

## Vegan Values, Religious Rights: A Cultural Critique of Entrenched Ethics

“Non-injury to living beings is the highest religion.”<sup>1</sup>

—Jain Maxim

### INTRODUCTION

People adopt vegetarian diets for numerous reasons, including but not limited to, environmental protection, animal welfare, aesthetics, health, and religion; however, when someone chooses to become vegan, thereby avoiding all use of animal products, ethical justifications often become paramount.<sup>2</sup> Despite being rooted in morality and ethics, veganism is not commonly considered a religion, and therefore receives no protection under the *Canadian Charter of Rights and Freedoms*.<sup>3</sup> Without constitutional protection, vegans may be at risk from practicing their veganism. For example, they may be denied employment for refusing to receive vaccinations that have been cultured in nonhuman animal cells.<sup>4</sup> Additionally, vegan

<sup>1</sup> Sri Swami Sivananda, *Jainism*, online: The Divine Life Society <http://www.dlshq.org/religions/jainism.htm> at para. 25.

<sup>2</sup> See generally Erik Marcus, *Meat Market: Animals, Ethics, & Money* (Boston: Brio Press, 2005); Sarah Soifer, “Vegan Discrimination: An Emerging and Difficult Dilemma” (2003) 36 *Loy. L.A. L. Rev.* 1709; Karen Iacobbo & Michael Iacobbo, *Vegetarians and Vegans in America Today* (Westport, CT: Praeger Publishers, 2006); Greta Gaard, “Vegetarian Ecofeminism” (2002) 23:3 *Frontiers* 117. Many people describe their journey to veganism as a continuum beginning with vegetarianism and resulting in veganism. See, for example, Jeffrey M. Freedman, “Why I Am Vegan” *Religion for Vegetarians and Vegans*, online: Vegetarian/Vegan Society of Queensland [http://www.vegsoc.org.au/religion\\_whyiamvegan.asp](http://www.vegsoc.org.au/religion_whyiamvegan.asp). I began this research endeavour with the belief that while individuals may hold varied reasons for becoming vegetarian, ethical/moral justifications most likely influenced the final step to veganism. However, I have been unable to completely validate this thesis since very little literature on veganism is available. See Emma McGrath, “The Politics of Veganism” (2000) 19:4 *Social Alternatives* 50. Nevertheless, the origins of the word “veganism” perhaps support my theory. The National Vegetarian Society in Britain grappled with the differences between strict vegetarians (what we could call vegan today) and lacto-ovo-vegetarians (vegetarians who consume dairy and eggs). Many of the group’s members recognized that the needless suffering and death of dairy cows and male chicks were inextricably connected to the lacto-ovo-vegetarian diet and found this to be inconsistent with their ethics/morals. Hence, the group coined the term “vegan” to describe one who refuses to consume any animal products. See Leah Leneman, “No Animal Food: The Road to Veganism in Britain, 1909-1944” (1999) 7:3 *Society & Animals* 219.

<sup>3</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 [*Charter*].

<sup>4</sup> See *Friedman*, *infra* note 166.

schoolchildren may be denied access to nutritious meals, and vegan students opposed to vivisection may be severely rebuked and/or stigmatized.<sup>5</sup>

*Charter* litigation has been initiated by individuals who have refused certain medical treatments based on religious beliefs.<sup>6</sup> Although these claims have not been entirely successful, the fact remains that these individuals were permitted to argue their position because their refusal was founded on religious grounds.<sup>7</sup> Even though some vegans' beliefs may be rooted in faith and practiced with religious fervour, ultimately their tenets have not been accepted as religion or even a legitimate belief by the general public; rather, mainstream society has often treated vegans with hostility or indifference, labelled vegans fanatics or freaks, and reduced veganism to a nutritional preference, merely an extreme or strict vegetarian diet.<sup>8</sup>

Since neither the United States Constitution nor the *Charter* provide a definition of religion,<sup>9</sup> courts and scholars have been left to grapple with its meaning and implication in relation to fundamental human rights. Judicial attempts to define the freedom of religion have often focused on attributes of traditional/conventional religions. However, this approach quickly becomes problematic due to its circular nature and its potential to promote certain religions, which in turn is tantamount to establishment of state religion.<sup>10</sup> In contrast, several scholars argue that freedom of religion is best defined by examining the spirit of protection or the underlying

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<sup>5</sup> See Part III(e), below.

<sup>6</sup> See generally Iain T. Benson, "The Freedom of Conscience and Religion in Canada: Challenges and Opportunities" (2007) 21 *Emory Int'l L. Rev.* 111 ["The Freedom of Conscience and Religion in Canada"]; Pauline Côté & T. Jeremy Gunn, "The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Canada" (2005) 19 *Emory Int'l L. Rev.* 685; Paul Horwitz, "The Sources and Limits of Freedom of Religion in a Liberal Democracy: Section 2(a) and Beyond" (1996) 54 *U.T. Fac. L. Rev.* 1.

<sup>7</sup> Whereas a single case involving treatment refusal due to Ethical Vegan values has been litigated in the United States (*Friedman, infra* note 166), no litigation of this type has been initiated in Canada.

<sup>8</sup> Taimie Bryant, "Trauma, Law, and Advocacy for Animals" (2006) 1 *J. Animal L. & Ethics* 63; Stanley M. Sapon, *Is Veganism a Religion?*, online: Vegan Values [http://www.veganvalues.org/veganism\\_religion.htm](http://www.veganvalues.org/veganism_religion.htm) [*Is Veganism a Religion?*]; Iacobbo & Iacobbo, *supra* note 2; McGrath, *supra* note 2.

<sup>9</sup> Christopher L. Eisgruber & Lawrence G. Sager, "Unthinking Religious Freedom" (1996) 74 *Tex. L. Rev.* 577.

<sup>10</sup> Timothy Macklem, "Faith as a Secular Value" (2000) 45 *McGill L.J.* 1.

value informing religious freedom.<sup>11</sup> One author reveals that religious freedom's value is found in a faith in the unknowable that holds the capacity to enhance one's well-being.<sup>12</sup> Ethical Veganism<sup>13</sup> is a set of beliefs and practices derived from ethical principles based on faith and acceptance of an interconnectedness of all living beings, human and nonhuman, which has the ability to promote the well-being of its adherents.<sup>14</sup> Consequently, Ethical Veganism is, in many ways, analogous to the value informing religious freedom—a respect for faith as a part of well-being—and thereby should find protection under section 2(a) of the *Charter*.<sup>15</sup>

Part I of this paper defines veganism, describes its origins, provides various justifications for the lifestyle, explains the significance of veganism, and discusses dominant culture's marginalization of vegans. In Part II, I sketch the scope of freedom of religion by providing an overview of freedom of religion doctrine generally before moving on to address the Supreme Court of Canada's treatment of religious freedom as well as outlining the elemental value of religious liberty as generally described in legal academic commentary on the matter. With the scope of freedom of religion outlined, in Part III, I consider the appropriateness of placing veganism within its purview. I do so by first explaining Ethical Vegans' and others' perspectives on whether or not the lifestyle is religious. Following that, I illuminate the parallels between Ethical Veganism and freedom of religion's underlying value, thereby illustrating the need to protect Ethical Veganism under section 2(a) of the *Charter*. After addressing the theoretical

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<sup>11</sup> Horwitz, *supra* note 6; Jeremy Webber, "The Irreducibly Religious Content of Freedom of Religion" in Avigail Eisenberg, ed., *Diversity and Equality: The Changing Framework in Canada* (Vancouver: UBC Press, 2006) 178; Macklem, *supra* note 10.

<sup>12</sup> Macklem, *supra* note 10.

<sup>13</sup> I wish to use this term to distinguish those who become vegan for ethical/spiritual reasons as opposed to those who choose the lifestyle simply for environmental or health benefits. Ethical vegans are a subset of vegetarians who are the most stringent in their refusal to consume animal products. See Soifer, *supra* note 2. See also Part I(c), below.

<sup>14</sup> Stanley M. Sapon, *A Philosophy of Vegan Values*, online: Vegan Values <http://www.veganvalues.org> [*Vegan Values*]; Stephen R. L. Clark, *The Moral Status of Animals* (Oxford: Clarendon Press, 1977).

<sup>15</sup> *Charter*, *supra* note 3. In particular, see s. 2(a) which reads, "Everyone has the following fundamental freedoms: freedom of conscience and religion."

suitability of incorporating Ethical Veganism under freedom of religion, I discuss the likelihood of Ethical Veganism's accommodation under Canada's current religious freedom jurisprudence. Primarily, I examine scenarios persons have faced in their devotion to a vegan lifestyle which hold factual similarities to constitutional cases where individuals have alleged discrimination on religious grounds.

## **Part I - VEGANISM**

### *a) Definition*

The baseline definition of veganism, having no regard for reasons one may become vegan, is a “way of life that avoids the use of any animal products for any purpose.”<sup>16</sup> Unlike vegetarians, who regularly consume dairy and eggs, and sometimes fish,<sup>17</sup> a vegan lifestyle includes abstention from meat, gelatin, eggs, honey, and dairy products, and a refusal to wear or use animal-derived products such as silk, wool, fur, bone, leather, pearls, or any item tested on animals.<sup>18</sup> Stanley M. Sapon, a vegan philosopher and renowned scholar of psycholinguistics, chooses to describe ethical vegetarianism<sup>19</sup> positively without listing products from which adherents abstain whereby it is a “philosophy that manifests its reverence and respect for the well-being of all sentient life.”<sup>20</sup> Some have referred to veganism as “strict” or “pure” vegetarianism or as the ultimate ideal for which vegetarians should be striving.<sup>21</sup> Most importantly, veganism is not merely a term to characterize a particular lifestyle, but a driving

<sup>16</sup> *Veganism and Vegans*, online: Vegan Club <http://veganclub.org/>.

<sup>17</sup> Soifer, *supra* note 2; See also Kathryn Paxton George, “Should Feminists Be Vegetarians?” (1994) 19:2 *Signs* 405. In this particular article, George, a scholar with extensive publications on the subject of vegetarianism, self-identifies as a vegetarian who consumes fish.

<sup>18</sup> Soifer, *ibid.*; *Veganism and Vegans*, *supra* note 16.

<sup>19</sup> Definitions or concepts in this paper will sometimes refer to vegetarianism rather than veganism due to the supporting references' use of the term vegetarianism. Nevertheless, the analysis or discussion remains unaltered by the difference in terminology since veganism, as noted in this section, is a subset of vegetarianism.

<sup>20</sup> *About Dr. Sapon*, online: Vegan Values [http://www.veganvalues.org/dr\\_sapon.htm](http://www.veganvalues.org/dr_sapon.htm); Stanley M. Sapon, *What's in a Name: Vegetarianism's Past, Present and Future*, online: Vegan Values [http://www.veganvalues.org/whats\\_in\\_name.htm](http://www.veganvalues.org/whats_in_name.htm) at 5 [*What's in a Name*].

<sup>21</sup> *Veganism and Vegans*, *supra* note 16; Sapon, *ibid.*

philosophy of tenets, sometimes referred to as a “social movement,” that influences the entirety of devotees’ lives.<sup>22</sup> The reader may now find herself asking what compels someone to embrace this way of life. Next, I will highlight various motivations for a vegan lifestyle, and although my approach may appear categorical, these groups are not discrete, and one would expect some vegans to hold overlapping principles which buttress their lifestyles.

*b) Health and Environment Rationales*

Sapon surveyed numerous vegan publications and websites wherein he discovered a central theme: extensive promotion of the health and environmental benefits of veganism with ethical justifications rarely advanced.<sup>23</sup> In fact, some vegans whose ultimate concern is not animal rights *per se* refrain from consuming animal products so as to boycott environmental degradation caused by factory farming practices, which includes but is not limited to methane production from cow and pig excrement, erosion of top soil, clear cutting of forests for ranching purposes, and pollution of rivers from runoff.<sup>24</sup> In addition to environmental anxieties, some individuals avoid animal products to promote personal health by reducing their risk of cancer and disease.<sup>25</sup> Similarly, veganism minimizes exposure to antibiotics, hormones, and chemicals often found in animal products.<sup>26</sup> Rationales such as health and environment may be considered simply dietary preferences. For some, however, environmental and health gains are a mere ancillary benefit, and regard for ethics is paramount.

*c) More than a Diet? Moral, Ethical, and Spiritual Motivations*

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<sup>22</sup> Sapon, *Is Veganism a Religion?*, *supra* note 8; Elizabeth Cherry, “Veganism as a Cultural Movement: A Relational Approach” (2006) 5:2 *Social Movement Studies* 155 at 156.

<sup>23</sup> Sapon, *ibid.*; Arguably, environmental justifications for veganism may be motivated by ethical principles, but in Sapon’s essay he seems to suggest that environmental and health benefits are used promotionally to advance a sort of self-serving veganism, one that will result in improved health and cleaner air/water for adherents. He contrasts these types of motivations with ethical justifications by emphasizing that those founded in ethics are not self-serving but are concerned with reducing suffering among all species and a general promotion of non-violence. Sapon envisions the Ethical Vegan as one who selflessly lives a life of compassion as dictated by her conscience.

<sup>24</sup> Marcus, *supra* note 2; Clark, *supra* note 14.

<sup>25</sup> Marcus, *ibid.*; Iacobbo & Iacobbo, *supra* note 2.

<sup>26</sup> *Ibid.*

Dietary habit is often simply a representation of a deeper, larger phenomenon.<sup>27</sup> Food practices signify ideologies, serve as a mode by which one may resist certain discourses, and consumption patterns are methods through which individuals often express their values and beliefs.<sup>28</sup> A recent study documenting the social influences on meat consumption found that values and beliefs maintain significant influence over one's choice to abstain from animal products.<sup>29</sup> Therefore, labelling Ethical Veganism as merely a dietary preference is erroneous, since, as Gary Francione argues, it is “a moral and political commitment [that] extends not only to matters of food, but to clothing and other products and ought to be an animal advocate's moral baseline” whereby one recognizes nonhumans' innate value.<sup>30</sup> Jeffrey Freedman, an Ethical Vegan, writes that his veganism “is about more than what I do or do not eat. For me, it is a prayer, a petition, asking why animals suffer greatly in a Universe created by a benevolent and loving God,” a question whose answer guided him to an abstention from animal products.<sup>31</sup> Freedman claims that Ethical Veganism is a corollary of *ahimsa*, which is the “respect for all living things and avoidance of violence towards others both in thought and deed.”<sup>32</sup> He compares Ethical Veganism to a fast of Yom Kippur or Christian Lent where the adherent finds “spiritual sustenance” rather than “dietary abstinence.”<sup>33</sup>

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<sup>27</sup> Leneman, *supra* note 2.

<sup>28</sup> Hakim Bey, *T.A.Z.: The Temporary Autonomous Zone, Ontological Anarchy, Poetic Terrorism* (Brooklyn: Autonomedia, 1991). See also Dylan Clark, “The Raw and the Rotten: Punk Cuisine” (2004) 43:1 *Ethnology* 19; Carol J. Adams *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (New York: Continuum, 2003) [*The Sexual Politics of Meat*]. Adams associates meat-eating with male dominance and finds that, “vegetarianism does more than rebuke a meat-eating society; it rebukes a patriarchal society” (at 190).

<sup>29</sup> Marcia Hill Gossard & Richard York, “Social Structural Influences on Meat Consumption” (2003) 10:3 *Human Ecology Review* 1.

<sup>30</sup> Sapon, *What's in a Name*, *supra* note 20; Gary L. Francione, “Reflections on Animals, Property, and the Law and Rain without Thunder” (2007) 70-WTR *Law & Contemp. Probs.* 9 at 41. Francione contends that animal activists' central focus should be the abolition of animals' status as property.

<sup>31</sup> Freedman, *supra* note 2 at para. 1.

<sup>32</sup> *The Canadian Oxford Dictionary*, 2d ed., s.v. “ahimsa”.

<sup>33</sup> Freedman, *supra* note 2 at para. 2.

Now that I have described how Ethical Veganism extends beyond simply a dietary preference, I wish to introduce the fundamental principle of Ethical Veganism. The essential element to this lifestyle is faith in an interconnectedness of all life whereby an Ethical Vegan sees herself as “part of the natural world, rather than its owner or master.”<sup>34</sup> Freedman claims that his ethical standard is centred on this principle of interconnectedness and Robert Morris, an 18<sup>th</sup> century vegetarian, described our existence along a “great Chain of Beings” where humans hold a place no higher than that of insects.<sup>35</sup> Additionally, Stephen Clark envisions an interconnected interspecies community, a peaceable kingdom, where nonhuman animals have moral value and humans express solidarity and respect by abstaining from consumption of animal products.<sup>36</sup>

Critics may find my argument for a faith in an interconnectedness problematic since some “ethical” vegans may avoid animal products due to a concern for poverty in developing countries. Arguably, these vegans are appropriately situated within the typical understanding of the term “ethical;” however, for the purposes of this paper I have chosen to regard Ethical Vegans as those individuals whose central tenet is faith in an interconnectedness of all living beings.<sup>37</sup> What is more, arguments for veganism that contain a postcolonial perspective tend to revolve not around faith but rather are often reasoned from statistics such as five pounds of grain and 2500 gallons of water are spent in production of just one pound of steak, rich western nations consume a disproportionate amount of animal products thereby preventing developing countries

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<sup>34</sup> Sapon, *Vegan Values*, *supra* note 14.

<sup>35</sup> Robert Morris, *A Reasonable Plea for the Animal Creation: Being a Reply to a Late Pamphlet, Intituled, [sic] A Dissertation on the Voluntary Eating of Blood* (London: M. Cooper, 1746), cited in Carol J. Adams, “Robert Morris and a Lost 18<sup>th</sup>-Century Vegetarian Book: An Introduction to Morris’s *A Reasonable Plea for Animal Creation*” (2005) 18:4 *Organization & Environment* 458 at 458 [“Introduction to Morris”]. It is possible that Morris was in essence advocating for Ethical Veganism, since the word “vegan” was not coined until 1944. For details regarding veganism’s inception see Leneman, *supra* note 2.

<sup>36</sup> *Supra* note 14.

<sup>37</sup> Presumably, a concern for individuals living in poverty stems from at least a humanist faith in interconnectedness.

from attaining basic nourishment, and so on.<sup>38</sup> As one can see, Ethical Veganism transcends a mere dietary preference and a concern for world hunger. From the above review, I have shown that faith in an interconnectedness of all life is the fundamental principle of Ethical Veganism as defined here. Next, I will discuss veganism's recent arrival in the Western world and argue that vegans, like religious minorities, are often disregarded and marginalized by the cultural hegemony.

*d) Veganism as a Novel Concept & Vegans as a Numerical and Counter-hegemonic Minority*

Although veganism has been appreciated by Eastern cultures for hundreds of years, the concept is comparatively novel in the Western world and the number of vegans is quite small.<sup>39</sup> In fact, a 2002 survey found that four percent of adults in the United States self-identify as vegetarians with self-described vegans comprising only five percent of that group, which indicates roughly one in five hundred American adults are vegan.<sup>40</sup> Globally, there are over one million vegans in the world today.<sup>41</sup> Nonetheless, I do not wish to simply portray vegans as a numerical minority. Instead, I hope to describe how a dominant meat-eating culture has marginalized veganism and its adherents.<sup>42</sup> The meat-eating hegemony is substantiated by North American consumption patterns wherein the vast majority of the population mindlessly consumes animal products without ever questioning the practice.<sup>43</sup>

Like other individuals who discover they exist within a cultural minority, a vegan may perpetually find herself “chastised, excluded, challenged, and reminded of one’s difference...a maker of Otherness.”<sup>44</sup> Documentation of adverse treatment of vegetarians, a group to which

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<sup>38</sup> McGrath, *supra* note 2; Peter Singer, *Animal Liberation*, 2d ed. (London: Pimlico Publishing, 1995).

<sup>39</sup> McGrath, *ibid.*

<sup>40</sup> *How Many People are Vegans?*, online: Vegan Club <http://veganclub.org/>.

<sup>41</sup> *Ibid.*

<sup>42</sup> See generally Iacobbo & Iacobbo, *supra* note 2; Adams, *The Sexual Politics of Meat*, *supra* note 28; McGrath, *supra* note 2; Marcus, *supra* note 2; Bryant, *supra* note 8.

<sup>43</sup> Marcus, *ibid.*; McGrath, *ibid.*

<sup>44</sup> Clark, *supra* note 28 at 24-25; Iacobbo & Iacobbo, *supra* note 2; McGrath, *ibid.*



vegans belong, dates back to the first century when Plutarch described how flesh eaters often harassed vegetarians with inconsiderate, misguided questions about their lifestyle.<sup>45</sup> Many years later in the 1830s, a distinguished physician, writing for what is now the *New England Journal of Medicine*, declared that vegetarians were “physical and emotional weaklings” and that a young boy had “become weak and emasculated, wet the bed, became insane, and then died” due to a lack of meat in his diet.<sup>46</sup> It appears that little has changed in modern times, as confirmed in common parlance where terms like “radical *vegan* insurgents” and “tofu-chomping holistic-wacko neurotic *vegan* weenie perverts” are used pejoratively.<sup>47</sup>

Vegudice<sup>48</sup> through discriminatory language such as that described above is not confined to private conversations; indeed, some authors contend that it is highly doubtful that there has ever been a positive depiction of a vegan in the media.<sup>49</sup> An example of a negative public image is portrayed on a rather *unwelcoming* ‘welcome’ sign on a border of a U.S. state that reads, “Vegetarians not welcome.”<sup>50</sup> In addition, flesh eaters have spoken in public discourse regarding their fears of becoming victims to a “national agenda for a new vegan society” where veganism will be a legislative imperative.<sup>51</sup> These sensational claims hardly seem likely to materialize, since recent public opinion surveys indicate societal support for veganism is “infinitesimal.”<sup>52</sup> Indeed, the consumption of animal products is so ensconced in Western culture that most meat

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<sup>45</sup> Adams, “Introduction to Morris,” *supra* note 35.

<sup>46</sup> Iacobbo & Iacobbo, *supra* note 2 at 127.

<sup>47</sup> Bryant, *supra* note 8; Dave Barry, “Can’t We All Just Get Along?” *The Miami Herald* (12 December 2004), cited in Richard Garnett, “‘Modest Expectations’?: Civic Unity, Religious Pluralism, and Conscience” (2006) 23 *Const. Comment* 241 [emphasis added].

<sup>48</sup> Iacobbo & Iacobbo have coined a new term for this discourse. “Vegudice” represents discrimination of vegans and vegetarians by merging the term prejudice with vegan/vegetarians (*supra* note 2 at 132).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.* at 128.

<sup>51</sup> Rone Tempest, “Sonoma Is Front Line in War over Foie Gras” *The L.A. Times* (29 November 2003), cited in Bryant, *supra* note 8.

<sup>52</sup> Penny Conly Ellison, “Capers in the Churchyard: Animal Rights Advocacy in the Age of Terror: Is There Madness to the Methods?”, Book Review of *Capers in the Churchyard: Animal Rights Advocacy in the Age of Terror* by Lee Hall, (2007) 2 *J. Animal L. & Ethics* 275 at 278.

eaters do not pause to contemplate whether or not humans hold a moral or ethical right to do so.<sup>53</sup> Although consumers of animal products publicly and emphatically express their concerns, a one-way dialogue has been created, as the meat-eating hegemony finds discussions regarding the reality of animal agriculture to be “taboo.”<sup>54</sup> Carol Adams argues that this portion of feminist vegetarians’ theory has been misrepresented or “silenced” altogether, because “historians and literary critics fail to take seriously the vegetarianism they encounter in their texts.”<sup>55</sup> What is more, she asserts that vegetarianism has become immaterial and trivial, given that discrimination regarding gender, race, and sexuality often occupy a central place in feminist theory.<sup>56</sup>

In addition to public outcry in opposition to veganism and often vegans themselves, the marginalization of vegans extends to their private lives where hostility and indifference are expressed at mealtime with family and friends.<sup>57</sup> I experienced this first-hand when, over a dinner containing animal products, I shared with some close friends that I planned to transition from vegetarianism to veganism. Although I communicated my ethical justifications, I was nevertheless met with astonishment and informed that veganism might be a sign of an eating disorder and that at the very least vegans assuredly have unhealthy relationships with food. Authors have echoed my experience by alleging that the meat-eating culture sees the practice of meat-eating as enjoyable; therefore, if someone chooses to abstain from animal products, that person must be a “pleasure anorexic—a pathological denier of enjoyment.”<sup>58</sup> These examples convey the significance of veganism in modern society, as a minority of adherents search to find

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<sup>53</sup> McGrath, *supra* note 2.

<sup>54</sup> Iacobbo & Iacobbo, *supra* note 2 at 57; McGrath, *ibid.*

<sup>55</sup> Adams, *The Sexual Politics of Meat*, *supra* note 28 at 166. Correspondingly, McGrath reveals that vegans in general have “historically been excluded from mainstream academic debate...dismissed as disparagingly as the rights of the animals they seek to protect” (*supra* note 2 at 51).

<sup>56</sup> *Ibid.*

<sup>57</sup> Iacobbo & Iacobbo, *supra* note 2; Adams, *The Sexual Politics of Meat*, *supra* note 28.

<sup>58</sup> Iacobbo & Iacobbo, *ibid.* at 131. Although meat eaters are often those who are dispensing these insensitivities, McGrath describes how even vegetarians operate to further marginalize vegans. She asserts that by only removing meat from their diet and by socially opposing the elimination of all animal products, vegetarians are tacitly labelling veganism as inconvenient, extreme, and nearly impossible, *supra* note 2.

their place in relation to the dominant meat-eating culture. Before I attempt to draw an analogy between Ethical Vegan values and the spirit of protection informing the freedom of religion, I will describe freedom of religion doctrine generally, review the Supreme Court of Canada's treatment of religious freedom, and introduce the underlying value of freedom of religion.

## **Part II - RELIGION**

### *a) Freedom of Religion Generally*

It is common place in liberal democracies to enshrine freedom of religion, and this fundamental right is entrenched in the United States Constitution<sup>59</sup> and the Canadian *Charter*.<sup>60</sup> However, just how to interpret this right is a “matter of great controversy” and despite arduous attempts, law has thus far been unable “to resolve its tensions with religion.”<sup>61</sup> The debate is in part fuelled by a lack of definition imparted in constitutional documents and conclusions that a “theory of religious liberty” is lacking in the United States Supreme Court jurisprudence.<sup>62</sup> Similarly, in Canada, conflict between law and religion has been “sustained and pronounced over the history of th[e] country,” and as a result, scholars have labelled the *Charter*'s section 2(a) language as overly broad and vague and constitutional jurisprudence as “games of chance more than debates of principle.”<sup>63</sup> Now that I have described the tension between law and religion generally, I will review specifically the Supreme Court of Canada's articulation of freedom of religion.

### *b) Supreme Court of Canada and Freedom of Conscience and Religion*

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<sup>59</sup> U.S. Const. Amend. I.

<sup>60</sup> *Charter*, *supra* notes 3, 13.

<sup>61</sup> Paul Bou-Habib, “A Theory of Religious Accommodation” (2006) 23:1 J. Appl. Philos. 109 at 109; Benjamin L. Berger, “Understanding Law and Religion as Culture: Making Room for Meaning in the Public Sphere” (2006) 15:1 Constitutional Forum 15 at 16 [“Understanding Law and Religion as Culture”].

<sup>62</sup> Eisgruber & Sager, *supra* note 9.

<sup>63</sup> Berger, “Understanding Law and Religion as Culture,” *supra* note 61 at 16; Randal N. Graham, “A Unified Theory of Statutory Interpretation” (2002) 23 Statute L. Rev. 91; Iain T. Benson, “Notes towards a (Re)definition of the ‘Secular’” (2000) 33 U.B.C. L. Rev. 519 at 527.

### i) Individualism, Choice, and Absence of Coercion

The Supreme Court has interpreted freedom of conscience and religion quite liberally and broadly with a central theme that the state shall place no coercion on the individual as highlighted by Dickson J. in Canada's touchstone freedom of religion case:

Freedom can primarily be characterized by the *absence of coercion* or constraint. The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses...to manifest whatever beliefs and opinions his or her conscience dictates...it has become the right of every Canadian to work out for himself or herself what his or her religious obligations, if any, should be and it is *not for the state to dictate otherwise*.<sup>64</sup>

Although an absence of coercion is paramount, the description above, since it fails to define *religion*, does not provide adequate assistance for those trying to sort out which groups should fall within section 2(a)'s protection. As a result, the court recently defined religion in the leading case of *Syndicat Northcrest v. Amselem*<sup>65</sup> where Iacobucci J. stated:

While it is perhaps not possible to define religion precisely, some outer definition is useful since only beliefs, convictions and practices rooted in religion...are protected by the guarantee of freedom of religion. Defined broadly, religion typically involves a particular and comprehensive system of faith and *worship*. Religion also tends to involve the belief in a *divine, superhuman* or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.<sup>66</sup>

While the court in *Amselem* found the belief or practice must have a “nexus with religion” in order to meet the evidentiary burden, section 2(a)'s substantive burden only requires a sincerity of belief.<sup>67</sup> The court held that freedom of religion protects practices and beliefs so long as an individual “sincerely believes or is sincerely undertaking in order to connect with the divine or as

<sup>64</sup> *R. v. Big M. Drug Mart Ltd.*, [1985] 1 S.C.R. 295, 18 D.L.R. (4th) 321 at paras. 95, 94, 124, 136 (WLeC) [*Big M.*] [emphasis added].

<sup>65</sup> [2004] 2 S.C.R. 551, 241 D.L.R. (4th) 1 (WLeC) [*Amselem*] [emphasis added]. Although this claim fell under the *Quebec Charter of Human Rights and Freedoms*, the court held that the ruling applied to Canada's *Charter* as well.

<sup>66</sup> *Amselem, ibid.*, at para. 39.

<sup>67</sup> *Ibid.*, at para. 46.

a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.”<sup>68</sup>

*Big M.* and *Amselem* highlight the importance assigned to individual choice and absence of state coercion in regard to religious freedom. While these values may assist in the promotion of non-traditional belief systems like Ethical Veganism, terminology such as “worship,” “divine,” and “superhuman” may narrow freedom of conscience and religion’s ability to accommodate particular groups and individuals.<sup>69</sup> Therefore, one could argue that unconventional beliefs and practices would be more adequately protected by focusing on Wilson J.’s concurring judgment in *R. v. Morgentaler*<sup>70</sup> where she defined freedom of conscience in s. 2(a) as a “personal morality which is not founded in religion” and as “conscientious beliefs which are not religiously motivated.”<sup>71</sup> However, this approach lacks persuasive force given that some scholars claim that Canadian jurisprudence has conflated freedom of conscience and religion such that separation of the concepts is impossible.<sup>72</sup> Moreover, this tactic may be dismissed as unhelpful for Ethical Vegans, since freedom of conscience as Justice Wilson described would merely protect beliefs not practices.<sup>73</sup> We can conclude that a narrow construction of religion such as that identified in *Amselem* and the lack of utility of freedom of conscience as a stand-alone right may limit our ability to argue for protection of non-traditional beliefs and practices under section 2(a). In response to this conundrum, some authors assert that freedom of religion is not necessary and protection can be found elsewhere, namely within equality provisions.<sup>74</sup>

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<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*; Horwitz, *supra* note 6.

<sup>70</sup> [1988] 1 S.C.R. 30, 44 D.L.R. (4th) 385 (WLeC).

<sup>71</sup> *Ibid.*, at para. 310.

<sup>72</sup> John Von Heyking, “The Harmonization of Heaven and Earth?: Religion, Politics, and Law in Canada” (2000) 33 U.B.C. L. Rev. 663.

<sup>73</sup> Webber, *supra* note 11.

<sup>74</sup> Eisgruber & Sager, *supra* note 9.

ii) Can Equality Provisions supplant freedom of conscience and religion?

Some constitutional scholars believe there is no need for special protection for religious freedom since concerns of religious minorities can be addressed through equality provisions like section 15 of the *Charter*.<sup>75</sup> These critics claim that religious freedom deserves no special protection because it is “not any more important than any other right.”<sup>76</sup> Furthermore, religions should not be “entitled to carve out their own microenvironments of law” and that “privilege-based discourse” (a process, often based on a hierarchy of values, whereby privilege is granted to certain interests and not others) like that often found in case law on religious liberty should be reframed with a focus on protection rather than privilege.<sup>77</sup> Not all scholars agree with this contention and in fact, many emphatically contend that religion indeed holds special value and that the spirit of protection for religious freedom dictates that it remain as a stand-alone fundamental right for citizens.<sup>78</sup>

Scholars who believe freedom of religion is exceptional and should not be subsumed by equality provisions maintain their position in part because the protection provided by it “symbolizes Canadian constitutionalism’s commitment to multiculturalism and the protection of plural cultural forms.”<sup>79</sup> Constitutional scholar Jeremy Webber contends that, “if freedom of religion is genuinely concerned with religion’s protection rather than its active discouragement..., then the freedom cannot be separated from the affirmative valuing of religious belief,” which necessarily entails contemplation of what makes religion valuable when one is engaged in an analysis of the freedom.<sup>80</sup> He further alleges that individual autonomy is

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<sup>75</sup> *Ibid.*

<sup>76</sup> Von Heyking, *supra* note 72 at 679.

<sup>77</sup> Eisgruber & Sager, *supra* note 9 at 601, 613-614.

<sup>78</sup> See, for example, Webber, *supra* note 11; Horwitz, *supra* note 6; Benjamin L. Berger, “Law’s Religion: Rendering Culture” (2007) 45:2 Osgoode Hall L.J. 277 [“Law’s Religion”]; Macklem, *supra* note 10.

<sup>79</sup> Berger, “Law’s Religion,” *ibid.* at 279.

<sup>80</sup> *Supra* note 11 at 178.

useless unless it is premised upon the full picture of the person, which for many will arguably demand consideration of her religious ethics.<sup>81</sup> Finally, he asserts that religion holds a quality deserving of particular esteem, and that highlighting freedom of religion without giving credence to the spirit of the freedom and its underlying values is “simplistic and nonsense.”<sup>82</sup>

Although some scholars have suggested that freedom of religion carries no unique value in its own right and should be absorbed by constitutional equality provisions, I agree with those who claim that religious freedom holds underlying value and deserves distinctive recognition. Perhaps Webber expressed it best when he stated that, “[s]pecial respect for religion is in the law already, in the constitutional commitment to freedom of religion itself.”<sup>83</sup> Freedom of religion’s retention as a fundamental right, distinct from equality provisions, is further validated by the presence of an equality component within section 2(a) jurisprudence.<sup>84</sup> Case law has included discussions of equality “without being specifically grounded on the equal protection provision of the *Charter*.”<sup>85</sup> Equality parlance utilized by the court includes “discrimination against”<sup>86</sup> and “stigmatizing.”<sup>87</sup> Because freedom of religion is worthy in its own right, deserves special respect, and carries an identifiable equality component, I conclude that freedom of religion should not be eclipsed by equality provisions. In the following section, I will explore further the elemental value of religious freedom and provide a purposive analysis in order to discover the spirit and moral value underlying this protected right, since a freedom “must be interpreted in terms of the purpose for the sake of which it is guaranteed.”<sup>88</sup>

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<sup>81</sup> *Ibid.*; See also Bou-Habib, *supra* note 61.

<sup>82</sup> Webber, *Ibid.* at 184.

<sup>83</sup> *Ibid.* at 191.

<sup>84</sup> Benson, “The Freedom of Conscience and Religion in Canada,” *supra* note 6.

<sup>85</sup> Jeremy Patrick, “Church, State, and Charter: Canada’s Hidden Establishment Clause” (2006) 14 *Tulsa J. Comp. & Int’l L.* 25.

<sup>86</sup> *Big M.*, *supra* note 64 at para. 97.

<sup>87</sup> *Zylberberg v. Sudbury (Bd. of Education)*, [1988] 65 O.R. (2d) 641, 52 D.L.R. (4th) 577 at para. 40 (C.A.) (WLeC) [*Zylberberg*].

<sup>88</sup> Macklem, *supra* note 10 at 9. This is consistent with the Supreme Court of Canada’s insistence that *Charter* rights

*c) Fundamental Value underlying Freedom of Religion*

The significance of religious freedom can only be established by referring to the purpose “that justified the entrenchment of that concept in a fundamental guarantee.”<sup>89</sup> Correspondingly, freedom of religion “cannot be justified, explained, or applied in the absence of a moral debate over the purposes for which that freedom has been and continues to be guaranteed.”<sup>90</sup> Despite these claims, the value/purpose of religion and religious freedom has often been ignored by the liberal state, since liberalism applies a reductionist approach whereby religion’s only importance is individual choice.<sup>91</sup> Although law appears to ignore the significance of religion when determining outcomes, law is not actually remaining silent. Instead, it is “asserting something about the true nature of that which it is protecting: ...it is making a sociological determination about what religion is.”<sup>92</sup> As one scholar notes, law is “making the larger claim about the very nature of religion at large” and thereby “kill[ing] other normative arrangements and interpretations.”<sup>93</sup> Despite law’s reductionist treatment of religious freedom and its alleged neutral stance regarding religion’s meaning, religion and its accompanying worth are not merely “what the law imagines [them] to be.”<sup>94</sup> Therefore, to entertain a robust understanding of religious freedom, we must inquire into the underlying value of the right to comprehend its spirit of protection.

Attempts to determine the fundamental value of religious freedom have often referred to traditional religious doctrines for comparison.<sup>95</sup> Yet, this is circular logic wherein one defines

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be interpreted purposively. See *Hunter v. Southam*, [1984] 2 S.C.R. 145, 11 D.L.R. (4th) 641 (WLeC); *Big M.*, *supra* note 64; *Eldridge v. B.C.*, [1997] 3 S.C.R. 624, 151 D.L.R. (4th) 577 (WLeC).

<sup>89</sup> Macklem, *supra* note 10 at 15.

<sup>90</sup> *Ibid.*

<sup>91</sup> Zoë Oxaal, “Second-Guessing the Bishop: Section 93, the Charter and the ‘Religious Government Actor’ in the Gay Prom Date Case” (2003) 66 Sask. L. Rev. 455 at para. 51. See also Berger, “Law’s Religion,” *supra* note 78.

<sup>92</sup> Berger, “Law’s Religion,” *ibid.* at 311.

<sup>93</sup> *Ibid.* at 311-312.

<sup>94</sup> *Ibid.* at 314.

<sup>95</sup> Macklem, *supra* note 10.



religion based on religion. Some caution against this approach to defining freedom of religion's value, because as one draws parallels between the novel claim and traditional religions, the elevation of the traditional religion becomes tantamount to establishment.<sup>96</sup> Comparing a novel belief or practice to conventional religions merely provides instruction as to the use of the term religion within the discourse. In other words, one asks whether the new religion meets certain qualifications exhibited by the traditional religion, and if so, it is labelled a religion. Arguably, this methodology does not elucidate the value of religious freedom nor does it provide instruction as to who and what should fall under protection of the freedom, which ultimately is an ethical question whose answer "cannot be found in religious doctrine."<sup>97</sup> Timothy Macklem contends that only faith, as a mode of belief, is able to substantiate the fundamental value of freedom of religion because of its capacity to contribute to one's well-being.<sup>98</sup> Likewise, Berger claims that the foundation of law's religion is the "individual's sense of his or her own relationship to the divine or to the object of *faith*."<sup>99</sup>

Faith is central to spirituality, daily choices, practices, and relations in the lives of religious individuals.<sup>100</sup> Macklem argues that faith "exists as a type of rival to reason" and that faith's worth "arises from its capacity to bridge the unknowable."<sup>101</sup> He suggests that faith exercised in reference to any belief, regardless of the belief's resemblance to traditional religious beliefs deserves protection under freedom of religion provided that the person holding the belief is unable to access the belief on the basis of reason alone and so long as the faith has the capacity to enhance well-being.<sup>102</sup> Macklem claims beliefs that are unable to contribute to well-being

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<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.* at 17.

<sup>98</sup> *Ibid.*

<sup>99</sup> Berger, "Law's Religion," *supra* note 78 at 288 [emphasis added].

<sup>100</sup> Shauna Van Praagh, "Courts Wrestle with Intersection of Law and Religion," *The Lawyers Weekly* (15 February 2008) 27:38 online: <http://www.lawyersweekly.ca/index.php?section=article&articleid=620>.

<sup>101</sup> Macklem, *supra* note 10 at 33, 38.

<sup>102</sup> *Ibid.*

should not be protected and his examples include suicidal cults like those led by Jim Jones and David Koresh.<sup>103</sup> Likewise, he asserts that political beliefs should not fall within the ambit of protection, since they are accessible primarily by reason alone, do not address the unknowable, and are not capable of enhancing well-being in the sense he describes.<sup>104</sup> Lastly, Macklem finds that religious faith is “faith in the value of a belief that is designed to sustain all or at least most of one’s commitments in life,” and that faith is significant only when the “inability to make the commitments that faith makes possible would have a negative impact on well-being.”<sup>105</sup>

Canadian constitutional jurisprudence, although not providing clarity as to the meaning of faith, has consistently given significance to the term.<sup>106</sup> Similarly, constitutional scholars have found that issues of religious liberty are not appropriately categorized solely as reason-based. One author claims that, “conscience like prudence is unlearned—it is formed...not artificially from books or rational method.”<sup>107</sup> In addition, Berger highlights how law relegates religion to the private sphere as opposed to the public domain where *reason* reigns paramount.<sup>108</sup> Similarly, Webber claims that efforts to convey the character of religion reflect “how people have looked beyond themselves for meaning in a manner that transcends sheer empiricism.”<sup>109</sup> From the above review, we can conclude that faith is not only noteworthy within Canadian’s constitutional jurisprudence, but is also useful in determining the fundamental value informing religious freedom. Thus, for the purposes of this paper, I will accept Macklem’s conclusion that the core value informing religious freedom is found in faith, as a mode of belief existing as a complement

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<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid* at 46-47.

<sup>106</sup> Berger, “Law’s Religion,” *supra* note 78. See specifically *Amselem*, *supra* note 65; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 35 D.L.R. (4th) 1 (WLeC).

<sup>107</sup> Edward G. Andrew, “Hobbes on Conscience within the Law and Without” (1999) 32:2 Can. J. Polit. Sci. 203 at 204.

<sup>108</sup> Berger, “Law’s Religion,” *supra* note 78.

<sup>109</sup> Webber, *supra* note 11 at 192.

to reason,<sup>110</sup> which must exhibit the capacity to contribute to one's well-being. With this conceptual anchor established, I will illustrate the parallels between Ethical Veganism and the freedom of religion thereby advocating for the protection of Ethical Veganism under section 2(a) of the *Charter*.

### **Part III - ETHICAL VEGANISM AND RELIGION**

#### *a) Do Ethical Vegans View Their Beliefs or Practices as Religious?*

I expect critics of my argument to claim that Ethical Vegans do not view themselves as religious and thus my analogy seeking to house Ethical Veganism within s. 2(a) is misguided. On the contrary, some Ethical Vegans indeed believe veganism is their religion, because “the tenets of vegan practice and belief create a compelling moral code on par with any religious doctrine or theology.”<sup>111</sup> Although not necessarily self-proclaimed, authors have described Ethical Veganism as religion.<sup>112</sup> In fact, one publication classified Ethical Veganism as a religion since it is a “cause, principle, or system of beliefs held to with ardour and *faith*.”<sup>113</sup> While adherents and others have rendered Ethical Veganism as religious in nature, I wish to note that this connection is not essential to my argument as I am not claiming that Ethical Veganism is a religion, nor am I drawing a firm analogy between Ethical Veganism and religion. I only wish to parallel the values of Ethical Veganism to the fundamental value that serves as the basis of religious freedom: respect for faith as part of well-being. Before drawing this analogy, I will discover whether or not Ethical Veganism will conform to the scope of freedom of religion as articulated in Canadian case law.

#### *b) Canadian Freedom of Religion Jurisprudence not Very Accommodating of Ethical Veganism*

<sup>110</sup> Arguably, Macklem is contending that faith exists outside of reason. However, for the purposes of this essay, I wish to view the two as intertwined, not mutually exclusive. For more on this topic, see Part III(c)(i), below.

<sup>111</sup> *Veganism as a Religion*, online: [http://www.adherents.com/largecom/fam\\_vegan.html#religion](http://www.adherents.com/largecom/fam_vegan.html#religion) at para. 4.

<sup>112</sup> Matthew Rich, “The Debate over Genetically Modified Crops in the United States: Reassessment of Notions of Harm, Difference, and Choice” (2004) 54 Case W. Res. L. Rev. 889. See also *ibid.*, *Veganism as a Religion*.

<sup>113</sup> *Veganism as a Religion*, *ibid.* at para. 2 [emphasis added].

Some constitutional scholars argue that interpretations of religious freedom “should be inclusive of the non-traditional beliefs, not directly connected with established religions but grounded in a secular morality.”<sup>114</sup> While the definition in *Amselem* may be inclusive of some unconventional beliefs, a narrow construction with terminology such as “worship,” “divine,” and “superhuman” make drawing a tight analogy between Ethical Veganism and freedom of religion impractical.<sup>115</sup> Although Ethical Veganism would not likely meet the evidentiary burden set out in *Amselem*, it would undeniably meet the sincerity of belief standard required by the substantive burden.<sup>116</sup> Indeed, one author concludes that veganism exemplifies the “depth and sincerity of one’s belief” that society’s current treatment of nonhuman animals is wrong.<sup>117</sup> Although it is improbable that Ethical Veganism would fall within the ambit of section 2(a) at this time, I believe the Ethical Veganism is directly analogous to the spirit of protection for and the underlying value of the freedom of religion. I will draw this parallel in the following section.

*c) Ethical Vegan Values as Analogous to the underlying Value Informing Religious Freedom*

i) Faith Accompanying Reason

*“Faith and reason are like two wings on which the human spirit rises to the contemplation of truth.”*<sup>118</sup>

—Pope John Paul II

Any attempt to “understand the meaning of civil rights by reason alone ignores the limits of human reason.”<sup>119</sup> Therefore, in order to comprehend the fundamental value of religious

<sup>114</sup> Anwar (Andy) N. Khan, “Canadian Education: The Legal Position of Religion” (1998) 21 The Liverpool L. Rev. 137 at 155.

<sup>115</sup> *Amselem*, *supra* note 65 at para. 46.

<sup>116</sup> *Ibid.*

<sup>117</sup> Nathan Nobis, “Vegetarianism and Virtue: Does Consequentialism Demand too Little?” (2002) 28:1 Social Theory and Practice 135 at 154 [emphasis added].

<sup>118</sup> *Faith and Reason*, Encyclical Letter *Fides et Ratio* of Pope John Paul II on the Relationship between Faith and Reason (Sherbrooke: Medaspaul, 1988), cited in, Brown, *infra* note 119 at 562.

<sup>119</sup> David M. Brown, “Freedom from or Freedom for?: Religion as a Case Study in Defining the Content of Charter Rights” (2003) 33 U.B.C. L. Rev. 551 at 562.

freedom, I and others, as outlined above, have emphasized the centrality of faith, as a mode of belief, in something unknowable, a faith not solely rooted in reason.<sup>120</sup> Ethical Veganism, as described above in Part I(c), is grounded in a faith in a “great Chain of beings,” an interconnectedness of all living beings.<sup>121</sup> Arguably, the Ethical Vegan’s faith is mystical and unverifiable since “interconnectedness” cannot be proven empirically, and in fact, “none of the distinctive Vegan beliefs have any basis in empirical science.”<sup>122</sup> Likewise, Ethical Vegans do not base their lifestyles merely on reason, as efforts to gain acceptance of a vegan worldview do not succeed unless transformation of emotion and values occurs.<sup>123</sup> It follows that the most effective means for facilitating a transition to a vegan lifestyle is through “not merely satisfy[ing] the reason[;] you must move the heart also.”<sup>124</sup> Sapon finds that individuals will not resolve to become Ethical Vegans based on facts alone, and Clark believes that a transformation of human hearts must take place before a peaceable kingdom may be achieved.<sup>125</sup> This insight gains support from a recent study of vegans, where those who learned of veganism through informational brochures, who arguably engaged with the concept on a reason-based level, were less likely to remain consistent in their vegan lifestyle.<sup>126</sup>

The idea that emotion informs reason when one chooses to abstain from animal products is a long theorized concept. Vegetarian ecofeminist scholars have canvassed the reason|emotion divide in animal advocacy extensively.<sup>127</sup> Reason has reigned supreme over emotion since the inception of liberal thought when scholars such as Aristotle, Kant, Locke, and Descartes

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<sup>120</sup> See Part II(c), above.

<sup>121</sup> Sapon, *Vegan Values*, *supra* note 14; Morris, *supra* note 35; Clark, *supra* note 14.

<sup>122</sup> *Veganism as a Religion*, *supra* note 11 at para. 6.

<sup>123</sup> Stanley M. Sapon, *To Tell the Truth, the Whole Truth...or Perhaps a Little Bit Less*, online: Vegan Values [http://www.veganvalues.org/tell\\_truth.htm](http://www.veganvalues.org/tell_truth.htm) [*To Tell the Truth*].

<sup>124</sup> Mahatma Ghandi, cited in, Sapon, *To Tell the Truth*, *ibid* at 7.

<sup>125</sup> Sapon, *ibid.*; Clark, *supra* note 14.

<sup>126</sup> Cherry, *supra* note 22.

<sup>127</sup> See generally Maneesha Deckha, “The Salience of Species Difference for Feminist Theory” (2006) 17 *Hastings Women’s L.J.* 1; Adams, *The Sexual Politics of Meat*, *supra* note 28; Gaard, *supra* note 2.

concluded that rights should only be bestowed upon those individuals who could exercise moral agency, meaning the ability to choose between right and wrong.<sup>128</sup> Feminist scholar Maneesha Deckha contends that historically “[r]eason, not feeling, sentiment, or emotion, could procure universal truths,”<sup>129</sup> and this idea of empiricism, “often masks ideological biases. Feminists have emphasized that the demand for objectivity typically involves a distancing of the scientist from what is being studied; in particular, any *emotional* response on the part of the researcher is equated with *bad* science.”<sup>130</sup>

As one might imagine, the dualistic hierarchy of reason|emotion<sup>131</sup> and the corresponding pre-eminence imputed on reason has created and perpetuated countless cultural oppressions based on gender, species, and race.<sup>132</sup> Deckha finds that these types of binaries sustain cultural imperialism whereby society renders minorities invisible, meanwhile labelling them as Other.<sup>133</sup> As we have found, the meat-eating hegemony has most assuredly labelled Ethical Vegans as Other, but one might be inquiring how the reason|emotion dualism relates particularly to Ethical Veganism. Ironically, the animal protection movement finds its roots in this “unnecessary

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<sup>128</sup> See generally Paola Cavalieri, *The Animal Question: Why Nonhuman Animals Deserve Human Rights*, trans. by Catherine Woollard. (New York: Oxford University Press, 2001); Deckha, *ibid.*; Jen Girgen, “The Historical and Contemporary Prosecution and Punishment of Animals” (2003) 9 *Animal L.* 97; Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge: Harvard University Press, 2006); Angus Taylor, *Animals and Ethics: An Overview of the Philosophical Debate* (Toronto: Broadview Press, 2003).

<sup>129</sup> Deckha, *supra* note 127 at 22.

<sup>130</sup> Taylor, *supra* note 128 at 135 [emphasis added].

<sup>131</sup> Although the literature refers to reason versus emotion, for the purposes of this analysis, one could replace emotion with faith, as faith, in the context of my argument, is the opposite of reason.

<sup>132</sup> Reason is often considered a male trait; while traits such as emotion, which are associated primarily with females, are maligned whereby women are seen as inherently defective and as a result, refused “equal respect and dignity” (Deckha, *supra* note 127 at 22). Regarding the subjugation of nonhuman animals, Deckha finds that being human entitles one to certain rights and that the ability to reason has often been the defining feature of humanity. For other accounts of oppression of women, see generally Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (London: Glasshouse Press, 2005); Gaard, *supra* note 2. Free speech and other fundamental rights such as personhood have historically been denied to certain races due to a perceived lack of capacity to reason. See generally Raymond Corbey, *The Metaphysics of Apes: Negotiating the Animal-Human Boundary* (Cambridge: Cambridge University Press, 2005); See also Kapur.

<sup>133</sup> Deckha, *ibid.*; Gaard, *ibid.*

dichotomy” wherein “the defense of nonhuman animals was framed as a matter of reason not emotion,” and likewise, modern animal activism remains contingent on a reasoned approach.<sup>134</sup>

Over-emphasis on reason is the quintessential vegetarian ecofeminist critique of the animal movement. Nevertheless, these scholars are not advocating for an emotion or faith devoid of reason, rather, they believe balance between reason and feelings can be achieved; furthermore, these theorists are rejecting “excessive male rationalization” and contending that emotion is “consciously [lived] through the employment of reason.”<sup>135</sup> Feminist legal scholar Jennifer Nedelsky reveals that “impartiality is premised on exclusionary concepts of reason and universality.”<sup>136</sup> She not only supports this argument conceptually, she reviews neurological research performed on brain damaged patients whose intelligence, memory, and perception remains preserved, but nevertheless, they are unable to interrelate with others emotionally and socially.<sup>137</sup> Therefore, this data validates the vegetarian ecofeminist critique that emotion does not merely complement reason, it is necessary for effective reasoning. Further, as Gaard states, “the combination of sympathy and a reasoned analysis...provides a more reliable guide to ethics in action.”<sup>138</sup>

As outlined above, Ethical Veganism originates from a faith in the interconnectedness of all living beings, and like vegetarian ecofeminist scholars, I assert that Ethical Vegans do not operate solely on faith (emotion), but faith consciously lived through reason.<sup>139</sup> Having

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<sup>134</sup> Gaard, *ibid.* at 123 and 121.

<sup>135</sup> Kapur, *supra* note 132 at 16. Here Kapur is referring to the Nussbaum’s work. See Martha C. Nussbaum, *Sex & Social Justice* (New York: Oxford University Press, 1999).

<sup>136</sup> Jennifer Nedelsky, “Emodied Diversity and the Challenges to Law” (1997) 42 McGill L.J. 91 at 96. See also Martha C. Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge: Cambridge University Press, 2001).

<sup>137</sup> Nedelsky, *ibid.*

<sup>138</sup> *Supra* note 2 at 123; See also Josephine Donovan, “Feminism and the Treatment of Animals: From Care to Dialogue” (2006) 31:2 Signs 305.

<sup>139</sup> Further support for this contention may be in found in Part I(b), above, where I outline various motivations for veganism. Whereas Ethical Vegans hold faith in the interconnectedness of all life, the reasoned portions of their lifestyle may originate from other justifications such as the environment, health, and so on.

demonstrated this first faith-based point of connection, in the following section, we must address whether or not an Ethical Vegan's faith has the capacity to enhance well-being, as Macklem suggests religious faith does.

### ii) Faith with a Capacity to Enhance Well-Being

Considering the numerous positive justifications for a transition to veganism, including environmental, health, and spiritual reasons, it is nearly impossible to conceive how one's well-being would not be enhanced. Nonetheless, animal advocates in general may be likely to suffer trauma because they are frequently marginalized by the meat-eating mainstream culture.<sup>140</sup>

Ethical Vegans acknowledge the suffering of nonhuman animals and may feel disenfranchised and powerless due to societal disregard or dismissal of their concerns.<sup>141</sup> Nevertheless, positive outcomes personally and communally carry the potential to outweigh negative side-effects of animal advocacy. For example, the anti-imperialist arguments to support veganism as mentioned in Part I(c), in relation to poverty alleviation and the like, hold the capacity to benefit all of humanity. Moreover, anecdotal evidence suggests that many who become vegan find their lives to have "greater meaning and purpose, compared to when they were not vegetarians or vegans."<sup>142</sup>

Critics of my analogy may contend that vegans suffer from nutritional deficits and have difficulty maintaining good health.<sup>143</sup> Although extensive documentation to refute this concern

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<sup>140</sup> Bryant, *supra* note 8.

<sup>141</sup> Bryant, *ibid.*; Iacobbo & Iacobbo, *supra* note 2.

<sup>142</sup> Nobis, *supra* note 117 at 149.

<sup>143</sup> In fact, the majority of the population continues to worry that to become vegan one must accept health hazards. See generally George, *supra* note 17; McGrath, *supra* note 2; E-L. Marcus *et. al.*, "Strict Vegan, Low-Calorie Diet Administered by Care-Giving Daughter to Elderly Mother—Is this Elder Abuse?" (2005) 24 *Med. & L.* 279; Kathryn Paxton George, "Discrimination and Bias in the Vegan Ideal" (1994) 7:1 *J. Agr. Enviro. Ethics* 19. Adams denounces this sort of categorical focus by asserting that like the above mentioned hierarchical dualisms, it "reduces vegetarianism to some quantifiable nutritional resource that can be measured scientifically." Carol J. Adams, "Comment on George's 'Should Feminists Be Vegetarians?'" (1995) 21:1 *Signs* 221 at 221.



exists,<sup>144</sup> assuming its truth for the moment, I would respond by highlighting that significance lies in the *capacity* to promote well-being, rather than the actual result.<sup>145</sup> Nevertheless, I believe it would be an onerous task to find an Ethical Vegan whose well-being has not been tangibly enhanced by her faith in the interconnectedness of all life and her subsequent abstention from animal products. In addition to well-being enhancement, Macklem found that belief associated with one's faith should be such that would "sustain all or at least most of one's commitments in life."<sup>146</sup> I will now address this assertion in relation to Ethical Veganism.

### iii) Belief Designed to Sustain All or Most of One's Commitments in Life

An Ethical Vegan's faith, as a mode of belief, will influence the entirety of her life.<sup>147</sup> Just as faith is central to daily choices and practices in the lives of religious individuals,<sup>148</sup> faith will affect nearly every aspect of Ethical Vegans' lives including food they eat, clothing they wear, products they use, medications they ingest, and medical procedures they allow or refuse.<sup>149</sup> In addition to adherence to faith-based daily practices, religious individuals often organize their relationships around their faith.<sup>150</sup> Similarly, Ethical Vegans may find it necessary to situate relationships accordingly to their lifestyle and philosophy, given that support from within the vegan community is essential for Ethical Vegans to thrive.<sup>151</sup> In view of the comprehensive nature of Ethical Veganism, it is no surprise that its tenets form the "*core value system* for a large number of practitioners."<sup>152</sup>

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<sup>144</sup> Stacey R. Dunn-Emke, *et. al.*, "Nutrient Adequacy of a Very Low-Fat Vegan Diet" (2005) 105:9 J. Am. Diet. Assoc. 1442; "Position of the American Dietetic Association and Dietitians of Canada: Vegetarian diets" (2003) 103:6 J. Am. Diet. Assoc. 748; Josephine Donovan, "Comment on George's 'Should Feminists Be Vegetarians?'" (1995) 21:1 Signs 226; Nobis, *supra* note 117.

<sup>145</sup> Macklem, *supra* note 10.

<sup>146</sup> *Ibid.* at 46-47.

<sup>147</sup> Sapon, *Is Veganism a Religion?*, *supra* note 8; Cherry, *supra* note 22.

<sup>148</sup> Praagh, *supra* note 100.

<sup>149</sup> Soifer, *supra* note 2; *Veganism and Vegans*, *supra* note 16.

<sup>150</sup> Praagh, *supra* note 100.

<sup>151</sup> Cherry, *supra* note 22; Praagh, *supra* note 100.

<sup>152</sup> *Veganism as a Religion*, *supra* note 11 at para. 4 [emphasis added].

#### iv) Summary

Although contemporary constitutional jurisprudence may preclude a successful Ethical Vegan's claim to protection under religious freedom, the values informing Ethical Veganism are analogous to those which are the spirit captured in the freedom of religion. Though a direct connection between freedom of religion and Ethical Veganism is not vital to my thesis, examples above lend support to the parallel drawn in my claim. For instance, some Ethical Vegans indeed view their practices as religious. Additionally, Ethical Veganism, like the value underlying religious freedom, is premised on a faith not rooted solely in reason that carries the capacity to enhance one's well-being. I suspect this faith-based connection between Ethical Veganism and freedom of religion will elicit various concerns, and I will address those in the following section.

#### *d) A Response to Anticipated Concerns*<sup>153</sup>

##### i) Floodgates

I sympathize with floodgates concerns regarding protection of sincere, yet unconventional, spiritual beliefs, since actions taken in conjunction with those beliefs can potentially promote divisiveness and inequality. For example, a federal district court in the United States protected an individual's sincerely held beliefs of which white supremacy was a central tenet.<sup>154</sup> Nevertheless, I believe a case such as this would fall outside of Canada's protection of religious liberty, as Macklem suggests suicidal cults would, due to a lack of

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<sup>153</sup> Although I am not canvassing the matter, I do wish to acknowledge an ongoing debate over the *Charter's* ability to promote social justice in general. Arguments against the *Charter's* capacity to advance the interests of minorities include loss of context, over-emphasis on negative liberties/individualism, and lack of access due to cost. On the other hand, scholars argue that constitutional jurisprudence gives meaning to social ordering, holds educative value, and promises citizens a just society. For more on these positions, see generally Berger, "Law's Religion," *supra* note 78; Joel Bakan, *Just Words: Constitutional Rights and Social Wrongs* (Toronto: University of Toronto Press, 1997); Jehan Aslam, "Judicial Oversight of Islamic Family Law Arbitration in Ontario: Ensuring Meaningful Consent and Promoting Multicultural Citizenship" 38 N.Y.U. J. Int'l L. & Pol. 841; Beverly McLachlin, Freedom of Religion and the Rule of Law: A Canadian Perspective in Douglas Farrow ed., *Recognizing Religion in Secular Society: Essays in Pluralism, Religion, and Public Policy* (Montréal: McGill-Queen's University Press, 2004) 12 at 13; E.R. Alexander, "The Supreme Court of Canada and the Canadian Charter of Rights and Freedoms" (1990) 40 U. of Toronto L.J. 1 at 39.

<sup>154</sup> *Peterson v. Wilmur Communications, Inc.*, 205 F. Supp. 2d 1014 (E.D. Wis. 2002).

capacity to enhance well-being. Failing that categorical exclusion, it is likely the Supreme Court of Canada would rule similarly to its verdict in *Ross v. New Brunswick School District No. 15*,<sup>155</sup> where the religious freedom of an individual who made anti-Semitic statements was found to have been infringed, but the infringement was justified under section 1 of the *Charter* in order to protect the dignity of those affected by the racist language. Thus, floodgates type of concerns may be adequately managed.

ii) Will the Ability to Speak in Public about Veganism be limited if it Gains Protection?

Perhaps a more compelling critique stems from vegans themselves. Leaders in the vegan movement have expressed concern over labelling veganism as a religion.<sup>156</sup> They fear that educational material on veganism will be deemed religious and therefore prohibited in certain public forums like schools and governmental programs.<sup>157</sup> While I would first reaffirm that I do not wish to label Ethical Veganism as a religion, but merely draw an analogy between Ethical Veganism to the fundamental underlying value of religious freedom, I would argue that section 2(a) jurisprudence would alleviate this concern. In *Canadian Civil Liberties Association v. Ontario (Minister of Education)*,<sup>158</sup> the Ontario Superior Court found that religious education is acceptable “as long as the purpose of the teaching is to inform the pupils, as an object of study, of the religious perspective as a way of looking at issues and values, [and] it cannot be regarded as an indoctrinal purpose.”<sup>159</sup> This objection, too, is perhaps quickly resolved.

iii) Ethical Vegans May not Wish to be Associated with Religion

<sup>155</sup> [1996] 1 S.C.R. 825, 133 D.L.R. (4th) 1 (WLeC).

<sup>156</sup> *Veganism as a Religion*, *supra* note 11.

<sup>157</sup> *Ibid.*; See also Donna D. Page, “Veganism and Sincerely Held ‘Religious’ Beliefs in the Workplace: No Protection without Definition” (2005) 7 U. Pa. J. Lab. & Emp. L. 363.

<sup>158</sup> [1990] 71 O.R. (2d) 341, 65 D.L.R. (4th) 1 (WLeC). This decision was upheld by the Ontario Court of Appeal. See [1998] O.J. No. 2856, 161 D.L.R. (4th) 225 (WLeC).

<sup>159</sup> *Ibid.* at para. 86 [emphasis in original].

A third critique arises from vegans' own self-identification. Some vegans have expressed concern that if Ethical Veganism is associated with religion, it will be found irreconcilable with other religions such as Christianity, Judaism or Islam due to association with the new age movement thereby limiting veganism's reach within those groups.<sup>160</sup> These critics believe that if veganism is associated with religion in any form, it will become more difficult to discuss with people, and therefore their outreach efforts will be hampered.<sup>161</sup> Nevertheless, not all Ethical Vegans agree on this result, and some have expressed their desire for protection of Ethical Veganism as religious because it would accurately portray the depth and sincerity of belief, which arguably would give authenticity to their position thereby facilitating discussions with others.<sup>162</sup> I believe that Ethical Veganism's association with religion will improve and increase educational opportunities. Since veganism is a tenet in some religions, and subpopulations of vegans exist within numerous traditional religions, perhaps connecting Ethical Veganism with religion would actually serve to bridge the gap between its adherents and sceptics found within conventional religions.<sup>163</sup> Now that I have addressed the theoretical suitability of incorporating Ethical Veganism under section 2(a), the following section presents cases where individuals have claimed religious protection and where protection might be sought in the future.

*e) Actual and Hypothetical Cases Illustrating the need for protection of Ethical Veganism*

The case of Bruce Anderson is most compelling for the purposes of this paper. Anderson, a strict vegetarian bus driver, was fired for insubordination when he refused to distribute a fast food chain's free hamburger coupons to his passengers. Although the case settled out of court, the decision of the U.S. Equal Employment Opportunity Commission, though not binding on any

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<sup>160</sup> *Veganism as a Religion*, *supra* note 11.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.* See also Part III(a), above.

<sup>163</sup> Rynn Berry, *Food for the Gods: Vegetarianism & the World's Religions* (New York: Pythagorean Publishers, 1998).

jurisdiction, is instructive. The commission found that Anderson had “strongly held moral and ethical beliefs” held with the “strength of traditional religious views,” and thereby the transit authority had committed religious discrimination against him.<sup>164</sup> This case would likely succeed in Canada where it has been held that when occupational duties allow discrimination against a religious believer, the employer must show reasonable attempts to accommodate.<sup>165</sup>

In another case of alleged discrimination in the workplace, Jerold Friedman, who had been an Ethical Vegan for nine years, refused an employer-mandated mumps vaccine, because it had been cultured in chicken embryos.<sup>166</sup> Despite Friedman’s offer to work off-site and to submit to regular check-ups for disease symptoms, his employment was terminated, and the California Court of Appeals held that veganism does not constitute a religion for the purposes of California’s Fair Employment and Housing Act.<sup>167</sup> Although Friedman’s case failed under California’s labour legislation, one author contends that the court’s decision “lends support to the argument that veganism, in certain circumstances, should be considered a religious belief under federal law” in the United States.<sup>168</sup> Nevertheless, a case like Friedman’s might prevail in Canada, since some assert that if one accepts a very broad definition of religion for constitutional purposes,<sup>169</sup> an Ethical Vegan who refuses a vaccine grown in poultry embryos would have a claim as valid as that of a Jehovah’s Witness who declines certain medical procedures.<sup>170</sup>

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<sup>164</sup> David Haldane, “Vegetarian Bus Driver Settles Suit against Agency for \$50,000” *The L.A. Times* (20 November 1996), cited in Page, *supra* note 157 at 406. Haldane’s article is available (for a fee) in the *The L.A. Times* archives online: <http://pqasb.pqarchiver.com/latimes/advancedsearch.html>.

<sup>165</sup> *Renaud v. Central Okanagan School District No. 23*, [1992] 2 S.C.R. 970, 95 D.L.R. (4th) 577 (WLeC). *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)*, [1990] 2 S.C.R. 489, 72 D.L.R. (4th) 417 (WLeC).

<sup>166</sup> *Friedman v. Southern Cal. Permanente Medical Group*, 102 Cal. App. 4th 39 (Cal. App. 2 Dist. 2002).

<sup>167</sup> *Ibid.* Certiorari was denied by the Supreme Court. See 538 U.S. 1033 (U.S. Cal. 2003).

<sup>168</sup> Page, *supra* note 157 at 365.

<sup>169</sup> See Part II(b)(ii), above, which describes a quite broad interpretation of freedom of religion in Canada’s constitutional jurisprudence.

<sup>170</sup> Susannah P. Mroz, “True Believers?: Problems of Definition in Title VII Religious Discrimination Jurisprudence” (2005) 39 *Ind. L. Rev.* 145.

Another example in a medical context is the hypothetical case of a vegan doctor refusing to perform a non-vegan procedure such as administering the mumps vaccine described above. The Canadian Medical Association has stated that, “[h]ealth care providers should not be expected or required to participate in procedures that are contrary to their professional judgment or personal moral values or that are contrary to the values or mission of their facility or agency.”<sup>171</sup> Similarly, in a Supreme Court of Canada case, *Reference re Same Sex Marriage*,<sup>172</sup> it was held that section 2(a) protects religious officials’ *right to refuse to perform* same-sex marriages or civil unions. Arguably, this holding could be applied to support an Ethical Vegan doctor’s refusal to perform certain medical procedures in accordance with her beliefs.

In addition to cases arising in the medical context, Ethical Vegans and religious schoolchildren face many dilemmas relating to their dress, diet, and participation. For example, many schools do not offer vegetarian lunch options and even fewer provide vegan alternatives. Indeed, in Washington State, private schools are barred from serving only vegan food and one such institution was compelled to serve a certain amount of dairy products in order to avoid forced closure.<sup>173</sup> Erik Marcus documents<sup>174</sup> that “animal agriculture benefits enormously from the National School Lunch Program” in the United States, where the program spends over \$500 million per year on animal products and a mere \$161 million on fruits and vegetables.<sup>174</sup> Nonetheless, schools with unusually large populations of Muslim and Jewish children have placed halal and kosher items on their daily lunch menus, thereby supporting the contention that

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<sup>171</sup> Canadian Healthcare Association *et al.*, Joint Statement on Preventing and Resolving Ethical Conflicts Involving Health Care Providers and Persons Receiving Care, (1999) [http://www.cna-aiic.ca/CNA/documents/pdf/publications/prevent\\_resolv\\_ethical\\_conflict\\_e.pdf](http://www.cna-aiic.ca/CNA/documents/pdf/publications/prevent_resolv_ethical_conflict_e.pdf) at pt. 1 para. 16, pt. II, para. 11. ■

<sup>172</sup> [2004] 3 S.C.R. 698, 246 D.L.R. (4th) 193 (WLeC).

<sup>173</sup> Iacobbo & Iacobbo, *supra* note 2.

<sup>174</sup> *Supra* note 2 at 100. Moreover, McGrath, *supra* note 2, reveals that the United Dairy Industry Association spends over \$100 million dollars yearly on advertising in the United States to propagate the myth that milk is crucial for wellness. We readily recognize the advertisements—glamorous celebrities with a milk moustache. This advertisement has permeated society such that there are now tee shirts that read “Got Jesus?” and “Got Hope?” (The latter being campaign memorabilia supporting president Barack Obama.).

if Ethical Veganism is protected under freedom of religion, perhaps vegan lunches will become more accessible as well.<sup>175</sup>

Much like a refusal to eat animal products provided in school lunches, Ethical Vegan students may wish to opt out of vivisection in the classroom, and a few states in the United States have passed legislation allowing for refusal to participate.<sup>176</sup> Although this legislation provides students with some accommodation, it is worthy to note here how vicious the opposition to a student's refusal may be. For example, scientists from University of California at Berkeley have branded students who oppose vivisection on their campus as “frenzied fanatics, purple-haired punks, and violent vegetarians.”<sup>177</sup> Though no cases on these vegan-specific issues have been litigated in Canada, arguably, they might succeed based on precedent set in section 2(a) jurisprudence. For example, the Supreme Court of Canada has ruled that an absolute ban on kirpans<sup>178</sup> was unconstitutional, and likewise, in another case, the court held that a student's ability to opt out of prayer in school was insufficient and violated religious freedom, because the children could be stigmatized as nonconformists.<sup>179</sup>

One can see how Ethical Vegans in the workplace and schools have experienced difficulties in exercising their faith. Nonetheless, as argued here, Ethical Vegans' claims might succeed under s. 2(a), especially if one accepts the parallel I have drawn in this paper. Although we have thus far dealt with actual cases, it is important to consider a scenario that has not yet made its way to the courts, but will potentially carry absurd results if/when it does.

*f) Arbitrariness and Absurd Results: a Comparison of a Jain's Claim to an Ethical Vegan's*

<sup>175</sup> Rain Levy Minns, “Food Fights: Redefining the Current Boundaries of the Government's Positive Obligation to Provide Halal”, Note, (2001) 17 J.L. & Pol. 713.

<sup>176</sup> Lisa Schultz Bressman, “Accommodation and Equal Liberty” (2001) 42 Wm. & Mary L. Rev. 1007.

<sup>177</sup> Iacobbo & Iacobbo, *supra* note 2 at 122.

<sup>178</sup> A kirpan is “the dagger or sword worn by Sikhs as a religious symbol.” *The Canadian Oxford Dictionary*, 2d ed., s.v. “kirpan”.

<sup>179</sup> *Multani v. Marguerite-Bourgeois (Commission scolaire)*, [2006] 1 S.C.R. 256, 264 D.L.R. (4th) 577 (WLeC); *Zylberberg*, *supra* note 87.

Just as veganism requires one not eat or wear animal products, many religions often impose dietary and dress restrictions on followers, and therefore, vegan practices would conceivably be granted constitutional protection when required by a traditional religion.<sup>180</sup> Therefore, if identical vegan practices, though internally inspired, remain unprotected because of a lack of connection with a particular conventional religion, arbitrary outcomes would result.<sup>181</sup> An example of arbitrary results occurred when an Ethical Vegan was required to submit to a non-vegan tuberculosis skin test to secure employment.<sup>182</sup> After refusal of the procedure, her doctor rebuked her and would not permit a chest x-ray in place of the injection. Nevertheless, when she explained to the physician that she was Hindu and that her Ethical Veganism was congruent with her religious beliefs, she was allowed to receive a chest x-ray rather than a tuberculosis test.<sup>183</sup>

Although the above scenario is arguably arbitrary, the arbitrariness of a Jain's claim for protection under freedom of religion compared to an Ethical Vegan's is perhaps the most suspect and absurd. Just as I have argued for Ethical Vegans, an interconnectedness of all living organisms is central to Jain teachings.<sup>184</sup> Jainism is a well recognized religion and is one of India's oldest religions.<sup>185</sup> Therefore, it is difficult to believe it would not succeed in a claim for protection under section 2(a). Nonetheless, some of the constitutional parlance such as "divine," "superhuman,"<sup>186</sup> and so on that could constrict Ethical Vegan claims would theoretically limit claims by Jains as well, since the Jains have no gods but instead put their faith in twenty-four

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<sup>180</sup> See *Spies v. Voinovich*, 173 F. 3d 398 (6<sup>th</sup> Cir. 1999), where a vegan prisoner argued for accommodation of his religious dietary requirements. The decision turned on the court's finding that Zen Buddhism did not require an adherent to maintain a vegan diet. One can see that if the court had found Zen Buddhism to demand veganism, a judgment would have been found in favour of the inmate's claim. Yet, at this time, it appears claims for protection of Ethical Veganism unattached to a traditional religion would fail.

<sup>181</sup> Page *supra* note 157.

<sup>182</sup> Soifer, *supra* note 2.

<sup>183</sup> *Ibid.*

<sup>184</sup> Sivananda, *supra* note 1; Michael Tobias, "The Anthropology of Conscience" (1996) 4:1 *Society & Animals* 65; Berry, *supra* note 163.

<sup>185</sup> Berry, *supra* note 163.

<sup>186</sup> *Amselem*, *supra* note 65 at 39; See generally Part II(b)(ii), above.



venerated sages.<sup>187</sup> Arguably these sages may be likened to animal rights activists like Gary Francione and vegetarian ecofeminists such as Carol Adams, whom many Ethical Vegans look to for inspiration and guidance. Finally, like Ethical Vegans, an avoidance of animal products is a fundamental way of life for Jains.<sup>188</sup> Because of Jainism's mainstream reputation and acceptance as a religion, I believe it would succeed in most any reasonable claim for protection under section 2(a). Nonetheless, as described above in Part III(b), it seems unlikely at this time that a claim for religious freedom by an Ethical Vegan would succeed and therefore, this would be a most incongruous result and worthy of further scholarly consideration.

*g) Summary*

In sum, I have argued that although some Ethical Vegans may not consider their practice a religion, this is not critical for what I advanced here: Ethical Veganism is comparable to freedom of religion not because they are directly analogous. More accurately, the parallel is found in the value informing both: a respect for faith as a part of well-being. The practical connection between these concepts may be tenuous within current s. 2(a) jurisprudence because of the restrictive terminology that courts have employed when articulating the meaning of religious freedom. Nevertheless, I have established a theoretical connection between Ethical Veganism and freedom of religion by revealing that both place heavy emphasis on reason-informed faith that holds the capacity to enhance well-being. This faith sustains nearly all of the commitments in Ethical Vegans' and religious individuals' lives.

Although faith is paramount for these groups, society has marginalized and stigmatized them in part due to their reliance on faith. Since the origin of liberal thought, reason reigns supreme relegating emotion/faith, and those who operate from a faith-centred place, to the

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<sup>187</sup> Tobias, *supra* note 184.

<sup>188</sup> *Ibid.*; Berry, *supra* note 163.

periphery. In an attempt to illustrate the viability and need for constitutional protection of Ethical Veganism, I have examined actual cases and hypothetical scenarios of discrimination. I have anticipated concerns including floodgates and potential loss of an educative forum for veganism; while these are valid potential dilemmas, I contend that they are likely quite manageable. Lastly, I have shown the likelihood of arbitrary results from one claim in particular (Jainism) as compared to Ethical Veganism's constitutional claim. The absurdity of this result serves to further support my argument that freedom of religion should cover Ethical Vegans as well.

### **CONCLUSION**

Ethical Veganism is a relatively contemporary, emerging principled philosophy presenting social dilemmas much like the predicaments found in freedom of religion jurisprudence. Ethical Veganism is more than a dietary preference, and indeed, for most adherents Ethical Veganism transforms nearly all facets of their lives. These individuals, in response to their faith in an interconnectedness of all life, resolve to lessen suffering and promote compassion by abstaining from animal products.

Ethical Vegans have created a social movement whereby their practices signify an ideology through which they resist one-way dialogue imposed upon them by the meat-eating hegemonic culture. Ethical Vegans are not merely a numerical minority, but are a marginalized cultural minority as well. Dominant discourse often silences vegans and veganism generally as demonstrated overtly in degrading pejorative language used in the public domain and subtly through the creation of a universal social taboo. What is more, this suppression surprisingly extends into academia generally as scholarly literature on veganism is scarce and specifically in that vegetarian ecofeminists have witnessed the silencing of the vegetarian component of their critique.

Individuals practicing religion and those practicing Ethical Veganism hold beliefs that are rooted in faith (emotion) consciously lived through reason. Like religious individuals, Ethical Vegans maintain a sustaining faith, and this faith connection serves to establish a theoretical parallel between Ethical Veganism with religious freedom. The similarity between these two concepts lies primarily in the underlying value informing both: a respect for faith as a part of well-being, and both groups face potential discrimination while exercising their faith. While religious individuals have advanced constitutional claims to protect their religious freedom, Ethical Vegans in Canada have yet to initiate litigation under section 2(a). I have argued that contemporary *Charter* jurisprudence suggests Ethical Veganism is unlikely to be accommodated at this time. Nevertheless I have attempted to establish a conceptual anchor linking the values informing Ethical Veganism and the spirit of protection of religious freedom. In addition, I have presented case law and scenarios illustrating the depth of vegudice in Ethical Vegans' lives thereby demonstrating the viability and need for constitutional protection of Ethical Veganism so that these individuals may be free to exercise their faith in ways that continue to enhance their well-being.

What is more, since the values informing Ethical Veganism are analogous to the underlying spirit of freedom of religion, and because Ethical Vegans, like many religious individuals, are a stigmatized cultural minority, Ethical Vegans are deserving of protection within the ambit of section 2(a). Western culture glorifies reason and thus has typically silenced and marginalized various groups whose ideologies centre on faith (emotion). Granting Ethical Vegans protection under freedom of religion would serve as one step toward an unravelling of the tension created by hierarchical dualisms like reason|emotion. If we dismiss yet another group (Ethical Vegans) as we have women, racialized groups, and others, labelling them as irrational or

unimportant, do we not risk further entrenchment of cultural imperialism? Allowing Ethical Veganism to fall within the ambit of religious freedom would not only remedy a particular discrimination, perhaps it would advance us toward “undo[ing] imperialism as well because of the intersecting and interacting dynamic of patriarchy and imperialism.”<sup>189</sup>

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<sup>189</sup> Deckha, *supra* note 127 at 33.