Veiled Women and the *Affect* of Religion in Democracy

Stewart Motha*

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Abstract: The veiled woman troubles feminism and secularism in much the same way. Both feminism and secularism face a problem of finding a position that respects individual autonomy, and simultaneously sustains a conception of politics freed from heteronomous determination. This article gives an account of what is being resisted and by whom in modes of politics which seek to produce an autonomous subject emancipated from `other laws' (heteronomy). It also draws on Jean-Luc Nancy in order to consider what has been termed the problem of Islam in Europe as a wider juridical and political problem centred on the significance of affect as heteronomy. It thus explores the tension between piety and polity.

Keywords:

Introduction

Ministers of state and the Prime Minister of Britain have found a problem worthy of themselves.[1] Not just the emancipation of women but social

* Kent Law School, University of Kent, Canterbury, Kent CT2 7NS, England
s.motha@kent.ac.uk

1 For a similar account in relation to France, see A. Badiou's excellent reflection in `The Law of the Islamic Headscarf' in his Polemics (2006) at 98-114. A sample of the statements by ministers and the Prime Minister about veiled Muslim women can be found in an excellent review of events and press coverage by Wendy Kristianasen, `Britain's Multiculturalism Falters' in Le Monde diplomatique, November 2006. Ishah Azmi, a school teacher in Dewsbury, Yorkshire, who wore a nikab in the classroom ceased to be a worker whose rights should have been determined by an employment tribunal without politicians expressing their judgement before all legal processes were expended. The minister for race and faith, Phil Woolas, told the Sunday Mirror on 15 October that `she should be sacked. She has put herself in a position where she can't do her job'. Her own MP, Shahid Malik, urged her not to pursue an appeal. Harriet

cohesion, even democracy itself, depends on their success. In France the hijab and other religious symbols have been outlawed in educational institutions. Muslim girls and women are to be saved from their fathers and brothers. These girls and women must show their hair and faces, for surely to think that the decision to `veil' is a matter of autonomous choice, an exercise of freedom of conscience or religion long guaranteed by liberal juridical orders is nothing but `false consciousness'. What is the reason for this rage against a few girls and women who wear headscarves or other forms of Islamic dress? What is behind this insistence that the woman, and especially the girl, must disrobe, must show herself?[2]

The current obsession of the state and media with woman in the United Kingdom wearing a hijab, jilbab or nikab has also led to calls to abandon the state-sponsored policy of multiculturalism. In France the debate has been centred on the secular character of the Republic, the principle of *laïcité*, the separation of religion and the state. In both cases the prevailing concerns are the absorption or integration of `minority cultures' in order to produce some elusive notion of social cohesion, and to disrupt apparently oppressive practices. The claim that multiculturalism and feminism are inconsistent is not new.[3] `Culture' is now the cipher for speaking about people and practices that were racialized in earlier times. To question `culture' and thus multi-culturalism is the new way to speak about the `difference' of Europe's others - especially at a time when Islam and `terror' have been given a spurious equivalence. `Multiculturalism' was itself a liberal attempt to pluralize the concept of equality - to `respect difference', `tolerate' heterogeneity of social and cultural practices, and value a diversity of life worlds.[4] But the `culture' and religion of the occident's archetypical other is being re-branded - Islam is once again a threat to the democratic value of equal liberty for all, despite the suicide of liberality contained in such discursive and govern-mental strategies to limit religious practices.

The veiled woman troubles feminism and secularism in much the same way. Both feminism and secularism face a problem of finding a consistent position that respects individual autonomy, and simultaneously sustains a

Harman, minister in the Department of Constitutional Affairs, called for an end to the nikab `because I want women to be fully included. If you want equality, you have to be in society, not hidden away from it'. Creating a timely distraction from the disasters in Iraq, Jack Straw initiated the furore when he asked a constituent (not a term to be taken literally any longer) that she should remove her nikab as he `felt uncomfortable'. Prime Minister Blair intervened later stating that the nikab was a `mark of separation' that makes others `from outside of the community feel uncomfortable'. See Kristianasen's detailed contextualization of how the veil became a weighty matter of state.
2 Badiou, id.
3 See S.M. Okin, Is Multiculturalism Bad for Women? (1999).
4 There have, of course, been powerful and persuasive critiques of multiculturalism, see, especially, H. Bannerji, Thinking Through: Essays on Feminism, Marxism and Anti-Racism (1995); and The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender (2000).

conception of politics freed from heteronomous determination. In making this argument, this article takes much of its conceptual inspiration from the essay by Jean-Luc Nancy contained in this volume. As Nancy characterizes the problem:

So everything happens as if the great alternative of modernity had been: either definitively emancipate politics so that it is entirely separate from religion, or expel them both, outside the effectivity and seriousness of the autoproduction of humanity. So either politics is conceived as the effectivity of autonomy (personal as well as collective), or politics and religion together are represented as heteronomous, and autonomy consists in freeing oneself from them. Resistance of the political to the religious or resistance to the politico-religious (and in this case, resistance of what, of whom? Let us leave this question in suspense).[5]

Inspired by this line of questioning, this article will seek to do two things: first, attempt to give an answer to what is being resisted and by whom in modes of politics which seek to produce an autonomous subject emancipated from `other laws' (heteronomy). Second, it will consider what has been termed the problem of Islam in Europe as a wider juridical and political problem centred on the significance of affect as heteronomy. That is, it will explore the important tension between piety and the polity. But let us first consider some examples of how the problem of autonomy and heteronomy are presented in juridical and political discourse.

There is by now high judicial authority, in Europe and the United Kingdom, for governmental limits on religious dress. The Grand Chamber of the European Court of Human Rights in Leyla SÎahin v. Turkey[6] endorsed a version of secularism that saw the ban on the `Islamic headscarf' (the hijab) as a condition for maintaining the `revolutionary values' that underpin the Republic of Turkey, and thus for guaranteeing equality, liberty, and democracy.[7] The prohibition on wearing the hijab by Leyla SÎ ahin, a medical student at Istanbul University, was found to be a justifiable and proportionate means of dealing with a threat to `public order' and for protecting the rights and freedoms of others. The Grand Chamber endorsed the following statement from the Chamber judgment of June 2004:

The Court does not lose sight of the fact that there are extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts . . . It has previously said that each Contracting State may, in accordance with the Convention provisions, take a stance against such political movements, based on its historical experience . . . The regulations concerned have to be viewed in that context and constitute a measure intended to achieve the

5 J.-L. Nancy, `Church, State, Resistance' in this Special Issue, (2007) 34 Journal of Law and Society 3-13, at 7.
6 Leyla SÎahin v. Turkey (Grand Chamber, European Court of Human Rights, Strasbourg, 10 November 2005); see, also, Dahlab v. Switzerland (Application no. 42393/98, 15 February 2001).
7 See SÎahin, id., para. 39.

legitimate aims referred to above and thereby to preserve pluralism in the university.8

This assessment equates the hijab and other forms of Islamic dress with `extremism', and with political movements that threaten the secular character of the Republic of Turkey. With the vulnerability of the secular state in mind, the following account of secularism was endorsed by the Grand Chamber:

Secularism is the civil organiser of political, social and cultural life, based on national sovereignty, democracy, freedom and science. Secularism is the principle which offers the individual the possibility to affirm his or her own personality through freedom of thought and which, by the distinction it makes between politics and religious beliefs, renders freedom of conscience and religion effective. In societies based on religion, which function with religious thought and religious rules, political organisation is religious in character. In a secular regime, religion is shielded from a political role. It is not a tool of the authorities and remains in its respectable place, to be determined by the conscience of each and everyone.9

The defence of the principle of secularism as distinct from state authority based on religious values is central to the judgment of the Grand Chamber, and to the wider disavowal of Islamic dress in the United Kingdom, France, the Netherlands, and Germany.10 We see in this formulation of secularism a direct opposition asserted between a politics of individual autonomy and theocratic political organization. It is precisely this distinction between secular and religious order that I will challenge in this article.
Secularism has not been the key ground for limiting Islamic dress in the United Kingdom. The United Kingdom cannot lay claim to being a secular state - and the fact that liberty, equality, and pluralism have nonetheless flourished in this non-secular state was not a matter that interrupted the reasoning of the Grand Chamber in Şahin when it elevated secularism with such confidence. But the United Kingdom courts have also ruled on the (in)appropriateness of religious dress, most recently in R (Begum) v. Headteacher and Governors of Denbigh High School.11

8 id., para. 115, the Grand Chamber citing the decision of the European Court of Human Rights in SÎahin with approval.
9 id., para. 39, decision of the Constitutional Court of Turkey, published in the Official Gazette, 5 July 1989, endorsed by the Grand Chamber at para. 115.
10 For an overview of the variety of reactions to Islamic dress in Europe, see T. Modood et al. (eds.), Multiculturalism, Muslims, and Citizenship: A European Approach (2006).
11 R (Begum) v. Headteacher and Governors of Denbigh High School [2006] UKHL 15. The dispute was between Shabina Begum, a minor of nearly 14 years when the dispute began, and Denbigh High School in Luton. The School prevented Shabina Begum from wearing the jilbab when she attended school, but denied that it had excluded her from the School. She was, according to the School, asked to conform to a `uniform policy' (wear the shalwar kameeze and/or other forms of dress including a hijab) which had been drawn up, the School claimed, in a manner sensitive to Muslim

The grand revolutionary ideals of a secular state are absent from the character of the tension between autonomy and heteronomy in the United Kingdom. Instead, women's equality, freedom of religious practice, social harmony, and unity and public order have featured in the reasoning of the courts. In Begum it was a school uniform policy which permitted the hijab but prohibited the jilbab that was in issue. The majority of judges in the House of Lords concluded that Miss Begum's right to manifest her religion (guaranteed by Article 9 of the European Convention of Human Rights (ECHR)) was not infringed as she and her family had chosen that she attend this school knowing full well that there were limits on school uniform. The majority also concluded that if her Article 9 right was infringed, there was a justifiable and proportionate limitation of her right authorized by Article 9(2) of the ECHR. The limits on school uniform were also judged to have been arrived at with extensive and adequate consultation in a plural society - the Imams had been consulted![12] At stake, then, was the limitation of religious freedom and the extent to which this is consistent with a plural democratic polity.

The decision of Baroness Hale in Begum is of particular significance for the objectives of this article. That is because it so palpably struggles with the tension between autonomy and heteronomy. Thus individual autonomy is pitted against democracy (as multicultural social cohesion), and feminist arguments that both support girls who veil and eschew the practice are considered. The reasons given by Baroness Hale for approving the school's uniform policy include consideration of the individual choice of women,[13] women's equality,[14] the complex agency of Muslim girls in Europe,[15] the

girls and their religious beliefs, and after wide consultation. Shabina Begum argued that she had been excluded, and had thus been denied her Art. 9 right and freedom under the European Convention on Human Rights to manifest her religious belief. She also contended that she has been denied her right to education, but this was not pursued later on appeal. Once Art. 9 is engaged, and not all Lord Justices agreed that it was, the question was whether the interference was justified and necessary in a democratic society. The majority of the House of Lords concluded that there had been no interference with the right in Art. 9 to manifest the practices and observances of Shabina Begum's religious beliefs. Lord Bingham sets out the most comprehensive account of this position. Lord Nicholls and Baroness Hale stated that there was an interference with Begum's Art. 9 rights, but argued that the interference was justified.
12 See the judgment of Lord Bingham, id., at para. 34; and Lord Foscote, id., paras. 75-7.
13 id., para. 96: `If a woman freely chooses to adopt a way of life for herself, it is not for others, including other women who have chosen differently, to criticise or prevent her'.
14 id., para. 95: `A dress code which requires women to conceal all but their face and hands, while leaving men much freer to decide what they will wear, does not treat them equally'.
15 id., para. 94: citing Bhikhu Parekh's rebuttal of Susan Moller Okin in `A Varied Moral World, A Response to Susan Okin's ``Is Multiculturalism Bad for Women''' Boston Review, October/November 1997. Parekh wrote:
In France and the Netherlands several Muslim girls freely wore the hijab (headscarf), partly to reassure their conservative parents that they would not be

limited cognitive capacities of a child,[16] and then beyond the individual, the social cohesion that a school might foster.[17] Drawing on the dissenting judgment of Judge Tulkens in Ŝahin, Baroness Hale agreed that there should not be limits placed on an adult's individual autonomy to choose how religious belief would be manifested. But in the case of a child, such limits were said to be justified, particularly when a school was successfully implementing a policy that was aimed at creating the conditions for social cohesion.

At the heart of Baroness Hale's reasoning is an extremely limited notion of what it means for an individual to have autonomous agency (`formal operational thought') - and this despite the fact that she acknowledges the complexity of agentive decisions on veiling by girls and women.[18] Moreover, it features the elevation of the unity of the community - the commonality and cohesion produced by the school - over the complex concerns that inform the decisions of young women to `veil'. It thus exposes how the exigencies of sustaining a particular formation of the political - the cohesive multicultural state - are dressed up as a defence of individual autonomy, or the protection of vulnerable girls. The production of a cohesive nation has to negotiate tensions between autonomy, democracy, secularism, and religion. It is precisely the relation between these phenomena that I explore here.

What, then, is the relation between autonomy, democracy, secularism, and religion? As we have seen, the equal liberty of the individual to practice her

corrupted by the public culture of the school, and partly to reshape the latter by indicating to white boys how they wished to be treated. The hijab in their case was a highly complex autonomous act intended to use the resources of the tradition both to change and to preserve it.

16 id., para. 93:
Important physical, cognitive and psychological developments take place during adolescence. Adolescence begins with the onset of puberty; from puberty to adulthood, the `capacity to acquire and utilise knowledge reaches its peak efficiency'; and the capacity for formal operational thought is the forerunner to developing the capacity to make autonomous moral judgments. Obviously, these developments happen at different times and at different rates for different people. But it is not at all surprising to find adolescents making different moral judgments from those of their parents. It is part of growing up. The fact that they are not yet fully adult may help to justify interference with the choices they have made. It cannot be assumed, as it can with adults, that these choices are the product of a fully developed individual autonomy.

17 id., para. 98:
Social cohesion is promoted by the uniform elements of shirt, tie and jumper, and the requirement that all outer garments be in the school colour. But cultural and religious diversity is respected by allowing girls to wear either a skirt, trousers, or the shalwar kameez, and by allowing those who wished to do so to wear the hijab. This was indeed a thoughtful and proportionate response to reconciling the complexities of the situation. This is demonstrated by the fact that girls have subsequently expressed their concern that if the jilbab were to be allowed they would face pressure to adopt it even though they do not wish to do so.

18 See Parekh, op. cit., n. 15.

religion, or to engage in social or cultural practices (though the practice of `veiling' cannot be reduced to that), has been opposed to civility, the emancipation of women, the defeat of Islamic fundamentalism, and the physical and psychological health of children. While the obvious conclusion to draw from all this would be that the `sacred' is being unequivocally expelled in order to sustain some other basis of commonality, in this paper I argue that much more is at stake. The controversy in relation to Islamic dress, and more widely, the place of Islam in Europe, is an apt context in which to explore how formations of the `sacred' mediate what is `common' in secular political community. The contemporary crisis of liberal democracy stems, I wish to argue, from the inability to sustain a political formation either by monistic authority (of God, monarch, or its modern variation as `people'), or by the various hetero-nomic formations of political community determined by history (class and labour), religion, culture, or ethno-nationality. Even the cosmopolitan polity buckles under the weight of the exigencies of `necessity' which regulate the application of human rights.

Nearly all human rights enunciated in post-Second World War charters and conventions (following the model of the French Declaration of the Rights of Man and Citizen 1789) subject such rights to limitations `prescribed by law' and `necessary in a democratic society'. That is to say, the violence that might legitimately be deployed in the name of sovereignty and community has multiplied in the age of human rights, and in a manner that specifically destroys the very liberties and autonomies purportedly founded and protected by such extreme measures. `Democracy' is now invoked in order to legitimate violations of individual freedom and liberty, and to disregard fundamental legal protections such as habeas corpus. We must understand this undermining of freedom, equality, and liberty in the name of democracy by way of a complex relation between autonomy and heteronomy contained in the concept of politics itself.[19]

It is worth tracing some of the key modes of politics that have led to the oppositions we have just observed between autonomy/heteronomy, sacred/profane, liberty/democracy. Much of the rhetoric about women who veil has centred on questions of individual autonomy, agency, social cohesion, and political transformation. It is therefore useful to provide a map of the influential discourses on political subjectivity, agency, and social transformation. This is followed by an examination of piety and political community in the second part of this article. Islamic piety has posed particular challenges in democratic political orders. The objective here is to explore the contours of how piety is a problem of `polity'. How does the opposition between religion and democracy arise in European modernity? Is the distinction between sacred and secular viable? How does the relation between autonomy and heteronomy undo the simplistic opposition between Islam and democracy?

19 I take this opposition of autonomy/heteronomy from Nancy, op. cit., n. 5.

THREE CONCEPTS OF POLITICS[20]

1. Autonomy

Although the enlightenment and its bourgeois revolutions are not the only source of a `proclamation of autonomy', their inspired formulation of `no equality without liberty, no liberty without equality' is worth examining more closely.[21] As Balibar argues, `equal liberty' stated in revolutionary terms has a logic that contains a `self-refutation of its negation'.[22] It is logically impossible to base civil liberty on discrimination, privilege, and inequality just as it is not possible to institute equality by despotism, even `enlightened' despotism.[23] This is a lesson that those who have intervened to save young Muslim women will do well to learn. But here the first aporia of autonomy also emerges to unsettle the `purity' of the formulation set out above. Autonomy is only possible through the unfolding of a universal-ization of the claim to autonomy. For instance, in the Marxist tradition, the demand for emancipation was articulated through the universalization `the people of the people', the `universal class'.[24] The politics of autonomy which is first a negation of oppressive conditions, must then present as a `negation of the negation', thus becoming an absolute.[25] As Balibar puts it, this `idealisation expresses itself in namings, creations of keywords, whose power to seize the imagination is all the greater for the fact that they initially expressed a radical negativity'.[26] `People' and `proletariat' are such terms, and Balibar claims that `woman' and `foreigner' might be others.[27] The unfolding of the emancipatory politics of the claim to autonomy of women, in its universalization as an absolute, becomes an unconditional demand that sweeps away any claim that does not fit with the ideal. What content will be given to this ideal? What conditions of women's emancipation will be made absolute?

In the language of left progressive politics, autonomy as the unconditional base for an emancipatory politics turns against itself at the moment when it is invoked as a universal practice. The universalization of a particular political subjectivity appears to be, in various modern instantiations, a necessary condition of emancipatory politics. But the autonomy of the subject falls down at the frontier where it confronts the (other's) law from another place.

20 E. Balibar, Politics and the Other Scene (2002) 1-39. I draw the three concepts of politics discussed in this section from Balibar's account.
21 id., p. 2
22 id., p. 3.
23 id.
24 id., p. 6.
25 id., p. 7.
26 id.
27 id.

For instance, consider the claim made by some feminists in relation to multiculturalism - particularly in the controversial debate around Susan Moller Okin's essay, `Is Multiculturalism Bad for Women?'[28] Here the claim is that respect for a plurality of cultural practices and normative frameworks can lead to normative paralysis in the face of practices that are harmful to women, such as polygamy, forced marriage, or genital cutting. But in an attempt to universalize the emancipated feminine subject, this feminist intervention undoes the very important negation of the abstract, autonomous liberal subject, exposed by an earlier feminist critique. More recently, Anne Phillips has presented an advance on Okin's concern, by suggesting that multiculturalism be emptied of `culture'. It is a gesture that holds on to the possibility of universally applicable norms that can regulate practices in particular life-worlds:

> We need . . . a multiculturalism without `culture': a multiculturalism that dispenses with the reified notions of culture that feed those stereotypes to which so many feminists have objected, yet retains enough robustness to address inequalities between cultural groups; a multiculturalism in which the language of cultural difference no longer gives hostages to fortune or sustenance to racists, but also no longer paralyses normative judgment. Those writing on multiculturalism (supporters as well as critics) have exaggerated not only the unity and solidity of cultures but also the intractability of value conflict, and often misrecognised highly contextual political dilemmas as if these reflected deep value disagreement. Though there are important areas of cultural disagreement, most do not involve a deep diversity in respect of ethical principles and norms, and many are more comparable to the disputes that take place within cultural groups.[29]

What, in particular, is being negated here in the name of a feminist politics? There is of course a disavowal of cultural relativism and an affirmation of woman's agency `within' particular cultural formations. There is also recognition of cultural difference, but a refusal to accept deep incommensurability with regard to ethical and normative principles. Most palpable, however, is the sense that one is either inside or outside a cultural and political group, and on the dominant side of such a binary opposition is a hegemonic capacity (of the feminists of the majority culture) to engineer a political consensus about what is beneficial to oppressed women.[30] On what basis can this political consensus be produced? This is a question that troubles all politics, and significantly, it leaves one wondering what is left of the demand for (the other's) `autonomy' at the end of this process.

28 Okin, op. cit., n. 3.
29 A. Phillips, `Multiculturalism without Culture' 4 (original emphasis), paper presented at conference on `Beyond Feminism v. Multiculturalism', London School of Economics, 17 November 2006, to be published in A. Phillips, Multiculturalism without Culture (2007).
30 Later I will consider another feminist approach, by Rosi Braidotti, that eschews this inside/outside conception of politics and human subjectivity - but one that I argue has its own shortcomings.

We have just observed the tension between universalizing autonomy and producing political consensus at the same time. This is a particular problem when the cultural and political field is understood to be `multicultural' or plural - by implication containing a multiplicity of normative frameworks. Let's consider this problem of politics in another register, this time, one that places emphasis on individual agency, and transformation of the conditions under which individuals make their own history.

2. Heteronomy

Famously, Marx gave an account of subjects' agency as `politics under conditions not of their choosing'. For Marx: `human beings make there own history, but they do not make it arbitrarily in conditions chosen by them-selves, but in conditions always already given and inherited from the past'.[31] Balibar offers a persuasive account of the agency of the individual subject that can be derived from the `conditions of history' as the heteronomous condition of politics.[32] Moreover, he combines this, following Foucault, with social and cultural structures, in order to avoid privileging structures of production and exchange.[33] For Marx, universalizing the economic base of history, `man is first and foremost a labouring being'.[34] Revolutionary politics is developed by exploiting the contradictions that might ultimately rupture the economic base.

New social movements, including feminism, have followed a similar logic in arguing against patriarchy, or cultural modes of domination. The general pattern is to examine the material conditions of politics, exploit contradictions, and thus bring about transformation (there is no `outside' to these conditions under which human agency is practiced).[35] It is a mode of politics which does not rely on a law from `outside' to call forth emancipa-tion, as we observed with the liberal politics of autonomy above. Politics is immanent to the conditions in which it arises. This concept of politics envisages a movement from material conditions, their contradiction, and finally the arrival of emancipatory transformation at some future point. This distant horizon of politics-as-transformation is compressed by Foucault.[36] Rather than treating the conditions of politics as temporally or structurally distant from `transformation', Foucault set out how the `con-ditions of existence which are to be transformed are woven from the same cloth as the practices of transformation themselves'.[37] Here again we see the

[31] K. Marx, The Eighteenth Brumaire of Louis Bonaparte, cited in Balibar, op. cit., n. 20, p. 8.
[32] Balibar, id., pp. 8-21.
[33] id., p. 9.
[34] id., p. 10.
[35] See discussion, id., pp. 10-12.
[36] id., p. 16.
[37] id., p. 15.

immanence of a politics of resistance. So for instance in his essay, `The Subject and Power', Foucault explained how institutions should be analysed from the standpoint of power relations, rather than from the perspective of institutions.[38] The `proper relation of power' is then `an action upon an action', that is to say, `deeply rooted in the social nexus' rather than in social relations constituted and determined above society in some structure whose effacement lies in some revolutionary future.[39] The `distance between conditions and transformation is reduced to a minimum'.[40] The body becomes the ultimate referent/agent of politics, and with it, attention is drawn to techniques of normalization. Where for Marx liberty was the horizon of revolutionary politics, for Foucault politics is contingent on power relations which entail `resistance'.[41] This is why Foucault urged that political actions should be thought of as `strategies' which are ultimately directed within the self - that is, as technologies of the self which train bodies. What we have here, then, are two modes of conceiving a politics of transformation: the Marxist notion of emancipation as `world historical change brought about by a universal class' or an analysis of power relations with respect to the singular being whose resistances in the mode of an `action upon an action' brings about transformations in the conditions of individual existence.

Returning to the question of politics in the context of veiling in European liberal democracies, we should be cautious about making trite equations between resistant practices and the complex reasons attached to why girls and women may decide to `veil'. Nonetheless, there is no shortage of evidence that veiling may well be seen as a form of resistance, `an action upon an action', and not merely the crude absorption of a docile subject in a theocratic and patriarchal order.[42] This should cause concern for those who wish to produce social consensus from above as a means of liberating the oppressed woman. Moreover, the ease with which the judiciary has internalized threats by `fundamentalists' and `extremists' should give no comfort when feminist concerns are appropriated for the production of social cohesion, such as in the Begum case. In Şahin and Begum, the individual subject whose freedom was apparently at issue is left to confront yet another governmental and biopolitical action against her body. Autonomy and

38 M. Foucault, `The Subject and Power' in Michel Foucault: Beyond Structuralism and Hermeneutics, eds. H.L. Dreyfus and P. Rabinow (1982), cited in Balibar, id., pp. 14-15.
39 Balibar, id., p. 14.
40 id., p. 15.
41 id., p. 17.
42 In particular, see my discussion of S. Mahmood's study of women's Mosque movements at pp. 153-5 below. See, also, Kristianasen, op. cit., n. 1; T. Asad, `Trying to Understand French Secularism' in Political Theologies, ed. H. de Vries (2006); D. Lyon and D. Spini, `Unveiling the Headscarf Debate' (2004) 12 Feminist Legal Studies 333-45, at 339-44; and Baroness Hale in Begum, op. cit., n. 15.

heteronomy cannot simply be opposed to each other. The desire and agency of the subject is conditioned by heteronomy, but not overdetermined by it. To the modes of politics and related conceptions of the individual subject we have been considering, a third must be added. This is inspired by Spinoza, and developed by Deleuze and Guattari, and feminist philosophers influenced by their thought.43

3. Becoming minority

For Deleuze and Guattari, following Spinoza, elements do not have a particular form or function.44 An element is distinguished by movement and rest, slowness and speed:

Thus each individual is an infinite multiplicity, and the whole of Nature is a multiplicity of perfectly individuated multiplicities. The plane of consistency of Nature is like an immense Abstract Machine . . . [I]ts pieces are the various assemblages each of which groups together an infinity of particles entering into an infinity of more or less interconnected relations.45

Individuation, which is only distinguished by movement, rest, slowness, and speed, takes place on a `plane of immanence'.46 In this plane of immanence, the individual is never fixed, that is to say, it is always in a process of becoming:

To the relations composing, decomposing, or modifying an individual there correspond intensities that affect it, augmenting or diminishing its power to act; these intensities come from external parts or from the individual's own parts. Affects are becomings. Spinoza asks: What can a body do?47

The body is capable of affects within a given degree of power. Rather than defining the body through species or genus, Deleuze and Guattari state that we should try to count its affects.48 Through affects, bodies can jointly compose a more powerful body, or destroy each other.

From this conceptualization of individuation - that is, bodies as multi-plicitous desiring assemblages, Deleuze and Guattari proposed a notion of identity as `territoriality'. This notion of identity as territoriality is especially pertinent to a discussion of veiling where women's bodies are territorialized as the site at which a political dispute about autonomy/heteronomy,

43 B. Spinoza, Ethics (2000); G. Deleuze and F. Guattari, A Thousand Plateaus: Capitalism and Schizophrenia (1987); and see M. Gatens, Imaginary Bodies: Ethics, Power and Corporeality (1996); M. Gatens and G. Lloyd, Collective Imaginings: Spinoza, Past and Present (1999); G. Lloyd, Spinoza and the Ethics (1996); A. Negri, The Savage Anomaly: The Power of Spinoza's Metaphysics and Politics (1991); and R. Braidotti, Transpositions: On Nomadic Ethics (2006).
44 Deleuze and Guattari, id., p. 253.
45 id., p. 254.
46 id.
47 id., p. 256.
48 id., p. 257.

secularism and *laïcité* take place. These territorialities/identities are either `majoritarian' or `minoritarian' - both expressing different modes of `desire for otherness'.49 `Desire for otherness' involves two modes of being the `fascinated self' - either desiring that the other remain other, or expressing a fascination for becoming other.50 These modes of desire (and territorialities) are means of constituting collectivities that arise in a universal schema of majoritarian identity: `a punctual system comprising five points: Man (central point), male (dominant point), adult (dominant point), woman, child'.51 This notion of the `majority' in Deleuze and Guattari's formulation is universal and without geopolitical or historical specificity.52 As Goulimari explains, from the point of view of feminism, this majoritarian schema of identity provides `a ready-made referent or political constituency, ``woman'' - in spite of her diversity and multiplicity'.53 To the extent that feminism relies on this referent as the subjectivity in relation to which its claims are based, it corroborates the majoritarian schema of identity. What many feminists including Goulimari call for is a minoritarian feminism - a mode of becoming minority - that emphasizes the `desire of becoming other' which builds `lines of flight' or `lines of escape' from the majoritarian schema.54 I should emphasize that this is not about majority/minority as it is used in discussions about `multiculturalism'.55 It is rather about the concept `woman' as a territoriality, and requires further explanation.

For feminists like Luce Irigaray who use the concept `woman' as a `strategic essentialism', woman is a referent for `female sexed being', a being capable of building alliances across `boundaries' of age, race, class, and sexual orientation.56 In relation to political subjectivity, the Deleuzian and Guattarian schema poses an immediate dilemma for feminists who wish to hold on to the category `woman' as a `strategic essentialism' which grounds a politics of difference upon which they base a reformist agenda. Luce Irigaray advocates such an essentialism (`woman'), as does Rosi Braidotti: ```being-a-woman'' is always already there as the ontological

49 P. Goulimari, `A Minoritarian Feminism? Things to do with Deleuze and Guattari' (1999) 14(2) Hypatia 97-120, at 102.
50 id.
51 id.
52 id.
53 id.
54 id.
55 Feminist theory has attempted to take seriously the conundrum of imposing a feminist normativity on so called `minority women' who are thus by definition `outside' what is set out as a feminist emancipatory trajectory. A good summary of how feminism grapples with the rather problematic category of the `minority woman' can be found in M. Malik, ```The Branch on which we sit'': Multiculturalism, Minority Women and Family Law' in Feminist Perspectives on Family Law, eds. A. Diduck and K. O'Donovan (2007, forthcoming).
56 See discussion of Irigaray and Braidotti in Goulimari, op. cit., n. 49, p. 106.

precondition'.[57] As Goulimari argues, the problem in Deleuze and Guattari's terms is that:

Strategic essentialism turns `being a woman' into an artificial territoriality for feminism, thereby simultaneously turning race, age, and sexual preference into subdivisions, into subterritorialities of `being-a-woman', with the result that it purports to be necessary for alliances across boundaries and between subterritorialities that it has constructed in the first place.[58]

The artificial territory, such as `woman', involves processes of `segregation' that are `majoritarian'. For Deleuze and Guattari, the processes of artificial territorialization are omnipresent, and there is no point in trying to label them as bad or good.[59] The objective, rather, is to constitute a mode of `becoming minoritarian' - that is, to create a `nomadic' identity/territoriality.[60] Rosi Braidotti, Moira Gatens, Genevieve Lloyd, and Antonio Negri have all drawn on Deleuze and Guattari to build a conception of human subjects as individuated `bodies', differentiated parts of nature, but without essence.[61] For these bodies, freedom is tied to reason, but also shaped by environment and social organization. These `nomadic subjectivities are defined in terms of processes of becoming'.[62] The desire of the individuated subject is capable of affective force and `being together' - but a `being together' which is radically `post-human', that is to say, non-anthropocentric. Rosi Braidotti has put it like this:

`we' are in this together. What this refers to is the cartography as a cluster of interconnected problems that touches the structure of subjectivity and the very possibility of the future as a sustainable option. `We' are in this together, in fact, enlarges the sense of collectively bound subjectivity to nonhuman agents, from our genetic neighbours the animals, to the earth as a bio-sphere as a whole . . . How to do justice to this relatively simple yet highly problematic reality requires a shift of perspective. As Haraway suggests, we need to work towards `a new techno-scientific democracy'.[63]

This `post-human' mode of nomadic politics raises and addresses many important contemporary concerns, although its generality and abstraction conveniently elides some more conventionally territorialized bodies. Given the affinity of Deleuze and Guattari with Marx and Foucault, one is left to ponder the many connections between the politics of the nomad and the earlier concerns of politics as autonomy and heteronomy.

57 R. Braidotti, Nomadic Subjects: Embodiment and Sexual Difference in Contemporary Feminist Theory (1994) 187, cited in Goulimari, id., p. 106.
58 Goulimari, id.
59 id., p. 110.
60 id.
61 Braidotti, op. cit., Gatens, op. cit., Lloyd, op. cit., Negri, op. cit., all in n. 43.
62 Braidotti, id., p. 148.
63 R. Braidotti, `Affirming the Affirmative: on Nomadic Affectivity' (2006) 11 Rhizomes para. 28, at <http://www.rhizomes.net/issue11/braidotti.html> - access verified 22 November 2006.

More specifically, what would it mean for a woman to speak in her own name, and be a desiring body that is a mere assemblage of affective forces oriented towards a minoritarian line of flight? Is autonomy obsolete when being-a-nomad is a condition of infinite multiplicity? Is the agentive subject redundant when the body is an affective assemblage? This is not the place to develop the responses that are available to these important questions. What we can take away from this discussion of modes of politics is that it is by no means adequate to pursue questions of equality and freedom, or religious and political life, as they have been dealt with by some liberal feminists or theorists of multiculturalism. Nor is it adequate to separate the child from the adult, the believer from the extremist, the democrat from the fundamentalist - simplistic oppositions that judges of the United Kingdom and European Courts have found to be expedient.

The Western popular media regularly assert that `Muslim women are incomparably bound by the unbreakable chains of religious and patriarchal oppression'.[64] However, more informed research would suggest that conduct that follows strict adherence to some Islamic teachings cannot simply be rendered as a rejection of liberal pluralism, secularization, and modernization. As Mahmood has argued, feminist scholarship on the subjectivity of Muslim women has paralleled the New Left rejection of the classical Marxist formulation that the peasantry has no agency and thus no place in the making of modern history (the Subaltern Studies Project).[65] The Muslim woman has thus been reunited with her agency, but this important intervention by feminists is also attended by some problems. Most significantly, a feminist consciousness about gendered subjectivity, as we have seen, has tended to focus on the agency of an `autonomous subject' whose actions can be universally mapped onto a terrain of repression and resistance.[66] Feminists have of course sought to depart from a liberal notion of individual autonomy by providing an account of woman's agency as embodied, relational, and socially embedded. Post-structural feminists have described how subjects performatively transgress norms by resignifying or subverting them. And as we have just seen, feminists inspired by Deleuze and Guattari, call into question the very existence of a unitary subject condemned to oppressive stasis. For these latter theorists, nomadic-being is a multiplicity of affective relations in constant movement.

Hence, there are by now many familiar accounts of understanding `resistance' to modes of normalization. But Mahmood asks whether this attention to norms as either consolidated or subverted by subjects does not ignore the fact that (religious) norms are also inhabited and experienced in a variety of ways.[67]

64 S. Mahmood, Politics of Piety: The Islamic Revival and the Feminist Subject (2005) 6-7.
65 id.
66 id., pp. 7, 14. Mahmood discusses the celebrated work of Lila Abu-Lughod, and the latter's own reflections on the need to depart from the binary of repression/resistance.
67 id., pp. 9, 22.

Importantly, Mahmood questions whether:

it is even possible to identify a universal category of acts - such as those of resistance - outside of the ethical and political conditions within which such acts acquire their particular meaning. Equally important is the question that follows: does the category of resistance impose a teleology of progressive politics on the analytics of power - a teleology that makes it hard for us to see and understand forms of being and action that are not necessarily encapsulated by the narrative of subversion and reinscription of norms?[68]

Mahmood's answer to the need to avoid such a teleology of politics through analytics of power is to focus on the agency of the subject, for instance, in women's mosque movements. To cut a rather long and interesting story short, what Mahmood finds in the Egyptian women's mosque movements is a turn to religion precisely in order to resist the wider secularization of society that is regarded as dissolving the family, and other sources of social and cultural practices. The mosque movement is thus about new structures of learning that will generate an ethos that was previously sustained by family and society. In what follows I want to focus on the affect of community that is at the heart of the tension between religion and democracy. This is one way to juxtapose practices of religious piety with modes of subjection in political community.

PIETY AND POLITY

Wearing the hijab and other forms of Islamic dress has been infused with the power to undermine multiculturalism, liberal notions of equality, individual autonomy, and the secular state.[69] For most liberals, particularly of the muscular kind, the hijab is a sign of women's oppressive absorption in `culture', and an intrusion of religion into the public sphere. This is apparently anathema to the modern conception of political life. In Turkey, as we observed above, the hijab has been associated with Islamic extremism and fundamentalism, and in the United Kingdom we observed how the jilbab and nikab have been associated with stifling the `proper' development of a child, or being a symbol of separation and unacceptable difference. Saba Mahmood has pointed out how the question of women's `piety' discussed in such disputes is always already a question of `polity'.[70] In her book, Politics of Piety, she sets out the debates among Islamic scholars and activists in Egypt regarding whether religious piety should principally be about worship, ritual, and an entire mode of being (the version from the pious adherents of Islam), or a platform for a wider social and political project which has as its horizons `truth, justice and freedom' (this is the view of people who eschew

68 id., p. 9.
69 See n. 1.
70 Mahmood, op. cit., n. 64, p. 53.

`religiosity', and want a wider dialogue about Islam and social change).71
The cultivation of the living body as virtuous through its capacities to be
constrained, limited, endure fasting and pain, punishment and even
martyrdom, are common features of many religions, not least Christianity.
In modernity these practices present a tension between individual autonomy
(in the form of individual choice of religious practice) and heteronomy
(being subject to a different, external law).

1. Autonomy and heteronomy

The tension between autonomy and heteronomy is especially troubling for
democratic orders - and in two senses. First there is the obvious tension
between the secular and the religious. Liberal democratic orders elevate the
autonomous individual above the constraints of communitarian determina-
tions, including the external (transcendent) law of religion. On this account
Islamic dress is negated to protect a system of individual autonomies,
including that of the apparently `vulnerable' woman. But there is a second
tension - this time between heteronomy and democracy itself. The individual
right to freedom of religious practice contradicts the `civil religion' of the
secular state. In light of this, the seemingly obvious oppositions between
sacred and profane, secular and religious, come unstuck.72 Heteronomy is
thus not only the transcendent, deific authority of conventional religion, but
also the `civil religion' of `stable nations' and the patriotic fervour that is
modernity's answer to what holds together our `being-with' each other.73
The problem of Islam in Europe is in that sense not just a clash between the
enlightenment's self-legislating, autonomous individual and the religion to
which she belongs, but is in fact a clash between which external law, of God
or nation-state, will determine individual and collective practice.

The problem of Islam in Europe (as with Christianity in the United States)
is that it has given rise to a civil war of heteronomies. The war of
heteronomies is a struggle over which law (of nation/republic or theocracy)
will prevail. Jean-Luc Nancy has elegantly encapsulated this conundrum of
heteronomy and the nation-state:

The sovereign State is the State that must derive its legitimation from itself.
Without even emphasizing how essential the right to decide the state of
exception from law (according to which Schmitt defines sovereignty) is in this
context, we have to acknowledge that autonomy, as the principle of the
political, here makes its major demand: it must or it should in one way or
another found, authorize, and guarantee its own law by its own means. Is this
possible in any other way than by invoking the necessities of security born of
the weakness and the hostility of men? But can such necessities found more
than an expedient - or even, in some cases, more than a usurped authority for

71 id., pp. 52-3.
72 The opposition between sacred and profane is interrogated below.
73 I will elaborate this point below with reference to J.-L. Nancy.

the sole good of some? Thus we see delineated the general scheme of the political problematic from the classical age onwards.[74]

How will the secular democratic state guarantee its own law by its own means? Have we not seen how questions of security (extremism and funda-mentalism) operate as the expedient which mediates authority for the good of some? The Ŝahin case, for instance, highlights how liberal democracies contain what Jacques Derrida has called an auto-immune process, a capacity to self-destruct in the name of self-preservation.[75]

Demo-cracy, literally the rule of the demos, harbours several `suicidal' possibilities. By giving over to the rule of the many, to rule by `number', by a process of counting, a majority can come to power that can destroy all that democracy appears to stand for: the equal worth of each person (which of course is another form of counting, of being included or excluded), and the many freedoms of speech, association, or political organization with which democracy is associated.[76] In Turkey, an Islamic revival `threatened' the secular Republic (and more specifically the reliability of a NATO ally crucially poised with a Euro-American geo-political orientation in the Middle East), and so the state responded by delimiting one of the very freedoms for which democracy stands by prohibiting the hijab in public institutions. This is one example of the auto-immunity or suicidal tendency in democracy. There is a more direct `suicide' which is a double appellation when the result of the counting for which demo-cracy stands yields a governing authority that is hostile to what has been called democracy.[77] Derrida gives the example of the Algerian election of 1992, when the state interrupted the electoral process in order to prevent an Islamic or Islamist group gaining power by democratic means - that is, by obtaining the support of the majority of eligible voters. The interruption of the electoral process was in the name of democracy, but also against the coming to power of Islamic groups that would introduce another law for the political community. The interruption of the election was decided in a sovereign fashion by the state because it held the view that a democratically elected Islamist organization would alter the constitution, and thus by democratic means, `de-democratize' the political and juridical order. The interruption of the election was the suicidal immunization of democracy. It was a destruction of democracy in the name of its preservation. An obvious question, then, is whether what is called `democracy' is much more than a process of counting - more than the rule (cracy) of the demos? The auto-immunity of democracy exposes the

74 Nancy, op. cit., n. 5, p. 9 (original emphasis).
75 J. Derrida, Rogues: Two Essays on Reason (2005) 35; but for a fuller account of the politics of friendship and fraternity that harbours this destruction, see J. Derrida, Politics of Friendship (1997); and for an excellent commentary see A.J.P. Thomson, Deconstruction and Democracy (2005).
76 Derrida, id. (2005), p. 30.
77 id., p. 33.

deep conundrum of `guaranteeing your own law by your own means' highlighted by Nancy above. In this process, democracy turns in on itself, turns against itself.

These observations about the auto-immune processes of democracy are also pertinent to the election of Hamas in the Palestinian Authority elections in January 2006. This was a democratic electoral victory decried by western powers. Though the formation of a government by Hamas could not be prevented precisely because of their democratic mandate, Europe, the United States, and several other countries suspended financial aid and continue to insist that specific policies be adopted by the Hamas-led government before further `recognition' of that power (kratos) of the people (demos) is given its due - the status of legitimate rule.[78] The unique feature in the Turkish, Algerian, and Palestinian examples is that Islam, in its many variations, has come to be regarded as `resisting' what is being called the democratic principle - even though, in actual fact, the `necessities born of expedience' (Nancy) are usurping democratic legitimacy. These examples yield an urgent and pressing conjunction of the `demographic' (piety) and the `democratic' (polity).[79]

We can now distil a general problematic that will be taken up in more detail here. The question is whether the `political', the polity, can be conceived in a manner that resists both heteronomy (which clings to a transcendent source of law), and auto-nomy (a source of law which collapses under the weight of the many critiques of the atomistic liberal subject)? What is the permissible relation between the cohering affect of a certain demographic (such as a Muslim community) and democracy (the counting of each individual-as-one)?[80] This is a problem that has been posed in so-called `multicultural societies' where the minority's attachment to the affect of community (usually centred around religion or culture) is opposed to the majority's apparently secularized citizenship. Again what is at stake (as with the Turkish example), I will argue, is one heteronomous determination verses another - the civil war of heteronomies. What we must consider is what these questions about affect reveal about the limits of secular formations of the political as they have hitherto been conceived.

Let me begin to approach these questions by elaborating how the principle of autonomy in liberal democracy surrenders to the heteronomous exigencies of the secular state. This will permit a refinement of how autonomy and heteronomy mutually undermine the expulsion of the `sacred' from the political order. It will also set up an interrogation of the unsustainable opposition between democracy and theocracy which is so central to the interrogation of secular modernity and for considering the affect of religion in democratic political community.

78 See `U.S. to Cancel $240m in aid over Hamas government' Times, 8 April 2006.
79 See discussion at pp. 154-5 above.
80 This is a problematic developed by Nancy in `Church, State, Resistance' (op. cit, n. 5), and I will provide an account of his insights below.

2.   Secular theology and the institution of democracy

The perception of `Islam' is that it presents sharp contrasts and acute tensions with liberal values and respect for human rights. The `Rushdie affair' or the controversy surrounding the recent publication of cartoons depicting the Prophet Muhammad are yet more examples of what is depicted as a challenge to `Europe's modernity' from religious extremists, usually Europe's others, caught in their regular stasis of culture and tradition. Moreover, the struggle between theocracy and democracy is being posed through a discourse of human rights. The question of Islam in Europe, and especially in the United Kingdom, is a telling site for considering the problem of the sacred in modern political and juridical formations.

In what sense is the `sacred' opposed to democracy in conventional rhetoric? To address this question we must have at least a working definition of the `sacred'. The `sacred' is more usually than not opposed to the `profane', but that opposition is itself a product of the modes of classification particular to developments in anthropology and sociology in the nineteenth century.[81] An essential feature of the sacred is that it pertains to what is `set apart' from the profane. The opposition between sacred and profane is determined by the essential character of this setting apart. This is a distinctly modern phenomenon according to Talal Asad, and can be contrasted with the opposition in medieval theology of divine/satanic (both transcendent powers) or spiritual/temporal (both worldly institutions).[82] Durkheim's Elementary Forms of Religious Life, for instance, presented `all known religious beliefs' through a classification that could be reduced to two opposed groups or terms, the `sacred' and `profane'.[83] The sacred in modernity, then, is an external transcendent power or authority which is supposedly universally opposed to the worldly or profane.

Closer scrutiny reveals that the distinction between the sacred and profane is a conceptual mess compiled on contradictions. The `sacred' has a very different inflection in the Christianity of early modernity where not all that is sacred is set apart. An object, person, institution, vessel, or the body and office of the King (who famously has two bodies), is not set apart and yet is called sacred.[84] The French Declaration of the Rights of Man and Citizen speaks of various rights, such as property, as sacred. Defying the opposition of religious and secular, it is no less than the `sacralization' of the individual and people that marks the emergence of the secular state. This is something of a contradiction given the regular logic of the secular state has it that it is the re-presentation of individual or `people'. Individual and people must be

81 See the excellent discussion in T. Asad, Formations of the Secular: Christianity, Islam, Modernity (2003) 30-7.
82 id., pp. 31-2.
83 id., p. 31.
84 id., p. 32.

anything but `sacred' - they must be a source of authority that mark the opening of an immanent rather than a transcendent source of power.[85] Some of the confusion which attends the opposition between sacred/profane can be explained through the conceptual separation of `nature', `religion', and `reason' that arises out of the European encounters with the colonized world.

For Asad, Europe's encounter with the non-European world helps to explain how the `sacred' comes to be essentialized as that which is universally set apart from the profane.[86] It was through the designation of practices as fetish and taboo, and the allocation of these to `Nature Folk' in the non-European world, that an essential separation was wrought between the sacred and the profane. The `sacred' became universally associated with religion. The cultures and traditions of the `backward peoples' of the world were understood as frozen in religion or myth. Europe came to be regarded as holding the prerogative of `profanation', the capacity to reorder society through `forcible emancipation from error and despotism'.[87] Liberal democracy as it is known today is informed by these movements in the eighteenth and nineteenth centuries. But let's be more specific about how the sacred continues to inhabit what is called the profane sphere of modern law, politics, and society.

Modern law and society is structured through what can be termed onto-theology. Modern sovereignty, for instance, secularizes a theological concept of power. As Derrida has put it, sovereignty is:

the concentration, into a single point of indivisible singularity (God, the monarch, the people, the state, or the nation-state), of absolute force and the absolute exception. We did not have to wait for Schmitt to learn that the sovereign is the one who decides exceptionally and performatively about the exception, the one who keeps or grants himself the right to suspend rights or law; nor did we need him to know that this politico-juridical concept, like all the others, secularises a theological heritage.[88]

The retention of a theological heritage can be seen in numerous definitive texts of western modernity.[89] The persistence of the sacred (or what is set apart) in the historico-political formation of European modernity suggests that this secular theology deserves more attention when considering forma-tions of the sacred in modern law and democracy. The secular theology of modernity is one explanation of why the sacred receives ambivalent treatment in liberal juridical orders. The sacred is at once guarded as

85 This move towards immanence is also a move towards transcendence, see, generally, F. Dallmayr, `Postmetaphysics and Democracy' (1993) 21 Political Theory 101.
86 Asad, op. cit, n. 81, p. 35.
87 id.
88 Derrida, op. cit. (2005), n. 75, pp. 153-4.
89 For a compendious setting out of these, see P. Fitzpatrick, ` ``What Are the Gods to Us Now?'': Secular Theology and the Modernity of Law' (2006) 8 Theoretical Inquiries in Law 285.

`freedom of conscience', right to religion, or the event of sacrifice[90] on which the political is founded and sustained, and also expelled as not proper to the `City', particularly in the case of what has been termed `political Islam'.

What we must now decipher is how this problem of secular theology manifests the constitutive limits of liberal democracy. In brief, this is a question of how modern rationality is presented as the property of the inhabitants, all equal, who dwell in the City (as polis, Europe, western civilization, with their values of freedom and autonomy apparently hated by religious fundamentalists, and so on). To be free is to be charged with the freedom that is the property of equal, rational beings (all the social contract theories flow from this assumption). But since Charles Taylor and others imported a certain Hegelianism into liberal philosophy (where the community or collective is the source of normative life-worlds), there have been ongoing ripples of a dispute about the source of authority. What is at stake here is whether the autonomous individual or the community to which she belongs is to be the source of authority and value. Will the self-authorizing autonomous individual be the sole guide of her actions, or will the individual's life-world be determined from another place (heteronomy)? The problem of secular theology in modern formations of law and society can thus be addressed through the tension between the autonomous individual of liberal demo-cracy, and the stricture of another `cracy', that of theocracy.

As we have seen, Jean-Luc Nancy has recently condensed this problematic of secular theology into the tension between autonomy and heteronomy.[91] To recap for a moment, I have set the stage for an undoing of the autonomous, self-legislating individual of western modernity by showing the extent to which this political formation contained a constitutive tension with heteronomy. Now I want to explain why this is the case. Why is there a persistent call on transcendent deities or their substitutes (such as nation, people, ethnicity)?

3. The affect of religion in democracy

`Autonomy' is a central principle of the political in modernity. The auto-nomy of the individual survives among competing heteronomies of theology and civil religion - what was termed secular theology above. Autonomy cannot deliver what J.-L. Nancy has termed the `force of affect' - the `fervour, desire, and sentiment' that is so central to our being-with. This autonomy must in `one way or another found, authorize, and guarantee its

90 For instance, consider J. van der Walt, Law and Sacrifice: Towards a Post-Apartheid Theory of Law (2005). See his account of the inevitability of sacrifice in political community, in ch. 5.
91 Nancy, op. cit, n. 5.

own law by its own means'.[92] The modern invention of sovereignty is the dominant mode of answering this problem of autonomy. The State comes to embody the principle of `atheistic' self-sufficiency with no legitimation from beyond itself. The intrinsic flaw in this formulation is the need for recourse to `civil religion'. As Nancy points out, the separation of Church and State comes to rest on a principle of secularism and `fraternity'. Through fraternity, and other denotations including `friendship', solidarity, responsibility, and even `justice' (think for instance of the various postcolonial struggles for independence), the `affect' of the political as an autonomous phenomenon is `perceptible to the hearts of citizens' (a phrase taken from Rousseau).[93] As an order of autonomy, something in the `affect' of the political resists. It is this resistance in the autonomy of the political that comes to be in conflict with heteronomy.

`Affect' is also `everyone's adhesion to community', and despite the secular imperative to separate this adhesion from all forms of `worship', it takes the form of practices of observance which celebrate values, symbols or signs (think of flags, Independence Day celebrations, monuments to the war-dead, and so on).[94] The allure of the many forms of fascism, and even `actually existing socialism', so-called, or the current `force' of democracy carries the lure of this `affect', and is central to the autonomy of the political. Now, although `autonomy' has resisted heteronomy (through notions of fraternity and secularism), what is crucial for understanding the significance of the `sacred', and indeed piety, as a challenge to the present empire of democracy, is that `heteronomy resists autonomy with the force of affect'.[95] For Nancy, `affect is essentially heteronomous, and perhaps we should even say that affect is heteronomy'.[96] Because of the `force of affect' exacted through Church or State, we are now facing the impossibility of a political institution constructed by autonomy. Autonomy fails because of the resistance of heteronomy. And heteronomy leads us to the disasters of patriotism, ethnicity, and religion. Hence the task now is to think the affect by which `we' co-exist, but not through a politics that collapses under the force of affect generated by heteronomy. How do we separate Church and State and be-with each other in a way that does not fall into the civil religion of the Republic that demands sacrifice? What law, or indeed as Nancy suggest, what `anomic' formation, will mutually resist autonomy and heteronomy?[97] This is the problem that remains to be thought through. The problem of affect in the political will have to be the site for this labour.

92 id., p. 8.
93 id., p. 9.
94 id., p. 10.
95 id., p. 11.
96 id. (original emphasis).
97 id., p. 13.

CONCLUSION

The juridification of politics has turned the veiled woman into a rights-bearing subject whose agency is subject to what is expedient in a democratic society. That is the banal reality of all human rights, and we should not be surprised that the state will clamp down on all heteronomous formations that resist the civil religions of the state. The feminist veneer of juridical and political pronouncements about the veiled woman must not distract us from the real political crisis - the apparent impossibility of recovering a political subject that might resist the proliferation of the exception as the norm, of consumption as freedom, of social cohesion through ignorant vilification of Europe's archetypical other. The suppression of religious expression and piety only exposes democracy's own lack - it cannot guarantee its own law by its own means unless the autonomy of the political is always already heteronomous. For the time being we are left with `convert or perish' as democracy's oxymoronic cry.

The subject of politics who makes her own history under conditions not of her choosing then appears to be left with a stark choice. Either convert to political formations that absorb her as a `citizen', or rely on the other heteronomous forms that inspire the desire and fervour of all affected beings. If being is singular-plural and always affected by the force of heteronomy, then her de-territorialization, the fact that she is a relational assemblage, is already part of her `becoming minority'. What will be a line of escape, a line of flight, from heteronomy? That is what remains to be thought.