THE CHURCH OF ANIMAL LIBERATION: ANIMAL RIGHTS AS "RELIGION" UNDER THE FREE EXERCISE CLAUSE

By Bruce Friedrich

Abstract:

In this paper, I contend that a belief in animal liberation qualifies as religion under the Free Exercise Clause jurisprudence of the United States Constitution. Thus, every time a prison warden, public school teacher or administrator, or government employer refuses to accommodate the ethical belief of an animal liberationist, they are infringing on that person's religious freedom, and they should have to satisfy the same constitutional or statutory requirements that would adhere were the asserted interest based on more traditional religious exercise.

As this paper develops, I will suggest that one possible solution to the widespread violations of the First Amendment rights of animal liberationists would be the incorporation of a "Church of Animal Liberation" under the Internal Revenue Code (as a proper church or as a religious organization). This would help to protect the free exercise rights of those who believe in animal rights, because it would give them a religious organization to reference—with articles of incorporation that align with the jurisprudential definition of religion—in making their requests for religious accommodation.

I. INTRODUCTION

The [person] who eats meat or the hunter agrees with the cruelties of Nature, upholds with every bite of meat or fish that might is right. Vegetarianism is my religion, my protest.

--Isaac Bashevis Singer[1]

Right now, a prisoner somewhere in America is being told by a prison warden that the prison will not grant his request for a vegetarian meal, even though the prisoner has a deeply held moral opposition to killing animals.[2] A parent is being told that her child's school will not allow her family to decline the milk that is required on all lunch trays, regardless of the parent's explanation that their family is morally opposed to the dairy industry because of the harm done

[1] ISAAC BASHEVIS SINGER & RICHARD BURGIN, CONVERSATIONS WITH ISAAC BASHEVIS SINGER 178 (1985); *see also* ISAAC BASHEVIS SINGER, *Preface to* STEVEN ROSEN, FOOD FOR THE SPIRIT: VEGETARIANISM AND THE WORLD RELIGIONS, at i (1987) ("Sometimes they say [God] wants sacrifice and the killing of animals. . . . But I think God is wiser and more merciful than that. And there are interpretations of religious scriptures which support this, saying that vegetarianism is a very high ideal.").

[2] According to Kathy Hessler, Director of the Lewis & Clark Animal Legal Clinic—which advocates on behalf of prisoners who are trying to obtain vegan or vegetarian diets on animal rights grounds—prisoners nationwide frequently face jail administrators who refuse to accommodate requests for vegan diets. E-mail from Kathy Hessler, Dir., Lewis & Clark Animal Legal Clinic, to author (May 4, 2014, 8:59 p.m.) (on file with *Animal Law*).

to dairy cows and their babies.[3] A student is being told that he will either dissect an animal for biology class or fail that assignment, despite his stated opposition to the dissection industry's breeding and killing methods.[4] A public school teacher is being told that she is required to pass out fliers for the circus, despite her opposition to the brutal methods employed by the circus

[3] Federal laws only require schools to offer a milk substitute to students for medical reasons. *See* 42 U.S.C § 1758(a)(2)(A) (2012) ("[Schools] shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk."); *see also* 7 C.F.R. § 210.2 (2013) ("Meals offered to preschoolers must consist of: Meats/meat alternates, grains, vegetables/fruits, and fluid milk."); 7 C.F.R. § 210.10(m)(2) (2014) ("Schools may make substitutions for students without disabilities who cannot consume the regular lunch or afterschool snack . . . . [W]ith respect to substitutions for fluid milk, such a statement must be signed by a recognized medical authority."); Alisa Fleming, *Does the School Lunch Program Have the Right to Require Kids to Take Milk?*, GO DAIRY FREE, http://www.godairyfree.org/ask-alisa/ask-alisa-does-the-school-lunch-program-have-the-right-to-require-kids-to-take-milk (Aug. 16, 2010) (accessed Nov. 14, 2014) ("Not all school districts and schools enforce this issue, but many do require a doctor's note for a child to turn down the milk provided in the school lunch."); *Offer Nondairy Milk in Schools*, PHYSICIANS COMMITTEE FOR RESPONSIBLE MED., http://www.pcrm.org/health/healthy-school-lunches/nslp/offer-nondairy-milk-in-schools (accessed) ("Because of the widespread but incorrect belief that milk is essential for good health, food service staff will often require that elementary school children take milk.").

[4] *See* Jan Oakley, *"I Didn't Feel Right about Animal Dissection": Dissection Objectors Share Their Science Class Experiences*, 21 SOC'Y & ANIMALS 360, 368 tbl. 2 (2013) (finding that more than 10 percent of polled students who objected to dissection were given a failing grade by their teacher). Although sixteen states have dissection choice policies (giving public school students the right to substitute a non-dissection alternative without penalty), whether teachers throughout those school systems are aware of legal requirements is certainly an open question. CAL. EDUC. CODE § 32255.1(b) (West 2002); CONN. GEN. STAT. ANN. § 10-18d (West 2014); FLA. STAT. ANN. § 1003.47(1)(a) (West 2012); 105 ILL. COMP. STAT. ANN. 112/5(d) (West 2006); Letter from Eve M. Bither, Educ. Comm'r, Dep't of Educ. & Cultural Serv., to Superintendents of Schools (Jan. 30, 1990) (available at http://www.navs.org/file/staff-documents-and-publications-body/Maine-1990-Dissection-Advisory-letter-to-Superintendents.pdf (accessed)) (Maine Education Commissioner advised every Superintendent of Maine to provide an alternative to dissection in their schools); Memorandum from David P. Driscoll, Comm'r of Educ., Dep't of Elementary & Secondary Educ., to Superintendents, Charter School Leaders, Principals & Curriculum Coordinators (Nov. 14, 2005) (available at http://www.doe.mass.edu/news/news.aspx?id=5621 (accessed)) (stating that Massachusetts Commissioner of Education advised schools to provide an alternative to dissection); MICH. ST. BD. OF EDUC. POLICY, STUDENT OPTIONS FOR ANIMAL DISSECTION COURSEWORK (May 13, 2014) (available at http://www.michigan.gov/documents/mde/FINAL_Policy_Dissection_Choice_456675_7.pdf (accessed)); N.H. DEP'T OF EDUC., NEW HAMPSHIRE STUDENT CHOICE POLICY (2014) (available at http://www.education.nh.gov/instruction/curriculum/science/documents/student-choice.pdf (accessed)); N.J. STAT. ANN. § 18A:35–4.24 (West 2013); N.M. ADMIN. CODE § 6.29.1.11 (2010); N.Y. EDUC. LAW § 809(4) (McKinney 2009); OR. REV. STAT. § 337.300 (2013); 24 PA. CONS. STAT. ANN. § 15-1523 (West 2006); R.I. GEN. LAWS §16-22-20 (2013); VT. STAT. ANN. tit. 16, § 912 (2013); VA. CODE ANN. § 22.1-200.01 (2011); *see* E-mail from Samantha Suiter, Sci. Educ. Specialist, PETA, to author (Apr. 28, 2014, 4:23 p.m.) (on file with *Animal Law*) (stating that PETA "encounter[s] cases all the time where students are seeking help dealing with teachers who are forcing them to dissect or risk receiving a failing grade"); *see generally Dissection Campaign Packet*, HUMANE SOC'Y OF THE U.S., http://www.humanesociety.org/parents_educators/dissection_campaign_packet.html, (accessed) (nothing that "[a]lthough most students believe they should have a choice or alternative when it comes to animal dissection, only 11 states have laws requiring student choice").

industry in the training of the animals in their care.[5] In myriad ways, the moral convictions of animal rightists[6] are violated by prison wardens, schools, and employers every single day.

Consider a few slightly different scenarios: What if a prison warden refused to honor a Jewish inmate's request for a kosher meal? What if a Hindu parent was told by the school administrator that her child would be forced to take a hamburger each day, in violation of her belief in the sacredness of cattle? What if the school forced a student to pray to Jesus, in violation of his Islamic faith? What if a public school teacher, an atheist, was forced to lead the prayer?

In this Article, I argue that there is no constitutional difference between the two sets of scenarios, because a belief in animal liberation constitutes a religious belief under constitutional jurisprudence interpreting the Free Exercise Clause of the United States (U.S.) Constitution.[7] Thus, every time a prison warden, teacher or school administrator, or government employer refuses to accommodate the ethical belief of an animal liberationist, they infringe on that person's religious freedom. Therefore, they should have to satisfy the same constitutional or statutory requirements that would adhere were the asserted interest based on more traditional religious exercise.

II. DEFINING RELIGION

The Establishment Clause of the First Amendment declares, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[8] As a

[5] Ringling works with schools all over the country to promote the circus. *See e.g.* Patrick O'Donnell, *Circus to Give Free Tickets to Cleveland Students with Perfect School Attendance*, CLEVELAND.COM, http://www.cleveland.com/metro/index.ssf/2013/09/circus_to_give_ free_tickets_to.html (Sept. 7, 2013) (accessed) (describing Ringling Brothers' offer to give a free ticket to up to 20,000 K-6 students in the Cleveland School District). The author of this Article called in sick in order to avoid having to participate in the Ringling Brother promotion when he was a teacher in Baltimore, Maryland.

[6] I use animal rights and animal liberation interchangeably.

[7] U.S. CONST. amend. I.

[8] U.S. CONST. amend. I.

preliminary matter of constitutional interpretation, understanding the jurisprudential definition of religion will be important since we, as U.S. citizens, need to understand what it is that we are all free to exercise and what the government cannot establish. However, one will search in vain for a clear definition of religion in Supreme Court or circuit court jurisprudence.[9] The Supreme Court has chosen instead to issue pronouncements in dicta that give a more general sense of what religion looks like, and a few circuit courts have offered ad hoc tests that attempt to compare an asserted religion to beliefs that are indisputably religious. The issue is further convoluted by the fact that although the term "religion" is only used once in the Constitution,[10] there is wide disagreement over whether the concept of religion should be understood differently depending on whether the issue under discussion is the government's obligation not to promote religion or, alternatively, not to inhibit a citizen's free exercise of it.[11]

The landscape of modern religion case law can be confusing, encouraging, or amusing—depending on your perspective. A brief canvassing of circuit court jurisprudence finds that constitutionally, atheists are religious.[12] So are agnostics.[13] The sole member of the "Church of Marijuana" is not religious.[14] Neither is a commitment to eating only raw foods.[15] But white

[9] Note that the IRS, charged with interpreting the term for religious exemption under the Internal Revenue Code, simply refuses to do so. *See infra* Part VI.C (discussing the IRS's lack of guidance as to what constitutes a "religious organization" under the Internal Revenue Code); *see also* I.R.S. Gen. Couns. Mem. *supra* note 10 (declining to define religion).
[10] U.S. CONST. amend. I.
[11] *See e.g.* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 828 (1978) (arguing that the Free Exercise Clause should be interpreted broadly to protect anything "arguably religious" but that the Establishment Clause should be interpreted narrowly so that the government is not prohibited from doing something as long as it is "arguably non-religious").
[12] *See* Kaufman v. McCaughtry, 419 F.3d 678, 682 (7th Cir. 2005) ("The Supreme Court has recognized atheism as equivalent to a 'religion' on numerous occasions . . . Atheism is . . . a school of thought that takes a position on religion, the existence and importance of a supreme being, and a code of ethics. As such, we are satisfied that it qualifies as Kaufman's religion for the purposes of the First Amendment claims he is attempting to raise.").
[13] *See* Theriault v. Silber, 547 F.2d 1279, 1281 (5th Cir. 1977) (per curiam) (recognizing agnosticism as a religion for purposes of the Free Exercise Clause).
[14] U.S. v. Meyers (*Meyers II*), 95 F.3d 1475, 1484 (10th Cir. 1996).
[15] *See* Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3d Cir. 1981) (holding that the plaintiff's political organization, which required a special raw food diet, was not a religion under the terms of the First Amendment).

supremacists associated with the Aryan Nation almost certainly are.[16] Obviously Krishnas[17] and Wiccans[18] are religious. So too are believers in the Science of Creative Intelligence.[19] A belief that social security numbers are a "mark of the beast" is "plainly religious within the meaning of the First Amendment."[20] The dope-smoker who founded the "Church of Marijuana" could have proved that his faith in marijuana was religious by claiming it was an interpretation of his Catholic faith. Similarly, a religious requirement can apply to only one person on the entire planet, as long as it is sincerely held.[21] And that is all simply at the circuit court level. Clearly, a constitutional definition of "religion" will require analysis beyond a denotative understanding of the term.[22]

A. The Supreme Court's Evolving Understanding of "Religion"

The general counsel to the Internal Revenue Service explained his view that

> [a]n analysis of the First Amendment to the Constitution of the United States indicates that it is logically impossible to define 'religion'. . . . An attempt to define religion, even for purposes of statutory construction, violates the 'establishment' clause since it necessarily delineates and, therefore, limits what can and cannot be a religion. The judicial system has struggled with this philosophic problem throughout the years in a variety of contexts.[23]

Similarly, in the chapter titled "Defining Religion," a respected case book on religion and the law explains: "Despite more than half a century of intensive Supreme Court interpretation of the

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[16] *See* Wiggins v. Sargent, 753 F.2d 663, 667 (8th Cir. 1985) ("We believe that in this case the fact that the notion of white supremacy may be, and perhaps usually is, secular, in the sense that that it is a racist idea, does not necessarily preclude it from also being religious in nature. . . .").
[17] Int'l Soc'y for Krishna Consciousness, Inc. v. Barber, 650 F.2d 430, 440 (2d Cir.1981).
[18] Dettmer v. Landon, 799 F.2d 929, 932 (4th Cir. 1986).
[19] Malnak v. Yogi, 592 F.2d 197, 199 (3d Cir. 1979).
[20] Callahan v. Woods, 658 F.2d 679, 686 (9th Cir. 1981).
[21] *See* Jolly v. Coughlin, 76 F.3d 468 (2d Cir. 1996) ("Our scrutiny extends only to whether a claimant sincerely holds a particular believe and whether the belief is religious in nature."); Vinning-El v. Evans, 657 F.3d 591, 593 (7th Cir. 2011) ("A personal religious faith is entitled to as much protection as one espoused by an organized group.").
[22] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1918 (3d ed. 1993) (defining religion as "the personal commitment to and serving of God or a god with worshipful devotion, conduct in accord with divine commands esp[ecially] as found in accepted sacred writings or declared by authoritative teachers, a way of life recognized as incumbent on true believers, and typically the relating of oneself to an organized body of believers").
[23] I.R.S. Gen. Couns. Mem. 36,993 (Feb. 3, 1977).

language of the First Amendment, the Court has not offered a constitutional definition of religion."[24] The lack of clear Supreme Court guidance leaves us with discussions in dicta in which the definition of religion is not at issue, as well as two critical cases where a statutory definition is established, with significant constitutional ramifications.

In *U.S. v. Seeger*[25] and *Welsh v. U.S.*,[26] the Court considered the definition of "religion" in the Universal Military Training and Service Act (UMTSA), which exempted from military service those who "by reason of religious training and belief, [are] conscientiously opposed to participation in war in any form." [27] The statute defined religion as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code."[28] Although both cases ostensibly involved statutory interpretation,[29] they were actually—both practically and as interpreted by the Supreme Court and circuit courts subsequently—constitutional holdings.

In *Seeger*, the Court considered the cases of three conscientious objectors whose applications for objector status were denied. Plaintiff Seeger was denied because his objection to war was not centered on a Supreme Being, as required by the Act.[30] Mr. Seeger explained that

> his was a "belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed." He cited such personages as Plato, Aristotle and

[24] MICHAEL S. ARIENS & ROBERT A. DESTRO, RELIGIOUS LIBERTY IN A PLURALISTIC SOCIETY 985 (2d ed. 2002).
[25] U.S. v. Seeger, 380 U.S. 163 (1965).
[26] Welsh v. U.S., 398 U.S. 333 (1970).
[27] Selective Service Act of 1948, ch. 625, § 6(j), 62 Stat. 604, 612 (1948) (current version at 50 U.S.C.A. app. § 456(j) (2012)). Note that since enactment the Act has seen a number of name changes: Universal Military Training and Service Act , Pub. L. No. 82-51, 65 Stat. 75 (1951); Military Selective Service Act of 1967, Pub. L. No. 90-40, 81 Stat. 100 (1967); Selective Service Amendment Act of 1969, Pub. L. No. 91-124, 83 Stat. 220 (1969); Military Selective Service Act, Pub. L. No. 92-129, 85 Stat.348 (1971).
[28] *Id.* at 613.
[29] *See Seeger*, 380 U.S. at 173–76 (exhibiting the Court's statutory analysis of the phrase "religious training and belief"); *see also Welsh*, 398 U.S. at 344–45 (Harlan, J., concurring) (criticizing the Court's manner of statutory interpretation in *Seeger* and *Welsh*).
[30] *Seeger*, 380 U.S. at 167. This requirement was eliminated when the Act was amended in 1967. Military Selective Service Act of 1967, Pub. L. 90-40, § 7, 81 Stat. 101, 104 (1967).

> Spinoza for support of his ethical belief in intellectual and moral integrity "without belief in God, except in the remotest sense."[31]

Plaintiff Jakobson wrote an essay on his opposition to serving in the war, in which he defined God as, essentially, "Godness."[32] The reason for his denial—whether lack of belief in a Supreme Being or lack of sincerity—was unclear to the court of appeals.[33] Plaintiff Peter's declaration was similarly lacking in anything commonly understood as "religion" or belief in a "Supreme Being."[34]

The *Seeger* Court ruled unanimously in favor of all three plaintiffs. In doing so, the Court wrote a treatise on "the ever-broadening understanding of the modern religious community"[35] that included a substantial discussion of writings on religion from "the eminent Protestant theologian Dr. Paul Tillich,"[36] "[a]nother eminent cleric, the Bishop of Woolrich, John A. T. Robinson,"[37] Vatican II's Ecumenical Council,[38] and "Dr. David Saville Muzzey, a leader in the Ethical Culture Movement."[39] The Court completed its canvassing of the religious literature by

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[31] *Id.* at 166.
[32] *Id.* at 168 ("He submitted a long memorandum of 'notes on religion' in which he defined religion as the 'sum and essence of one's basic attitudes to the fundamental problems of human existence,' he said that he believed in 'Godness' which was 'the Ultimate Cause for the fact of the Being of the Universe'; that to deny its existence would but deny the existence of the universe because 'anything that Is, has an Ultimate Cause for its Being.' There was a relationship to Godness, he stated, in two directions, i.e., 'vertically, towards Godness directly,' and 'horizontally, towards Godness through Mankind and the World.' He accepted the latter one") (citation omitted).
[33] *Id.* at 167.
[34] *See id.* at 169 ("As to whether his conviction was religious, he quoted with approval Reverend John Haynes Holmes' definition of religion as 'the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands; it is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best.' The source of his conviction he attributed to reading and meditation 'in our democratic American culture, with its values derived from the western religious and philosophical tradition.' As to his belief in a Supreme Being, Peter stated that he supposed 'you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.'") (citations omitted).
[35] *Id.* at 180.
[36] *Seeger*, 380 U.S. at 180 (speaking of a "'God above God,' the power of being, which works through those who have no name for it, not even the name God").
[37] *Id.* at 181 ("[W]e are reaching the point at which the whole conception of a God 'out there,' which has served us so well since the collapse of the three-decker universe, is itself becoming more of a hindrance than a help.").
[38] *Id.* at 182 ("The Church regards with sincere reverence those ways of action and of life, precepts and teachings which, although they differ from the ones she sets forth, reflect nonetheless a ray of that Truth which enlightens all men.").
[39] *Id.* at 183 ("'Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. . . . Religion, for all the various definitions that have been given of it, must

noting that its findings on the matter represent just "a few of the views that comprise the broad spectrum of religious beliefs found among us."[40]

In order to test whether an applicant's belief is religious under this expansive definition, the Court set up a test, which it called "simple of application" and "essentially . . . objective":[41]

> [D]oes the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption? Moreover, it must be remembered that in resolving these exemption problems *one deals with the beliefs of different individuals who will articulate them in a multitude of ways*. . . . Local boards and courts in this sense are not free to reject beliefs because they consider them "incomprehensible." Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, *in his own scheme of things, religious*. . . . [W]hile the "truth" of a belief is not open to question, there remains the significant question whether it is "truly held." This is the threshold question of sincerity which must be resolved in every case.[42]

The Court noted that although "the statutory definition excepts those registrants whose beliefs are based on a 'merely personal moral code[,]' [t]he records in these cases . . . show that at no time did any one of the applicants suggest that his objection was based on a 'merely personal moral code.'"[43] So, the Court was willing to err on the side of caution, finding religion absent a specific affirmation by the plaintiff that his belief was purely personal. With regard to Mr. Seeger, who all but denounced religion as a normative concept, the Court wrote: "We are reminded once more of Dr. Tillich's thoughts:

> "And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, or your ultimate concern, *of what you take seriously without any reservation*. Perhaps, in order to do so, you must forget everything traditional that you have learned about God."[44]

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surely mean the devotion of man to the highest ideal that he can conceive. . . . What ultimate reality is we do not know; but we have the faith that it expresses itself in the human world as the power which inspires in men moral purpose.'").

[40] *Id.* at 183.

[41] *Id.* at 184.

[42] *Seeger*, 380 U.S. at 184–85 (emphasis added).

[43] *Id.* at 185–86.

[44] *Id.* at 187. (emphasis in original).

In *Welsh*, the 4–3 Court[45] went a step further, extending the *Seeger* holding to cover an objector who "struck the word 'religious' entirely [from his application] and later characterized his beliefs as having been formed 'by reading in the fields of history and sociology.'"[46] Mr. Welsh's opposition to war, the Court noted, "was undeniably based in part on his perception of world politics."[47] However, that was not the end of the matter, because in his application, Welsh also wrote: "'I believe that human life is valuable in and of itself; in its living; therefore I will not injure or kill another human being. . . . I cannot, therefore, conscientiously comply with the Government's insistence that I assume duties which I feel are immoral and totally repugnant.'"[48] In extending its statutory definition of "religion" under the UMTSA to Mr. Welsh, the majority stressed its belief that the plaintiffs in *Seeger* and *Welsh* were not meaningfully different in their "religious" opposition to war. For example, both Seeger and Welsh "strongly believed that killing in war was wrong, unethical, and immoral, and their consciences forbade them to take part in such an evil practice."[49]

Discussing the *Seeger* Court's focus on the three conscientious objectors' "own scheme of things" as it pertains to religion, the *Welsh* Court noted that "[t]he reference to the registrant's 'own scheme of things' was intended to indicate that the central consideration in determining whether the registrant's beliefs are religious is whether these beliefs play the role of a religion

[45] Justice Blackmun did not participate in the decision. Justice Harlan concurred in the result but felt that the Court should strike down the statute as violating the religion clauses of the First Amendment. *Welsh*, 398 U.S. at 344, 359.
[46] *Id.* at 341.
[47] *Id.* at 343 (Welsh explained his objection to war by stating "I can only act according to what I am and what I see. And I see that the military complex wastes both human and material resources, that it fosters disregard for (what I consider a paramount concern) human needs and ends; I see that the means we employ to 'defend' our 'way of life' profoundly change that way of life. I see that in our failure to recognize the political, social, and economic realities of the world, we, as a nation, fail our responsibility as a nation.").
[48] *Id.*
[49] *Id.* at 337.

and function as a religion in the registrant's life."[50] Thus, even if beliefs are "purely ethical or moral in source and content," they will be found to be "religious" if they

> impose upon him a duty of conscience . . . "parallel to that filled by . . . God" in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a "religious" conscientious objector exemption under § 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions.[51]

Most readers who are new to the topic are, I suspect, surprised by the Supreme Court's capacious understanding of religion as encompassing, basically, any belief system at all as long as it involves a "duty of conscience." And in fact, the holdings are even more remarkable, since they do not just equate religion with something as vague as a "duty of conscience"; they also pretend that Congress did not include any reference to a "Supreme Being" in the statute. While granting that the reference to a "Supreme Being" was added by Congress to an earlier version of the statute,[52] the Court nevertheless concludes that Congress chose the concept of a "Supreme Being" rather than "God" in order "to embrace all religions and to exclude essentially political, sociological, or philosophical views."[53] Thus

> the test of belief "in a relation to a Supreme Being" is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is "in a relation to a Supreme Being" and the other is not.[54]

The test of religious belief, then, essentially ignores the "Supreme Being" concept altogether. In response to the Court's holdings in *Seeger* and *Welsh*, Congress later removed the phrase.[55]

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[50] *Id.* at 339.
[51] *Welsh*, 398 U.S. at 340 (internal ellipses and quotation marks omitted).
[52] *Seeger*, 380 U.S. at 176 ("Under the 1940 Act it was necessary only to have a conviction based upon religious training and belief; we believe that is all that is required here").
[53] *Id.* at 165.
[54] *Id.* at 165–66.
[55] Military Selective Service Act of 1967, Pub. L. No. 90-40, § 7, 81 Stat. 100, 104 (1967) (current version at 50 U.S.C.A. app. §456(j) (2012)); *see Malnak*, 592 F.2d at 204 n.17 (Adams, J., concurring) (describing congressional response in removing the phrase).

… [cut discussion of strained analysis for space]

III. FOR FREE EXERCISE PURPOSES, ANIMAL LIBERATION IS A RELIGION

The animals of the world exist for their own reasons. They were not made for humans any more than black people were made for whites or women for men.[56]

The best-known argument for animal liberation goes like this: Other animals are made of flesh, blood, and bone, just like human beings are. They have the same five physiological senses as humans and feel pain in the same way and to the same degree. They are cognitively, behaviorally, and emotionally complex. As Darwin explained, differences between humans and other animals are differences of degree, not kind.[57] For the same reason most human beings would not eat, wear, or experiment on other humans—because they are individuals with moral worth in their own right—so too with animals.[58]

In overtly constitutional terms, animal rights activists agree with Professor Lawrence Tribe, who weighed in strongly in support of a Thirteenth Amendment claim[59] by People for the Ethical Treatment of Animals (PETA) on behalf of orcas held in indentured servitude at SeaWorld:

> The [Thirteenth] [A]mendment's purpose, concerned with human slavery as a matter of original intent, is not bounded by the expectations of its authors, any more than the anti-discrimination provisions of the Fourteenth Amendment turned out to be bounded by its authors' expectations. . . . [I]t seems to me no abuse of the Constitution to invoke it on behalf of non-human animals cruelly confined for purposes of involuntary servitude. To the contrary, I can readily imagine a future in which ordinary citizens . . . look back with horror on the ways in which we now treat some of these noble creatures. . . . [T]hat day may come more quickly than some might expect. . . . Even if [PETA's] lawsuit fails and the orcas on whose behalf it is brought are not ultimately freed, we all benefit from the

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[56] Alice Walker, *Foreword* to MARJORIE SPIEGEL, THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY 13, 14 (1996) (describing Spiegel's argument as "cogent, humane . . . astute . . . [and] sound.").
[57] CHARLES DARWIN, THE DESCENT OF MAN: SELECTION IN RELATION TO SEX 179 (1871).
[58] This is Peter Singer's *Animal Liberation* at its most basic and without the comparisons to other forms of injustice, as well as the evaluation of specific abuses of animals in society that are unjustifiable. *See generally* SINGER, *supra* note 157.
[59] Complaint for Declaratory and Injunctive Relief at 1–2, Tilikum *ex rel* People for the Ethical Treatment of Animals, Inc. v. SeaWorld Parks & Entm't Inc., 842 F. Supp. 2d 1259 (S.D. Cal. 2012) (No. 11cv2476 JM WMC).

national reflection and deliberation that the filing of this suit could initiate.[60]

To the question of PETA's decision to file on behalf of orcas, Professor Tribe opined that the group was probably trying

> to make a point about how the mere absence of superficial resemblance to human beings shouldn't be permitted to obscure the more important issue of whether we are guilty of abusing and exploiting creatures with remarkably sophisticated social, cognitive, and communicative capabilities as well as the capacity to suffer—and whether that abuse and exploitation are inconsistent with the deepest values that our Constitution was instituted to protect.[61]

If one were to write an animal liberation pledge, it would probably sound like this: "I believe that animal life is valuable in and of itself. Therefore, I will not injure or kill any animal. I cannot, therefore, conscientiously comply with any insistence that I participate in activities that I feel are immoral and totally repugnant."[62] With "human" changed to "animal," this pledge is what the *Welsh* Court found to be a statement of religious belief.[63] The Court stressed that Welsh's strength of belief and the dictates of his conscience vis-à-vis killing in war mirrored Seeger's beliefs and warranted similar religious protection, despite his explicit disavowal of conventionally religious motivation.[64] Animal liberationists have a similar "duty of conscience" that guides them in their lives and that is "parallel to that filled by God in traditionally religious persons."[65] As Mohandas Gandhi explained, "if anybody said that I should die if I did not take

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[60] E-mail from Lawrence Tribe, Professor, Harvard Law Sch., to David Crary, Reporter, Associated Press (Oct. 25, 2011, 6:25 am) (on file with *Animal Law*); *see also* Bruce Friedrich, *Is Sea World a Slave Plantation? Lawsuit for Animals Garners High-Power Support*, Geo. L. Wkly., http://www.gulawweekly.org/opinion/2011/11/1/is-sea-world-a-slave-plantation-lawsuit-for-animals-garners.html (Nov. 1, 2011) (accessed).
[61] E-mail from Lawrence Tribe to David Crary, *supra* note 163.
[62] *See supra* Part II (discussing the definition of religion under the Constitution and precedent at the levels ranging from Supreme Court to circuit court).
[63] *Welsh*, 398 U.S. at 343.
[64] *Id.* at 337.
[65] *See id.* at 340 ("If an individual deeply and sincerely holds beliefs . . . [that] impose upon him a duty of conscience to refrain from participating in any [activity] those beliefs certainly occupy . . . a place parallel to that filled by God in traditionally religious persons.") (internal quotation marks omitted).

beef tea or mutton, even under medical advice, I would prefer death. That is the basis of my vegetarianism."[66]

Similarly, the *Seeger* Court unanimously found religious belief in plaintiffs who: (1) believed in "goodness and virtue for their own sakes"; and (2) defined God as, basically, "goodness."[67] This subjective test did not ask whether the plaintiffs defined their belief as religious, but rather focused on whether each objector's beliefs were, "in his own scheme of things,"[68] held in a way that transcends a "merely personal moral code."[69] Animal liberationists view their moral obligation to non-killing of nonhuman animals as an ethical obligation on par with the moral obligation of plaintiffs Welsh and Seeger not to kill other human beings.[70] Indeed, Peter Singer's *Animal Liberation* is a book-length condemnation of animal use for experimentation and food. The first chapter is titled, "All Animals Are Equal . . . or why supporters of liberation for Blacks and Women should support Animal Liberation too."[71] Clearly, if Welsh, Seeger, and their compatriots had religion, so too do animal liberationists.

[66] Gandhi, *supra* note 156, at 20–21.
[67] *Seeger*, 380 U.S. at 166.
[68] *Id*. at 185.
[69] *Id*. at 165.
[70] *See id.* at 187 ("We are reminded once more of Dr. Tillich's thoughts: And if that word (God) has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God.") (internal citation and quotation marks omitted).
[71] SINGER, *supra* note 157, at 1.