

The strength of protection for non-religious beliefs under Human Rights law

Abstract: *This paper explores the Human Rights protections for those possessing non-religious beliefs under various relevant legal provisions. The inherent difficulties in protecting non-religious beliefs under United Kingdom Human Rights law are examined and the distinction between political and philosophical beliefs is used to illustrate this. The example of the non-religious belief of veganism is assessed against various promulgated legal tests for ‘belief’ and analysed in practical examples under the areas of employment law, medical law, prisoners’ rights and parental rights to demonstrate the issues involved with allowing interference with individuals’ non-religious beliefs. Without current effective practical protection, advocacy groups have stepped forward to attempt to ameliorate gaps left by domestic equality bodies. A conclusion is reached arguing more regard ought to be had to non-religious beliefs to ensure their effective protection under equality law, particularly by domestic equality bodies.*

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Introduction

This paper aims to evaluate an element of Human Rights law relating to Article 9 of the European Convention on Human Rights (ECHR, 'the Convention'),¹ which protects individuals' 'freedom of thought, conscience and religion'. Specifically, it will explore the protection given for non-religious 'philosophical' and 'political' beliefs. While such a distinction is not part of Strasbourg jurisprudence, its development is observable in UK case law.²

Article 9(1) outlines the content of the right and Article 9(2) explains the grounds for permissible interference:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion ***or belief*** and freedom, either alone or in community with others and in public or private, to manifest his religion ***or belief***, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion ***or beliefs*** shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.³

The paper's scope principally includes the right in a UK context, but examples from other jurisdictions (particularly from other ECHR signatories) will be used for comparison and critique. The non-religious belief of veganism will be used as a focused case study; a belief treated differently across various jurisdictions,⁴ but

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

² Sandberg (2015) 'Are political beliefs religious now?' 175 *Law & Just. - Christian L. Rev.* 180, 182-3; Buchanan, R. (2011) 'Protecting philosophical beliefs - has the law gone too far?' *T.E.L.L.* 16:12 91, 91-93; Henson, P. (2010) 'Beyond belief' *S.J.* 154(10), 8, 11.

³ ECHR, Article 9 (author's emphasis added); domestically in the United Kingdom: the Human Rights Act 1998, Article 9.

⁴ Soifer, S. (2003) 'Vegan Discrimination: An emerging and difficult dilemma'. *Loyola of LA Law Review* 36 1709; Palmstorfer, N.(2017) 'Austrian Constitutional Court: Vegan Landowner Must Tolerate Hunting on His Property'. *Vienna Journal on International Constitutional Law* 11(1) 129; Marcus, E., Wasserstein Fassberg, C., Namestnik, J., Guedj, D., Caine, Y. (2005) 'Strict Vegan, Low-Calorie Diet Administered by Care-Giving Daughter to Elderly Mother - Is This Elder Abuse' 24 *Med. & L.* 279, 296; Cole, M. (2013) 'Is It Really Vegan or Vegetarian? A Comparative

recognised as a protected belief both under the ECHR⁵ and the United Kingdom Equality Act 2010.⁶ This non-religious belief will be critically analysed utilising the aforementioned legal framework, and its place in current Human Rights jurisprudence will be examined.⁷ As an explanatory note, it is recognised that different branches of European law give effect to legal equality. Many of the cases referenced (including *Grainger*⁸ below) are heard under law developed from the EU Directive 2000/78/EC. The ECtHR (Article 14) and EU equality measures have different backgrounds, however generally EU equality law should be interpreted in line with the ECHR and ECtHR case law.⁹

While much focus has been had on the religious element of Article 9 in the European Court of Human Rights' (ECtHR),¹⁰ the non-religious element has arguably had less consideration.¹¹ However, Simler J¹² has said: 'The law does not accord special protection for one category of belief and less protection for

Analysis of the Regulatory Frameworks for Food'. *Australian Animal Protection Law Journal* 9 44; Rosengard, D. (2017) 'Three Hots and a Cot and a lot of talk: Discussing Federal Rights-based Avenues for prisoner access to vegan meals'. *Animal Law* 23 355; Page, D. (2005) 'Veganism and Sincerely Held Religious Beliefs in the Workplace: No Protection without Definition', 7 *U. Pa. J. Lab. & Emp. L.* 363 (2004-2005); Krajnc, A. (2017) 'Bearing Witness: Is Giving Thirsty Pigs Water Criminal Mischief or a Duty'. 23 *Animal L.* 479 (2016-2017).

⁵ *H v United Kingdom* (1993) 16 EHRR (CD) 44.

⁶ Equality and Human Rights Commission (2016) *Article 9: Freedom of thought, belief and religion*. Available: <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion>. Last accessed 12th Mar 2018; Equality Act 2010, s.4 and s.10.

⁷ Rowley, J. (2017a) 'Towards a Vegan Jurisprudence: The Need for a Reorientation of Human Rights' (PhD thesis, Lancaster University).

⁸ *Grainger plc v Nicholson* [2010] IRLR 4 (EAT).

⁹ European Union: Council of the European Union, *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, 27 November 2000, OJ L 303 , 02/12/2000 P. 0016 – 0022, Preamble (1) and (4).

¹⁰ *Eweida v United Kingdom* [2013] ECHR 37; *Lautsi v Italy* [2011] ECHR 2412; *Sahin v Turkey* [2006] E.L.R. 73; *SAS v France* [2014] ECHR 695; *Osmanoğlu and Kocabaş v. Switzerland* [2017] ECHR 14.

¹¹ Murdoch, J. (2007) 'Freedom of thought, conscience and religion - A guide to the implementation of Article 9 of the European Convention on Human Rights'. *Human rights handbooks*, No.9, 12. Available: <https://rm.coe.int/168007ff4f> Last accessed 21st Jan 2018; hardly any attention in the preparatory notes for Article 9 was paid to the non-religious element of the right: European Commission for Human Rights (1956) 'European Commission of Human Rights Preparatory Work on Article 9 of the European Convention on Human Rights'; Rowley, J. (2014) 'Vegan Rights: Questions and Answers', 5. Available <http://www.theivra.com/Documents/Vegan%20Rights.pdf>. Last accessed 19th Jan 2018.

¹² The present UK Employment Appeals Tribunal President – Unknown (2016) *Mrs Justice Simler*. Available: <https://www.judiciary.gov.uk/publications/mrs-justice-simler/>. Last accessed 12th Mar 2018.

another. All qualifying beliefs are equally protected. Philosophical beliefs may be just as fundamental or integral to a person's individuality and daily life as are religious beliefs'.¹³ Indeed, on an international level, the non-religious counterpart is considered equal by the Special Rapporteur for this right¹⁴ and in the CCPR General Comment 22.¹⁵

While specific lists of what is deemed a belief have not been attempted, a general test, subsequently refined in UK case law, can be found in *Grainger v Nicholson*.¹⁶ Critical analysis will be had of this test, informed by my own evaluation and academic commentary, as it applies to certain non-religious beliefs. It is thus important to examine and evaluate how effectively one's right to freedom of thought and conscience is protected as it relates to non-religious beliefs.

The boundary of a 'religious belief'

The difficult task of defining the right to freedom of thought, conscience and religion was not attempted by the Convention drafters, but left a flexible notion which could evolve over time, determinable by the courts.¹⁷ In this respect, changing from effectively being considered *not* a religion by the House of Lords previously¹⁸ to the Supreme Court ruling recently that Scientology *is* a religion,¹⁹ the higher court has taken a more 'activist' and 'modern approach' to the old

¹³ *General Municipal and Boilermakers Union v Henderson* [2015] UKEAT/0073/14/DM (13 March 2015), [62].

¹⁴ Bielefeldt, H. (2011) 'Protecting and Implementing the Right to Freedom of Religion or Belief: Interview with Heiner Bielefeldt'. *Journal of Human Rights Practice* 3:3 229 <https://doi.org/10.1093/jhuman/hur021>; Bielefeldt, H. (2013) 'Misperceptions of Freedom of Religion or Belief.' *Human Rights Quarterly* 35(1) 33.

¹⁵ UN Human Rights Committee (HRC) (1993) *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4. Available: <http://www.refworld.org/docid/453883fb22.html>. Last accessed 12th Mar 2018.

¹⁶ [2010] IRLR 4 (EAT).

¹⁷ Council of Europe (2015) *Guide to Article 9, 7*. Available: https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf. Last accessed 12 Mar 2018.

¹⁸ *R v Registrar General, ex parte Segerdal* [1970] 2 QB 697.

¹⁹ *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77; Dickson, B. (2015), 'Activism and Restraint within the UK Supreme Court'. *European Journal of Current Legal Issues* 21(1), 3.

question:²⁰ what amounts to a religious belief? Notwithstanding, the question of Scientology's religion status is still contested under Strasbourg jurisprudence.²¹ In theory this ought to have no effect on the right, but as the test in *Grainger* will demonstrate, arguably if one's belief is more readily assignable to that of a religion, then the individual's right is more easily secured, than if it is considered non-religious. This will become particularly evident in the case of beliefs straddling the political/philosophical borderline.

Section A – The test in *Grainger*: What amounts to a belief?

In the years preceding *Grainger* confusion arose regarding what amounted to 'philosophical' beliefs in the UK, due to the inclusion of the word 'similar' in equality legislation.²² The domestic legislation was thought to include only philosophical beliefs which were 'similar' to religious beliefs, but exclude political beliefs (for example, allegiances to political parties).²³ Consequently, 'nationalist beliefs'²⁴ and far right political beliefs²⁵ would not be protected. However, following the removal of the word 'similar' in 2006,²⁶ the courts could re-examine what amounted to a non-religious belief.

As the courts evaluated the law in *Grainger*, the test for non-religious 'philosophical' beliefs was held to be that:

- (i) The belief must be genuinely held.
- (ii) It must be a belief and not... an opinion or viewpoint based on the present state of information available.

²⁰ *Ibid* Dickson, B. (2015), 3.

²¹ *Supra* Council of Europe (2015), 8; Evans, M. (2017) 'The Freedom of Religion or Belief in the ECHR since Kokkinakis. Or "Quoting Kokkinakis"'. *Religion & Human Rights*, 12(2-3) 83, 89-90.

²² Employment Equality (Religion or Belief) Regulations 2003, Reg 2(1); *supra* Sandberg (2015), 180; Ford, L. and Levine, M. (2011) 'Do you believe in fairies?' *Employment Law Journal* 121 1, 4.

²³ *Ibid* Sandberg (2015); *Baggs v Fudge* [2005] ET 1400114/2005 (23 March 2005); *supra* Buchanan (2011), 93.

²⁴ *Williams v South Central Limited* [2004] ET 2306989/2003 (16 June 2004); *Finnon v Asda Stores Ltd* ET/2402142/05.

²⁵ *Baggs v Fudge* [2005] ET 1400114/2005 (23 March 2005).

²⁶ Fry, N. and Qureshi, S. (2010) 'Protecting philosophical beliefs'. *E.L.A. Briefing* 17(2) 4; Equality Act 2006.

- (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- (iv) It must attain a certain level of cogency, seriousness, cohesion and importance.
- (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.²⁷

Under this elastic test, a belief ‘does not need to constitute... a fully-fledged system of thought’.²⁸ While the test has been praised for adding clarity to belief protection,²⁹ this summary of the Strasbourg jurisprudence has conversely been criticised as ‘suspect’; Sandberg arguing the ECtHR only excludes ‘mere opinions’ rather than worldviews.³⁰ Further, the ECtHR does not fetter its judgment in this way, but ‘consider[s] all claims, determining their success on their merits’.³¹ Subsequent case law has further complicated the picture as there exists no such ‘watertight definition of belief’ under Strasbourg jurisprudence, which ‘does not distinguish between philosophical and non-philosophical beliefs’.³² Under ECHR requirements, the belief must merely possess a ‘certain level of cogency, seriousness, cohesion and importance’.³³

The test is consequently applied arbitrarily both expansively and restrictively.³⁴ This had led to some examples of ‘protected’ non-religious beliefs to include: pacifism;³⁵ atheism;³⁶ a belief in environmentalism;³⁷ Spiritualism;³⁸ and, among

²⁷ [2009] UKEAT 0219/09/ZT (3 November 2009), [24].

²⁸ *Supra* Sandberg (2015), 183; *ibid*, [28].

²⁹ *Supra* Fry and Qureshi (2010), 5.

³⁰ *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 29; *Supra* Sandberg (2015), 182-183.

³¹ *Ibid* Sandberg (2015).

³² *Ibid*, 183.

³³ *Campbell and Cosans v United Kingdom* [1982] ECHR 1, [36]; Cranmer, F. (2013) *Employment, religion or belief, the Equality and Human Rights Commission and the Daily Mail*. Available: <http://www.lawandreligionuk.com/2013/04/09/employment-religion-or-belief-the-equality-and-human-rights-commission-and-the-daily-mail/>. Last accessed 17th Jan 2018.

³⁴ *Supra* Sandberg (2015), 184.

³⁵ *Arrowsmith v UK* (1978) 3 EHRR 218, 7050/75.

³⁶ *Kokkinakis v Greece* [1993] 17 EHRR 397.

³⁷ *Grainger v Nicholson plc* [2009] UKEAT 0219/09/ZT (3 November 2009).

³⁸ *Greater Manchester Police Authority v Power* [2009] EAT 0434/09/DA (12 November 2009).

others,³⁹ beliefs in the virtue of public service broadcasting.⁴⁰ Some examples of insufficient 'beliefs' include: beliefs in conspiracy theories regarding 9/11;⁴¹ a belief Poppies should be worn prior to Remembrance Sunday;⁴² and beliefs that one must always be polite and truthful.⁴³ In the latter decision the tribunal held beliefs should not be confused with one's 'personal conscience', stating, 'ethical beliefs were not the same as religious or philosophical beliefs'.⁴⁴ An arguably controversial ECtHR case was *Pretty v UK*, which implicitly decided a belief in the virtue of assisted suicide was insufficient for Article 9 protection.⁴⁵

A series of cases further confused the stance on the status of non-religious political beliefs. *Maistry v BBC* implied even political beliefs may be protectable,⁴⁶ which doubted the validity of a prior employment tribunal case (*Kelly v Unison*) which argued the opposite.⁴⁷ *Kelly* went on appeal⁴⁸ and the beliefs in question (Marxism/Trotskyism) were considered not to be 'philosophical' beliefs. Instead of following the previous *Baggs* case which simply excluded political beliefs from protection,⁴⁹ the court in *Kelly* distinguished between "political beliefs which involve... the creation of a legally binding structure by power or government regulating others", which are not protected, and political beliefs which "are expressed by his own practice but where he has no ambition to impose his scheme on others", which may be protected.⁵⁰ Commentators observed the claimants' 'objectionable',⁵¹ 'extreme'⁵² views 'conflicted with the fundamental

³⁹ Anti-fox hunting beliefs: *Hashman v Milton Park (Dorset) Ltd* [2011] ET 3105555/2009 (31 January 2011); Humanist beliefs: *Streatfield v London Philharmonic Orchestra Ltd* [2012] 2390772/2011 (22 May 2012).

⁴⁰ *Maistry v The BBC* [2011] ET1213142/2010 (14 February 2011).

⁴¹ *Farrell v South Yorkshire Police Authority* [2011] ET 2803805/2010 (24 May 2011).

⁴² *Lisk v Shield Guardian Co Lid & Others* [2011] ET 3300873/2011 (14 September 2011).

⁴³ *Moore v Hartlepool Borough Council* (EOR 199); Wallace, S. (2011) 'Religion or belief: the limits of "philosophical belief"'. *E.O.R.* 211 19, 20; *Devine v Home Office (Immigration and Nationality Directorate)* ET/2302061/04.

⁴⁴ *Ibid* Wallace (2011).

⁴⁵ *Pretty v United Kingdom* (2002) 35 E.H.R.R. 1, [82].

⁴⁶ *Maistry v The BBC* [2011] ET1213142/2010 (14 February 2011), [19]; *Supra* Ford and Levine (2011), 5.

⁴⁷ *Ibid* *Maistry v The BBC*, [19].

⁴⁸ [2009] ET 2203854/08 (22 December 2009).

⁴⁹ *Baggs v Fudge* [2005] ET 1400114/2005 (23 March 2005).

⁵⁰ [2009] ET 2203854/08 (22 December 2009), para114; *supra* Sandberg (2015), 185.

⁵¹ *Kelly v Unison* [2009] ET 2203854/08 (22 December 2009), [102].

⁵² *Supra* Buchanan (2011), 93.

rights of others and the dignity of the individual and, as such, are not worthy of respect in a democratic society’;⁵³ particularly considering the ‘revolution’ element of the beliefs, which operated ‘outside of a structured democratic process’.⁵⁴ This is further complicated by the fact the European Commission has suggested that communist beliefs came under Article 9’s scope⁵⁵ as a political ideology.⁵⁶ Conversely, in *Redfearn v UK*⁵⁷ after a BNP member alleged he was discriminatorily dismissed ‘due to BNP’s overt and racist/fascist agenda’,⁵⁸ the ECtHR found his Article 9 claims to be ‘manifestly ill-founded’; making it ‘unclear whether political beliefs were protected under the Equality Act 2010’.⁵⁹

The *Henderson* case⁶⁰ consequently arguably even ‘further mudd[ies] [an] already... messy area...’.⁶¹ The beliefs contested were Marxism and ‘left wing democratic socialism’.⁶² Following an unsubstantial application of the *Grainger* belief test to the facts,⁶³ the tribunal ‘accepted that beliefs in a political philosophy can be protected even where they are aligned to membership of a political party.’⁶⁴ Full discussion of this judgment’s validity, and the relevance of *Kelly*, was not given attention to on appeal as the respondents conceded the belief point. Thus, ‘decisions in discrimination law cases may hinge upon whether or not it is conceded that a claimant has a belief’ – a ‘clearly unsatisfactory’⁶⁵ development with ‘the reason for change’ unclear.⁶⁶

⁵³ *Supra* Wallace (2011), 20.

⁵⁴ *Supra* Buchanan (2011), 93.

⁵⁵ ECmHR, 11 Oct. 1991, *Hazar and Others v. Turkey*, DR 72/200, Application Nos. 16311/90, 16312/90 and 16313/90; Renucci, J. (2005) *INTRODUCTION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS*, 30. Available: http://echr.coe.int/Documents/Pub_coe_HFiles_2005_01_ENG.pdf. Last accessed 21st Jan 2018.

⁵⁶ *Supra* Murdoch (2007), 12.

⁵⁷ [2013] IRLR 51, [60].

⁵⁸ *Supra* Sandberg (2015), 186.

⁵⁹ *Ibid*, 187.

⁶⁰ *General Municipal and Boilermakers Union v Henderson* [2013] ET 33016908/2012 (30 September 2013).

⁶¹ *Supra* Sandberg (2015), 193.

⁶² *Ibid*, 192; *General Municipal and Boilermakers Union v Henderson* [2013] ET 33016908/2012 (30 September 2013), [48].

⁶³ *General Municipal and Boilermakers Union v Henderson* [2013] ET 33016908/2012 (30 September 2013), [25] and [48]; *Ibid*, Sandberg (2015).

⁶⁴ *Ibid* Sandberg (2015).

⁶⁵ *Ibid*, 195.

⁶⁶ *Ibid*, 192.

Thus the law relating to freedom of thought, conscience and belief is presently ambiguous regarding whether political beliefs will be protected, leading Sandberg to observe:

‘...it is unclear whether an employer is required to provide equal treatment to requests made to change working hours from employees who are Evangelical Christians, humanists, Marxists, members of the Green party, and those who believe in the value of a lie-in.’⁶⁷

He suggests instead including political beliefs under Article 10 or 11, ‘making it clear that they are protected in their own right rather than by stretching the right to religious freedom to provide a misleading and ultimately unsatisfactory impression that political beliefs are religious now.’⁶⁸

This is clearly worrisome for those seeking protection of their non-religious beliefs, at a time where ‘legal uncertainty makes it all the more desirable... for national authorities competent in their respective areas to be as consistent as possible in granting recognition to legitimate religious [and non-religious belief] claims, without thereby privileging some over others, and to admit an interpretation of equal treatment that is not opposed to diversity but rather is one of its constituent parts.’⁶⁹ The UK courts are not solely culpable for uncertainties surrounding belief protection, however – Evans⁷⁰ has criticised the ECtHR’s approach in this area for its lack of consistency.⁷¹ He argues the court refuses to meaningfully engage with analysis of a belief’s worthiness of Article 9 protection, stating the court instead sometimes hides ‘behind a façade of inclusivity and non-evaluation.’⁷² He sympathises with the court, ‘since denying a belief... protection.... is tantamount to saying... it is not “cogent, serious, cohesive or important” – however, ‘there is also a danger that by not doing so it encourages

⁶⁷ *Ibid*, 195-196.

⁶⁸ *Ibid*, 197.

⁶⁹ Foblets, M. (2013) ‘Freedom of religion and belief in the European workplace: Which way forward and what role for the European Union?’ *International Journal of Discrimination and the Law* 13:2-3 240, 254-5.

⁷⁰ *Supra* Evans (2017), 83.

⁷¹ *Ibid*, 89-90.

⁷² *Ibid*, 90-91.

frivolous claims, or extends a mantle of legitimacy over views which are potentially problematic.’

Having examined the law surrounding the complicated and confused protection of non-religious beliefs, this paper now turns to examine the non-religious belief of veganism, with analysis of its stance in the realm of non-religious belief protection in the UK.

Section B – Veganism: a case study

1. The belief itself:

The UK Vegan Society definition of veganism, used widely and by international vegan organisations,⁷³ is as follows:

‘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. In dietary terms it denotes the practice of dispensing with all products derived wholly or partly from animals.’⁷⁴

Largely associated with abstaining from eating animal products, veganism extends into many areas involving animal use, such as clothing, medicine and entertainment. While the arguably primary driver behind veganism is a stance against the harm caused to other sentient⁷⁵ beings, other motivators for vegans

⁷³ Go Vegan World (2018) *What is veganism?* Available: <https://goveganworld.com/what-is-veganism/>. Last accessed 12th Mar 2018; Czech Vegan Society (2018) *What is veganism?* Available: <http://veganskaspolecnost.cz/basic-information/what-is-veganism/>. Last accessed 12th Mar 2018.

⁷⁴ The Vegan Society, (2017) *Definition of veganism*. Available: <https://www.vegansociety.com/go-vegan/definition-veganism>. Last accessed 18th Jan 2018.

⁷⁵ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, Title II, Article 13; Low, P. (2012) *The Cambridge Declaration on Consciousness*. Panksepp, J., Reiss, D., Edelman, D., Swinderen, B., Low, P. and Koch, C. (eds) Available: <http://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>. Last accessed 12th Mar 2018; Bekoff, M. (2012) *Animals are conscious and should be treated as such*.

include the damaging effects society's use of animals has on the environment via animal agriculture;⁷⁶ and veganism's positive effect on humans, with an increasingly popular motivator being the reportedly positive effects that a vegan or 'plant-based' diet can have on health.⁷⁷

2. Why examine veganism?

The vegan philosophy exemplifies deep convictions concerning the universality of suffering, opposing established dominant majority beliefs and cultural practices. Vegan convictions regarding animal products have previously been considered and accepted as within Article 9's scope in 1993 under the ECHR⁷⁸ and is reportedly labelled as one of the 'fastest growing lifestyle movements' in the

Available: <https://www.newscientist.com/article/mg21528836-200-animals-are-conscious-and-should-be-treated-as-such/>. Available 12th Mar 2018.

⁷⁶ Gerber, P. J., H. Steinfeld, B. Henderson, A. Mottet, C. Opio, J. Dijkman, A. Falcucci and G. Tempio (2013) *Tackling climate change through livestock – a global assessment of emissions and mitigation opportunities*. Food and Agriculture Organization of the United Nations, Rome, 115; Steinfeld, H., Gerber, P., Wassenaar, T., Castel, V., Rosales, M., Cees, H. (2006) *Livestock's Long Shadow: Environmental Issues and Options*, Rome: FAO; The Vegan Society (2018) *Environment*. Available: <https://www.vegansociety.com/go-vegan/environment>. Last accessed 12th Mar 2018; Carus, F. (2010) *UN urges global move to meat and dairy-free diet*. Available: <https://www.theguardian.com/environment/2010/jun/02/un-report-meat-free-diet>. Last accessed 12th Mar 2018; Carrington, D. (2014) *Eating less meat essential to curb climate change, says report*. Available: <https://www.theguardian.com/environment/2014/dec/03/eating-less-meat-curb-climate-change>. Last accessed 12th Mar 2018; Wellesey, L. (2015) *Can eating less meat help reduce climate change?* Available: <http://www.bbc.com/news/science-environment-34899066>. Last accessed 12th Mar 2018; Magill, B. (2016) *Studies Show Link Between Red Meat and Climate Change*. Available: <https://www.climatecentral.org/news/studies-link-red-meat-and-climate-change-20264>. Last accessed 12 Mar 2018; Cousineau, L. (2017) *The Meat Industry*. Available: <http://www.climate-change-guide.com/meat-industry.html>. Last accessed 12th Mar 2018; de Boo, J. (2014) *Ripened by human determination: 70 years of The Vegan Society*, 8. Available: <https://www.vegansociety.com/sites/default/files/uploads/Ripened%20by%20human%20determination.pdf>.

⁷⁷ *Ibid* de Boo (2014), 8; Craig, W. (2009) 'Health effects of vegan diets'. *The American Journal of Clinical Nutrition* 89(5), 1 May 2009, 1627S–1633S, <https://doi.org/10.3945/ajcn.2009.26736N>; Pepelko, K. (2013) *Vegan Strongman Patrik Baboumian Breaks World Record*. Available: <https://www.onegreenplanet.org/news/vegan-strongman-patrik-babaoumain-breaks-world-record/>. Last accessed 12th Mar 2018; The Vegan Society (2018) *Health*. Available: <https://www.vegansociety.com/go-vegan/health>. Last accessed 12th Mar 2018; Berger, J. (2017) *Veganism raises your game. Just ask Jermain Defoe*. Available: <https://www.theguardian.com/commentisfree/2017/mar/29/veganism-jermain-defoe-plant-diet>. Last accessed 12th Mar 2018.

⁷⁸ *H v United Kingdom* (1993) 16 EHRR (CD) 44.

UK.⁷⁹ Stylised by some as a 'social justice movement',⁸⁰ the number of vegans increased 360% between 2006-2016; reaching an estimated 542,000 vegans in Britain.⁸¹ While clearly a minority belief, there is an increasing amount of studies surrounding veganism in recent years.⁸² In a study conducted by Mehl,⁸³ the strength of a growing 'vegan identity' was examined, in a paper which 'investigates the ways... vegans negotiate their identities as members of a movement that challenges the normative meanings associated with food and animals in the context of a society that does not hold those same meanings'.⁸⁴ Mehl's study demonstrates the risk posed to such minority beliefs in a society holding opposing majority beliefs; consequently necessitating legal protection of these non-religious beliefs in at least a strong a fashion as religious beliefs.

MacInnis and Hodson recently 'empirically tested whether bias exists toward vegetarians and vegans.'⁸⁵ Their results demonstrate a particularly negative evaluation of vegans (especially males) overall. Their work 'empirically confirms vegetarians and vegans as targets of bias. Unlike other forms of bias (e.g., racism, sexism), negativity toward vegetarians and vegans is not widely

⁷⁹ Lowbridge, C. (2017) *Veganism: How a maligned movement went mainstream*. Available: <http://www.bbc.co.uk/news/uk-england-leicestershire-40722965>. Last accessed 17th Jan 2018; de Boo, J. (2016) *How Many Vegans? One of the Fastest Growing Lifestyle Movements*. Available: http://www.huffingtonpost.co.uk/jasmijn-de-boo/how-many-vegans_b_10002562.html. Last accessed 17th Jan 2018; Quinn, S. (2016) *Number of vegans in Britain rises by 360% in 10 years*. Available: <http://www.telegraph.co.uk/food-and-drink/news/number-of-vegans-in-britain-rises-by-360-in-10-years/>. Last accessed 17th Jan 2018; The Vegan Society (2016) *Find out how many vegans are in Great Britain*. Available: <https://www.vegansociety.com/whats-new/news/find-out-how-many-vegans-are-great-britain>. Last accessed 17th Jan 2018.

⁸⁰ Ferdowsian, H. (2016) *Why Justice for Animals Is the Social Movement of Our Time*. Available: <https://www.psychologytoday.com/blog/animal-emotions/201603/why-justice-animals-is-the-social-movement-our-time>. Last accessed 17th Jan 2018; Smith, G. (2011) *Veganism Is A Social Justice Movement*. Available: <https://thethinkingvegan.com/articles/veganism-is-a-social-justice-movement/>. Last accessed 17th Jan 2018.

⁸¹ *Supra*, The Vegan Society (2016).

⁸² *Supra* Palmstorfer (2017), 129; *supra* Rosengard (2017), 355; Newson, A. (2010) 'Clinical Ethics Committee Case 9: Should we inform our patient about animal products in his medicine?' *Clinical Ethics* 5:1 7; MacInnis, C. and Hodson, G. (2017) 'It ain't easy eating greens: Evidence of bias toward vegetarians and vegans from both source and target.' *Group Processes & Intergroup Relations* 20(6) 721; *supra* Rowley, J. (2017a).

⁸³ Mehl, S. (2017) *Hailing seitan silently: Negotiating vegan identities in a non-vegan world*. Available from ProQuest Dissertations & Theses Global. (1915986429). Retrieved from <https://search.proquest.com/docview/1915986429?accountid=9730>.

⁸⁴ *Ibid*, ii.

⁸⁵ *Supra*, MacInnis and Hodson (2017), 721.

considered a societal problem; rather, negativity toward vegetarians and vegans is commonplace and largely accepted.' This study adds to a 'growing literature finding bias toward benign yet social norm-challenging others', perhaps unsurprising after uncovering that '73.4% of references to vegans in the UK newsmedia in 2007 were negative'.⁸⁶ In doing less harm in the domains of animals and the environment, 'vegans are perceived as doing harm in another: they undermine the integrity of prevailing social values and traditions that exploit animals.'⁸⁷

This study and other examples in the news⁸⁸ 'illustrate how a small segment of society that holds sincere beliefs regarding the ethical and equal treatment for all creatures is often sorely mistreated because of those very beliefs.'⁸⁹ In considering what legal protections are available for this non-religious beliefs in the UK and how effective protection is in practice, particular focus will be had on the areas of employment, prisoners, medical law and parental rights; demonstrating the risks of eroding protections surrounding non-religious beliefs. While discrimination against vegans may not be considered 'earth-shattering news', and at times 'trivial',⁹⁰ Soifer notes: 'there is value, however, in exploring

⁸⁶ Cole, M. and Morgan, K. (2011) 'Vegaphobia: Derogatory discourses of veganism and the reproduction of speciesism in UK national newspaper.' *British Journal of Sociology* 62 134. doi:10.1111/j.1468-4446.2010.01348.x; *Ibid*, 737.

⁸⁷ *Ibid* MacInnis and Hodson (2017), 739.

⁸⁸ BBC (2018) *Shropshire chef said she 'spiked' vegan meal*. Available: <http://www.bbc.co.uk/news/uk-england-shropshire-42543108> Last accessed 12th Mar 2018; ABC News (2014) *Vegan teacher loses job over Facebook post*. Available: <http://abc13.com/news/vegan-teacher-loses-job-over-facebook-post/435278/>. Last accessed 15th Mar 2018; Chiorando, M. (2018) *Major Survey Reveals Extent Of Discrimination Against Vegans*. Available: https://www.plantbasednews.org/post/major-survey-reveals-extent-of-discrimination-against-vegans?utm_source=Plant+Based+News+Subscribers+Combined&utm_campaign=bda5a1e880-Weekly+News+Updates&utm_medium=email&utm_term=0_5651a57357-bda5a1e880-192767081. Last accessed 12th Mar 2018; Go Vegan Scotland (2018) *Results of Survey on Vegan Provision in Scotland*. Available: https://docs.wixstatic.com/ugd/d95b36_f4bcc9845854533ba8aea3cf8e590b2.pdf. Last accessed 12th Mar 2018; BBC (2016) *Italy proposal to jail vegans who impose diet on children*. Available: <http://www.bbc.co.uk/news/world-europe-37034619>. Last accessed 15th Mar 2018.

⁸⁹ *Supra*, Soifer (2003), 1710.

⁹⁰ *Ibid*; *Supra* Page (2005), 391; *supra* Rowley (2014), 3.

the capacity of our legal system to marginalize, or protect, those who do not hold orthodox, mainstream beliefs.⁹¹

3. Does veganism meet the belief test?

While deemed within Article 9's scope in 1993, there may be a need to review and verify this status today. Firstly, considering the confusion discussed above surrounding the political/philosophical belief borderline, clearly the threshold for achieving 'belief' status has evolved in the UK. This has engendered ambiguity, and while being accepted as a belief antecedently, this perhaps ought not to be taken for granted as communism too was previously arguably accepted under Article 9.⁹² Furthermore, following *Redfearn* and *Kelly*, the status of political beliefs/philosophies is now ambiguously seated. Secondly, it may be noted that – as in *Henderson* – in *H v UK* (in which veganism was deemed protected) the UK government had already conceded that veganism was a 'belief'.⁹³ Consequently, the European Commission did not properly assess its belief status in their judgment.⁹⁴ If protection of Marxist/communist ideologies is considered malleable in the UK courts' eyes,⁹⁵ regardless of their previously decided status, then a re-evaluation of veganism may be inevitable in future belief discrimination cases.

This is, thirdly, increasingly pressing as veganism is arguably moving from merely being a philosophical belief to becoming a political issue. This is relevant as in *R (Williamson) v Secretary of State*⁹⁶ – referenced in *Grainger*⁹⁷ – vegetarianism was regarded as uncontroversially meeting the belief test. While being obiter, however, arguably vegetarianism is less of a political stance than veganism – the UK Vegetarian Society state that many vegetarians do not concern themselves with other instances of animal suffering, such as for clothing and cosmetics;

⁹¹ *Ibid.*

⁹² ECmHR, 11 Oct. 1991, *Hazar and Others v. Turkey*, DR 72/200.

⁹³ *H v United Kingdom* (1993) 16 EHRR (CD) 44.

⁹⁴ *Ibid.*

⁹⁵ *Kelly v Unison* [2009] ET 2203854/08 (22 December 2009).

⁹⁶ *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246, [55].

⁹⁷ *Grainger plc v Nicolson* [2010] I.C.R. 360, [20].

vegetarianism being considered more as a dietary preference.⁹⁸ Furthermore, some vegans consider themselves to be ‘abolitionists’, referencing opposition to the 18-19th century slave-trade, or ‘animal liberationists’ – both opposed to the commodification of sentient beings for unnecessary purposes.⁹⁹ Recent developments add credence to the politicisation of veganism, such as backlash surrounding the removal of a clause declaring animal sentience in law;¹⁰⁰ consistently high public opposition to fox hunting where its illegality was considered contestable in parliament by the Prime Minister;¹⁰¹ and an increasing number of vegetarian and vegan politicians, which includes the current Labour party leader, Jeremy Corbyn.¹⁰² Regarding the latter, across Europe vegan and

⁹⁸ *Supra* Newson (2010), 11; Vegetarian Society (2017) *FAQs*. Available <https://www.vegsoc.org/info>. Last accessed 29th Jan 2018.

⁹⁹ Francione, G. and Garner, R. (2010) *The Animal Rights Debate: Abolition Or Regulation?* New York City: Columbia University Press; Francione, G. and Chalton, A. (2017) *The Six Principles of the Abolitionist Approach to Animal Rights*. Available: <http://www.abolitionistapproach.com/about/the-six-principles-of-the-abolitionist-approach-to-animal-rights/#.U6KEkkCSjIU>. Last accessed 29th Jan 2018; Woodcock, S. (2015) *Three Announcements About TAVS: The Term “Abolitionist,” Changing Tavs’ Name, And Brand New And Comprehensive Website About Veganism*. Available: <http://www.abolitionistvegansociety.org/three-announcements-about-tavs-the-term-abolitionist-changing-tavs-name-and-brand-new-and-comprehensive-website-about-veganism/#.Wm8coqhl854>. Last accessed 29th Jan 2018.

¹⁰⁰ Department for Environment, Food & Rural Affairs, Animal and Plant Health Agency and The Rt Hon Michael Gove MP (2017) [Environment Secretary confirms sentience of animals will continue to be recognised and protections strengthened when we leave the EU](https://www.gov.uk/government/news/environment-secretary-confirms-sentience-of-animals-will-continue-to-be-recognised-and-protections-strengthened-when-we-leave-the-eu). Available: <https://www.gov.uk/government/news/environment-secretary-confirms-sentience-of-animals-will-continue-to-be-recognised-and-protections-strengthened-when-we-leave-the-eu>. Last accessed 12th Mar 2018; Belam, M. (2017) *MPs hog social media as they deny voting animals are not sentient*. Available: <https://www.theguardian.com/politics/2017/nov/22/mps-social-media-deny-vote-animals-are-not-sentient-protocol-uk-law>. Last accessed 12st Mar 2018; BBC (2017) *Gove attacks 'distorting' social media after animal sentience row*. Available: <http://www.bbc.com/news/uk-politics-42108236>. Last accessed 12th Mar 2018.

¹⁰¹ Cowburn, A. (2017) *85% of the British public are opposed to repealing fox hunting ban, poll reveals*. Available: <http://www.independent.co.uk/news/uk/politics/fox-hunting-poll-boxing-day-league-against-cruel-sports-ban-theresa-may-election-a8127851.html>. Last accessed 12th Mar 2018.

¹⁰² Warry, R. (2017) *Jeremy Corbyn and other famous vegetarian politicians*. Available: <http://www.bbc.co.uk/news/uk-politics-40058342>. Last accessed 12th Mar 2018; Viva (2018) *VEGAN POLITICIANS*. Available: <https://www.viva.org.uk/vegan-vegetarian-politicians>. Last accessed 12th Mar 2018; McD, I. (2017) *UK now has 4 vegan MPs*. Available: <https://theveganooption.org/2017/06/08/uk-ge2017-election-night-guide/>. Last accessed 12th Mar 2018.

animal protection political parties are emerging, with parliamentary seats gained in Portugal and the Netherlands.¹⁰³

4. Veganism assessed:

As indicated above, to qualify for protection, vegans must show that their convictions meet the threshold of possessing a ‘certain level of cogency, seriousness, cohesion and importance’.¹⁰⁴ Arguably veganism is cogent, in that it is clear and logical – refraining from the use of animal products where ‘practicable and possible’ is an argument based on the fundamental economic principle of supply and demand.¹⁰⁵ In seeking an end to animal exploitation, vegans hope to remove the demand for products which are the result of said exploitation, in the hope the supply would then decrease overtime to such a level for the practice to diminish.

The belief’s seriousness concerns a view by vegans that the harm caused to animals (largely through regular, legal practices in the animal agricultural industry) in the UK and internationally is of such a gross level that it is immoral.¹⁰⁶ Vegans argue farms bearing welfare assurances have been shown to nonetheless sanction great harm to farm animals.¹⁰⁷ Additionally, notwithstanding

¹⁰³ Party for the Animals (2018) *Political parties worldwide*. Available: <https://www.partyfortheanimals.nl/international-movement/>. Last accessed 12th Mar 2018; Alvim, N. and Kantelal, D. (2017) ‘From a petition towards a law: the Portuguese case of mandatory vegan options in public canteens’ 2nd International Symposium on Veganism and Law 22nd and 23rd of July 2017 Berlin, Germany. Available: <http://www.theivra.com/Documents/From%20a%20petition%20towards%20a%20law.pdf>. Last accessed 12th Mar 2018.

¹⁰⁴ *Campbell and Cosans v United Kingdom* [1982] ECHR 1, [36]; Cranmer, F. (2013) *Employment, religion or belief, the Equality and Human Rights Commission and the Daily Mail*. Available: <http://www.lawandreligionuk.com/2013/04/09/employment-religion-or-belief-the-equality-and-human-rights-commission-and-the-daily-mail/>. Last accessed 17th Jan 2018.

¹⁰⁵ Hayes, A. (2017) *Economics Basics: Supply and Demand*. Available: <https://www.investopedia.com/university/economics/economics3.asp>. Last accessed 12th Mar 2018.

¹⁰⁶US: Nation Earth (2015) *Earthlings*. Available: <http://www.nationearth.com/>. Last accessed 13th Mar 2018; UK: Winters, E. and Woods, L. (2017) *Land of Hope and Glory*. Available: <https://www.landofhopeandglory.org/>. Last accessed 13th Mar 2018.

¹⁰⁷ Viva (2017) *RSPCA ASSURED (PREVIOUSLY FREEDOM FOODS)*. Available: <https://www.viva.org.uk/pig-farming-report/RSPCA-Assured>. Last accessed 12th Mar 2018;

more 'acceptable' welfare conditions, vegans object to unnecessary killing of animals, if it is possible to be healthy without.¹⁰⁸ Additionally, the environmental vegan motivator considers it worse for the environment to have the same quantities of animals eaten today kept in a 'free-range' environment, due to level of resources required for this.¹⁰⁹

Viewing the extensive literature available on the vegan philosophy, summarised on The Vegan Society website, the belief arguably possesses a certain level of cohesion.¹¹⁰ The vegan philosophy's importance, or at least its espoused practices, is observable worldwide in politics and law; particularly in the UK and the EU.¹¹¹ Damaging the environment pertaining to wildlife is regulated in the

Winters, D. (2017) *Land of Hope And Glory: An Open Letter From The Filmmakers To The RSPCA*. Available: <https://www.plantbasednews.org/post/land-of-hope-and-glory-an-open-letter-from-the-filmmakers-to-the-rspca>. Last accessed 12th Mar 2018; RSPCA (2017) *Land of Hope and Glory film*. Available: <https://www.rspcaassured.org.uk/land-of-hope-and-glory-film>. Last accessed 12th Mar 2018.

¹⁰⁸ British Dietetic Association (2017) *British Dietetic Association confirms well-planned vegan diets can support healthy living in people of all ages*. Available: <https://www.bda.uk.com/news/view?id=179>. Last accessed 13th Mar 2018; Melina, V., Craig, W. and Levin, S. (2016) 'Position of the Academy of Nutrition and Dietetics: Vegetarian Diets.' *J Acad Nutr Diet*. 116(12), 1970. doi: [10.1016/j.jand.2016.09.025](https://doi.org/10.1016/j.jand.2016.09.025); NHS (2018) *The vegan diet*. Available: <https://www.nhs.uk/Livewell/Vegetarianhealth/Pages/Vegandiets.aspx>. Last accessed 13th Mar 2018.

¹⁰⁹ Harper, L., Denmead, O., Freney, J. and Byers, F. (1999) *Direct measurements of methane emissions from grazing and feedlot cattle*. *J Anim Sci*. 77(6) 1392; Mosley, M. (2014) *Can eating meat be eco-friendly?* Available: <http://www.bbc.co.uk/news/science-environment-28858289>. Last accessed 13th Mar 2018; Monbiot, G. (2017) *Goodbye – and good riddance – to livestock farming*. Available: <https://www.theguardian.com/commentisfree/2017/oct/04/livestock-farming-artificial-meat-industry-animals>. Last accessed 13th Mar 2018; DiStasio, C. (2015) *Leading environmentalist says free-range meat is worse for the environment than airplane travel*. <https://inhabitat.com/leading-environmentalist-says-free-range-meat-is-worse-for-the-environment-than-airplane-travel/>. Last accessed 13th Mar 2018; Westervelt, A. (2014) *Ethical farming dilemma: should we be helping the chicken or fixing the egg?* Available: <https://www.theguardian.com/sustainable-business/eggs-environment-farming-health-cage-free>. Last accessed 13th Mar 2018; Farr, S. (2017) *Here's Why Grass-Fed Beef is Just as Bad for the Environment as Grain-Fed*. Available: <https://www.onegreenplanet.org/environment/grass-fed-beef-is-just-as-bad-for-the-environment-as-grain-fed/>. Last accessed 13th Mar 2018.

¹¹⁰ The Vegan Society (2018) *Why go vegan?* Available: <https://www.vegansociety.com/go-vegan/why-go-vegan>. Last accessed 12th Mar 2018.

¹¹¹ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, Title II, Article 13; United Kingdom Environmental Law Association (2017) *European Protection of Nature and Wildlife*. Available: <http://www.environmentlaw.org.uk/rte.asp?id=211>. Last accessed 12th Mar 2018; International Fund for Animal Welfare (2018) *Protecting animals with international law and policy*. Available:

European Union and internationally¹¹² and animal welfare is of such importance to receive a UK national animal welfare act.¹¹³

Assessed against the UK test in *Grainger*, (i) that the view is genuinely held does not pertain to the validity of veganism itself. That it (ii) ‘must be a belief and not... an opinion or viewpoint based on the present state of information available’ is a somewhat ambiguous requirement, however ‘if a person can establish... he holds a philosophical belief which is based on science, as opposed... to religion, then there is no reason to disqualify it from protection’.¹¹⁴ Thus, even though the belief is centred around scientific consensus of animals’ ability to feel pain and other emotions, according to *Grainger* this ought not defeat its belief status. More widely, arguably veganism is a belief in the recognition of universal suffering of both human and non-human animals; incorporating emancipatory justice for all animals.

The relevance of the belief to everyday life¹¹⁵ and the deeply held moral aspect of the belief arguably meets the test in (iii) – observable practices of vegans demonstrate the belief is ‘life-directing’ with their beliefs surrounding the inclusion of animals in considerations of universal suffering affecting decisions on a plethora of life’s activities.¹¹⁶ Covered above is (iv) in its relation to an emancipation from suffering and climate change, and arguably veganism meets (v) uncontroversially.

Notwithstanding this assessment, evidence for the dismissal of vegan beliefs is arguably observable in *Herrmann v Germany*.¹¹⁷ In refusing to consider Hermann’s Article 9 claim¹¹⁸ the right was overridden by consideration of an infringement under Article 1 of Protocol No.1; eventuating an arguably

<http://www.ifaw.org/united-states/our-work/political-advocacy/protecting-animals-international-law-and-policy>. Last accessed 12th Mar 2018.

¹¹² *Ibid*.

¹¹³ Animal Welfare Act 2006.

¹¹⁴ *Grainger v Nicholson* [2009] UKEAT 0219/09/ZT (3 November 2009), [30].

¹¹⁵ *Supra* Page (2005), 389-390.

¹¹⁶ The Vegan Society (2018) *Definition of veganism*. Available:

<https://www.vegansociety.com/go-vegan/definition-veganism>. Last accessed 12th Mar 2018; The Vegan Society (2018) *Lifestyle*. Available: <https://www.vegansociety.com/go-vegan/definition-veganism>. Last accessed 12th Mar 2018.

¹¹⁷ *Herrmann v Germany* App No 9300/07 (ECtHR, 26th June 2012).

¹¹⁸ *Ibid*, [87].

unsubstantial evaluation of the belief by the majority, harkening back to Evan's criticism addressed previously.¹¹⁹ A potentially similar case may reach the ECtHR from the Austrian Constitutional Court,¹²⁰ where a likely obstacle to the Article 9 right will be the juridical tool of the margin of appreciation.¹²¹ Criticised previously for invoking the device for the uncertainty it casts on belief protection,¹²² Barnes and Hill 'urge the court to engage more openly with the merits of limitation arguments rather than adopt the intellectual dishonesty so often evident in the inconsistent and often capricious deployment of the margin of appreciation.'¹²³ If invoked, a pattern of relegating the protection of non-religious beliefs such as veganism may become observable; threatening their protected status.

Section C – Practical examples of veganism's interaction with the law

*H v UK*¹²⁴ and others¹²⁵ demonstrate while a belief may qualify for Article 9 protection, not all actions flowing from the belief will be equally protected; the right is primarily limited to private actions and may restrict public expression of beliefs.¹²⁶ Consequently, the ECHR does not permit a refusal to abide by legislation, applying neutrally and generally in relation to the freedom of conscience in the public sphere.¹²⁷ When facing an opposing majority culture this may raise issues for minority non-religious beliefs such as veganism, particularly when considering legitimate aim and proportionality assessments relating to the accommodation of vegans. A proportionality assessment can render interference

¹¹⁹ *Supra* Evans (2017), 89-91.

¹²⁰ *Supra* Palmstorfer (2017).

¹²¹ Unknown (2012) Herrmann v. Germany (GC): the importance of precedent and Strasbourg 'micromanagement'. Available: <https://strasbourgobservers.com/2012/07/12/herrmann-v-germany-gc-the-importance-of-precedent-and-strasbourg-micromanagement/>. Last accessed 12th Mar 2018.

¹²² *Supra* Vickers (2017), 168-170.

¹²³ Barnes, K. and Hill, M. (2017) 'Limitations on Freedom of Religion and Belief in the Jurisprudence of the European Court of Human Rights in the Quarter Century since Its Judgment in *Kokkinakis v. Greece*'. *Religion & Human Rights* 12:2-3, 174, 196-197.

¹²⁴ *H v United Kingdom* (1993) 16 EHRR (CD) 44.

¹²⁵ *X v Germany* (1970) application no. 4445/70; *Pichon and Sajous v. France* (2001) application no. 49853/99.

¹²⁶ Gonin, L. (2013) 'Freedom of Thought, Conscience and Religion in the ECHR: The scope of Article 9 ECHR, Terminological distinctions and current legal difficulties.' *Fides et libertas [1940-6924]* 59, 66.

¹²⁷ *C v UK* (1983) DR 142 (Application no. 10358/83).

with the Article 9 right justified if the interference is pursuant and rationally connected to a legitimate aim (listed in Article 9(2) above) and utilises the least intrusive means possible to achieve said aim.¹²⁸ This leads to discussion of how vegan beliefs would be protected in concrete examples, which at times displays the difficulty in identifying ‘*exactly* which practices resulting from a belief are entitled to [Article 9’s] guarantee and which are not.’¹²⁹

1. Veganism in employment law:

Vickers notes ‘two major reasons’ why one’s beliefs should be protected in the workplace.¹³⁰ She states if freedom of belief is to be ‘given practical protection, it must be operable in common areas of daily life, including professional life’; otherwise we risk relegating the right to the ‘private sphere’.¹³¹ Secondly, she argues otherwise some (often minority groups) will be less able to access ‘the financial and other benefits of work’ if their beliefs have rules or practices which can ‘interfere with... usual rules of the workplace’.¹³²

In navigating a society not sharing the vegan belief, vegan employees may find their Article 9 right limited when required to perform acts contravening their beliefs. Examples may include being required to use products tested on animals¹³³ or mandatory animal skins uniforms.¹³⁴ Equally, they may face discrimination *because* of their beliefs. For example, in the UK, the NHS explicitly excluded vegans from applying for a job because the vegan diet was conflated with ‘restrictive diets’.¹³⁵ In Switzerland, ‘a soldier was not allowed to join the

¹²⁸ *Bank Mellat* [2013] UKSC 39, [74].

¹²⁹ *Supra* Gonin (2013), 66.

¹³⁰ *Supra* Vickers (2017), 165-166.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *H v United Kingdom* (1993) 16 EHRR (CD) 44.

¹³⁴ *Supra* Rowley (2014), 15 and 25-37.

¹³⁵ Fouzder, M. (2017) *Vegan challenges discriminatory job ad*. Available:

[https://www.lawgazette.co.uk/lawyer-in-the-news/vegan-challenges-discriminatory-job-](https://www.lawgazette.co.uk/lawyer-in-the-news/vegan-challenges-discriminatory-job-ad/5061773.article)

[ad/5061773.article](https://www.lawgazette.co.uk/lawyer-in-the-news/vegan-challenges-discriminatory-job-ad/5061773.article). Last accessed 13th Mar 2018; Bolton, B. (2017) *In the courts: vegan rights in the UK*. Available <https://l2b.thelawyer.com/vegan-rights-uk/>. Last accessed 19th Jan 2018.

army' as his veganism was an 'unsuitable ethical orientation.'¹³⁶ In *Hashman*,¹³⁷ a vegan employee was dismissed due to anti-fox-hunting beliefs. His beliefs were deemed within Article 9's scope,¹³⁸ however, and he was successful in his unfair dismissal claim.¹³⁹

2. Veganism in medical law:

In one medical law report, providing the diet for those in one's care was arguably conflated with abuse.¹⁴⁰ This conclusion is refuted by reputable health organisations.¹⁴¹ Additionally, a lack of respect and understanding for the non-religious vegan philosophy may arguably be a concern for elderly vegans, for whom guidance surrounding the Power of Attorney procedure has been provided by advocacy groups.¹⁴²

An additional medical law issue relating to veganism arises in the instance of animal-derived vaccinations.¹⁴³ For example, in cases involving immunisation of children the courts have ordered such vaccinations to be administered against vegan parents' wishes.¹⁴⁴ Regarding respecting vegan practices, a reassuring Clinical Ethics Committee report is observable in relation to the pig-derived

¹³⁶ *Supra*, Rowley (2017a), 19; Harres, C. (2016) 'Vegan Soldier Rejected by Swiss Army for Failing to Wear Leather Boots' (*International Business Times*). Available: <http://www.ibtimes.com/vegan-soldier-rejected-swiss-army-refusing-wear-leather-boots-2280206>. Last accessed 19th Jan 2018.

¹³⁷ *Hashman v Milton Park (Dorset) Ltd t/a Orchard Park* ET 310555/2009.

¹³⁸ *Supra* Wallace (2011), 19; *supra* Buchanan (2011), 93.

¹³⁹ Clarks Legal (2011) *Decision that Anti-fox hunting stance is a "philosophical belief" upheld*. Available: [http://www.clarkslegal.com/Blog/Post/Decision that Antifox hunting stance is a philosophical belief upheld](http://www.clarkslegal.com/Blog/Post/Decision%20that%20Antifox%20hunting%20stance%20is%20a%20philosophical%20belief%20upheld). Last accessed 13th Mar 2018.

¹⁴⁰ *Ibid*, Marcus et al (2005); see also: *Melville v Muller* 2006 BCSC 895 (CanLII).

¹⁴¹ *Supra* British Dietetic Association (2017); *supra* Melina, Craig and Levin (2016); *supra* NHS (2018).

¹⁴² Bolton, B. (2017) *Ensuring Your Veganism Is Protected If You Lose Capacity To Manage Your Affairs*. Available: <http://www.theivra.com/Documents/Power%20of%20Attorney.pdf>. Last accessed 17th Mar 2018.

¹⁴³ *Supra* Rowley (2014), 28-29; The Vegan Society (2018) *Definition of veganism*. Available: <https://www.vegansociety.com/go-vegan/definition-veganism>. Last accessed 12th Mar 2018.

¹⁴⁴ *F v F (Welfare of Children: Immunisation)* [2013] EWHC 2683 (Fam); *BC v EF (Parental Responsibility: Immunisation)* [2016] EWFC 69 (05 December 2016); *supra* Rowley (2017a), 18.

medicine, heparin.¹⁴⁵ The Committee considered whether it was important to inform patients if their medicine contained animal products – they concluded: ‘our view is that we... have a moral obligation to disclose the derivation of heparin... to all patients to allow them to come to [an]... informed choice.’¹⁴⁶ The Committee struggled, however, when asked if they would recommend the purchase of non-animal-derived synthetic alternatives for those with beliefs objecting to animal-derived medicine.¹⁴⁷ A principle concerned was if alternatives were more expensive then budgetary limitations may factor in.

3. Veganism and prisoners’ rights:

The ECtHR have shown readiness to give practical application to abstention from animal products on the basis of prisoners’ beliefs.¹⁴⁸ The non-legally binding European Prison Rules state,¹⁴⁹ ‘depriving prisoners of their liberty has no bearing on their human rights’. Points 22.1 and 22.2 respectively reference the need to consider prisoners’ religion and culture when providing food, and that the rules will be ‘applied impartially, without discrimination on any ground such as... religion, political or other opinion.’ Point 29.1 additionally emphasises that prisoners’ ‘freedom of thought, conscience and religion shall be respected.’

In Jakóbski,¹⁵⁰ the ECtHR ‘reiterated prior observation[s] that “dietary practice is a direct expression of belief”¹⁵¹ and notwithstanding the margin of appreciation

¹⁴⁵ *Supra* Newson (2010), 7-12.

¹⁴⁶ *Ibid*, 9.

¹⁴⁷ *Ibid*, 10.

¹⁴⁸ *Jakóbski v. Poland* no. 18429/06, 7 December 2010; *Vartic v Romania (no. 2)* no. 14150/08, 17 December 2013; Rowley, J. (2017b) *The Right to Vegan Food in Prison in Europe*. A paper presented at the Seventh Austrian Animal Rights Congress and CARE Vienna November 2017. Available: http://www.theivra.com/Documents/The_Right_to_Vegan_Food_in_Prison.pdf. Last accessed 17th Mar 2018; *supra* Council of Europe (2015), 69; cf. *supra* Rosengard (2017), 362 and 364-365.

¹⁴⁹ Council of Europe Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to member states of the European Prison Rules (*Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers’ Deputies*).

¹⁵⁰ *Jakóbski v. Poland* no. 18429/06, 7 December 2010.

¹⁵¹ *Supra* Rowley (2017b), 5-6; *Cha’are Shalom Ve Tsedek v. France* [GC], no. 27417/95, ECHR 2000-VII, [73-74].

afforded to states, ‘the Court insisted... the Prison Rules should be observed.’¹⁵² Similarly to Jakóbski, in Vartic v Romania¹⁵³ Buddhist beliefs were also recognised relating to such dietary requirements. The presence of the dietary preferences stemming from *religious* beliefs in both may have been a prevailing factor in protecting the applicant’s Article 9 rights with reference to the abovementioned Prison Rules. Notwithstanding, by analogy vegan dietary preferences ought to be protected likewise.

4. Parental rights and veganism:

Finally, ‘parental rights’, engaging Article 2 of Protocol No.1 (ECHR), encompasses a right for parents to raise their children according to their religious/philosophical beliefs; often entering the realm of education.¹⁵⁴ This right may affect both vegan teachers and vegan parents. A case relevant to the former may include Dahlab v Switzerland,¹⁵⁵ where a primary school teacher who had recently converted to Islam was required to remove her headscarf when teaching. It was decided the headscarf was a ‘powerful external symbol’ liable to ‘influence’ young children. This thinking could extend to a similarly placed vegan teacher who wished to wear symbols/clothing representative of the vegan philosophy, or who held discussions with children on the topic of animal rights. Following Dahlab, these actions may be justifiably limited in the eyes of the ECtHR.

Alternatively, an arguably restrictive approach was given to parental rights as it concerned freedom of belief in Valsamis¹⁵⁶ and Efstratiou v. Greece.¹⁵⁷ Due to their pacifist philosophy (springing from the parents’ Jehovah’s Witness religion) two children were disciplined for not attending a school parade commemorating the anniversary of a war.¹⁵⁸ The ECtHR ruled that ‘...the parade could [not] have

¹⁵² *Ibid* Rowley (2017b).

¹⁵³ *Vartic v Romania* (no. 2) no. 14150/08, 17 December 2013.

¹⁵⁴ *Supra* Council of Europe (2015), 5.

¹⁵⁵ *Dahlab v Switzerland* (dec.), no. 42393/98, ECHR 2001-V.

¹⁵⁶ *Valsamis v Greece*, no. 21787/93, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI.

¹⁵⁷ *Efstratiou v. Greece*, no. 24095/94, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI.

¹⁵⁸ *Supra* Council of Europe (2015), 21.

offended either girls' pacifist convictions, and that such commemorations... served... both pacifist objectives and the public interest.¹⁵⁹ Arguably the ECtHR imposed its interpretation of a pacifist's opinion over the holder of the belief themselves – 'interpreting' the belief which consequently removed any interference. Debatably, as pacifists themselves, the applicants would be better suited to determine what offended their philosophy. Thus, debatably due to confusion over what constitutes veganism's particularities by some, as observed above, a court may utilise their own view of what would contravene the philosophy of a vegan child, potentially overruling vegans' parental rights.

Conclusion

To conclude, the aim of this paper was to examine the test(s) for categorising which non-religious beliefs may attain protection under Article 9 ECHR and similar equality law, examine the strength of this right in practice and assess whether a lack of more explicit protection for specific beliefs can potentially disadvantage those with sincerely held life directing convictions.

UK law is currently ambiguous and uncertain concerning the boundary between 'philosophical' and 'political' beliefs and whether protection ought to be granted to both. While attempting to add clarity, the *Grainger* test has been confused by cases raising the political/philosophical distinction¹⁶⁰ – further complicated by the ECtHR's reluctance to engage in substantial evaluation of individual beliefs' worthiness of protection.¹⁶¹ This being considered, the protection afforded to non-religious beliefs such as veganism arguably requires surmounting an additional hurdle involving a consideration of whether they have become sufficiently 'politicised'. The existence of this confusion surrounding non-religious beliefs

¹⁵⁹ *Efstathiou v. Greece*, no. 24095/94, 18 December 1996, Reports of Judgments and Decisions 1996-VI, [32]; *Valsamis v Greece*, no. 21787/93, 18 December 1996, Reports of Judgments and Decisions 1996-VI, [31]; *supra* Council of Europe (2015), 21.

¹⁶⁰ *Kelly v Unison* [2009] ET 2203854/08 (22 December 2009); *General Municipal and Boilermakers Union v Henderson* [2013] ET 33016908/2012 (30 September 2013); *Maistry v The BBC* [2011] ET1213142/2010 (14 February 2011); ECmHR, 11 Oct. 1991, *Hazar and Others v. Turkey*, DR 72/200, Application Nos. 16311/90, 16312/90 and 16313/90; *Redfearn v United Kingdom* [2013] IRLR 51.

¹⁶¹ *Supra* Evans (2017), 90-91.

serves to leave those wishing to vindicate their rights uncertain; a concern not faced by religious believers.

At an institutional level, there is arguably a certain level of relegation of non-religious beliefs from consideration. Regarding veganism, advocacy organisations have amassed multiple reports of discrimination against vegans,¹⁶² with Rowley observing, 'it is fairly common to see a religious need being met more readily than those... who have nonreligious beliefs.'¹⁶³ It is due to this dismissal of non-religious beliefs, in comparison to religious beliefs, that there has arisen a need for advocacy groups to challenge and ensure compliance with equality law; ameliorating the lack of attention given to them institutionally.

While previously deemed within Article 9's scope, upon assessment veganism arguably meets the *Grainger* test. As such, vegans have the right to manifest their convictions free from interference, but in an absence of institutional support vegan lawyers have felt the need to propose specific legal changes to better accommodate vegans in daily life.¹⁶⁴ This is, arguably, a manifestation of the legal uncertainty around protection for non-religious belief under the right to freedom of thought, conscience and religion and an indication of the struggle those with life directing non-religious convictions face.

These circumstances highlight that the primacy given to the equality of protection for belief in international human rights documents¹⁶⁵ contrasts the inadequate protection afforded to non-religious beliefs due to their confused categorisation. Freedom to express one's belief serves an integral part of many people's lives and 'without respect for... freedom in the area of religious or philosophical

¹⁶² IVRA (2018) *Our challenges*. Available: <https://www.theivra.com/challenges.html>. Last accessed 17th Mar 2018.

¹⁶³ *Supra* Rowley (2014), 33.

¹⁶⁴ IVRA (2016) *Concluding Declaration of the 1st International Law Symposium on Vegan Rights*. Available:

<https://www.theivra.com/Documents/Concluding%20Declaration%20of%20the%201st%20International%20Law%20Symposium%20on%20Vegan%20Rights.pdf>. Last accessed 18th Mar 2018.

¹⁶⁵ Kirby, M. (2009) 'Law, Human Rights, and Religion – of Genocide, Sexuality, and Apostasy'. *Macquarie Law Journal* 9 3; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), Article 18; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), Article 9.

convictions the concept of human rights would remain a torso.¹⁶⁶ As such, sincerely held non-religious convictions must be given more weight for their effective protection under Human Rights law.

¹⁶⁶ *Supra* Bielefeldt (2013), 34.

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