the ethics of alterity, but only insofar as it recognises affectivity, sociability, interdependency and relational responsibility. This is the context for the system of protective, remorseful justice that limits infinite duty rather than permits competitive, individualistic gains. Protective rights, on this view, is a system through which the community of socially responsive, ethically aware beings formalise otherness as the foundation of a requirement to be responsible and dutiful to others who are always and already present, a priori reason.

It is empirically clear that nonhumans, in all their difference, have expressed their presence to human beings and that they exist and are extensively considered in the socio-political domain. In so doing, they have impeded the autonomy of human reason and influenced thinking. On this view, the demand for responsibility has already been made, but ethical responsibility has not been acknowledged and entrenched.

On the view presented, humans are ethically responsible to nonhumans who are brought into the realm of justice as legitimate others with five basic moral entitlements which can be viewed as falling into three groups. On the basis of otherness and the a priori ethical event, nonhumans have a right to life and to liberty. On the basis of otherness and alterity, they have the right to self-defined identity, and on the basis of the ethical duty in close proximity, they have the right to

care and to assistance.⁵⁹⁸ These three groups of basic rights will now be explained.

6.2.1 A nonhuman entitlement to life and liberty

In an inclusive system of justice, all nonhumans, without exception, have a right to be different without prejudice. They are owed a duty of responsibility, to the extent that they are entitled to life according to their own mode of existence. Their inclusion in the ethics of alterity strengthens their socio-legal status and encourages respect far beyond the call for the abolition of ownership of other species.⁵⁹⁹ Nonhumans have the right to live out their natural lifespan, be supported by human intervention⁶⁰⁰ and be unimpeded by (intentional or inadvertent) oppressive human conduct that would cause their premature death. This entitlement prohibits a broad range of current practices, such as any form of ownership, killing for food, sport, or production of a commodified product. This is a non-anthropocentric threshold of justice, applied infinitely on the basis of responsibility to the material and corporeal existence of nonhuman others. It is grounded by the fact that they have been apprehended as beings that signify with a ‘saying’ before the imposition of an oppressive ‘said’, and the fact that they invite the subject to respond to their one and only precious life, asking: ‘What action will you take in the knowledge that my life is vulnerable and I am also at the mercy of mortality?’.

Though the ethics of alterity do not explain the normative principles of a practical justice that follows its implementation, other scholars have considered how

⁵⁹⁸ As pointed out by the NhRP, establishing rights also secures nonhuman animals as ‘legal persons’. ‘So far as legal theory is concerned, a person is any being whom the law regards as capable of rights or duties...Any being that is so capable is a person whether a human being or not...’. John Salmond, *Jurisprudence* (Glanville L Williams ed, 10th edn, Sweet and Maxwell 1947) <<https://www.nonhumanrightsproject.org/media-center/04-11-17-media-release-blacks-law/>>accessed 13 April 2017.

⁵⁹⁹ Gary Francione is well known for advocating an end to the property status of animals. Gary Francione, *Animals, Property and the Law* (Temple University Press 1995).

⁶⁰⁰ This is discussed in more detail below, under the ‘entitlement to care and assistance’.

their entitlements may be honoured. For example, Will Kymlicka and Sue Donaldson suggest that domesticated animals could become ‘citizens’, wild animals could become ‘sovereigns of territories’ and liminal animals could be granted basic rights.⁶⁰¹

The entitlements of nonhuman animals are as absolute and unlimited as those of humans and impose negative and positive duties.⁶⁰² The administration of the principles of a remorseful system of justice adjudicates on a case by case basis, thinking the unthinkable and comparing the incomparable in an attempt to remorsefully limit the infinite duty human beings owe to others.

The principle of remorseful justice may limit human responsibility in specific circumstances. For example, in a one-to-one encounter with a small insect that is attempting to find a way through a glass window pane, there is a negative duty not to cause harm to the vulnerable creature and a positive duty to open the window and assist in her endeavour to fly away.⁶⁰³ In some circumstances the duty to the small creature may be limited if there is a significant threat to the wider community, such as the alleged threat from the mosquito that causes the Zika virus.⁶⁰⁴ Though the value of the mosquito must be acknowledged, the duty owed to a multiplicity of others – including the other’s others - may take precedence in a balancing of primary

⁶⁰¹ Donaldson and Kymlicka (2011). See also Will Kymlicka and Sue Donaldson, ‘Animals and the Frontiers of Citizenship’ (2014) 34(2) *Oxford Journal of Legal Studies* 201.

⁶⁰² The conjoining of ethical grounds for the moral standing of nonhumans with positive and negative duties addresses what Donaldson and Kymlicka see as a limiting factor of traditional animal rights theory in their argument to locate the emancipation of nonhumans within politics, rather than in ethics. Mark Rowlands has contested the need for such a move, on the basis of inaccurate perceptions. This explanation of both the ethical grounds for nonhuman moral standing and its application in practical justice shows the continuing relevance of both strands of discourse.

⁶⁰³ A discussion about an entitlement to care, support and assistance follows below.

⁶⁰⁴ The World Health Organisation is currently (2016) disseminating informative reports that indicate a possible association between Zika virus infection and congenital malformations and severe neurological and autoimmune complications. The Zika virus is reported to be caused by mosquitos. World Health Organisation (WHO), ‘Research: Zika: The Origin and Spread of a Mosquito-Borne Virus’ (WHO, 2016) <www.who.int/bulletin/online_first/16-171082/en/> accessed 2 June 2016.

and infinite duty. In the context of the recognition of a general threat to a multiplicity of others, a remorseful system of justice can adjudicate that duty to the immediate other is limited, on the basis that the wider community of others requires protection. Though in principle killing remains prohibited,⁶⁰⁵ it may, nevertheless, be remorsefully justified in special and specific circumstances and contexts but this is not to be decided on utilitarian grounds or on the basis of oppressive reduction and thematization. In this way, respect for life and liberty, insofar as is ethically and practically possible, is acknowledged in the foundations of an anti-speciesist system of justice.

6.2.2 A nonhuman entitlement to self-defined identity

The third basic right of nonhumans is the right to self-defined identity. All nonhumans have the right to exist in the context of the sapient order of their species, free from human-imposed, oppressive themes and categories.

The entitlement to self-defined identity would prohibit any reduction of nonhuman life to themes and categories that either intentionally or inadvertently cause oppression or permit arbitrary abuse. On this basis, current vocabulary that describes nonhumans in the reductive terms of oppressive categories would be redefined as vocabulary that reduces the other through themes of anthropocentric convenience. Categories such as ‘pets’, ‘farm animals’, ‘laboratory animals’, ‘vermin’, ‘race-horses’ and ‘livestock’ would become obsolete because they pertain to the creation of an oppressive totality of reason. It would not be permissible to refer to nonhumans in a derogatory way because it would function to reduce and subjugate their being. This entitlement does not preclude interaction with nonhuman animals

⁶⁰⁵ Remorse for any killing is always paramount because it is conduct that is antithetical to human nature.

and is likely to support a wide range of enhanced relationships, including cohabitation.

6.2.3 A nonhuman entitlement to care and assistance

Given that the ethics of alterity ground an absolute duty to the other in close proximity and an infinite duty of care, nonhumans have two further basic entitlements – to care and to assistance. This entitlement goes beyond the demands of total emancipation and is subsequent to the application of the ethics of alterity to an inclusive system of rights of the other.

Such entitlements to care and assistance requires the extension of kind acts of compassion that would enable the other to pursue its life and to ensure it did not lose its life from neglect. For example, there is a positive duty to open a window to let out a fly that had accidentally entered an enclosed space, to stop and attend to nonhumans in road traffic accidents, and to respond kindly to assist all nonhumans encountered in close proximity. This entitlement implies both positive and negative duties and under no circumstances must the other be reduced by oppressive themes and categories that would justify arbitrary appropriation, abuse, relegation or dismissal.

This entitlement is also in contrast to the idea put forward by Gary Francione that there is no requirement for human beings to intervene to prevent harm to other animals from other sources. Supporting the recent emergence of literature arguing that beneficial and positive interaction with nonhuman animals is imperative, the inclusion of nonhuman animals in the ethics of alterity requires intervention to protect the other from harm. In a system of protective rights informed by the ethics of alterity, the scope of duty changes from no legal duty for individuals to aid others

to the primacy of the ethical duty, especially to those in close proximity.

6.3 A practical example

The five basic entitlements of nonhumans are the positive effects of including nonhumans in a system of justice that is built on the ethics of alterity. They clearly have broad ramifications that require tremendous shifts in thinking about law, rights and the ways in which nonhumans are treated by humans.⁶⁰⁶ An example of the shift in thinking required can be explained using a recent controversial incident involving a dog who was killed by police officers on a road in North Wales.⁶⁰⁷

In this incident, armed police officers intentionally killed a dog on the road in the interests of public safety. The officers reported that the dog could not be caught. To avoid danger to the public, who would be travelling in cars at speed on the road, the officers made the decision to instigate a fatal collision with the dog, using their vehicle at high speed. Advocates for the rights of nonhumans (People for the Ethical Treatment of Animals) complained that 'Law enforcement officers are entrusted with protecting the innocent and the vulnerable, and that does not include deliberately running them over with the intent to kill'.⁶⁰⁸ On the other hand, Chief Inspector Darren Wareing was reported as stating that:

the 'potential for a serious collision was present throughout'

⁶⁰⁶ This is something that can be discussed in relation to path dependency. Path dependency is the theory that historical factors will be significant in the possibility of securing change, despite the observation of available options. The theory is a typical approach to historical scientific discourse and was adapted in the early 1980s to explain economic inefficiencies. The theory is now applied in social and political discourse, which also explains notions of weak to super-strong path dependent modes of resistance. The idea that 'things would have been better if...' is also challenged through a theory of negative path dependency. For a useful background introduction, see Richard R Nelson and Sydney G Winter, *An Evolutionary Theory of Economic Change* (Harvard University Press 1982); Mark J Roe, 'Chaos and Evolution in Law and Economics' (1996) 109 *Harvard Law Review* 641; Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics' (2000) 94(2) *The American Political Science Review* 251.

⁶⁰⁷ BBC News, 'NWP Officers Who Killed Dog on A55 Referred to Watchdog' (*BBC News*, 24 February 2016) <http://www.bbc.co.uk/news/uk-wales-north-west-wales-35650395> accessed 27 July 2016.

⁶⁰⁸ BBC News (24 February 2016).

and there was 'no alternative way' for them [the officers] to minimise risks to motorists. 'The only safe option was to run the dog over at sufficient speed to ensure that it was destroyed and would not suffer. Other methods of destruction were considered, but were ruled out on the grounds of public safety'.⁶⁰⁹

The principles of the remorseful system of justice intrinsic to the ethics of alterity require that, at all times, the balancing and calculations involved in situations concerning ethical encounters with others must be from the point of view of the original encounter. This means observing that, in close proximity, the other is owed everything and that the prohibition on intentional harming and killing is the way in which the essence of human identity and duty to others is protected. It is on this view that the conduct of the police officers comes under scrutiny.

The officers drove the police car at the dog at high speed to kill her following a review of other options, which were ruled out on the grounds of public safety. This course of action could be deemed disproportionate on the grounds that the dog was intentionally killed because it was an animal and not a human being. In failing to respond to otherness, reducing the value of the life of the dog and imposing inequality of ethical regard, it may be deemed that the officers failed in their duty of care and that the intervention was wholly unjustified and even criminal.

In determining whether there was a fair and reasonable application of a remorseful system of justice, questions would be raised about the possible options

⁶⁰⁹ BBC News (24 February 2016).

to protect the public and the dog from harm. Other options not considered in this case would be, for example, those used in other road traffic incidents and which are routinely implemented, such as stopping traffic, closing the road or using barriers. Although in a remorseful system of justice, killing may be necessary, these events turned on the fact that it was a dog in the road, not a person. The dog was reduced and denied ethical responsibility and – through a broad and widely used system of oppressive thematisation and dismissive categorisation – the action taken was not considered or conducted on the basis of the original ethical demand, in which the dog asked for an ethical response.

Protective rights for nonhumans are inspired by an inclusive ethics of alterity that explain entitlements in terms of foundational duties emerging from moral responsibility. Principles are general, and it is not possible to extract a set of normative practices that determine specific action required in all eventualities. The ethics of alterity serve as a foundation for establishing and outlining the general mode of conduct owed to nonhumans. This philosophy of otherness underpins a dynamic and non-dogmatic approach to animal ethics by transcending the oppressive totality that has secured their subjugation. In this regard, it is a platform on which models of practical justice for nonhumans can be evaluated and potentially supported.

Models of practical justice that would be supported by the philosophy of otherness are those that are able to contextualise ethical responsibility as fundamental to the moral and legal standing of nonhumans. They will facilitate a remorseful system of justice honestly and will not allow anthropocentric privilege to enter through the back door. Theories and models of inclusive justice – such as those

advocating nonhuman inherent value,⁶¹⁰ sentiency,⁶¹¹ consciousness and interests,⁶¹² capability,⁶¹³ citizenship⁶¹⁴ and ‘vulnerability’⁶¹⁵ – may be useful to ascertain the way forward in an ethics-inspired, remorseful system of justice; but they must be scrutinised to ensure that no aspect pertains to an anthropocentric-motivated totality of reason.

The shift in thinking required to initiate equality of ethical regard for nonhumans is unlikely to reform socio-legal conditions in the near future. The general principles that grant entitlements to nonhumans can, though, be applied to the human rights claims of vegans brought under the right to freedom of conscience. How the entitlements of nonhumans impact positively on the legal claims of vegans will now be explained.

6.4 A reconceptualisation of freedom of conscience

A reconceptualisation of freedom of conscience is based on the understanding that human rights are grounded in otherness. They express responsibility and duty, and are the means through which humanity aims to deal with the suffering of others. On the argument presented in this thesis, nonhumans are also legitimate others to whom humanity is responsible. As such, veganism, as a culture in response to responsibility, is the embodiment of Levinasian ethics that is

⁶¹⁰ For example, Regan (1988).

⁶¹¹ For example, Peter Singer (1983).

⁶¹² Rowlands (2002); Rowlands (accessed 4th July 2016); Cochrane (2009).

⁶¹³ Nussbaum (2007) [particularly Chapter 6], 346-347.

⁶¹⁴ Donaldson and Kymlicka (2011); Kymlicka and Donaldson (2014). See also related ideas in Rob Garner, Dan Lyons and Angela Roberts, ‘How to Protect Animal Welfare: Deliberation, Democracy and Representation. Policy Research Briefing’ (*Centre for Animals and Social Justice*, Sheffield 2016)

<<http://www.casj.org.uk/wordpress/wp-content/uploads/2016/02/How-to-Protect-Animal-Welfare.pdf>> accessed 27 July 2016. For critique, see, for example, Rowlands (accessed 4th July 2016). For a critique of specific rights in favour of responsibility, see Cupp (2016).

⁶¹⁵ See, for example, Ani Satz, ‘Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, And Property’ (2009) 16 (2) *Animal Law Review*, 65; Maneesha Deckha, ‘Vulnerability, Equality and Animals’ (2015) 27(1) *Canadian Journal of Women and the Law* 47; Stephen Thierman, ‘The Vulnerability of Other Animals’ (2011) Volume IX 1(2) *Journal for Critical Animal Studies* 182.

enacted in and animated by human rights. These circumstances bring human rights to a threshold where otherness is most visible.⁶¹⁶

This idea of human rights is accessible and sensible. The human rights protection of veganism – as ethics in practice or as indistinction in practice – also makes sense in the context of the primacy of the right to live a worthwhile life and an Article 9 claim to the right to be free to live, unimpeded, according to an a priori ethical response to responsibility.

As was seen in Chapter 3, the right to freedom of conscience is the principle upon which ethical responsibility to the moral standing of nonhumans has been accepted as coming within the scope of human rights. As such, the right to freedom of conscience, rather than existing primarily to accommodate the claims of self-seeking, atomised individuals endowed with reason and conscience, can be reconceptualised. This reconceptualisation regards the Article 9 right to freedom of conscience to be the vehicle that permits human reason and conscience to transport ethical responsibility to human rights.

The right to freedom of conscience, utilised in the claims of vegans, becomes the evolutionary, transformational mechanism that brings human rights to a transformative threshold at which the centrality of human autonomy is dissolved. The enterprise that was human rights observes and accommodates affectivity, facilitates otherness, supports the moral standing of nonhuman animals and illuminates and conveys their suffering. Under the right to freedom of conscience, the human rights claims of vegans communicate ethical responsibility to the system

⁶¹⁶ In a form of justice that observes the ethical origin of the 'complaint'. See Sylviane Agacinski, 'Another Experience of the Question, or Experiencing the Question Other-Wise' in E Cadava P Connor and J-L Nancy (eds), *Who Comes After the Subject* (Routledge 1991) 14.

of justice, whose mission it is to address and ameliorate suffering. It responds in the affirmative to the nonhumans as those to whom it is ethically obliged.

On this view, nonhumans are subjects of justice because they invoke responsibility. They are not subjects of justice on the basis that joining the moral community imposes obligations and duties on them, but on the basis that their relational presence creates ethical responsibility that must be accommodated.

Vegans have, thus, illuminated ethical responsibility to the moral standing of nonhumans as an issue that bears heavily upon the current concept of freedom of individual conscience and the speciesist prejudice intrinsic to human rights. In so doing, veganism highlights a threshold in human rights that is an interface of human and nonhuman moral standing.

The affirmative response from human rights to the ethical claims of vegans injects this threshold with transformative value in the form of dissolution of the human-animal boundary. This is because a positive response from human rights to veganism implies that legal reasoning is, arguably, able to speak from a position of otherness rather than immanence. As such, it is a small step from accepting ethical veganism to applying the principle of otherness in litigation in order to facilitate better outcomes in cases presenting ethical responsibility to nonhuman others.

6.5 Article 9 litigation and adjudication

Currently, under Article 9 of the Convention, a vegan has an absolute right (under Part 1) to believe in ethical responsibility to the moral standing of nonhumans and has a qualified right to practically manifest their ethical convictions. The primacy of the right to freedom of belief is provided in the context of individualised human rights and an assumed, homogeneous, speciesist prejudice towards nonhumans. This

prejudice manifests a profound dismissal of ethical responsibility, approves and permits the appropriation and resource status of nonhuman animals, and perpetuates the use of oppressive categories and themes through which their commodification is justified. It is falsely assumed in this paradigm of human rights that the basic social conditions of prejudice towards nonhuman life represent the worthwhile life of autonomous human subjects. This denial of innate compassion for nonhuman others and our intertwined sociability with them manifests the view that living practically with moral indistinction is a matter of personal and private conscience. In these circumstances, the human right to live with ethical responsibility to nonhuman others requires the applicant to show that she has suffered a personal disadvantage: or, as was seen in the case of *Vartic*, suffers a significant disadvantage.⁶¹⁷

In this paradigm, vegans present intertwined human-animal social relationships and the worthwhile value, to human society, of inclusive, ethical responsibility. On this argument, the ethical obligation to nonhuman others and their original rights are ipso facto re-presented in vegan complaints of interference with ethical practice.

In the absence of a complete reorientation of human rights grounded in the ethics of alterity, the Article 9 claims of vegans and cases that concern compassion for other animals can be litigated differently: in a way that takes into account the already acknowledged ethical nature of human relationships with nonhumans.

In this different approach to litigating claims of freedom of conscience, the balancing calculation required concerns a remorseful justice that is designed to

⁶¹⁷ As observed in *Vartic v Romania* (no 2) App no 14150/08 (ECtHR, 17 March 2014). See Chapter 3.

address the problem of infinite, competing duties owed to the other by the subject. Such a calculation must be conducted in the context of the original, ethical facing, which essentially means – in the context of ethical responsibility – a commitment to the principle of not killing and not doing harm, and to extending a compassionate welcome as far as is possible. Litigation must not overlook the suffering of nonhumans in calculating the fate of the applicant, and there must be no resort to oppressive themes of convenience or any prioritisation of unevaluated practices that pertain to the current, subjugated status of nonhumans.⁶¹⁸

In this new approach, cases are judged as matters of ethical opening that represent ethical responsibility as the essence of human identity and the existing, widespread, compassionate regard for nonhumans. They are adjudicated on the basis of the principles that give rise to the moral and legal standing of others. As outlined in the discussion above, these are: innate human sociality; recognition of heterogeneity; existing, pre-social otherness; the obligation in the a priori, ethical demand; and the recognition of infinite responsibility.

Legal reasoning would not, therefore, seek developments that limit state duty to vegans – such as raising the standard of disadvantage, or creating law built upon the oppressive thematisation intrinsic to the orthodoxy of reason. Instead, legal reasoning in litigation would focus on the applicant's presentation of a priori ethical responsibility in the face of nonhuman suffering, and, with it, would shift the emphasis from human rights claims for self to human rights claims for the other.

6.6 Conclusion

The aim of this chapter has been to explain the implications of applying the

⁶¹⁸ This would ultimately also challenge the grounds for lawful interference under Article 9 (2).

ethics of alterity that concerns animals to human rights discourse and the claims of vegans. It argues that in a reoriented system of protective rights that draws its principles from the ethics of alterity, nonhumans have moral and legal standing, based on their alterity, the principle of otherness, and the a priori and infinite responsibility that the relational encounter between a subject and another facilitates. It explains that, on these principles, nonhumans have basic entitlements: to life, liberty, self-defined identity and to care and assistance.

Since the ethics of alterity promote infinity of responsibility, it has been observed that the system of remorseful justice must be employed to limit the infinite duty of every person. It has been noted that, in this justice, it may be necessary to thematise and categorise, but that this must not be pursued in the interests of the totality of reason that confers privilege to the human subject. In this regard, it was interpreted as a requirement to refrain from oppressive themes and categories that reduce and subjugate animals in the interests of anthropocentric privilege.

The chapter has identified that the implications of including nonhuman animals in a rights enterprise built upon the ethics of alterity are positive and profound. Nonhuman animals are offered a degree of protection thus far not recognised in animal rights theory. As such, the application of the ethics of alterity to a rights enterprise has utility for existing animal rights discourse. In the absence of an existing, concrete, non-abstract, moral philosophy for the moral standing of nonhumans, it offers a platform on which to develop a body of discourse that does not relegate the lives of animals in the interests of anthropocentric privilege.

The chapter identifies that the conclusion that nonhuman animals have moral and legal standing has implications for the human rights claims of vegans. As claims

that reflect a collective ethical conscience in which it is uncontested that nonhuman animals feature significantly in human ethics, it was argued that they can no longer be judged as claims of personal and private conscience in which personal disadvantage must be proven. Instead, the chapter argues for a reconceptualisation of the right to freedom of conscience to allow matters of collective conscience to be acknowledged as formative in the evolution of humanity, justice and law. Though this provision remains significant and must remain a primary value in other contexts, the evolution of humanity requires that when an ethical value becomes universalised, it must be recognised as such through normative, social conduct. As such, it has been argued that the human right to freedom of conscience should no longer adjudicate matters concerning ethical regard for nonhumans as a matter of the personal and private. In such a reformed system, the claims of vegans – claims of ethical responsibility to nonhuman others – are significantly more successful.

Chapter 7

Conclusion

This thesis has aimed to discover whether a different ethical theory, when applied to the right to freedom of conscience, would better accommodate the claims of vegans. By applying Levinas' ethics of alterity to the status of nonhuman animals and promoting its use in the litigation of claims that present ethical responsibility to them, it has argued and concluded that this philosophy has enormous transformative potential. It has made the specific point that the inclusion of nonhumans in the ethics of alterity means that the ethical obligation to nonhumans must be understood in terms of the same ethical imperative that grounds the idea of human rights: that the nonhuman other exists, expresses authentic presence and creates the same ethical demands as human others. This conclusion impacts positively on the claims of vegans.

The thesis began, in Chapter 2, by considering the essence of veganism. It was found that veganism gives expression to the moral standing of nonhuman animals and can be regarded as the lived expression of ethical responsibility to them and their suffering. It was discovered that veganism has significance as a culture grounded by ethics that are in opposition to those that facilitate the dominant culture of the consumption of animals. In this regard, veganism has been described by Matthew Calarco as indistinction in practice, by Bob Torres as the daily lived expression of ethical commitment and protest, and by Gary Francione as a moral imperative for a humanity that cares about nonhumans. In sum, veganism is a matter

of justice because it re-presents the natural moral standing of nonhuman animals and their suffering to the legal system of a society that has entrenched prejudice against them.

Following an examination of the claims of vegans, Chapter 2 went on to identify that vegans experienced difficulties in various social contexts, and that some of these difficulties could be categorised as claims under human rights. It explained that veganism comes within the scope of the European system of human rights, but that it was subject to the principles of adjudication in the orthodoxy of autonomy. Legitimate aim and proportionality feature in claims presented under the human right to free conscience but do not take into account nonhuman suffering.

Chapter 3 thus assessed the centrality of the human individual in human rights. It found that there was a complex history to the idea of human rights and that they have emerged predominantly through the notion that human beings are born into a community of others but are regarded to be primarily rational. This primacy of reason appears to be historically rooted in natural law and became more entrenched during the Enlightenment, when secularism and Western philosophy emphasised the rational autonomy of the individual. These ideas were found to be emphasised in the Universal Declaration of Human Rights and, more strongly, in the European Convention on Human Rights. The idea that rights emerge in the context of community and duty to others appears to have lost significance, and the primacy of the autonomous individual now appears to shape the idea of human rights.

Noting the centrality of the human individual in the idea of human rights, it was found that the claims of vegans for the moral standing of nonhuman others will always submit to the theory of human autonomy. It was argued that claims of

conscience for nonhuman others challenge the notion of entrenched human identity and the ethical orientation of human rights. In this regard, Chapter 3 went on to suggest that a system of human rights based on Levinas' ethics of alterity may have significant utility for the claims of vegans for suffering nonhuman others. This suggestion relied on the idea that Levinas' philosophy supported a suffering narrative of human rights in which the subject recognises responsibility to others.

Chapter 4 explained an existing branch of critical human rights scholarship that utilised Levinas' ethics of alterity. It observed that scholars such as Upendra Baxi and Costas Douzinas reject the individualism of human rights. The target of human rights, they argue, is to eradicate suffering. These scholars explain how human rights could function better if the same-for-self claim rights gave way to a paramount concern for duty to and responsibility for others. They argue that the idea of human rights emerged in recognition of the ethical demands of others and that caring and compassion are innate to human identity. They further argue that current human rights-for-the-self do not address suffering and that they restrain the ethical evolution of humanity.

Chapter 4 went on to explain that the ethics of human rights could be understood in terms of Levinas' ethics of alterity. Levinas identifies that human beings live in, and desire, community. Human beings have never known isolation and can never escape the fact that the other is always and already present. In this context of being predisposed to an awareness of others, otherness (innate concern for the other), a priori responsibility (the fact that a response to the other *cannot* be avoided) and infinite duty (the awareness that there are always and already multiple others who issue the primary ethical demand) are paramount because they create

ethics. For Levinas, at the moment a subject encounters another, the subject is forced to respond and, thus, is made responsible by the other. The subject becomes aware that they have entered the world of a precarious other and is duty-bound to consider the impact they may have on the other's vulnerability. The subject is not resistant to this universal unity.

On this basis, Chapter 5 asked whether the ethics of alterity concern nonhumans. It found that Levinas' original, exclusive thesis did not correspond to his later publications, in which he expressed how he was motivated to respond to nonhumans. It was also noted that he explicitly stated that nonhuman others are owed ethical duties. Despite this, he never categorically confirmed that nonhumans generate ethical responsibility.

Chapter 5 went on to examine various contributions from scholars interested in the question of the animal. It found support for the argument that Levinas' ethics of alterity logically concern ethical responsibility to nonhumans. Scholars have argued that nonhuman others are not 'things' – they have expressed their authenticity as mortal beings – and that human beings have long witnessed and concerned themselves with their suffering. They have identified that if ethical responsibility is grounded by an innate desire to respond ethically to difference, then the ethics of alterity do concern nonhuman others. The chapter concluded that if the ethics of alterity can be grounded in suffering, have utility for the basis of rights, and concern nonhuman others then the human ethical obligation to nonhumans must be understood in terms of our innate predisposition for compassion in an extended community of human and nonhuman others. This conclusion has implications for human rights theory and practice.

Chapter 6 outlined the implications for nonhuman animals and vegans of a system of human rights based on the ethics of alterity. It explained that all animals have basic entitlements, such as the right to life and liberty, and the right to exist free from being categorised in terms of oppressive themes that emerge from the totality of anthropocentric reason. It explained that, in this system, the claims of vegans succeed because they are not judged on the basis of whether a personal disadvantage can be proven. Instead, they are judged in the context of the representation of nonhumans and their precarious mortality and of the ethical imperative to attend to their suffering. It was explained that accommodating nonhumans in a rights enterprise, as an ethical matter of justice, is complex, but that it would begin from the recognition of their basic rights and a non-anthropocentric administration of legal justice that would be known as remorseful justice.

Chapter 6 conceded that a transformative paradigm shift in protective rights is unlikely to take place in the near future. On this basis, it reasoned that the ethics of alterity could play a role in human rights by helping to litigate claims of conscience for nonhuman others differently. It argued that though the right to freedom of thought, conscience and religion is a significant value in human rights, it does not go far enough in facilitating evolution of the normative values that are no longer personal and private. It therefore concluded that in cases of conscience that concern the moral standing of nonhumans, adjudication should reorient to recognise the collective desire for an ethical response to responsibility. In this application of the ethics of alterity to the claims of conscience for nonhuman others, their suffering is acknowledged as a matter of ethical concern and the claims of vegans are considerably more likely to be successful.

7.1 The argument developed in this thesis and why it is important

In sum, the argument developed in this thesis is that veganism gives expression to the moral standing of nonhumans that is resisted by the orthodoxy of autonomy within human rights. This resistance impacts on the human rights claims of vegans to practice ethical responsibility. As such, Levinas' ethics of alterity, which is already promoted as presenting sound logical reasoning for the origin of the idea of protective rights, is argued to offer more positive outcomes for the claims of vegans because it includes the moral standing of nonhuman others.

The conclusion that Levinas' ethics of alterity concern nonhumans has been reached following a review of logic in Levinas' own thesis and literature available in the domain of animal ethics. Existing scholarship on this subject identifies two positions that support the inclusion of nonhuman animals. The first is the recognition that both Levinas and social humanity in general are ethically motivated by nonhuman animals because a life force, vulnerable to the forces of mortality, is witnessed. Humans bestow care and compassion on nonhuman others, willingly, in response to the unspoken 'saying' that asks for compassion to be extended as a matter of natural social justice. In this relationship is the expression of 'face'. It is an epiphany that animates ethics. The other halts the unrestrained ego of the self, facilitating innate responsibility. This first position promotes the idea that nonhumans have intrinsic value to generate ethics through an encounter and, thus, are owed ethical duties.

The second position is offered by Diane Perpich. This theory holds that Levinas' priority of the human face does not exclude nonhumans from ethical concern. Levinas' priority of the human face merely means that it is human beings

who create ethics by bringing ethical openings to be negotiated within the context of a democracy. This position supports the conclusion of this thesis because humans have long held nonhumans to be a matter of ethical justice. Evidence given for this view included both the recognition in various treaties and national constitutions of the sentient status of nonhumans and examples of case law that uphold their moral standing by denying others a right to exploit them. That nonhumans matter to humans is also recognised through the fact that veganism comes within the scope of human rights protection.

These conclusions are important for human rights discourse. Human rights, at a basic level, recognise the right of the other to live and to be free of arbitrary oppression. They aim to secure emancipation in the face of suffering and bring the suffering of the marginalised to the centre. Protest scholars explain that the idea of human rights could only ever have emerged in the context of acknowledging the ethical demand of others, and they argue that human rights have been derailed by a focus on claim rights-for-the-self. They further maintain that the idea of a homogeneous autonomous self is argued to be a most oppressive component of a protective rights enterprise whose target is the elimination of suffering. In this historical and contemporary discourse, even that of the postmodernist, the moral standing of nonhuman others and their suffering has been largely ignored.

Thus, these conclusions are important because the community of living beings on Planet Earth extends beyond human beings. The orthodoxy of autonomy, human exceptionalism and human supremacy are outdated ideas that are slowly giving way to a richer understanding of interconnected life and the need for systems of justice to recognise the impact of human activities on the planet and other life.

The idea of protection for life and liberty, for self-authorised identity and for care and support no longer concerns only human beings in a society that has already recognised the sentient status of other, mortal life and has acknowledged that human activities can (and do) cause further harm. In the case of nonhuman animals, the harms imposed and the suffering endured is not just accidentally off the scale. It is a direct result of both an entrenched denial that nonhuman others have lives that are lived according to their own modes of being and of their exclusion from the moral community. In this view, human rights are built upon a false ontology of species prejudice. They transmit a 'said' in denial of the 'saying' of nonhuman others. In this context, claims that re-present the suffering of nonhumans are always and already disadvantaged in a system that does not recognise the justice required in a co-existent community of mortal others.

Without regard for these circumstances, scholars seek the ethics of human rights on their own terms. Some, such as James Griffin, retain human exceptionalist positions to explain and make sense of human rights in a self-perpetuating anthropocentric body of theory that is difficult to break through. In this context, advocates for nonhumans attempt to assign human characteristics to nonhuman others to support their cause – but in the ethics of alterity, this is a reduction of the other to the same.

The argument presented in this thesis is important because it foregrounds the importance of ascertaining valid and legitimate ethical principles for the existence of basic rights. It contributes to a body of discourse that contests the orthodoxy of autonomy as the grounds for rights but goes much further. By questioning the centrality of the human individual in the existing rights enterprise, it brings to the

centre the most severely marginalised suffering others whose ethical demand not only asks for justice and mercy but also invokes reflection on the grounds for existing and enduring human privilege.

Foregrounding the ethics of exceptionalist basic rights, the conclusion of this thesis describes veganism as the re-presentation of the natural ethical demand of the other. In so doing, it not only grounds the inclusion of nonhuman others within a concrete, non-abstract ethical experience of them as authentic others – it also supports the call of protest scholars for otherness to operate as the inclusive postmodern principle of justice. In this regard, the universal principle to be established in a non-anthropocentric rights enterprise is not cognitive competence, suffering or sentience, because these are the a posteriori categories used to describe (ineffectively) the reasons for the meaning and significance of the relational encounter intrinsic to the idea of human rights.⁶¹⁹ Rather, the first principle to be established is universal responsibility; but a specific kind of responsibility. It requires an acknowledgement that human beings are ethically responsive in the presence of the other who presents their mortal existence to us. It requires an understanding that human identity is co-constructed in relational experiences with others who are always and already present and constitutive of who we are. Reason, on the other hand, is merely subsequent, but instrumental, to an ethical humanity which is burdened with developing and implementing a system of justice that remorsefully limits competing ethical demands.

Ultimately, the importance of the conclusion of this thesis lies in its support for the idea that ethical duties are owed to others because it is in our nature to

⁶¹⁹ These remain important concepts of reason that undoubtedly play a significant role in the remorseful balancing required in the administration of legal justice.

desire to live in community without killing, oppressing and harming authentic others. This is the bedrock of a protective rights enterprise that can only be conceived of from within the context of apprehending and being concerned with others.

7.2 Implementing the ethics of alterity

The conclusion of this thesis has profound implications for humans and nonhumans alike. It requires a tremendous shift in thinking, from a prejudicial anthropocentrism to an inclusive non-anthropocentric form of reasoning that undoubtedly presents enormous challenges. These challenges include a fair and honest assessment of whether the current speciesist prejudice – exemplified most predominantly in the commodification of nonhuman animals – reflects human integrity, or whether it simply serves the totality of anthropocentric reason.

On a practical, daily level, the argument developed requires public authorities and social institutions to regard veganism as a manifestation of a much wider ethical regard for nonhumans, presenting a goal of consistency that eradicates random, arbitrary and illogical prejudicial themes and categories of oppression. With regard to human rights, the argument requires a reorientation of foundational values away from the primacy of reason and towards the primacy of the ethics-inducing other. In the absence of a paradigm shift in human rights, the ethics of alterity can be applied in cases concerning ethical responsibility to nonhuman others. The following explains how this could take place.

7.3 Adjudication and the recognition of alterity

In *H v UK*,⁶²⁰ the applicant was duty-bound to respond to the resource status of nonhuman animals. H's claim presented the commodification of a life that had

⁶²⁰ (1993) 16 EHRR.

been reduced to existing as a means for human ends. H's claim presented the lives of others that had been appropriated as objects of biological apparatus on which dyes (that would eventually be made available to humans) could be tested for safety. From the perspective of the ethics of alterity, H presented an asymmetrical desire and duty to care. He re-presented and expressed the reduction of heterogeneous, mortal life, suffering and death. Though it was found that his vegan convictions were within the scope of the Convention, the finding was made only in relation to a system that prioritised and promoted his rational autonomy to believe in the seriousness of these matters, rather than on the basis that these matters of ethical responsibility, reduction, oppressive categorisation and killing were serious in themselves.

When discussing the merits of this case according to the ethics of alterity, the heterogeneity of life that cannot be known and the paramount duty to be compassionate in the face of moral standing are paramount. Since any calculation for justice must be based on the original ethical opening – that is, the demand for responsibility as presented in an original face-to-face encounter – legal reasoning cannot rely on a principle of existing law if in doing so it overlooks the reduction of the legitimate other to commodity status and the dismissal of their suffering and death.

H presented alterity to the extent that it is not limited by observable differences. In the application of the ethics of alterity, heterogeneous nonhumans are entitled to life and to a self-authored identity in which their sapience is recognised. On this basis, H would be allowed a request to be exempt from participating in the practice of the reduction of legitimate others to a status of commodified resource, their appropriation or their death.

Similarly, the alterity, precariousness and suffering of others were not considered in *Jakóbski* or in *Vartic*. Both cases re-presented the mortal suffering other, and in both, personal disadvantage was paramount. In *Herrmann*, Judge Pinto de Albuquerque took a novel approach in his partly dissenting judgment. In his dissent, he defended the presentation of the moral standing of nonhumans under Article 9. Though Pinto's views do not correlate to the argument of this thesis in that he promotes their protection under the Convention in other ways – such as through their property status – his views, nonetheless, give credence to the need to develop a better process of litigation for claims that represent the moral standing of nonhumans. Moreover, Pinto's ideas come close to recognising the operation of alterity in existing human rights.

7.4 The existing possibility of alterity in human rights

The right to present compassionate regard for nonhumans is most notable in the 2012 ECtHR Grand Chamber case of *Herrmann v Germany*.⁶²¹ In this case, a landowner's Article 9 ethical objection to an obligation to allow hunting to take place on his land was relegated by sixteen judges to one in favour of an apparently more important principle: the right to peaceful enjoyment of private property.⁶²² In a partly dissenting statement, Judge Pinto raised a sustained and lengthy point to support his judgment that the applicant had suffered a breach of his Article 9 right to freedom of conscience. In this statement, Judge Pinto remarked on the creation of a developing interface of human and nonhuman interests at the ECtHR.

⁶²¹ *Herrmann v Germany* App No 9300/07 (ECtHR, 26th June 2012).

⁶²² See Page 30 of the judgment: the Court 'holds by sixteen votes to one that it is not necessary to examine separately the complaint under Article 9 of the Convention'. Instead, a Protocol 1 right to peaceful enjoyment of property took precedence. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1.

In relation to the applicant's conscientious objection to hunting, Judge Pinto commented on legal rules and on the importance of addressing higher ethical values, which he noted was '[m]ankind's true moral test'.⁶²³ Judge Pinto remarked that this case was not only about property rights but also centred on the way in which the Convention protected animals.⁶²⁴ For Pinto, the presentation of animals under Article 9 is an important constituent part of a clear and uncontested broad trend towards the acceptance of the moral standing of nonhumans and their protection; a trend that the Convention and the ECtHR recognise.

Judge Pinto's dissenting statement was in response to the Court's prioritisation of property rights over an Article 9 claim to freedom of conscience. It supported the recognition of the moral standing of nonhumans by citing the works of philosophers who advocate positive changes in the human-animal relationship in recognition of a 'shared nature' of human and nonhuman animals. Supporting his dissent, Pinto noted the clear and uncontested burgeoning of international and national constitutional animal protection, the developing interface of human and nonhuman interests at the ECtHR, works of compassionate philosophy in favour of the moral standing of animals, and the undisputed, widespread, compassionate, public voice.

7.5 Adjudication and the recognition of otherness

From the perspective of the ethics of alterity, the claims of *H, Jakóbski*, *Vartic* and *Herrmann* can be reconceptualised as the recognition of ethical otherness. Each claim promoted ethical duty and responsibility to nonhuman others. They reflected

⁶²³ See Paragraph 1 of Judge Pinto's partly dissenting statement.

⁶²⁴ Pinto observes protection of animals in the form of the property right of humans, as beings in themselves and in the context of environmental balance.

the fact of intertwined co-existence and human responsibility to precarious, mortal, nonhuman others.

What *H*, *Jakóbski*, *Vartic* and *Herrmann* communicate to law is the fact that human beings consider relationships with nonhumans to be a matter of ethics. As a minimum, therefore, nonhumans have the right to be different included in the administration of justice. This requires, in the first instance, a respectful, non-oppressive thematisation and categorisation and a pro-active endeavour to re-present their legitimate value.⁶²⁵ Though adjudication in the remorseful justice of the ethics of alterity necessarily has to compare, judge and balance competing demands, it must do so from a position of the original, ethical encounter and an acknowledgment that the subject enters the world of the precarious other, who is already vulnerable. The recognition in litigation of affective otherness would ensure the dissolution of the primacy of personal and private conscience in human rights and counter the unethical totality of reason that facilitates and manifests convenient categories of oppressive anthropocentrism. This would ensure better outcomes for vegans.

7.6 Adjudication and a priori responsibility to nonhumans

The claims presented illustrate compassionate, ethical engagement with nonhuman others. As such, they demonstrate responsibility and re-present the authentic other that signifies their presence in a silent saying that precedes human language. This silent saying animates ethics, or, on Perpich's view, opens valuing. It is the moment of intersection when the other 'speaks' to the subject: 'It is me', 'I have a purpose', 'I will one day die', 'I am vulnerable and subject to mortality. How will

⁶²⁵ Either as facilitators of ethics or of ethical opening.

you respond?’ To ignore or reject this ethical event of absolute responsibility is to reside in the totality of reason. It stagnates human evolution, entrenches dogma and fails to facilitate human freedom. The totality prevents the subject from enacting responsibility for others. It is ipso facto unethical.

Applying the principle of a priori responsibility to the cases referred to above requires the recognition of infinite responsibility to the a priori saying of the other and a commitment to responsibility as a constituent of human identity. This would then deal with the dismissal of nonhumans in the ‘said’ of the totality of reason that grounds and justifies lawful interference in the manifestation of ethical responsibility. The application of a priori responsibility in adjudication of the cases presented would ensure better outcomes.

7.7 Adjudication and infinity of ethical responsibility to nonhumans

H’s claim related to the commodification of nonhumans that are designated as apparatus for chemical testing. It thus spoke to the infinity of the ethical demand. In two of the other cases, the plaintiffs refused to eat the others they had not known or ever come into contact with. In one, the applicant objected to hunting others who were also not in close proximity. In recognition of infinite responsibility, these subjects presented the demand of the third party under the right to free conscience. The plaintiffs, in these cases, were practising ethical responsibility. They were looking to the justice of human rights to ensure that they would be permitted to manifest ethical practice and would not be required to rescind the ethical obligation.

In the ethics of alterity, adjudication must calculate, balance and judge to limit one’s infinite duty to the other in circumstances of conflicting ethical dilemmas. The cases discussed above were not adjudicated in this context. They were, instead,

cases presented in the context of an anthropocentric system of protective rights that denies ethical responsibility to nonhuman others.

Currently, the calculation and balancing conducted under the right to freedom of conscience are from within the totality Levinas explains. They concern only whether the individual self-of-the-ego suffers a disadvantage in circumstances of an entrenched totality of reason that has oppressed and commodified nonhumans. These conditions have created speciesism and what Melanie Joy has called the invisible belief system of carnism that protects, perpetuates and maintains the (false) natural, normal and necessary justification for the oppressive conditions for nonhumans defined as 'food'.⁶²⁶ Resistant to these systems, veganism expresses the infinity of responsibility by re-presenting the suffering nonhuman other as the relational third party who is not in direct proximity. Keeping in mind that the principle of infinity requires that the third party is owed the same ethical consideration as those in close proximity, intentional reduction, harm or killing must be prohibited.⁶²⁷ In human rights cases that present ethical responsibility to nonhumans, the application of the principle of the infinity of ethical demand ensures that cases succeed because plaintiffs would not be required to participate in what would be deemed unethical human conduct.

This approach to settling the human rights claims of vegans covers a range of situations that vegans currently find intolerable, such as requirements that school pupils dissect nonhumans in science classes. Under the ethics of alterity, rather than primarily assessing the degree of disadvantage to the applicant, the emphasis would be on the suffering and death of the nonhuman in question. In these reoriented

⁶²⁶ Melanie Joy, *Why We Love Dogs, Eat Pigs and Wear Cows* (Conari Press 2010).

⁶²⁷ Subject to a notion of 'just' (but remorseful) killing.

conditions, a school's attempt to limit its duty towards nonhuman others would be rejected on the basis that the teaching objective sought is disproportionate to the suffering of nonhuman others – because it requires their reduction, commodification and death.

The same considerations apply to cases presented by vegan police officers and firefighters, who are required to wear uniform items that are derived from the skin of nonhumans. In these cases, although rules and regulations exist for safety, the court would, under the ethics of alterity, have to consider the duty to nonhumans in line with the original ethical facing. Given that there are suitable alternative uniform items that meet the requirements of health and safety policies, the court would have no option but to conclude that the interference is disproportionate.⁶²⁸

Similarly, a requirement to present this thesis according to university regulations may require that I accept printing and binding services that use products derived from nonhumans.⁶²⁹ In such circumstances, under current human rights law,⁶³⁰ a request can be made for alternatives to be sourced and used – but such a request will be considered only in relation to individual personal disadvantage rather than to the obligatory ethical demand to honour difference and respond to unique, nonhuman others with kind regard and respect.

The potential of the ethics of alterity as a model for the reconfiguration of litigating claims re-presenting the moral standing of nonhumans presents enormous challenges regarding the human relationship with nonhumans. This challenge is most

⁶²⁸ This does not mean that if there were not alternatives there would be a justification for the resource status of nonhumans.

⁶²⁹ Cloth dye and glue typically contain derivatives from nonhumans.

⁶³⁰ Assuming that a university is designated a public authority.

prominent at the interface of human and nonhuman moral standing as illuminated by the human rights claims of vegans. Despite this, a specific application of the ethics of alterity to claims of conscience for the moral standing of nonhuman others reconfigures the nature of the claim, citing the primacy of ethical responsibility as the principle on which any interference must be justified.

7.8 Implications for nonhumans

To be clear, the application of the ethics of alterity to human rights honours the unique individuality of each and every human and nonhuman animal. It acknowledges the transcendence of the subject by the other as the process by which human beings become ethical. On this basis, it honours the moral standing of all lives as unique ethics-inducing others who invoke responsibility and facilitate acts of duty.

In this system, responsibility and duty are inseparable from the awareness of a universally shared characteristic of precariousness and the understanding that all life is subject to the forces of mortality. A rights enterprise protects the world of the other from the actions of the subject, regardless of actual, observed suffering. As such, all nonhumans have moral and legal status on the basis that they are perceived as mortal.

In this theory, a system of remorseful justice will remorsefully limit duties owed. Though singularity cannot be overcomplicated to accommodate uniqueness of Being, any thematisation or categorisation must not be to automatically relegate the self-defined identity of the other.⁶³¹ In an inclusive application of the ethics of alterity, there is a commitment to non-oppressive categorisations and themes that

⁶³¹ Derrida's thoughts on singularity (see Derrida (2008)), in which he cites the story of the cat that looks, are too complex to help develop a universal system of protective rights because of the emphasis on absolute singularity. This is a position from which it is difficult to provide any ethical categories through which universal principles would be regarded ethical.

demonstrate an intention to acknowledge responsibility to the other in all situations.

Remorseful justice, unfortunately, requires that balance is brought to the infinite obligatory demand. Ethics of alterity theory offers general principles but does not prescribe a detailed set of normative categories to suit all circumstances. It is, though, a philosophy that is sensitive to the potential for a totality of reason to subjugate in the interests of the subject. In this regard, contemporary theory on animal rights may help to ascertain the (remorseful) principles of the way forward. In addition, the theory of the Saturated Marginalised Other, developed by Simmons, may also be helpful in developing principles for practice by introducing the idea of phenomenological saturation to the extent of subjugation and suffering.

7.9 Implications for vegans

The claims of vegans in a human rights built upon the ethics of alterity are successful. Bringing the idea of a universal, infinite ethical responsibility to animals to bear upon human rights, this new way to litigate cases concerning compassion for nonhuman animals removes the requirement to prove personal disadvantage. Though the right to freedom of conscience remains significant to negotiating other matters, when it is used to present and re-present the others that are already considered as a matter of collective conscience, human rights practice will recognise that the provision has 'done its job' and has helped in the creation and evolution of the universal ethical categories that help humanity live according to the highest ethical values. In this system, litigation in cases such as *H, Jakóbski, Vartic* and *Herrmann* no longer submits to the centrality of the human individual and its associated primary concepts (such as personal disadvantage and significant disadvantage); nor does the judiciary override ethical regard for nonhumans in

favour of a different protocol, used also to uphold the primacy of individual claims. Instead, it acknowledges existing ethical regard for other-than-human animals and permits a justice based on ethical reasoning that is induced by the primacy of responsibility to the other.

7.10 Recognising the complexities of Levinas' philosophy

Levinas' philosophy on the ethics of alterity is complex, demanding and so 'blisteringly obscure'⁶³² that interpretive accounts run the risk of representing nothing more than, as Desmond Manderson suggests, a simple understanding.⁶³³ It is true that there is much to be explored, reflected on and revisited in Levinas' work: for example, the command not to kill that is issued in the ethical encounter, and the idea that a remorseful justice may (remorsefully) be required to implement violence in the protection of the self and the other's other. In his development of an exceptionally dense and complex philosophy of the merits of such violence, Levinas offers a pre-social gracious humanity no practical guidance in its quest to create and maintain a social harmony that also permits the utility of violence.

Moreover, reading and attempting to decipher Levinas' philosophy involves many optimistic highs, twists and returns, but also intense lows that together culminate in the frustrating acknowledgement that it is a philosophy that does not easily lend itself to the formulation of exacting principles for the application of law.⁶³⁴ Apart from extracting the basic ground rules on which a case for the inclusion of nonhumans can be made, Levinas' ethics of alterity and the creation of positive law are at odds: the first requires an acceptance of a priori affectivity and of notions

⁶³² Manderson (2009) 3.

⁶³³ Manderson (2009) 4.

⁶³⁴ For discussions on a variety of topics on Levinas and law, see Marinos Diamantides (ed), *Levinas, Law, Politics* (Routledge-Cavendish 2007) and Manderson (2009).

of singularity, unique otherness and infinity; the second provides for the reason of man and homogeneous themes and categories. What is required is a way to thematise and categorise that does not overcomplicate singularity but at the same time does not cause oppression through unjust and prejudicial themes and categories.

With the exception of the developments for practical justice put forward by Simmons, existing critical human rights scholarship does not develop a workable system of justice from Levinas' ethics of alterity. This is also characteristic of this thesis – save for utilising the foundational principles to argue for a reorientation in the foundations of human rights from individualism to a non-anthropocentric inclusive otherness.

This thesis has explained an alternative model for litigating and adjudicating cases that could accommodate the human rights claims of vegans by presenting responsibility to nonhuman others. It is a starting point for the entry of the ethics of alterity to be incorporated into a framework for basic protective rights. It is a point of entry in recognition that the claims of conscience for suffering nonhumans represent to social justice, as a matter of ethical responsibility, the already present and legitimate other. With regard to a much more profound reorientation of the foundations of human rights, what is required is the development of discourse on the otherness of human identity and the creation of themes and categories that are anti-oppressive and necessarily anti-anthropocentric.

These developments are directly related to the major principles in Levinas' ethics of alterity that describe the normativity of the relational experience that invokes responsibility. It is on these principles, as Jill Stauffer suggests, that the ethics

of alterity may present the basis for an emancipatory justice that stems from a reconceptualised understanding of human subjectivity.⁶³⁵ Such a reconceptualisation of human subjectivity can accommodate an understanding of veganism being the re-presentation of the nonhuman other that has been caught up in the totality of the orthodoxy of human autonomy. If, even at a basic level of understanding, Levinas' ethics of alterity speak to the other to communicate the principles of justice that accommodate suffering others, veganism does this work at the foundation of the right to freedom of conscience and at the heart of human rights.

7.11 Developing a vegan jurisprudence of human rights

In the development of a theory of relational Becoming with other animals that can be used to underpin a vegan jurisprudence of human rights, the articulation of concrete principles for everyday practice remains a significant challenge.⁶³⁶ In an endeavour to ascribe moral and legal standing to nonhumans in terms of relational ethical responsibility, discourse must move beyond sentiency to consider the broader scope and complexity of otherness and the vegan manifestation of infinite ethical responsibility. This discourse should not centre on nonhuman animals but on human modes of thought: 'change regarding the moral standing of animals is not necessarily about animals. It is about us. Facing animals is about facing ourselves and others.'⁶³⁷ As such, discourse must resist a return to ideas that perpetuate a hierarchy of moral standing.⁶³⁸ In an attempt to generate non-anthropocentric

⁶³⁵ Jill Stauffer, 'Productive Ambivalence: Levinasian Subjectivity, Justice, and the Rule of Law' in Manderson (2009).

⁶³⁶ For a discussion of the way philosophy currently deals with ascribing moral standing to nonhuman others, see Mark Coeckelbergh and David J Gunkel, 'Facing Animals: A Relational, Other-Oriented Approach to Moral Standing' (2014) 27(5) *Journal of Agriculture and Environmental Ethics* 715. doi:10.1007/s10806-013-9486-3.

⁶³⁷ Coeckelbergh and Gunkel (2014) 715.

⁶³⁸ Such as ascribing moral standing as a result of relational Becoming through playing or working with animals. Haraway (2008) 22.

thought, the idea of relational Becoming must not be limited to only the ‘embodied communication’⁶³⁹ that describes those in close proximity. It must be extended to consider a manifested responsibility that emanates from witnessing the infinity of ethical responsibility in the embodied communication of the other in close proximity. This concerted effort will help pave the way to detailing further what is at stake in the idea of human rights grounded by an ethics of alterity that does not explain how to live according to what it prescribes - but certainly concerns vegans and nonhuman others.

The ethics of alterity is a philosophy that is able to move forward a vegan jurisprudence of human rights on the basis that, if nothing else, Levinas’ goal, as Robert Bernasconi remarks, was a ‘reorientation of thinking ... [that] impacts on our approach to concrete situations so that we come to see them as ethical’.⁶⁴⁰

Baxi cautioned about the potential for ‘Vulgar Levinasianism’. This was based on Alford’s reference to the ‘Levinas Effect’ in which scholars interpret Levinas to ‘say whatever [they] wanted to say in the first place’.⁶⁴¹ With regard to the representation of nonhumans and their visibility in the claims of vegans, the idea of veganism as a response to a priori ethical responsibility is admittedly a moot point – but no more so than the idea of the immanence of ethical responsibility.

If Levinas’ philosophy on the ethics of alterity is anything at all, it is a response to and in the service of the other. As such, even a simplistic understanding and application to justice and law is better than a deep, comprehensive understanding and application of an alternative that exalts the primacy of the self at

⁶³⁹ Haraway (2008) 23-26.

⁶⁴⁰ Robert Bernasconi, ‘What is the Question to Which Substitution is the Answer?’ in Simon Critchley and Robert Bernasconi (eds), *The Cambridge Companion to Levinas* (Cambridge University Press 2002) 250.

⁶⁴¹ C Fred Alford, ‘Levinas and the Limits of Political Theory’ in Marinou Diamantides (ed), *Levinas, Law, Politics* (Routledge-Cavendish 2007) 107.

the expense of suffering others. In this regard, discourse could do much worse than to explore further the potential of the ethics of alterity to ground a protective rights enterprise that seeks universality and aims to attend to suffering, emancipate and liberate. This is especially so in the current era of scepticism about the institution that is human rights, the escalating urge to attend to the off-the-scale-suffering of nonhumans, and the interface of human and nonhuman moral standing currently observed in human rights theory and practice. Such an exploration is, after all, implicit in the existence of human rights and (as Levinas goes to great lengths to argue) is constitutive of a humanity that is always and already trying to work out how to respond to responsibility.

The accommodation of veganism by the Convention not only acknowledges the significance of the ethical nature of human and nonhuman interaction, it also creates and imposes legal duties to accommodate vegans in different contexts in wider society. Either by ensuring the provision of appropriate food and synthetic uniform items, or by ensuring inclusion of veganism as a legitimate topic in educational curricula, human rights law is instrumental in upholding, honouring and promoting the moral standing of other animals. This is paradoxical to the idea of exclusive human rights and is a clear indication of the potential for a profound transformation of human rights to protect the moral standing of nonhuman animals.

In view of these considerations, the argument presented in this thesis is not limited to a consideration of one system of human rights that seeks to comply with established, normative, universal principles. It extends to a critique of the false ontological assumptions entrenched in the idea of human rights that justify exclusion. The ontologically justified exclusion of other animals does not only

subjugate and deny them their basic rights, it denies the ethical obligation innate to a compassionate humanity that is restrained and sucked into a paradigm of violence and prejudice which it finds so objectionable.

On this view, human rights discourse, law and legal process cannot escape the vegan re-presentation of the nonhuman other and the ethical imperative to acknowledge the authentic signification in the unspoken saying that precedes the oppressive said. As such, it must also acknowledge and honour the socio-political, intertwined nature of human and nonhuman life, the human-to-nonhuman sociability and the widespread compassion that transgresses speciesist prejudice.

Ultimately, the human rights claims of vegans can only be accommodated by foregrounding the ethical nature of our relationship with nonhuman others. This requires an anti-oppressive, inclusive vegan jurisprudence of fundamental, basic moral rights that honours, rather than de-faces, the legitimate, authentic signification of nonhuman others and our ethical responsibility to them. In this regard, the application of Levinas' ethics of alterity has significant value for the claims of vegans.

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