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**Jain Vegetarian Laws in the City of Palitana:  
Indefensible Legal Enforcement or Praiseworthy Progressive Moralism?**

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**Abstract:** The city of Palitana, India, has become the first region known to legally install de facto meat bans, essentially making Palitana a vegetarian city by law. These legal steps seem to be the direct result of social pressure put on local legislators in the form of a mass hunger strike performed by local Jain monks. This thesis is aimed at discussing the background of this case, its connections to a broader general discussion of moral and ethical vegetarianism, and arguments in favor of and against the legal installment of a meat ban in the Palitana case. It is concluded that although the meat ban is ideologically and theoretically speaking ethically justifiable and defensible it is in practice, at least in its current form, not ethically desirable.

**Key Words:** *Ahimsa, Animal Rights, Anthropocentrism, Ecology, Jainism, Minority Rights, Moral Vegetarianism, Palitana, Philosophy of Law, Religious Rights*

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## 1. Introduction

The famous Russian writer and philosopher Leo Tolstoy, who was (among many other things) a fervent vegetarian, once reasoned the following: "A man can live and be healthy without killing animals for food; therefore, if he eats meat, he participates in taking animal life merely for the sake of his appetite. And to act so is immoral" (p. 171). From this quote it becomes clear that Tolstoy through moral reasoning came to the conclusion that meat consumption can in many cases not be, at least morally, justified. Tolstoy is far from solitary in this conclusion, as for example contemporary philosopher James Rachels shows in a paper outlining what he calls "the basic argument for vegetarianism". Inspired by Peter Singer's famous article "Animal Liberation" Rachels argues in favor of vegetarianism based on the idea that causing pain for mere gustatory pleasures is immoral. Interestingly, he stresses his focus on the pain aspect, leaving open space for meat consumption not to be immoral in (theoretical) situations where no noteworthy pain is caused in the meat production process (p. 266). In this Rachels differs from Tolstoy, who focuses on the taking of life. This discrepancy raises some interesting questions, such as: what is it exactly that might make meat consumption immoral? And can meat consumption in any way be moral? Furthermore, both Rachels' and Tolstoy's statements could raise some questions of consequentiality: If meat consumption is immoral, should one stop consuming meat? Should those who decide not to stop consuming meat voluntarily maybe even be forced into a vegetarian lifestyle, for example through legal means? Does it matter at all whether the act of consuming meat is moral, amoral, or immoral? And shouldn't the choices of individuals that choose to consume meat just be respected, even if meat consumption would proof to be immoral?

An interesting case related to these and many other questions can be found in the form of Palitana, India. The town, home to roughly 65.000 inhabitants<sup>1</sup>, is one of the most sacred places for Jains. Jainism, one of the world's oldest religions, holds as one of its focal interests the ideal that those practicing it live a life of nonviolence towards all living beings. This means, among other things, that practicing Jains are supposed to follow a vegetarian diet (Buncombe). In fact, nonviolence towards animals is such an important pillar in the Jain religion that local monks have been lobbying for an extensive amount of time to get Palitana, being an important sacred place and pilgrimage destination for Jains, to become a slaughter- and/or meat-free zone. Eventually a group

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<sup>1</sup> According to the 2011 census of India the exact amount of inhabitants of Palitana city was 64497 individuals at that time. It is important to note that one should not confuse Palitana city with Palitana region, or with Vipur (Palitana), both of which are easily confused with Palitana city but give very different demographic figures. When skimming through popular/journalistic articles on Palitana one will find a broad range of population estimates, and it seems that this unclarity about the distinction between Palitana city, Palitana region, and Vipur (Palitana) might be a logical cause for this.

of roughly 200 Jain monks decided to go on a hunger strike, and local authorities gave in. As a result Palitana became the first city in the world with anti-meat laws, more specifically, banning the slaughter of animals as well as the sale of meat and eggs within city boundaries as of the fourteenth of August 2014 (Niazi). Important to note is that non-Jain parts of Palitana's community are also affected by this ruling. The primary example of non-Jains affected is the local Muslim minority, adding up to between 20 and 25 percent of the inhabitants of Palitana, and many seem to be affected by this court ruling in a way they deem incorrect. However, the Muslims do not seem to be the only ones affected against their will or desire, as local Muslim scholar Syed Jehangir Miyan has openly opposed the new laws arguing that "there are so many people living in this city, and the majority of them are non-vegetarian" (qtd. In Niazi). It is even suggested the new law is discriminating, as it conflicts with the interests as well as the religious convictions of non-Jains living in Palitana (Buncombe).

This thesis discusses the new anti-meat law in Palitana from an ethical perspective. The following section deals with the general Jain religious convictions, the core concept of ahimsa, and Jain vegetarianism. Next, the focus shifts to the legal aspect of this case. In this section the main focus will lie on the relationship between public pressure and law, religious freedom, and on majority and (especially) minority rights,. After the religious and legal theoretical aspects of this case have been introduced the thesis shifts to a more in-depth ethical discussion of the case. This discussion will revolve around weighing the interests and arguments of all parties involved, seeing what ethical/moral theories seem to apply and/or would supply backup or counterarguments for the court ruling. The ethical discussion of the case will in many cases relate back to more theoretical and general moral philosophical approaches of relevant (sub)topics such as moral vegetarianism, religious rights, and the connection between religion on one hand and law and politics on the other in modern democracies. This choice has been made in order to investigate whether the Jain monks' reasoning in the Palitana case could possibly hold from a broader perspective, that is beyond sole religious argumentation, for example through using scientific and moral philosophical argumentation. This discussion is aimed at eventually answering the following question: is it morally defensible to legally impose (moral) vegetarianism in the case of Palitana?

## 2. Theoretical Background For Palitana's Pledge For Vegetarianism

In this chapter the focus lies on three sections, that are designed so as to focus-funnel towards the core aspects of the Jain religion and culture relevant for the case at hand. Thus this chapter starts out with a short general introduction of the Jain religion, followed by a more extensive elaboration on the Jain relation to the so-called ahimsa principle, and then going even further in-depth into the specific issue of Jain vegetarianism.

### 2.1. Jainism

A good general introduction into Jainism can be found in the form of a book by professor in religion and Asian studies Jeffery Long: *Jainism, an Introduction*. Jainism is practiced by about 4,2 million people worldwide according to Long, with the vast majority of practicing Jains living in or coming from the Indian subcontinent (p. 13-14)<sup>2</sup>. However, exact figures on (practicing) believers differ quite a bit, as for example Niazi speaks of there being 5 million Jains in India alone, and Chapple for example speaks of 7 million followers worldwide ("Bioethics", Chapple, p. 1339). Long recognizes three main streams within Jainism: the stricter metaphysical orthodox followers, the somewhat less all-encompassing theistic heterodox stream, and the contemporary neo-orthodoxy, which revolves around modern concepts of science and rationality (p. 14). Jainism is an old religion, with its roots stretching back to and arguably beyond the 9<sup>th</sup> century BCE (p. 29-30), although from a Jain perspective no point of foundation can be established since Jainism is "the eternal and essential nature of existence" (p. 30).

Interestingly, the first time Long introduces Jainism he does not speak of a religion. Instead, Long speaks of "an ancient tradition of nonviolence" (p. 1), furthermore drawing multiple parallels between Jainism, Hinduism, and Buddhism (p. 1-4). The fact that Long does in fact see Jainism primarily as a religious stream becomes apparent in his work later on though, as he for example argues that "Jainism is, in its origins, a South Asian religious tradition, part of the larger milieu that is also Home to Hinduism, Sikhism, and, originally, Buddhism" (p. 5), once again focusing on its connection to multiple other world religions. A clearer explanation of this connection, especially between Jainism and Hinduism, is offered by Long somewhat later in the same book. As Long points out many Jains will feel closely related to Hinduism, some won't mind sharing religious facilities, and some will even be quite okay with being called Hindus. Interestingly the supreme

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<sup>2</sup> For comparison: There are about 900 million Hindus in India alone (Long, p. 27-28). Hence it seems fair to state that Jainism has a relatively small group of followers, even in the country where it originated and is still relatively most prevalent and practiced.

court in India, despite Jainism being named separately in the constitution and in Indian census reports, even sees it as a reformist movement amongst Hindus rather than as a separate religion (Mahmood, p. 771). However, it seems that many Jains believe Hinduism is a culturally prevalent factor in the Indian subcontinent that is also shared by Jains, whereas Jainism is religiously distinct from Hinduism (Long, p. 25). Thus it seems that the common denominator between Jainism and Hinduism might be culture, whereas religion is arguably the differentiating factor. It has to be urged once more though that not all Jains agree on this, and some would see Jainism and Hinduism as (more) completely distinct from each other (p. 26-27).

Practically speaking the "ancient tradition of nonviolence" that Jainism is, as Long puts it (p. 1), means (among other things) the following: First of all Jains believe in multiple religious aspects and concepts that are shared with related religions such as Hinduism and Buddhism. Examples of this are the idea that our universe is without beginning and without end, and the belief in a universal law of action and reaction that is known as karma (p. 83-86). Interestingly, one could say that Jains are not to be seen as conventional theists as there is no belief in a traditional God in the sense of a creator. Rather, the soul is seen as divine (p. 91). To add, one can turn to Chapple's discussion of bioethics in Jainism, as Chapple points out that instead of there being the belief in a creator God, Jainism is rather typified by what he calls "a unique respect for all life forms" which forms the main foundation for a broader ethical approach to life ("Bioethics", Chapple, p. 1339). This broader ethical approach to life is typifying for the Jain religious doctrine, as a special focus in Jainism lies on the (directly to karma related) so-called concept of ahimsa, a deep belief in all-encompassing nonviolence (Long, p. 97).

Jainism entails, of course, a lot more than can be summed up in the short summary of Long's introduction into Jainism as just offered. However, in the context of this thesis the summary just offered should suffice to give a rough overview of what it generally entails and how it ties into other religious and/or cultural traditions. For further detailed information about Jainism and all it entails one should best turn to Long's book (or find a suitable equivalent). However, the most important concept in the Jain religion in the context of this paper is the ethical approach to life from a nonviolent, or even an arguably anti-violent point of view: ahimsa. Therefore, it is now time to turn to a more focused and in-depth analysis of the concept of ahimsa, what it is, and what it entails.

## 2.2. *The Concept of Ahimsa*

Although an introduction of the concept of ahimsa is also part of Long's work (p. 97-100), and although he relates to the concept throughout his work, a more detailed and in-depth overview of the concept might give a better insight into its role in the case of Palitana. Therefore, it might be more fruitful to turn to a mix of other, more narrow and specialized sources.

A first glance at a dictionary entry might seem a logical start in exploring the meaning of a concept like ahimsa. However, when turning to for example the Merriam Webster online dictionary's entry for "ahimsa" one encounters the following description: "the Hindu and Buddhist doctrine of refraining from harming any living being". Clearly this entry is far from complete, as it for example lacks any reference to ahimsa also being an essential part of the Jain doctrine, and as it does not offer much insight into what kind of harming is actually meant. When turning to an (online) encyclopedia, in this case the Encyclopedia Britannica, one can already find a more complete and suitable description. The Encyclopedia Britannica<sup>3</sup> entry for ahimsa at least includes Jainism in its description, as it starts off with the following: "ahimsa, (Sanskrit: "noninjury") in the Indian religions of Jainism, Hinduism, and Buddhism, the ethical principle of not causing harm to other living things.". Even more interesting is how the text continues, as the entry directly turns to ahimsa in Jainism, and discusses it as being the "standard by which all actions are judged". It furthermore makes a distinction between two ways of practicing ahimsa: a less all-inclusive version that is mostly focused on not killing any animal life, and a more all-encompassing approach that drives followers to do as much as they can in order to keep from "knowingly or unknowingly being the cause of injury to any living soul (jiva)". Furthermore the Encyclopedia Britannica entry rightfully points out that the concept of noninjury does, at least for the (more strict) Jains, not only apply to physical harm but also to other realms such as harmful thought. An important difference between Jain ahimsa and Hindu/Buddhist ahimsa is also highlighted as it is pointed out that both the latter have never been quite as strict and broad in their implementation of ahimsa in life as Jainism traditionally has. Thus, all in all an encyclopedia entry as provided by the Encyclopedia Britannica already offers a more detailed insight into ahimsa as a whole, as well as into ahimsa in the Jain religious doctrine more specifically. However, one can still delve a bit deeper and try to create a deeper understanding in the connection between the Jain approach to ahimsa as a theoretical and religious doctrine, and the practical application of it in the form of Jain vegetarianism and even Jain vegetarian activism. Therefore it is now time to turn to a discussion of the Jain practical application

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<sup>3</sup> Encyclopedia Britannica is the company that is, interestingly, also the owner of Merriam Webster; making differences in strictness and detailedness of interpretation all the more interesting and somewhat surprising.

of ahimsa in life through (among other things) vegetarianism.

### 2.3. Jain Vegetarianism

Jain vegetarianism is directly related to the concept of ahimsa, the concept of karma, and the belief that these doctrines are (to be) present in all aspects of life. In this sense, the Jain doctrine with regards to a vegetarian lifestyle might best be described as a form of religious deontology, that is interestingly enough primarily inspired and backed up by one central virtue-ethical concept: nonviolence (ahimsa)<sup>4</sup>. As a result, Jain vegetarianism, and in fact the Jain diet as a whole, is quite strict. Generally speaking Jain vegetarianism entails a strict diet in which meat, fish, and eggs are all prohibited (Singhvi, in "Ecology", Chapple, p. 223). This means that a diet of vegetables and milk products remains<sup>5</sup>, however, there is more. Even when eating plant products, one should try to mitigate harm done as much as possible, meaning that the consumption of plants is also restricted by one's actual food necessity (Shah, p. 240). Furthermore, variants seem to also exclude honey and/or alcohol (Evans, p. 203) and even many root vegetables (Shah p. 251). Arguably, a more modern move is that towards Jain veganism. Chapple for example points out how a movement following Pravin K. Shah<sup>6</sup> has started advocating Jain veganism, as Shah put to the table the problem with combining nonviolence and modern dairy farming. Shah seems to find modern, industrialized cow farming cruel and believes the cows in this system are suffering, for a variety of reasons ("Roots, Shoots", Chapple, p. 125-126). Whether the same move towards veganism would also take place if milk-products were produced in a more traditional, less industrialized manner, is (sadly) not discussed.

Clearly Jain vegetarianism, even veganism, and the Jain diet as a whole is quite a strict lifestyle, although it can of course be expected that levels of application will differ per individual. An interesting, and for some possibly surprising aspect of the Jain approach to not doing harm can be found in Jain activism. The Jain doctrine is generally centered around preventing harm and around doing good, but it has to be pointed out that this can also be interpreted as an active duty. As a result, Jain activism has been present throughout history, with for example a Jain lawyer taking on

4 In the Jain case two categories of normative ethics, virtue ethics and (religious) deontological ethics, really seem to coincide. On one hand the duty to abide to religious rules is fairly absolute and straightforward, making Jainism a case example of religious deontology. On the other hand, these rules are justified by and elaborated on in the sense of a virtue-based reasoning concerning ahimsa, nonviolence, which very much appeals to the virtues of practicing Jains and adds a virtue-ethical layer. As a result the Jain doctrine seems to, possibly somewhat atypical for a modern Western interpretation of normative ethical theories, create an ideological web in which virtue-ethical and deontological aspects are inseparable.

5 Chapple automatically seems to include Poultry in the meat category, since the prohibition of poultry is the standard in Jain vegetarianism but it is not named exclusively by Chapple.

6 For the sake of avoiding confusion, it has to be pointed out that this is another Shah than the one referred to in the previous sentence.

animal welfare cases pro bono, or Jains throughout the ages<sup>7</sup> actively seeking for government to ban the slaughter of animals through petitioning (Evans, p. 209). Interestingly, Evans also points out how a monk went on a hunger strike in Palitana in order to nudge local government into banning slaughter as an example of such Jain activism (p. 210). This was written mere months before a similar action in Palitana<sup>8</sup>, although performed by many more monks, made Palitana's municipal government give in, as will be further discussed later in this paper. However, for now the most relevant central message of these examples as offered by Evans is that the Jain belief in nonviolence is not in any sense a belief in inaction. Rather, it is a duty of nonviolence that one has in their private lives, but that some also see as an active duty, in which others can be nudged or even pushed towards ending their own harm-doing to living beings. This aspect of Jain vegetarianism and ahimsa is quite vital in the Palitana case, as will be discussed later on. Furthermore, a discussion of the possibility for ethical philosophical reasoning to back Jain moral vegetarianism up and/or possible counterarguments will be included in the upcoming moral discussion in chapter four. However, before this, it is first time to introduce some of the relevant legal and social aspects of/related to the Palitana case, which will be done in the next chapter of this thesis.

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7 Evans for example refers to a 12<sup>th</sup> century case of Jain activism aimed at stopping the slaughter of animals.

8 Whether these actions are more or less directly related, and whether the monk discussed by Evans might have inspired his peers, or even instigated a larger hunger strike can (sadly) not be retraced.

### ***3. Philosophical/Ethical Aspects of Palitana's Legal Ruling***

This chapter is aimed at further exploring the legal and social (political) side of the Palitana case, albeit through a philosophical perspective. For this the focus will primarily lie on philosophy of law and related theories and concepts. A select set of the aspects most relevant to the case of Palitana will be discussed: the connection between religion and law, soci(et)al pressure and law, the friction between majority and minority rights, and the representation of non-humans that lack agency in law. All these aspects will be discussed from a theoretical perspective and their practical link to the Indian legal situation will shortly be introduced. A more elaborate interpretation of these topics in the Palitana case will however not be offered just yet, as this will be part of the next chapter's more elaborate and complete ethical evaluation of the Palitana case.

#### *3.1. Religious Arguments and Law*

The first subtopic to be discussed in this chapter is the connection between religious argumentation/reasoning and law. This is a logical starting point in the legal and social discussion for the simple fact that the call for a legal ban on slaughter and import of meat in Palitana by Jain monks was first and foremost grounded in a religious framework and reasoning: Jainism.

As for example pointed out by rhetorician and philosopher Jan Rothkamm the connection between religion and law is often close and direct, and many legal structures were in fact religion-based in their early days (p. 301-303). Interestingly, Rothkamm points out that this is also the case for India (p. 302). However, Rothkamm also acknowledges that there are cases in which in law, in further stages of development, moves towards a sort of enlightened secularism. Actually Rothkamm argues that even in this case law can often for a large part be traced back to religious influences/reasoning (p. 302-303). This does not, however, mean that any negative value judgments concerning religious influence in law are necessarily involved. Quite the contrary, Rothkamm states that "to achieve fairness and impartiality, law needs a dispassionate, technocratic, and professional approach. But when it comes to subjective assessments and ultimate justifications, rationalism alone is insufficient to provide orientation" (p. 308). It seems Rothkamm believes that even in a situation of enlightened, secular legal systems religion can play a valuable role in making the legal system work in practice, or as Rothkamm puts it: "religious inspiration is [...] vital for the content of laws [and] for their enforcement" (p. 308). Rothkamm overall appears to be a supporter of combining enlightened, secular, rational reason and more traditional, religion-based reasoning in the field of law. Although worlds apart in methods, ideals, and possibly also judgments, religion and rational

secularism can add to each other and even out each other's weaknesses. However, there is also a risk in this combination. As Sonnenschmidt for example points out: "essentially, the combination of spiritual and secular power remains the condition under which political terrorism or guerrilla warfare and/or religious striving for purity of creed can flourish" (in Labuschagne and Sonnenschmidt, p. 404). However, like Rothmann Sonnenschmidt also acknowledges that religion (or as Sonnenchmidt puts it: "gnosticism") and a more secular approach to law ("modernity") are most probably closely related in a vast amount of cases, and actually can be retraced as working together or at least being intertwined throughout history (p. 403-404). However, Sonnenschmidt also offers a warning in his conclusion that is of some relevance for the case study of Palitana, as he states: "I want to stress the importance of carefully examining what movements, be it political, philosophical, social, economic, or religious, think, say and do" (p. 413).

So how about the case of Palitana, and with that of the Indian approach to the connection between religion and law? As established a bit earlier in this section there has been direct influence of religion on law in India in much earlier days<sup>9</sup>. However, it might be interesting to turn to more modern times and see how India deals with religion nowadays in a legal sense.

Hanna Lerner points out that India seemingly struggles with which approach to personal law they are to take in their constitution, with a special concern being the differences between religious groups (p. 404)(Lerner specifically points out the friction between Hindu and Muslim interests, but as established earlier in this thesis Jainism and Hinduism show quite some similarities and come from similar traditions, so it can be expected that this same friction could to a fair extent exist between Jain and Muslim interests as well). Lerner furthermore points out that instead of solving possible friction in personal law constitutionally, this task is left to lower levels of politics (p. 404). As Lerner puts it "the institutional path of personal status in India was established *despite* an explicit decision by political leaders to adopt evasive regulatory strategies in addressing conflicts over the state's religious character" (p. 406). An interesting way of dealing with the avoidance of conflict in personal law in India that Lerner discusses is the existence of a system, which makes that several legal systems based on one's own religious and/or cultural background can coexist<sup>10</sup>. However, Lerner also offers a striking example of how such a plurilegal system can cause problems

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<sup>9</sup> Rothkamm in fact refers to a case example from the 3<sup>rd</sup> century BC (p. 302).

<sup>10</sup> India knows a plurilegal system in which different individuals can be subjects to different personal laws based on their religious background, making differences within the legal system within the nation not only geographically decided (i.e. local laws), as is quite common in democracies around the world, but also demographic, primarily based on religious background, which is much more unique. This plurilegality on a demographic, religious, level makes that citizens living in the same area, even neighbors, can be subject to different personal laws that are not essentially (meant to be) hierarchical in nature (for example as class based laws would be) but rather coexistent.

in cases where the interests of people with different backgrounds and their respectively applying legal systems are to be weighed and balanced (p. 407-408). As a result of the occurrence of such problematic cases, but also for example because of feminist concerns, India in recent decades has known an ongoing debate with several groups and/or individuals calling for a Uniform Civil Code, a set of personal laws that would apply to all citizens on a constitutional, and with that nationwide, level (p. 407-408).

In addition to looking at Lerner's interpretation of modern day Indian connections between religion and law, it might be interesting to turn to some statements made by Tahir Mahmood, who focuses much of his work on the connections between religion and law, especially in the case of India. Mahmood discusses how India calls itself a secular state, not overtly, but covertly, by calling itself a "Sovereign [Secular] Democratic Republic" (p. 756). However, as Mahmood points out, there are some important differences between the Indian secular state and western conceptions of the secular state. For example, both in theory and in practice it seems that, legally speaking, there is no clear separation of law and religion (p. 756-757). As Mahmood puts it: "Indian secularism does not require a total banishment of religion from the societal or even state affairs. The only demand of secularism, as mandated by the Indian Constitution, is that the state must treat all religious creeds and their respective adherents absolutely equally and without any discrimination in all matters under its direct or indirect control" (p. 757). Mahmood refers to a set of constitutional decisions and laws, of which three are especially relevant for the Palitana case. First of all article 25, clause I, which states the following: "All persons are equally entitled to "freedom of conscience and the right freely to profess, practice and propagate religion"" and next to this article 29, clause I, which reads: "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same" (Indian constitution, qtd. In Mahmood p. 758). The last one might be of most importance for the Palitana case. It concerns the "Places of Worship (Special Provision) Act, No. 42", which as Mahmood puts it "prohibits forcible conversion of any place of worship of any religious denomination into a place of worship of a different religious denomination, and requires preservation of the religious character of all places of worship—except the disputed mosque site in Ayodhya—as they existed on August 15, 1947, the date of India's independence" (p. 764).

From a recap of Lerner's and Mahmood's works the following conclusion can be drawn: India, although in theory secular, shows a lot of connections between law and religion in practice. This is, as established earlier in this section, not necessarily a bad thing. However, as for example discussed by Lerner, (p. 407-408) this structure can cause problems when individuals or even entire

groups come into conflict because of differing religious backgrounds. To make matters more complicated India has a plurilegal system in which not everyone is subject to the same personal law. On a national constitutional level some religious rights and duties are also established though, as discussed by Mahmood. What these connections between religion and law in India exactly mean for the Palitana case will be discussed later on in this paper, however, first it is time to turn to the connections between soci(et)al pressure and law.

### 3.2. *Soci(et)al pressure and Law*

From the perspective of philosophy of law it can be stated that most philosophers will believe that lawmakers should/are to be guided by *beneficence*, by the aim/strive to create laws in such a way that they will (help) improve the world (Brand, p. 54). Arguably, however, it depends very much on one's philosophical convictions to decide what this strive would exactly mean in practice. Thus, a utilitarian might say laws should be so that they create as much welfare as possible (leaving the question of what kind of welfare is meant exactly unanswered for now), whereas a virtue-ethicist might believe that lawmakers should try to impose and/or defend certain virtues (leaving the question of which virtues are desirable unanswered for now). In the case of Palitana, the interesting aspect is that lawmakers seem to have been influenced by members of the public who used far-going means of pressuring lawmakers, such as going on hunger strikes. An important question this raises is whether such a process is proper, acceptable, and/or desirable? From a philosophy of law perspective, one could really argue in either way. A utilitarian thinker could, theoretically, for example argue that the accumulative prospective welfare gained by those calling for new meat laws trumps the welfare lost by those who do not want such laws to be installed<sup>11</sup>. A virtue ethicist might argue in either way, depending on which virtues they deem desirable: if one cherishes animal rights then lawmakers being guided by societal pressure calling for meat laws might be seen as acceptable<sup>12</sup>. However, if one cherishes the right to exercise religion for religious minorities, one could argue the lawmakers are making a big mistake by giving in to societal pressure.

Ultimately, when it comes to the goal/strive of lawmaking, however a clear majority opinion in the field of philosophy of law can be found. This majority position is for example discussed by

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11 Considering an act- and/or rule-utilitarian approach (which arguably go together in most but not all cases (Bernstein)) to law, as for example discussed by Bernstein in his article "Legal Utilitarianism".

12 Such a virtue-ethical approach to law would basically move into a specific sub-topic in the field of virtue jurisprudence, dealing with the possibility/morality of law to guide and/or judge citizens based on virtues. A well-known historic thinkers in favor of such approaches are for example Aristotle and Thomas Aquinas (Baofu, p. 12), but contemporary followers of this approach to law can also be found, as for example Robert P. George (*Making Men Moral*).

Brand, who puts it as follows: "Modern philosophers see autonomy as an important value that the law should respect and promote. Above all, laws should avoid compromising individual autonomy unless there is a good reason to do so" (p. 68). For the case of Palitana this really boils down to the need for an answer to the question whether the societal pressure from the Jain monks (also taking into consideration the facts the monks act from a religious perspective, in a to them religiously important region, in support of their beliefs) is good enough a reason for lawmakers to compromise the autonomy of individuals through implementing slaughter/meat importation bans. The religious background of the Jain monks and its effect on lawmaking has already been discussed in the previous section. A possible relevant factor that is yet to be explored is the rights/interests of majorities as well as minorities, and how these should be evaluated and weighed. This will be discussed in the next section.

### *3.3. Majority/Minority rights*

As discussed earlier in this thesis India has a plurilegal system in the sense that different religious groups have certain different (personal) laws. Hence, differences in law can not only be found geographically (for example in the case of regional and/or municipal laws), but also demographically. This is especially interesting seeing as though India, as also discussed earlier in this thesis, sees itself as a secular state. It seems that this secularism is shown through abiding by the ((sub)group) need for religious/religion-based laws for Indian citizens no matter what their religion, rather than not enforcing any religious/religion-based laws. This is for example also shown by Rafeek, who writes about the place of religion in modern Indian law that: " the secular forces and parties of course not only acknowledge minority question but also want to treat them fairly and give them equal status in matters of social, cultural, political and economic rights" (p. 164). An interesting question that this approach to state-level secularism might bring up is the issue of how the rights of (in this case religious) majorities and minorities are viewed in the Indian case. How much freedom is there really, and in what fields?

According to Rafeek minorities in India, especially the religious ones, are "under attack" (p. 165). This wording is harsh, but does in fact not only refer to a symbolic attack, but also physical violence towards minorities. Especially interesting is the conception of minority, because as Rafeek rightly points out minorities on a nation-scale (e.g. Muslims and Christians in India) can in fact form the (absolute and/or relative) majority in specific provinces/regions (p. 167). This division is highly relevant for the Palitana case, since both the Jains and Muslims are de facto national

minorities, but the Jains are not a de jure national minority whereas the Muslims are<sup>13</sup>. Moreover, what the religious majority is in Palitana remains unclear, as census information on religious community affiliation on the Palitana town level seems to exist, but has not (yet) been published by the government of India. However, as discussed in the introduction of this thesis there are those who claim that the vegetarians (and with that probably also the Jains) in fact form a minority in Palitana itself (Miyan). Thus on a national level both groups might see themselves protected by minority laws, but on a local level the legal roles are somewhat unclear, with no definite clarity provided about the status of Jainism as a religious majority or minority. To further complicate things the Jain community might very well form a minority in Palitana, but it can be expected that the amount of Jains within the town's boundaries at any given time might be higher than the amount living there full-time, as Palitana is a very important and holy destination of pilgrimage for Jains. One could wonder whether this stream of visiting Jains should also be taken into consideration in the law-making process.

The existence of minority rights in a democratic system, as in the case of India, can be a point of discussion in itself. One could for example argue for what is in practice a dictatorship by the majority. However, from a philosophy of law approach the attribution of minority rights in a democratic system is highly defensible, as for example argued by Christopher Berry Gray:

many philosophers [...] believe that a wide variety of cultural rights can be justified by extending traditional liberal arguments. In certain situations, for instance, affording special representation rights to a group may be the best way to meet the democratic requirement of political equality or the equal representation of interests. Similarly, many accommodations under the heading of multicultural rights [...] seem to be natural extensions of a liberal commitment to toleration" (p. 556-557).

As becomes clear from this excerpt, a case for minority rights in a democratic system can be made from multiple theoretical approaches. Furthermore, one can notice from this excerpt that possible minority rights can be categorized and divided into subgroups, as Gray for example recognizes three subgroups of minority rights: self-government rights, multicultural rights, and special representation rights (p. 556). Relevant aspects are especially the self-governmental right (through the possibility of attribution of political/legal power to a minority on a local level where they

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13 According to Rafeek only five religious minorities are officially recognized on a national level in India: "Muslims, Christians, Sikhs, Buddhists and Zoroastrians" (p. 167). It seems probable that, seeing as though Jains are officially seen as a stream within Hinduism (as discussed earlier in this thesis), Jainism is seen as part of the majority religion: Hinduism.

actually form a much more sizable minority or even majority) (p. 556) and the multicultural rights for "legal protection for certain practices associated with particular ethnic or religious groups" (p. 556)(as for example the Muslim religious traditions with regards to the sacrificial slaughter of animals, but also the Jain abstinence from slaughter).

Although minority rights on a philosophical level might make sense for a democratic secular system such as India, and although it seems the national legal system is in theory at least up to a certain extent aimed at safeguarding and/or reinforcing these rights, there are of course practical problems. Minority rights might collide, and they might not be safeguarded in practice. This last aspect is for example discussed by Ghatak and Udogu in their discussion of the minority rights of the Dalits in India. In their conclusion they offer a statement that can be extended to minority rights as a whole, as they state that there is a form of "entrenchment of the caste configuration in the republic issues [at the socio-religious level]" (p. 222), furthermore stating that there is a de facto sense of religious , in which religions can be regarded as superior or inferior (p. 222), and one might expect that legal rulings can very well be based on this hierarchy as a consequence. Thus, although philosophically desirable, and at least on a national level theoretically defended, minority rights in practice are still often not safeguarded, and inequalities in freedoms, levels of education, wealth, and many other aspects of life still seem to exist (Ghatak and Udogu; Rafeek). In the case of Palitana it seems that neither the Muslims nor the vegetarian Jains form an absolute majority<sup>14</sup>, and one can imagine that the minority rights of both groups will and, in the case of the meat ban, do collide.

Having discussed the legal rights of minorities from a philosophical perspective and briefly having linked them to the Indian case, the theoretical discussion of the most relevant legal topics related to the Palitana case comes to its conclusion. The next chapter will be aimed at combining the theoretical findings of this chapter (with regards to legal aspects), and the previous chapter (with regards to demographic and religious aspects) with ethical/moral arguments, and with the practical conditions in the Palitana case. This evaluation eventually leads to an ethical philosophical discussion of the morality of the anti-meat laws in Palitana.

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<sup>14</sup> The claim about the Jains not forming an absolute majority is based on local scholar Miyan's claims (qtd. in Niazi) by lack of published census data. Therefore this statement of fact will have to be seen, for now, as one with some reservations.

#### ***4. Ethical Evaluation of Palitana's Religion-Driven Anti-Meat Legal Moralism***

Chapter four is aimed at going deeper into the ethical and moral aspects of the Palitana case, at analyzing possible ethical arguments in favor of, and where deemed necessary against<sup>15</sup>, the Palitana legislation with regards to meat import and slaughter, and at giving focus to case-specific points of interest where necessary and/or relevant. For this the first section of the chapter is primarily focused on linking the Palitana case and Jain vegetarianism to a more general ethical and moral discussion of vegetarianism and animal rights. This specific section is especially aimed at investigating the possibility for and presence of theoretical and ideological justification of the Palitana Jains' ideas and actions, going beyond the mere level of religious argumentation. After this the animal rights aspects are somewhat further explored in the second section, as some legal philosophical approaches to the role and rights of animals in human legal systems are introduced. The third section of this chapter will especially focus on the discussion of legal representation of religious interests, discussing both the Jain and the Muslim interest and possible related arguments. In the fourth section any other legal aspects of relevance that have not yet been captured in section 2 and 3 of this chapter are under discussion, especially human rights and minority rights. The fifth and last section of this chapter is aimed at discussing the moral/ethical aspects of the creation of legislation as a (direct) result of soci(et)al pressure and activism.

##### *4.1. Arguments from Philosophy of Vegetarianism & Animal Rights*

The Jain interpretation of ahimsa and the rather strict vegetarianism that this in practice results in can in fact be related quite clearly to multiple ethical approaches to animal rights and/or vegetarianism. Especially interesting to discuss is how Jain vegetarianism seems conceptually closely related to the ethical philosophical ideas of anti-speciesism and more extreme versions of animal rights. The focus is on more extreme versions of animal rights for these seem to be closest connected to Jain vegetarianism. For example, if one would look back to the quote by Tolstoy that was discussed in the introduction of this thesis<sup>16</sup> it becomes apparent that Tolstoy's reasoning in this specific quote does not go as far as Jain vegetarianism would go. It could be argued that Tolstoy's

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15 It has to be noted that both the set of arguments in favor of as well as those against are far from exhaustive, and are selected on their relevance for the case at hand, the need to stress/highlight certain aspects of the issue, and the argument being made leading up to the conclusion of this thesis. As diverse and balanced a discussion as deemed ideologically necessary and practically possible within this works' time and space constraints is being offered, but the reader is advised and encouraged to (specifically) critically evaluate the selection made while reading. This because one can see for themselves where agreement or disagreement with the selection made exists, and this can be especially telling about one's personal stance on the issue.

16 "A man can live and be healthy without killing animals for food; therefore, if he eats meat, he participates in taking animal life merely for the sake of his appetite. And to act so is immoral" ("On Civil Disobedience", p. 171)

quote (at least theoretically) leaves a fair amount of room for (re)discussing and possibly accepting the morality of meat-consumption in cases where human health might be at stake, for example in the case of shortage of food. This is room for argument that can indeed be found in many more moderate ethical approaches to animal ethics, for example especially in the case of most animal welfare arguments. Jain vegetarianism seems to leave a lot less space for this, as ahimsa is a universal law that is supposedly aimed at governing all actions of the individual (Tatia, in "Ecology", Chapple, p. 9), seemingly without leaving much room for exception. One simply has to combine this with the fact that even the vows laypersons that call themselves Jains make include the keeping from killing, hurting, and mutilating living beings (p. 8-9). Even if one is in danger of malnutrition, it seems that the universal and all-encompassing nature of the ahimsa doctrine would probably restrict one from turning to animals as a food source. But one could go even further in their reasoning. Tatia for example also discusses that even practicing lay Jains have a duty to keep from harming the environment through acts such as recklessly cutting down trees, burning forests, and digging in fields (Tatia, in "Ecology", Chapple, p. 8). Thus one could wonder whether in cases of need, for example through malnutrition, Jains would even be allowed to eat animals that died a natural death. Although no harm is done to them in life, the deep respect for ecological systems as a whole and the keeping from harming the ecological system as a whole might support an approach that suggests even eating an animal that died from other causes than killing would disrupt the environment more than Jains are allowed to, as their deceased bodies are now part of the ecosystem. Moreover, even in dead animals there is the probable presence of for example parasites. These parasites, being animals, are also part of the concern of Jains as these too are not to be harmed (Shah, p. 240). A practical problem that comes with this less open-ended approach, and one that might at first glance be seen as an insurmountable problematic argument against the Jain ahimsa doctrine, is that one is at risk of harming insects, microorganisms, parasites, and many more life beings in many daily tasks. Even something as simple as walking can cause harm. However, it seems that the focus really lies on doing everything one can to minimize harm done, and there is understanding that a complete and perfect avoidance of harm can never take place. Hence Shah for example uses the following wording: "Jain seers<sup>[17]</sup> have advised humans to live on vegetarian food, with a minimum of violence to plants" (p. 240). Thus, it is understood that harm will always be done, but even in the case of plants the aim should be that harm is to be minimized as much as possible. This would also apply to animals, and most probably even more so for the simple sake intentionally harming animals is already fully prohibited in the first place. In fact, this hurdle is foreseen and discussed in Jainism. In order to overcome this problem three types of violence are

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17 A form of religious leaders.

accepted and/or recognized as being inevitable in Jainism: domestic, professional, and self-defensive. The first, domestic, foresees the fact that daily tasks will always cause harm to other living beings, even if these tasks are done with all caution one can possibly apply (Shah, p. 109). Interesting to note is that the last one, self-defense, actually justifies violence in the case of warfare and/or when defending oneself from a criminal. This, at first glance, goes very far from the strict following of Jain ahimsa, and might offer a first insight into the proactive stance of monks in Palitana to (albeit through non-violent action) push their agenda. This specific aspect will further be elaborated on later in this chapter.

So which ethical and/or scientific approaches would come even close to such an absolute rule against any form of harming animals? Maybe a relevant theoretical concept that forms a good starting point is that of psychologist and animal rights activist Richard Ryder, who introduced the term speciesism. This term describes the discrimination of non-human animals based on the sole argument that they are non-human, while lacking relevant and solid arguments for this difference in treatment. Some would even go so far as to compare speciesism to racism, gender discrimination, and even nazism<sup>18</sup>. Throughout the years the concept of speciesism has gained academic and public interest alike, and especially those opposing the idea, anti-speciesists, have further expanded on the term (Ryder, Waldau, and Cavalieri, p. 320-323). What makes this term relevant in relation to the Jains is that, indeed, the Jains are very consciously and carefully concerned with the wellbeing of other species through their application of the ahimsa principle. However, they do not do so completely randomly, an important factor in the strictness of application of the concept is based on how many senses a being has, creating a hierarchy in the species ladder (Jain, p. 33). Such a system of differentiating between species can for example be compared to modern recurring scientific animal welfare/-rights arguments such as sentience and/or painism. Thus, it seems that both in Jainism and in philosophy/science at least one type of argument against treating animals in certain ways is based on actual traits of these animals that might grant them a right to inclusion in human consideration.

The moral consideration of any living soul (jiva) as proposed in Jainism (see section 2.2. of this thesis) also finds itself a counterpart in modern philosophy. For this, one might for example turn to Tom Regan, who in his book *The Case for Animal Rights* discusses the idea that certain non-human animals have moral rights because they are what he calls subjects of a life, and with that are ends in themselves. Of course one could argue about how far the consideration of non-humans

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<sup>18</sup> Especially nazism is a controversial comparison, but compelling arguments are being made in the philosophical field, as for example in David Sztybel's "Can the Treatment of Animals be Compared to the Holocaust"?

interest must and can go, which non-humans should be included, and what decisions should be made when human and non-human interests conflict. Regan's inclusion of animals in the subject of a life category is for example already much more exclusive than the Jain consideration of the jiva, as Regan does not argue for taking any and all living soul into consideration, but only a limited and specific set of individuals that show certain traits, such as beliefs and desires, perception, and memory, just to name a few (p. 243). However, at least on a theoretical level it is interesting to see that the Jain approach to respecting and considering the importance of the living soul beyond the mere human versus non-human categorization finds its scientific/philosophical counterpart.

When turning to more holistic approaches to not only respecting (individual) life but also overarching ecosystems and entities larger than individual living organisms even more connections between Jain reasoning on one hand and science and philosophy on the other can be found. Although the concept of ahimsa at first glance might suggest a respect for and interest in individual life, much more than for ecological systems as a whole, quite the contrary is true. Bhaskar for example puts it as follows: "Jain cosmology gives paramount importance to mountains, rivers, trees, and other natural resources [...]. These natural resources have been enshrined as sacred in Jain art and architecture", furthermore stating that "an individual is a unit of the society. Therefore, Jainism stresses individual purification as the foundation for social purification" (Bhaskar, in "Ecology", Chapple, p. 176). A good summary of the Jain approach to ecology might be found in Bhaskar's statement that "the Jain tradition is one that considers ecology an indispensable part of both spirituality and material life" (p. 178), with love and vegetarianism being some of the examples given by Bhaskar that are parts of the individual life that are important aspects of a more holistic respect for the ecological systems as a whole as well (p. 178). Thus, it can be stated that the levels of respect for individual life and respect for ecological systems as a whole seem to coincide in the Jain tradition and beliefs. Examples of (partial) counterparts of this dual approach in the field of science and philosophy can for example be found in the Gaia theory and deep ecology.

The Gaia theory, founded by Lovelock and Margulis in the eighties (Kirchner, p. 223), although strongly criticized throughout the years, at least gives some interesting insights on the philosophical level that pair up with the Jain belief system. Especially the weaker approaches to the Gaia theory, such as Homeostatic Gaia, offer some interesting ideas. Homeostatic Gaia is, much like the Jain belief system, a philosophical concept in which the earth as a whole is in a homeostatic state. This basically means, as Kirchner puts it, that "the biota influences the abiotic world in a way that is stabilizing" (p. 224). An even more moderate approach is the Co-evolutionary Gaia, which still focuses on the living (biota) and non-living world (abiotic) influencing each other, but puts less

of a factor on the stabilizing effect/purpose (p. 224). As clearly shown in his conclusion Kirchner, among many others, is highly critical of the Gaia hypothesis (p. 233-234). However, it can be stated that, much like the Jain concept of ahimsa and the jiva, one can at least see it as "an engaging and colorful metaphor that some have used as a unifying theme and a motivator for research" (p. 233), even if one doesn't believe in the hypothesis (Gaia) or religion (Jainism) behind it. Kirchner points out that this interpretation, when done literally, is also dangerous in the case of Gaia (p. 233), but this might be missing the point. On a philosophical, figurative level the idea of planet earth as one big organic system in which the biotic and abiotic world coincide and affect each other can regardless of its scientific value be a valuable metaphorical approach that both in Jainism as well as in the Gaia hypothesis seems to be a central concept.

Even closer related might be Arne Naess's deep ecology theory, which in its basic principles (Sessions and Naess) shows a lot of aspects that can be more or less directly be related to Jainism. Aspects in the basic principles of deep ecology that can directly be related to the Jain religion are for example principle one: "The well-being and flourishing of human and nonhuman Life on Earth have values in themselves [...]. These values are independent of the usefulness of the nonhuman world for human purposes"<sup>19</sup>, principle three: "Humans have no right to reduce [...] richness and diversity [of life forms] except to satisfy *vital* needs"<sup>20</sup>, and principle eight: "those who subscribe to the foregoing points have an obligation directly or indirectly to try to implement the necessary changes"<sup>21</sup>. Although traditionally focused more specifically and exclusively on the biotic world as compared to for example the Gaia hypothesis, deep ecology would intrinsically call for respect for abiotic entities as well, seeing as though treading lightly and respecting the integrity of the habitat of the non-human biotic world takes a central place in deep ecology (especially visible in Sessions and Naess's principles four up to seven). Clearly, deep ecology shows a lot of overlap with the Jain approach to respecting life, and with that intrinsically, the non-living part of nature as well. This coincidence of the individual life and the larger system of life, of biotic and abiotic aspects of the world, can arguably cause friction between interests. This objection can in fact be, quite fruitfully, raised against both deep ecology and Jainism, once again hinting towards their relative equableness. Important to note is that much of this friction between individual life and ecosystems can arguably be seen as the direct result of human disruption, often fairly recent, and the Jain religion and beliefs date back to a time where the disruption of ecosystems by humans was expectedly of a much smaller and less influential scale. This might help explain why the Jain philosophy does not seem to

<sup>19</sup> See sections 2.2 and 2.3 of this thesis for further elaboration on the Jain approach to nonhuman life from a nonanthropocentric viewpoint.

<sup>20</sup> See the discussion earlier in section 4.1 concerning "household violence" for the Jain counterpart of this principle.

<sup>21</sup> The Jain counterpart, Jain vegetarianism as an active duty, is for example discussed in section 2.3 of this thesis.

have any readymade and well-accepted answers as to how one can respect individual life and the larger natural ecosystems at the same time to their fullest, at least not from an already disrupted and unbalanced starting point. How to balance the different interest levels (individual versus ecological, and biotic versus abiotic) either in the theory of deep ecology or in the Jain religion are interesting questions, that do not yet seem to be tackled to an appropriate and satisfactory level. However, the friction between the interests of individual life and the larger ecological system is an objection that is not of such a central nature to the case study of Palitana that it is to be further elaborated on in the context of this thesis.

To conclude, it seems clear that Jainism can find some (partial) support in modern science and philosophy, which makes it plausible to suggest that the Jain approach to non-human animal treatment might not only hold as religious reasoning, but as moral and ethical animal-related reasoning as well. This is important in the case of Palitana because the (at least at first glance) seemingly sound arguments of/related to the Jain doctrine might help in justifying their pressuring of the legal powers. This specific issue will be further discussed in section 4.5, but first it is time to turn to a discussion of the moral/ethical arguments related to the (lack of) justification(s) for legal protection and/or rights for non-human animals.

#### *4.2. Arguments Concerning the Legal Representation of Non-Human Animals ((Lacking Agency)*

An important aspect of the anti-meat laws in Palitana is the political and legal representation of animals. Of course, the representation of non-human animals in law is not a completely new concept, with many nations having installed laws against animal cruelty and/or (preventively) setting up guidelines for the treatment of animals. However, in the Palitana case the political and legal representation of animals seems to go a lot further. The Jain monks can, in a sense, be seen as representatives for (what they at least believe) the animal interests. This fairly elaborate representation function is, although much less commonly accepted than for example laws against severe cruelty to animals, not completely new either. It seems that there are two important factors that might help to justify and/or clarify the proactive role the Jain monks have taken in the Palitana meat ban: Firstly, there is clearly a conviction that the interest of animals to not be killed matters to the extent where they should not be outweighed by human interest. Secondly, there seems to be the belief that interference by these monks, humans, is necessary and/or desirable. As for the first factor, the conviction in the interest of animals to not be killed as held by the Jain monks, one can best refer back to previous sections in this thesis (especially chapter two) to find specific background information. The second aspect, the Jain monks' belief in the necessity/desirability of

their interference, will be further elaborated on here though.

A possible explanation of the Jain monks' behavior from an animal ethical perspective can be that they combine their beliefs with regards to animal moral rights/interests with a belief in the need for these rights to be extended to be seen as legal rights/interests as well and with the conviction that they are the ones with the agency to do so. Especially this last aspect, the agency, is of importance. Seeing as though non-human animals don't have agency in a human sense<sup>22</sup> one might argue that their interests be represented by others that do. This is for example strikingly discussed by Robert Garner, who in a discussion of how far-going animal rights would affect society puts it as follows: "Animals [...] cannot campaign for their own liberation, and it requires an unprecedented level of altruism from members of a species who stand to lose from the protection of animals, to fulfill this objective on behalf of them" (p. 42). Although the altruism of the Jain monks is arguably less than that visualized by Garner, simply because the animal rights these monks try to impose legally would not make them lose very much (they are already living in avoidance of animal harm) and because these monks do so out of deep-rooted religious convictions and not solely out of personal beliefs, it is still a fact that they campaign on behalf of non-human animals.

Interestingly, the representation of the rights of humans that lack agency is already highly evolved in most legal systems, with many bases covered for the representation of for example small children, demented individuals, or people with severe intellectual disabilities. As Smith puts it: "We are all animals, after all; we are all, at some stages in our lives, vulnerable, interdependent, not very rational, and lacking voice and agency" (p. 164). Seeing as though this lack of agency is not a unique non-human feature, and it does not prevent human societies from creating highly developed legal frameworks in defense and support of humans that lack agency, one might wonder whether this representation could (and possibly should) not also be implemented for non-human animals. Smith actually believes it can, as she states that "there is no outstanding difficulty in providing political or legal representation for animals. [...] We must conceptualize representation somewhat differently, not as a second-best form of political agency but as a way to *create* a kind of political agency for all members of the community" (p. 164). From this perspective, it is both legally and morally more relevant to discuss who are in fact part of the community than who possess agency. For the Jain monks, believing in the sanctity of the soul of all living beings, it seems fair to say that their community inclusion would go a lot further than only humans, probably including all living souls in our community, and their defense of those members of the community that lack agency might be seen as a logical result.

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<sup>22</sup> For example because of the lack of language, cooperation, and logic, just to name a few.

A good animal rights example of this kind of reasoning can be found in the form of Eisenhart von Loeper, an animal rights fore-fighter. He argues that "the basic inviolable condition for all the individual rights of animals is their right to life and survival in all their many forms and manifestations" (p. 157), that "if animals are acknowledged to be bearers of rights, they must be treated accordingly. Animal rights, like human rights, arise from natural law" (p. 157), and that "the assertion of the rights of human beings, even in the case of conflict, is something we accept as natural. If animal protection is [to be fair and objective], animal rights must be secured in the same way as human rights. The special character of animal rights, like that of the rights of minors, means that they can only be realised if man acts as the animals' defender and trustee" (p. 157-158). Eisenhart seems driven by a belief in a natural, universal law that dictates animal rights, much like the Jains seem to believe in what can be seen as a religious universal law that dictates animal rights. Other than this difference in ideological background Eisenhart's reasoning would give a full ethical account of how the Jain action could be defended and backed up by argumentation from an animal rights point of view.

#### *4.3. Arguments Concerning Legal Representation of Religious Interests*

Having elaborately discussed the directly to animal interests and rights related ethical/moral arguments that are most relevant/related to the Palitana case it is now time to move beyond the animal aspect of the court ruling. The first non-animal aspect to be discussed is the legal representation of religious interests. As one can read in section 3.1. it seems that the representation of religion through law can be considered constructive and/or helpful from a moral/ethical perspective, and it seems a commonplace practice in India even though India calls itself secular. This section will be aimed at discussing whether such representation might, next to constructive/helpful, also be considered morally/ethically justifiable.

Vital in this question of justifiability seems to be one's own personal and cultural beliefs and one's convictions, which is the very thing that makes the Palitana case so problematic. An especially relevant thought to be presented here is what Brian Barry states on liberalism:

A defining feature of liberalism is moral and religious toleration. Opinions to the effect that some forms of conduct (for example, homosexual relations between consenting adults) are sinful or unnatural may not be enforced by law: it is not the business of the law to regulate conduct as long as it does not violate the constraints imposed by a liberal state for the protection of individuals (p. 131).

Barry makes this statement in the context of a discussion of moral relativism, about which he further states that according to the liberal position "nobody, anywhere in the world, should be denied liberal protections against injustice and oppression", further adding that this ideal is one that is to be seen as one that has a pragmatic side to it, having the exact boundaries of when protection is needed/justified often decided by/through practical concerns (p.138). These statements seem to be easily and directly translatable to India, it being a liberal democracy. However, the question is still whether this approach to religious rights and toleration would work in favor of the Muslims who want to continue slaughtering animals and/or importing meat, or in favor of the Jain Monks' appeal. Vital in this is who is to be understood as an "individual" and as "anybody" (and with that also applicable to Barry's "nobody"). From the Jain perspective the soul, as something holy, most probably makes animals part of the group of individuals that need and should get protection by the liberal state. In such a case it might very well be the business of law to regulate slaughter/meat import. If, however, non-human animals are not to be seen as "individuals" to be included in this legal community, as many of the opponents of the law might argue, then the Jain-inspired anti-meat laws might very well be a restriction of conduct that cannot be justified from a liberal perspective.

Interestingly, one could argue that the solution to the question of whose religious rights justify (in)action more in the Palitana case, those of the Muslims or those of the Jains, seems to lie in answering the questions raised in sections 1 and 2 of this chapter, concerning animal status and rights in the legal system. This has to do with the idea proposed by Barry as the "abuse of 'culture'" (p. 252-258), which basically boils down to the conception that an appeal to rights purely because of 'culture'<sup>23</sup> without any appealing arguments that back up the rights one appeals to content-wise is not justifiable. As Barry puts it: "If there are sound reasons against doing something, these cannot be trumped by saying – even if it is true – that doing it is a part of your culture. The fact that you (or your ancestors) have been doing something for a long time does nothing in itself to justify your continuing to do it" (p. 258). It seems that this argument can also easily apply to religious beliefs, as it appears logical that (not) doing something for the simple fact it is dictated by a religion can be overruled by sound substantive arguments (i.e. the illegality of many practices that are part of sharia law in many western countries. These countries do in fact support religious freedom up to a certain extent, but seem to create boundaries there where their own liberal and/or democratic ideologies come into conflict with religious practice, as for example in cases where individuals might be mutilated and/or killed).

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23 And in the case of Palitana culture could be easily replaced by religion, without this having many major implications for the load covered.

In the case of the Palitana meat laws the moral and ethical judgment of the new anti-meat laws will be practically fully based on the outcome of the question what rights and role animals have in the legal system. As shown through sections of Barry's work one can think of appealing arguments in favor of defending religious practice up to a fairly large extent, but if sound arguments against a religious practice can be found then such a practice can be overruled. In the Palitana case this will mean that the Jain position can be defended properly if, and probably only if it can be soundly argued that animals should be included in human legal and moral consideration to a (near) same extent as humans. If however such a position cannot be successfully argued, the Jains might very well impede on the liberal democratic religious and/or cultural rights of those opposing the laws that live in Palitana, as the laws in question would impede on personal freedom without solid grounding. As shown in sections 4.1. and 4.2. a case in favor of the Jain position with regards to animal rights and moral inclusion can be argued from a philosophical perspective. However, both on a philosophical and on a traditional scientific level (i.e. behavioral biology, neurobiology) it would be an indefensible statement to say that any serious uniformity in opinions on the width of the field can be found on this topic. As opinions on animal rights and moral inclusion have far from come to a (semi-)uniform conclusion, it seems fair to argue that following the Jain claims with regards to animal interests and rights on a legal level and imposing them on individuals that are not part of the Jain culture is at least risky, and could form a slippery slope. One could argue that as no clear logical and sound arguments that a (vast) majority of relevant professionals agrees upon seems to exist on the content-level, the court's choice to support the Jain's appeal and push the laws shows signs of the creation of a religious and/or cultural hierarchy. It seems that the law in question might very well be, but is on an argumentative level far from certainly, right from a philosophical and/or scientific perspective. However, as certainty on the rightness of the anti-meat legislation on the philosophical and/or scientific level are still highly debatable and indeed debated, it seems the laws might find their origin primarily on the religious level. The risk of this is that religiously inspired laws without sound enough content-based arguments, but that do inflict on the interests/rights of other members of a (liberal democratic) society, become not only religiously inspired but also religious laws. As such a (sub-)government, like in this case the local Palitanese government, might be at risk of losing (some of) its secularity in favor of a system in which a form of religious hierarchy exists, at least on the legal level.

#### *4.4. Other Legal Arguments: Human Rights, Minority Rights*

An important aspect in the Palitana meat law case is the position of the Muslim minority in India as a whole. As already pointed towards in the introduction of this thesis there are those that

believe that Muslims are being discriminated against, both in the specific Palitana meat-law case as well as in more general terms (i.e. Miyan qtd. in Niazi; Buncombe). Especially the opposition between Hindus and Muslims is a topic of interest, as for example Anthony Chase argues that violence towards Muslims has become of such a proportion that it's a serious humanitarian problem consisting of recurring human rights violations (p. 35-36), but also other human rights related issues of discrimination such as educational level discrepancies and differing levels of political representation/participation are discussed by Chase (p. 36-37). Chase correctly links these human rights issues to minority rights concerns in the case of Muslims in India, as he discusses that "human rights and minority rights are interlinked. For some communities, the establishment of minority rights may be necessary in order for individual human rights to be realized" (p. 43). Chase discusses the results and risks of not properly supporting and strengthening these minority rights, for example pointing out the loss of religious identity and chances for minorities, in this case Indian Muslims, to grow increasingly militant (p. 44). Thus not taking minority rights into account to a satisfactory level might very well cause harm to minorities and majorities alike in the long run. This is a problematic issue in the case of the Jain meat laws, as it forms a perfect example of what could be interpreted as discrimination of a (religious) minority (as discussed in section 4.3) and with that could be seen as a violation of human rights and/or individual rights of an entire community. As such even if one would believe that the Jains are morally/ethically and/or ideologically right from for example an animal interest perspective (see sections 4.1 and 4.2) it is still important to take into account the risks posed by such a court ruling to the human – and minority rights of local Muslims (and other meat-eating minorities alike), as well as to the greater community and its values as a whole in the long run.

One can of course, at least at first glance, make quite a solid case against the justifiability of implementation of minority rights. Barry for example discusses the politics of solidarity concept, in which the premise that citizens belong to a single society is accepted, and as a result they also share a single fate (p. 300). About this Barry even goes so far as to state from a politics of solidarity perspective:

Where a minority is constituted out of those who are on the losing side in a disagreement about the future of the institutions they share with the majority, there appears to be no case for building in special protections for the minority. It would surely be absurd to say that a minority defined in this way should have a veto on the policy favoured by a majority, or that its members should be able to demand that the policy with which they disagree should not apply to them (p. 300).

From a logical point of view this might seem like a sound stream of reasoning in a democratic system, which basically boils down to a tyranny of the majority. However, as the pragmatic value load of the word tyranny of course already implies, there seems to be something off about this approach. Although democratically sound, it seems that Barry's reasoning goes against the liberal ideals of toleration as discussed earlier on (see section 4.3 of this thesis). Moreover, it seems that this very black and white approach could pose some risks to human rights, which arguably transcend the rights of a society, as the denial of minority rights can create a precedent and/or can have an accumulative effect that can affect minorities and possibly majorities in a society alike (as discussed in the beginning of this section).

Last but not least, the Indian case makes the denial of minority rights even more questionable. As discussed in section 3.1 the Indian political secular system differs from typical western secularism in the sense that it knows a plurilegal system that allows special religious (legal) rights to different religious subcultures. This makes the interest in minority rights different, as it seems applicable to Barry's closing statement in the section concerning multiculturalism in democracies, which reads: "the logic of my argument is that, if cultural minorities are to be granted exemptions from generally applicable laws, this should come about as a result of a decision-making process in which all citizens are entitled to take part on equal terms" (p. 305). It seems that such conditions, through the plurilegality in the Indian legal system and the democratic nature of the state, exist. Thus, not allowing a cultural (in this case specifically religious) minority such as the Muslims in Palitana an exemption from laws that do not fit their minority interests might set a precedent that in the long run could render the whole plurilegal system meaningless.

In fact, it can be argued that cracks in the plurilegal system and the approach to multiculturalism in India are already starting to show as some argue, as for example Ghatak and Udogu, that there is already a sense of hierarchy in which some cultural and/or religious groups are placed higher than others (p. 222, as also discussed in section 3.3 of this thesis).

Overall, it seems that from a political as well as a legal point of view the denial of minority rights may be defensible, especially when one considers all citizens to be part of a single society, as in the example offered by Barry. However, the resulting tyranny of the majority can conflict with humanitarian interests and human rights, and can have far-stretching (undesirable) effects on both minorities and majorities alike. Moreover, the case-specific situation of the Indian plurilegal secularism might very well make the denial of minority rights even more problematic and arguably undesirable, as such a denial of rights can form a slippery slope that results in the decay of the value

of such a plurilegal system as a whole. As exemplified through Ghatak and Udogu, such cracks in the plurilegality can arguably already be found in India, and the Palitana case would probably not help make the situation better. Thus, although the legal implementation of anti-meat laws might be defensible from a legal and/or political point of view, the effects this ruling might have on human rights as well as the Indian system and stability in India as a whole should not be overlooked.

#### *4.5. Arguments Concerning the Creation of Legislation Based on Soci(et)al Pressure Through Activism*

Before attempting to make any concluding remarks it is important to first turn to a final important aspect of the Palitana anti-meat laws: the soci(et)al pressure that caused the creation of the laws. As discussed in the introduction of this thesis news sources seem to point towards two hundred monks going on a hunger strike as a means of pressuring local politics to adjust local law so as to make Palitana a de facto vegetarian city (Niazi; Buncombe). From what the various resources tell, these monks did not seem to do so as an institution, but as a combined set of individuals that can be identified through their religious institutional background. As such they can be seen as a social and/or societal activist movement. When it comes to the force such movements (should) have legal philosophical resources seem to differ fairly in their moral judgment/viewpoint. Shabani for examples argues that "law that arises purely through power politics, pressure groups' influence, or systemic workings, as much of the existing law does, does not bear the stamp of discursive validation" (p. 64). In this Shabani also directly refers back to the nowadays fairly widely accepted Habermasian concept of deliberative democracy and its values; the concept of deliberative democracy would most definitely have a hard time justifying social/political activism as a legitimate means of affecting lawmaking, as it is very much aimed at talking (deliberation) rather than action.

However, it seems that an important aspect to be taken into account is that law and justice are not always the same, as also recognized by Shabani (p. 47). This is a relevant legal philosophical aspect in the context of this discussion because it might be seen as an argument that overrules the call for deliberation in a liberal democratic lawmaking process. As Sion strikingly puts it "the existence of political freedoms or limits does not exempt an individual from moral responsibility for his or her choices. Legislation is not a substitute for conscience, or a just alibi for moral abdication. [...] from an ethical point of view, laws are just one influential factor among others in behaviour, which in certain cases it may be wise to volitionally dismiss or oppose" (p. 279). This sort of reasoning would when one accepts/agrees with the animal rights/interests arguments/beliefs behind the Jain religion clearly justify the (morality of the) daily behavior of the

monks, in terms of them following a vegetarian diet themselves, where the law leaves space for meat consumption. However, it does leave open the question whether this might also justify the Jain monks' trying to assert their beliefs on others and do so through not only following their own beliefs in their daily lifestyle but also through very far-going campaigning such as going on a hunger strike, in terms endangering themselves to further pressure legislators.

Interestingly it seems that, conceptually, the Jain monks' action comes very close to civil disobedience. Although no clear signs are present of their hunger strike being against any laws, it becomes apparent from for example De Gruchy's interpretation of civil disobedience that many aspects of the Jain monks' hunger strike overlap with the understanding of the general concept of civil disobedience: "civil disobedience normally involves personal sacrifice and cost. Its moral power derives not only from the rightness of the cause at hand, but from the willingness of its advocates to act openly, usually for the sake of others rather than themselves, and to accept the consequences of their deeds. In disobeying the law they respect the rule of law" (p. 153). All these aspects of civil disobedience seem to very much be in line with the Jain monks' actions, and not surprisingly many of these aspects are either very straightforward or have already been discussed somewhere earlier on in this thesis; the personal sacrifice and cost come with the risk of dying, the rightness is a perceived rightness through religious beliefs (see sections 2.2. and 2.3) which can also be backed up with philosophical and/or scientific argumentation (see sections 4.1 and 4.2), the altruistic nature of the monks' actions has been discussed before (section 4.2), and the respect for the rule of law is self-explanatory from the fact that the Jain monks see it as a valuable tool/resource to further their beliefs.

Having established that the Jain monks' actions can very well be closely compared to civil disobedience it is interesting to briefly turn to what legal philosophy has to say about civil disobedience, as this is (sadly) a much more discussed and established topic than pressuring politics/law through actions that go beyond general lobbying and deliberation, but don't cross legal barriers<sup>24</sup>. Civil disobedience in itself can, when done at the right times, in the right ways, and for the right reasons, easily be defended from a legal philosophical perspective. De Gruchy for example argues that "civil disobedience is a democratic act of law-making, a conscientious violation of a particular law or set of laws in the interests of upholding justice and thereby affirming the rule of

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24 The Jain monks' approach, going on a hunger strike, really sits in between these two approaches that are both more established and researched. Of course traditional lobbying, albeit by religious interest groups, companies, or other governments, is a well-known and established topic. Civil disobedience too is well-discussed, running anywhere from petty crimes to guerilla tactics. The Jain case is difficult to directly relate to literature, since it sits comfortably in the middle of these two established fields of interest as a legally justifiable protest that is aimed at changing laws but is politically and/or from a humanitarian perspective seemingly undesirable. Hence it is valuable to relate it, content-wise, to the closest one (established in the text to be civil disobedience) so as to see what legal philosophy might have to say about this case.

law" (p. 153). If straight up opposing the law is already morally, albeit not legally, justifiable in a democratic society because of the difference between legality and moral justice, than surely such reasoning could also apply to the Jain monks' protest, which was not even illegal but at most politically, socially, and/or from a humanitarian perspective undesirable. Therefore the question essentially, much like in the previous section of this chapter, boils down to whether the Jain beliefs are morally just or not. This is the question to be answered to justify and/or condemn the Jain monks' hunger strike, much more than purely the mechanisms behind this action and the form of pressure they use to pursue their legal aims/goals. It seems then that the Jain monks' pressuring of local government to implement laws through going on a hunger strike might very well be morally, as well as is most probably legally, justifiable. However, such moral justifiability will fully depend on the morality of their beliefs with regards to animal rights and interests. Are these interests morally elevated, and is the state doing a moral wrong, than the monks might very well not only do something morally justifiable, but might have a moral duty to act against the immorality of the legal systems. This can even be argued in the case of a democratic state, such as India, where deliberation is an arguably more conventional tool, if this tool is depleted without result. Are the monks' beliefs not morally justifiable, however, then their actions will not be either, as they would wrongfully pressure politics, the legal system, and their fellow humans into abiding by their beliefs.

As already pointed out in the previous section of this thesis, the remaining problem is that no true consensus on the nature, (extent of the) value, and importance of animal rights and interests can be recognized in the literature at hand. Therefore, making any decisive conclusions about the moral justifiability of the pressuring of local authorities in order to change laws through going on a hunger strike as done by the Jain monks in Palitana is to be seen as an impossible task. However, some important hints have been offered throughout this paper, and at least a framework for judging the morality of the monks' actions and its results more thoroughly and systematically has been offered to some extent. For this it is now time to turn to the final chapter of this thesis, which will be focused at discussing and concluding the Palitana anti-meat law case based on my personal interpretation of the case and the way I as an author evaluate the moral status of the issue at hand.

## 5. *Conclusion/Discussion*

When putting all the pieces of the puzzle together the Palitana case looks as follows: There appears to be a law against the slaughter of animals and import of meat within the boundaries of the city (Niazi), making Palitana a de facto vegetarian city. This legal ban appears to be the direct result of ongoing activist efforts of local Jains, especially monks, of which eventually roughly 200 went on a hunger strike in order to pressure local politics to legally enforce vegetarianism (Buncombe; Niazi). The main problem raised after the ban seems to be that far from all members of society agree with the new law, and local minorities (especially the Muslim minority) actually feel discriminated against for being limited in their personal and/or religious freedoms (Buncombe).

The reasoning behind the Jain vegetarianism (as discussed in chapter 2 of this thesis) can be defended by and/or closely related to moral/ethical reasoning with regards to animal rights and/or interests (as discussed in sections 4.1 and 4.2). However, it has to be added that this defense is one based on which position one takes in the animals rights/interests debate, and nothing close to consensus agrees on these topics in the realms of science and philosophy. When accepting the arguments offered in sections 4.1 and 4.2 it can be stated that the facts that this law is directly influenced by religious interests, that this law opposes the personal and religious interests of other (minority) members of society, and that social pressure rather than deliberation caused the law to be installed can all be seen as acceptable and/or defensible. However, if one disagrees with the arguments offered in sections 4.1 and 4.2 it can easily be defended that the Jain actions unjustly and possibly even dangerously combine religion and politics, and wrongly disregard the religious/cultural/basic needs interests of others as well as the need for deliberation in a democratic system. Furthermore, even if one agrees with the arguments offered in 4.1 and 4.2 some of these concerns should still be taken into account, and negative side-effects to the legal enforcement of a meat ban as performed in Palitana could disrupt the political and/or cultural stability, affect people negatively in their basic humanitarian needs, and be destructive to the animal rights/interests cause through the dismay these effects may cause.

Personally I agree with a lot of the Jain ideals content-wise, and the arguments as presented in sections 4.1 and 4.2 are the ones I find most relevant and accurate in the animal rights/interests debate, for me overruling more moderate approaches such as most animal welfare and/or nearly all anthropocentric approaches. My agreement with the Jains is not a theological one, but primarily based on a belief in the importance of respecting both individual life and the inherent value of larger (in part abiotic) ecosystems, much in line with Arne Naess's deep ecology<sup>25</sup>. Therefore I can say I

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<sup>25</sup> See section 4.2 for further elaboration and discussion on deep ecology and its ideological and practical connection to Jainism.

very strongly agree with the Jains' personal vegetarianism, and their strive for vegetarianism on a wider scale. However, the activist way in which the Jain ideal has been pushed legally and the lack of space for other personal, cultural, and/or religious beliefs cause some major problems that might harm the ideals behind Jain vegetarianism, and with that also behind deep ecology, in the long run. From the perspective of secularism vs. religious influence in politics I fear that the implementation of the anti-meat laws solely based on the religion-founded activism rather than on the arguments behind these religious beliefs can be seen as religious discrimination through pressure. As a result the sense of a religious hierarchy comes into existence, where some religions are politically and legally more powerful based on how far their followers will/might go (see sections 3.3, 4.3, and 4.5 for further elaboration). From a minority/religious freedom and rights perspective I fear that the laws as are can in the first case cause further opposition to the Jain ideals and get in the way of (possibly in the long run more fruitful) content- and argument-based deliberation and argumentation. Furthermore they create a precedent in which cultural/religious freedoms and rights can apparently be overruled by threats to (in this case personal) harm and the pressure that comes with this, rather than through deliberation. This might destabilize the political and legal systems on a larger scale as deliberation can seemingly easily be replaced by a culture of threats of harm (see section 4.4 for further elaboration).

Hence, in my opinion the Jain ideals and their execution of these ideals in their private lives are very morally/ethically justifiable as well as defensible, and moreover, they are even admirable from a theoretical ideological perspective. This does not, however, make the execution of these ideals defensible from a practical point of view. In fact, the way the monks have pushed their ideals to become part of the political and legal system of Palitana, and the direct and indirect consequences this has for multiple parties involved as well as for the ideological cause in itself, is arguably quite morally and ethically undesirable in practice, albeit not necessarily indefensible. I use 'justifiable' in this context with reference to the sole ideological, theoretical, and philosophical aspects and interests of the case, basically discussing the issue from a mostly deontological perspective. 'Defensibility' is highly related to this justifiability, as it relates to how well practical actions (i.e. protests) can be backed up (justified) through ideological, theoretical, and philosophical argumentation. 'Desirability' is the most practical of the set of terms used in the context of this section, mostly referring to the more pragmatic and consequentialist aspects of (the results of) practical actions.

It seems that the risks posed to social, political, and legal order and freedoms to Palitana, but also to society (local, national, possibly even global) are both relevant and plausible. Hence the approach chosen might not only cause harm to the animal rights and interests case in Palitana, but

also to the possibility for argument-based deliberation on the animal rights and interests case as a whole. Furthermore it might damage cultural, religious, and political interests indirectly, further driving cultures apart and undermining the cultural and religious neutrality of the Indian (national and/or local) government. An alternative approach to the pushing of animal rights and interests based on content-based deliberation, even if results yielded would be smaller and/or take longer to be achieved, might have therefore been more desirable and defensible in terms of indirect and long-term effects. As discussed in chapter four religious influence in politics, the overruling of minorities, and the application of social pressure in politics are all very well morally/ethically defensible. However, such a defense could be made much easier if this influence, overruling, and application of pressure were done with backup in the form of content-based argumentation and logic, rather than purely through religious ideals combined with threats to (self-)harm.

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