

## A Vegan Jurisprudence of Human Rights

(Significantly condensed version)

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### Abstract

This paper introduces ethical veganism<sup>2</sup> to human rights discourse. It examines the postmodern and posthuman critique of Kantian human rights and the call for Levinasian ethics of alterity to replace the Kantian primary values of reason and autonomy. In congruence with existing scholarship, it advances the argument for a transformational paradigm shift in the foundational architecture of human rights to entrench the importance of duty to Others. However, in examining veganism in the context of human rights discourse, it highlights that the postmodern call for a reorientation of human rights has overlooked the impact of the expansion of postmodern human rights to vegans. It concludes that human rights evidence a shift in the conception of human nature to one that represents a profound responsibility and duty to Otherness. Rather than re-presenting Kantian same-for-self human rights, it highlights that the existence of and protection for ethical veganism has already animated the Levinasian transcendental principle of justice called for by postmodern and posthuman human rights scholarship.

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<sup>2</sup> Veganism in its original meaning has come to be known as ethical veganism. 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 purpose; and by extension, promotes the development and use of animal-free alternatives for the benefit of humans, animals and the environment.”* (*The Vegan Society Articles of Association 2010*. Retrieved from [http://www.vegansociety.com/uploadedFiles/About\\_Us/Articles-of-Association-Nov-10.pdf](http://www.vegansociety.com/uploadedFiles/About_Us/Articles-of-Association-Nov-10.pdf)). The use of the term “vegan” or “veganism” throughout this paper refers to this definition of ethical veganism not temporary, dietary or medicinal veganism.

## Introduction

Human rights are necessarily related to a conception of human identity. Current modern human rights are grounded in a notion of human identity commonly associated with Kantian principles of liberal philosophy. As such, human Being revolves around a rational, individualised, self-conscious, self-determining ego; the autonomy of which is of paramount social and legal importance.<sup>3</sup> This notion of human identity establishes the exclusionary principle of the dignity of the human species and underpins a framework of protective rights that celebrate the superiority of this human Being.

Postmodern human rights discourse has, however, developed a powerful critique of Kantian constructed human identity, and questions the scope of subsequent liberal philosophy to function as a principle of emancipation in the human rights project. Citing this critique as scholarship emanating from the “protest school”<sup>4</sup> of human rights, Dembour<sup>5</sup> notes the rejection of Kantian principles on the basis that they promote a homogeneous human kind in which same-for-self claim rights delude and reduce humanity to atomistic egos devoid of concern for others, and individual life projects which are dominated by perpetual conflict for self-preservation and recognition. Instead, protest scholarship urges the adoption of Levinas’ ethics of alterity as a superior principle foundational to human identity and human rights. This alternative identity is grounded in a non-metaphysical, pre ontological, *a priori* ethical responsibility brought about in an encounter with the face of the Other.

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<sup>3</sup> The Universal Declaration of Human Rights promotes “reason and conscience” as intrinsic human characteristics.

<sup>4</sup> Protest scholarship in human rights is said to be represented by scholars such as, for example, Upendra Baxi and Costas Douzinas. The focus of this school is “suffering”. It emphasises that the mission of human rights is the alleviation of such suffering through responsibility for each other. See Marie-Benedicte Dembour. To Dembour’s list of scholars can be added the later (2014) work of William Paul Simmons.

<sup>5</sup> Dembour, M.B. (2006).

In developing this critique, the protest school of human rights provokes two important debates: The first is a debate concerning the notion of human identity that ought to ground human rights.<sup>6</sup> The second debate concerns its own ontological position; that the diverse range of claims for human rights, evident in the postmodern and posthuman world, is a politics of ego-centred, self-interest that is disconnected from a higher morality of human identity.<sup>7</sup> This claim, put forward by Douzinas<sup>8</sup> and Indaimo,<sup>9</sup> argues that the postmodern proliferation of rights has caused a “moral crisis of self-interested indifference, ethical ambivalence and personal relativism.”<sup>10</sup>

Both Douzinas and Indaimo claim that these circumstances are paradoxical to the intentions of postmodern human rights; the aim of which was to facilitate an ethical transformative, transcendent principle for justice, grounded in difference and Otherness. In this endeavour, human rights have failed. Moreover, this discourse advocates that until a transcendental principle of justice is properly secured through a paradigm shift in human identity; from a Kantian self-seeking ego to a Levinasian ethical primary concern for the Other, the current notion of human identity underpinning human rights will perpetuate the numerous paradoxes and aporias<sup>11</sup> inherent in the human rights project.

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<sup>6</sup> This is also taken up by Indaimo see below.

<sup>7</sup> This is a new and original observation central to my PhD project.

<sup>8</sup> Douzinas, C. (2000).

<sup>9</sup> Indaimo, J.A. (2015). Note: Indaimo’s work does not represent protest scholarship, but rather identifies the posthuman potential of a shift in principles of human identity for human rights law.

<sup>10</sup> Indaimo, *ibid*, at 65.

<sup>11</sup> Douzinas, C. *ibid*, n8.

The call then, is for a reinvigorated human identity and a reorientation in the architecture of human rights. From homogeneous same-for-self rights, validated on the basis of individual (or group) reason and autonomy, to a dutiful humanity grounded in an ethic of self-for-Other on the basis of the Levinasian pre ontological, *a priori* compassionate duty and responsibility in the face of unique Otherness.

### **Argument presented in this paper**

This paper presents two arguments: Firstly, that the recognition of the Other in the postmodern expansion of human rights has already given way to a reinvigorated notion of human identity and to a Levinasian transcendental principle of justice that reflects the infinite responsibility<sup>12</sup> and asymmetrical ethical duty to Otherness outlined by Levinas and demanded by the protest school of human rights. It therefore concurs with the call for a reorientation of the foundational concepts of human rights in its acceptance of the first claim of the protest school: that Kantian liberal philosophy does not represent a suitable ethic for human rights and that Levinas' ethics of alterity does.<sup>13</sup> Secondly, on the basis that it argues that Levinasian Otherness is already characteristic of human identity and functional in human rights practice, it rejects the second claim; that the postmodern proliferation of human rights has "reduced the heterogeneity of the infinity of alterity and the ethics of otherness to the *genus* of sameness in the signification of being."<sup>14</sup>

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<sup>12</sup> Levinas urges that responsibility to Others is infinite.

<sup>13</sup> The concurrence is for different reasons. The protest school calls for a reorientation because it observes same-for-self claim rights that have no transcendental value. My concurrence is based on the fact that human rights has reached a transformational threshold in theory and practice where human rights now concerns animal rights but not on the basis of any notions of personhood.

<sup>14</sup> Indaimo, J.A. *ibid*, n9, at 179.

Rather, this paper highlights the observation that human identity and human rights already espouses a specific Levinasian concept of Otherness in which the Other is absolutely foreign, dissimilar, unique, incomparable and non-interchangeable.<sup>15</sup> This observation is clear in the legal acknowledgment of vegan identity,<sup>16</sup> and in the fact that veganism is acknowledged as coming within the scope international law provisions and Article 9 of the European Convention of Human Rights and Fundamental Freedoms.<sup>17</sup> In rejecting the second argument of postmodern protest scholarship, this paper highlights the immediate proximity between human rights and the desired paradigm shift in which human identity is grounded in ethical compassionate duty to the Other. What is required, therefore, is not that human rights *identify* the principle of profound Otherness and human rights discourse *adopts it*, but that human rights ought to logically evolve to *entrench it* in its foundational architecture, and discourse *align itself* with the already existent principle of infinite profound Otherness found in human identity, and operational in current human rights practice.

### **Outline of this paper**

The remainder of this paper will explain how, and why, vegan human rights are claims made on the basis of the transcendental principle of justice called for in postmodern and posthuman scholarship. It will do this by firstly offering an insight into the two main arguments of existing scholarship: that human rights orthodoxy is an insufficient ethical principle for justice because it has disallowed heterogeneity, and, that it has resulted in a focus on same-for-self claim rights - even though the postmodern expansion of rights

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<sup>15</sup> These descriptive characteristics of the Other are used repeatedly by Levinas, Baxi, Douzinas and Indaimo.

<sup>16</sup> Scholarship relating directly to ethical vegan culture is limited. Refer to Barbra McDonald, (2000); Rachel McNair (2001); Larsson, C. L., Ronnlund, U., Johansson, G. & Dahlgren, (2003); Bob Torres, (2005) and Bob Torres & Jenna Torres ( 2007).

<sup>17</sup> *H v United Kingdom* (1993) 16 EHRR CD 44.

includes groups of Others who have succeeded in their endeavour to resist and challenge social and legal dominance. It will then respond to these two claims by explaining how vegan identity, and its protection in human rights law, illustrates that Levinas' ethics of alterity is already intrinsic to Being – that is, to human nature - and already instrumental in its impact on human rights.

### **Protest school same-for-self homogeneity in human rights orthodoxy**

Protest scholarship rejects Kantian principles on the basis that reason and autonomous will is a powerful exclusionary and “peculiar ontological construction”<sup>18</sup> used by the superior as a weapon to dominate the inferior. It emphasises that the true nature of human rights is a formalisation of responsibility, duty, compassion and empathy towards the suffering Other. Insisting that human rights should operate as “the instruments of ethics”,<sup>19</sup> Douzinas recognises that rights “are a formal recognition of the fact that before my (legal) subjectivity always and already has come another.”<sup>20</sup>

For Douzinas, however, current human rights give legitimacy to Kantian same-for-self morality rather than facilitate or promote compassionate duty to others. What Douzinas means by this is that Kantian human rights have created conditions in which humanity is defined as possessing equal rational autonomy and competitive sameness: a homogeneous Being with the same inescapable need to fulfil the desire of the self-regarding, autonomous ego in its endeavour to secure itself as a priority and paramount in a world of atomised conflicting egos.

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<sup>18</sup> Baxi, U. (2008), at 44.

<sup>19</sup> Douzinas, C. *ibid*, n8, at 353.

<sup>20</sup> Douzinas, C. *ibid*, n8, at 343.

These circumstances have created vast inequality, exclusion and an endless proliferation of individual rights claims, through which the ego attempts to fulfil endless selfish desires and protect its autonomy and self-interest. Current human rights are thus argued to be a framework for the protection of competing rights of numerous atomistic egos. This claim of the protest school of human rights remains intact, despite the proliferation of diverse groups of Others who have registered their difference in the postmodern world of plural identities. This is because the postmodern ethic of human rights is argued to be a politics of self, which, despite promoting particular difference, remains anchored to same-for-self egotistical morality. Both protest scholarship (Douzinas) and posthumanist human rights discourse (Indaimo) observe this version of human identity underpinning human rights: "... feminism, ethnic and racial rights movements, gay activism, *etc.* (emphasis added) have agitated for the same emancipatory rights once limited to an identity of abstract individuals and restricted for the dominant socio-political group"<sup>21</sup> but none, they claim, transcend Kantian same-for-self rationality. As such, both Douzinas and Indaimo urge a paradigm shift in the foundation of human rights: a shift from unethical Kantian morality to Levinasian ethical responsibility. However, the version of human identity observed by existing scholarship in its critique of the postmodern expansion of human rights, fails to distinguish between the politics of self, claimed to be at the root of such expansion, and the politics of the Other which is inherent to vegan identity. In expanding human rights to ethical veganism, law has entrenched a transformative and transcendental politics of distinct Otherness. From this perspective law is seen as an institution which recognises that the autonomy of the subject is restricted, restrained and limited not only by the presence of other human beings but by the presence of non-human Others.

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<sup>21</sup> Indaimo, J.A. *ibid*, n9, at 64.

### Levinas' ethics of alterity

Levinas' ethics of alterity concerns asymmetrical human conduct in an encounter with the face of another: a unique, dissimilar, non-interchangeable, absolute Other. At the moment of the face to face encounter, the subject becomes aware of both their power and vulnerability and is immediately response-abled.<sup>22</sup> For Levinas, the encounter constitutes an ethical transformation in human beings. In the face to face encounter, there is no doubt that a course of action will be chosen; the only question is what that choice will be. To be free from unethical Kantian totality, one must accept the *a priori* ethical obligation to welcome and care for the other: to accept the ethical transformation in the self that is brought about by the response-enabling impact of the Other.

For Levinas, ethics arise in the encounter with the face of the other because it reveals a difference that cannot be known, it is an infinite unknowable presence that generates the moral rule "thou shalt not kill."<sup>23</sup> Experiencing the face of the other is a concrete ethical experience, constituting an ethical relation from which one cannot be released:

...the relation to the other, as a relation of responsibility, cannot be totally suppressed, even when it takes the form of politics or warfare. Here it 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.<sup>24</sup>

"[I]n its mortality the face before me summons me, calls me, begs for me".<sup>25</sup> As such, in the face of another, one is bound and hostage to the ethical demand of the Other.

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<sup>22</sup> Levinas, E. (1961/2000), at 15.

<sup>23</sup> Levinas, E. (1985), at 89.

<sup>24</sup> Levinas, E. (1989a), at 247.

<sup>25</sup> Levinas, E. (1989b), at 83.



What Levinas is urging is that ethics arise when one accepts the response-ability to welcome and to care for the absolute Other. The obligation to respond is innate to human Being but ethics is rejected if the subject, consumed in the totality of self, fails to open the self to the call of the Other. In Levinas' ethics of alterity, compassion for the other is intrinsic to human Being, and where one accepts and is liberated by the ethical obligation to welcome and care for the absolute Other, one has transcended unethical totality. The obligation of Levinas' ethics of alterity is thus the transcendental principle of justice sought and preferred by both posthuman and postmodern human right protest scholarship.

For Levinas, human rights represent the pre social, natural *a priori* ethical obligation to the absolutely different Other and the innate compassion of human Being to respond positively to heterogeneity. Rather than ego enhancing same-for-self rights of falsely assumed homogenous humankind, human rights should be regarded as a way to balance competing responsibilities.

Douzinis 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...."<sup>26</sup> As such, Douzinis 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."<sup>27</sup> Douzinis believes that Levinas' philosophy has "changed the ontological, epistemological and moral

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<sup>26</sup> Douzinis, C. *ibid*, n8, at 352.

<sup>27</sup> Douzinis, C. *ibid*, n8, at 352.

assumptions of modernity” and that human rights would benefit enormously from incorporating and promoting specifically Levinasian<sup>28</sup> ethics of alterity.<sup>29</sup>

### **Veganism as immediate proximity to Levinasian Otherness**

The observation of an immediate proximity to a human identity that is grounded in ethical responsibility emerges in the acknowledgement and recognition of vegan human identity.<sup>30</sup>

Rather than representative of the Kantian atomised same-for-self ego of critical postmodern discourse, veganism is a shift away from same-for-self ethics in its profound asymmetrical self-for-Other relationship with the unique, absolutely different Other.<sup>31</sup>

In this asymmetrical ethical welcoming, there is no irrationality in the inter-subjectivity that constitutes the vegan. The ethical demand to care for and welcome the absolutely different Other; to be partly constituted by this asymmetrical relationship, is met willingly and freely, allowing compassion, the essence of human Being - as indicated by the inatness of the ethical obligation in Levinasian ethics – to flow freely in the face of infinite difference and response-ability.

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<sup>28</sup> Douzinas does not mention the similarity of Levinas’ contemporary Knud Ejler Logstrup’s theory of the ethical demand imposed by the Other.

<sup>29</sup> Douzinas, C. *ibid*, n8, at 348.

<sup>30</sup> Levinas would argue that veganism represents transference of human values (suffering for example). However, even if such transference is accepted, the fact that law recognises non-humans as sentient (Treaty of Amsterdam for example alongside various “welfare” provisions) means that non-humans are involved in human politics by representation. The fact of this representation acknowledges the existence of a prior ethical encounter.

<sup>31</sup> Levinas himself was unsure about whether or not non-humans express the required “presence” through “face”. He felt it required a “more specific analysis.” (See Levinas, *The Paradox of Morality* in Wright, Hughes and Ainley, 1988). Vegans would disagree that a more specific analysis is required. Vegan identity promotes restraint on autonomous action in the face of any sentient life, and indeed, any circumstances where a negative impact on the wider environment may be consequential to autonomous action. See Levinas, *The Paradox of Morality* in Wright, Hughes and Ainley 1988

Rather than a homogeneous same-for-self human identity, in which personal subjectivity and endeavour supercedes the essence of identity, vegan human identity is that which is open to absolute difference, and saturated<sup>32</sup> with the pre social, pre-ontological, *a priori* ethical obligation. Going beyond the humanist and posthuman call to respect and welcome human difference, veganism is the lived expression of a human identity imbued with Levinasian infinite compassionate duty and responsibility for the unique, dissimilar, non-interchangeable Other: the ultimate in difference; the non-human Other.<sup>33</sup>

### **Vegan human rights and the impact of transcendental otherness**

Human rights present an ontological statement and a philosophy of Being. As such, its Kantian foundations are called into question. However, though postmodern discourse argues that human rights annihilates human Being and is devoid of ethical integrity because it does not entrench Otherness, the expansion of human rights to accommodate veganism indicates otherwise. Rather than limiting the transformational potential of rights,<sup>34</sup> vegan human rights re-present the already existing postmodern transcendental principle of justice which is based on a positive infinite response to the call of the Other. This is because vegan human rights are not the claims of the same-for-self personal aesthetic rights for the individual ego in atomistic Kantian terms, but are claims made in the spirit of transcendental Otherness: an Otherness that welcomes the *a priori* asymmetrical ethical responsibility and

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<sup>32</sup> Simmons, W.P. (2014) uses the idea of saturation in his development of a political principle for justice from the theory of ethics of alterity.

<sup>33</sup> Contrary to popular perception, human language is not a pre-requisite for the ethical encounter to take place. The first encounter which acknowledges presence is silent "the face speaks". Language is secondary and can aid understanding of the Other's and the subject's Being. Where language is secondary and helps understand Being, the cries of suffering non-humans is easily understood by human beings and this could help explain why law already recognises the sentience of non-humans. The first experience of the ethical encounter is recognition of presence.

<sup>34</sup> Douzinas and Indaimo, see above: human rights have "reduced the heterogeneity of the infinity of alterity and the ethics of otherness to the *genus* of sameness in the signification of being." n 14.

compassionate duty to the vulnerable, suffering Other. When a vegan comes to human rights she does so, not to claim self-for-same ego driven rights, but with an *a priori* ethical demand to welcome, care for and protect the absolutely different Other. Rather than same-for-self claims, vegan claims entrench the sought after postmodern principle of Otherness.

Thus, in recognising the values of the ethical vegan community<sup>35</sup> law accommodates, protects and advances much more than mere ethical vegan values. In this intersection where human rights meet the moral status of non-humans, law facilitates the operational Levinasian transcendental principle of justice that is based on infinite responsibility to profound Otherness. The legal rights of vegans re-present and animate the moral, social and political duty to be positively response-enabled by the call of the absolutely different Other.

On this basis, unlike other postmodern identities which re-present Kantian human identity through rights which are devoid of a transcendental principle of true Otherness, vegan human identity and rights move discourse to the immediate proximity of the transcendental principle of justice sought in postmodernism and posthumanism. Through this observation, postmodern human rights discourse is orientated towards a transformational paradigm of inclusivity and toward a vegan jurisprudence of human rights.

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<sup>35</sup> The United Kingdom Equality and Human Rights Commission literature frequently refers to veganism as a protected lifestyle under the ECHR, the Human Rights Act 1998 and The Equality Act 2010. Public Authority provision for vegans includes food, work wear (uniform items, footwear, accessories), educational items in school such as items not made from the skin of other species, or containing substances derived from other species. The Equality Act 2010 imposes a duty to accommodate veganism. This is the interpretation of provisions stemming from the International Bill of Rights concerning the human right to live according to one's deep convictions.

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