Fraternalism as a limitation on religious freedom: the case of S.A.S. v France

Eoin Daly
National University of Ireland, Galway

Abstract

In S.A.S. v France, the European Court of Human Rights upheld France’s prohibition on public face coverings, including the burqa and niqab. In doing so it accepted a novel doctrinal contention on the part of the French government: that the manifestation of religious beliefs could legitimately be restricted in the interests of what was loosely termed vivre ensemble – literally, “living together” – or what I will label “fraternalism”. I will argue that fraternalism, in the French setting, is closely linked to the idea of a duty of civility in political theory: in this instance, it is understood as a duty to observe a minimum degree of fraternal interaction with one’s fellow citizens. In this paper, I will relate the Strasbourg Court’s judgment to French-republican discourse concerning the requirements of civility in a republican polity. In turn, I will argue that civility, in this context, must be understood as a habitus – a set of learned orientations and bodily techniques – rather than as something akin to a set of discursive or speech constraints, as civility is usually understood in liberal philosophical literature. This demonstrates the danger in the idea of civility (or fraternalism) as limiting religious (or indeed other) liberties. Despite the terminologies of republican virtue in which it is presented, its performative and embodied dimensions means not only that it is morally arbitrary its specific content, but also that it will tend to enshrine and reproduce ethno-cultural and gender hierarchies.

Introduction
The limiting criteria for the right to manifest religious beliefs under Article 9 of the European Convention of Human Rights has proven a consistent point of controversy in the jurisprudence of the Strasbourg court. The European Court of Human Rights (ECtHR) has previously accepted rather wide interpretations of the concepts of public order and security as limiting the right to wear religious clothing. In particular it has routinely deferred to domestic authorities’ responses to what they perceive as fundamentalist threats to the democratic order. However, it has been less clear whether or not states may limit religious freedom in the interests of promoting a vaguer aim of social cohesion, as distinct from more concrete and material threats to democratic institutions and aims. This issue was raised by France’s 2010 prohibition on public face-veiling, which was effectively intended at banning the niqab and burqa specifically (despite being phrased in more general terms). For the most part, the domestic discourse rationalized the law with reference to a loose set of aims centred around social cohesion, rather than the traditional “material” elements of public order. In particular, it was argued that the State had a legitimate role in encouraging (and indeed enforcing) certain forms of sociability. And this, in turn, was linked to the republican character of the state: citizens, it was assumed, were under a “duty of fraternity”, and specifically a duty to reveal their faces to one another in public – this being a minimal requirement of republican sociability. Indeed, the Strasbourg court’s ruling in S.A.S. v France upheld the French position not with reference to the rights-based justifications that been offered in its support – say, its supposed role in affirming gender equality or emancipating Muslim women – but rather, its interest in securing the conditions of vivre ensemble – literally, “living together”.

In this article, rather than critiquing the Court’s acceptance of the French rationale, I will connect the judgment to the domestic French-republican discourse concerning the role of fraternalism in social life. In particular, I will discuss how the French discourse framed the faceveiling ban as being a matter of decorum and sociability – and thus, a matter of duty – as much as a tool of emancipation and “rights”. Thus I will aim to show how the “duty of fraternity”,
which the ECtHR effectively accepted as limiting religious freedom, was constructed with reference to France’s official republican doctrines. Relatedly, I will discuss how this idea of a duty of fraternity can be linked to the concept of civility in political theory. Indeed, counter-intuitively, in France fraternity was interpreted not as requiring expressivity, but rather discretion and self-restraint – the burqa being problematized as highly individualistic and “ostentatious”, rather than excessively modest or austere. I focus neither on the legal-doctrinal classification of fraternalism as a limit on religious freedom, nor on the abstract political-theory question of whether or not duties of civility, including those of fraternal sentiment, may be imposed on citizens. Instead, I will consider the implications of a “duty of fraternity” in light of what fraternity (or civility generally) requires in practice. And specifically, I will argue that the SAS judgment approaches the concepts of vivre-ensemble and fraternalism in an excessively abstract way, ignoring how these operate, and the political functions they fulfill, in their contextualized instantiations. Since being “civil” (or fraternal) is a matter of habitus – that is, of mastering those bodily and linguistic techniques through which we position ourselves in a social world – duties of these kind inevitably reflect and reproduced gender, class and cultural hierarchies.

**The ECtHR ruling in SAS v France**

While the applicant in SAS v France – described as a devout Muslim and wearer of the burqa – invoked Articles 3, 8, 10, 11 and 14 of the Convention as well as Article 9, I will focus on the religious-freedom dimension of the judgment.

The impugned law, which had the effect of prohibiting the burqa and niqab in France, did not explicitly target Islamic dress as such but rather enacted a general prohibition on clothing that is “designed to conceal one’s face” in public places. It exempted certain categories of public face-coverings, for professional and artistic – but not religious – purposes.

Whilst the French government accepted that the law constituted a *prima facie* interference in the right to manifest religious beliefs for the purposes of Article 9 of the Convention, it argued that the interference was legitimate and proportionate in light of a number of public-policy aims which it described as
underlying the measure. First, France invoked perhaps the most obvious limiting clause for the right to manifest religious beliefs – public safety – arguing that this justified a prohibition on public disguises. However, while noting that public security might justify a requirement to reveal one’s face in specific instances, the Court held that a general ban could be regarded as proportionate “only in a context where there is a general threat to public safety”, which the respondent had not established.²

Secondly, France also invoked an inter-related set of more elusive, rights-based justifications for the prohibition, specifically the principles of gender equality and human dignity. It claimed that these aims could be understood as “protect[ing] the rights and freedoms of others” within the meaning of Article 9 of the Convention. The government argued that since the “full veil” had the effect of “effacing” the wearer from public space, it was “necessarily dehumanizing” – whether or not it was consented to – and therefore, it “could hardly be regarded as consistent with human dignity.”³ The face, it said, “expresses the existence of the individual as a unique person”, reflecting “one’s shared humanity with the interlocutor ... at the same time as one’s otherness.”⁴ The applicant described this characterisation of face veiling as an “abstract assumption, based on stereotyping and chauvinistic logic”.⁵ The government argued that even if this concern should only apply to coerced and not voluntary face veiling, a general ban was nonetheless proportionate given the “diffuse” nature of coercion and thus the impossibility of tailoring the prohibition to specific instances of coercion.⁶

Similarly, the interpretation of the voile intégrale as a symbol of female subjugation was argued to justify a general ban, on gender equality grounds, irrespective of individual consent.

However, the Court rejected these rights-based justifications. It held, on the one hand, that human dignity could not justify a “blanket” ban, given the uncertain and elusive meaning of face veiling. To this end it noted “the variability of the notions of virtuousness and decency that are applied to the uncovering of the

² Para. 120
³ Para. 81
⁴ ibid
⁵ Para. 80
⁶ Para. 112
human body”. Similarly, it held that gender equality could not be invoked to prohibit a practice voluntarily engaged in by women themselves, and thus the measure was considered disproportionate in relation to this aim specifically.

Thirdly, it was the most elusive and novel of the grounds France argued – that of social cohesion, roughly speaking, or what I will label “fraternalism” – which the Strasbourg court ultimately accepted as a legitimate basis for the ban. The French government argued that since “the face plays a significant role in human interaction”, the willingness to publicly reveal one's face constituted one “of the minimum requirements of life in society”. To deny this, it said, “is to break the social tie” and to reject the principle of vivre ensemble (literally, “living together”). In turn, the government argued that the aim of fostering the minimal conditions of collective life could be related to the “protections of the rights and freedoms of others” within the meaning of Article 9, and therefore, that it was a legitimate basis for limiting the right to manifest religious beliefs in the guise of face-covering attire. Accordingly, the Court accepted France's argument that the visual aspect of “interpersonal relationships” forms “an indispensable element of community life” and moreover, that it is necessary to “democracy” in the broad sense.

On the one hand, it might have been thought that a vague aim of promoting social cohesion – even if legitimate per se – could not be understood as a protection for the “rights and freedoms of others”, except in the most elusive and indirect sense. To accept, as the Court did, that face-veiling could be understood as “breaching the right of others to live in a space of socialization”, not only seems to overstates citizens' interest in seeing each others' faces: more fundamentally, it seem to stretch the term “right” to cover a rather intangible and elusive interest.

On the other hand, one might have thought that the objection invoked against the public safety justification would equally have applied to the “living

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7 Para. 120
8 Para. 118
9 Para. 81
10 Para. 122
11 Ibid
together” argument – such that, in order to justify a general ban in proportionality terms, France would have had to establish that face-covering, of the sort the law targeted, in fact had the effect of undermining social cohesion to an extent that posed a real threat to the democratic order and thus, to the rights and freedoms of others. In *Sahin v Turkey*, the Court controversially accepted that religious clothing could, in a certain context, be seen as representing an ideology that was incompatible with and threatening to democratic institutions, and thus – indirectly at least – as threatening the rights and freedoms protected in the Convention, over the long run. Yet in the *SAS* case, the impact of the prohibited practice on specific Convention rights is even more intangible. The Court accepted that face covering negated the values of “tolerance and broadmindedness without which there is no democratic society.” Yet even if face veiling were accepted as necessarily representing a defiance of democratic sociability, the threat posed to concrete individual freedoms seems empirically unfounded, or symbolic at best. In short, the link between sociability and the “rights of others”, in this case, was even more elusive and intangible than the link between “secularism” and rights that had previously been asserted in *Sahin*.

Nonetheless, the Court’s majority held that France’s general ban was proportionate to the legitimate aim of promoting “living together”, or democratic sociability, as a corollary of the “rights and freedoms of others”. It distinguished its previous judgment in *Arslan v Turkey*, which concerned Turkey’s ban on certain religious garb in public, based on the qualitatively unique nature of face-coverings compared to other forms of religious dress. It accepted that “a State may find it essential to give particular weight in this connection to the interaction between individuals” such that a general ban, in the interests of promoting *vivre ensemble*, would not be considered

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12 November 10, 2005, Application no. 44774/98
13 Para. 156
14 Februar 23, 2010, Application no. 41135/98
15 Para. 140
disproportionate. It was an appraisal of the sort that fell within France’s margin of appreciation.\textsuperscript{16}

In light of judgments such as \textit{Sahin} and especially \textit{SAS}, it increasingly seems that the Court will accept an amorphous and ill-defined range of justifications as limiting the right to manifest religious beliefs. In its judgments concerning religious liberty, it usually invokes a platitudinous formula – specifically, that it is “necessary to place limitations on freedom to manifest one’s religion or beliefs in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected”.\textsuperscript{17} In turn, this has allowed it to adjudicate on such restrictions in an ad hoc, if not completely incoherent way. In \textit{SAS}, it seems the Court relied on social cohesion, the most elusive of the justifications raised – rather than say, public security or human dignity – because only this could be shoehorned into the conceptual framework of proportionality, the Court’s dominant analytical methodology. What is particularly puzzling about the judgment is the causal link it identifies between democracy and fundamental rights and mundane, everyday dispositions of civility and sociability, virtues that have no immediate or obvious connection to the democratic order the Convention embraces. Certainly it can be argued that dispositions of civility, sociability or even altruism are necessary to the health of democracy, and thus of democratic freedoms, in the long run. Yet this can hardly justify general prohibitions on instances of individual conduct that seem to undermine such amorphous social norms, at least without evidence that such practices have become sufficiently prevalent to undermine democratic life in some specific, tangible way.

In the following sections, I will provisionally take at face value the idea that citizens may owe duties of sociability, civility or even of \textit{fraternity}. I will consider the sources of this idea in real-world political discourse and its traces in normative political philosophy, before discussing the specific social

\textsuperscript{16} Para. 156
\textsuperscript{17} Para. 126
functions this concept performs within a specific discursive and political framework.

**The ‘duty of fraternity’ in French discourse**

While the SAS judgment accepted that the aim of democratic sociability ("living together") could legitimately restrict the exercise of Convention rights, this idea has distinctive resonance in certain peculiarities of contemporary French political discourse, and specifically in the republican philosophy that dominates France’s political identity and political discourse.

To some extent, the anti-veiling discourse that supported the French law used an emancipatory rhetoric that framed wearers of the “full veil” as victims, and thus appealed to principles of liberty and equality, especially gender equality. In particular, the parliamentary commission on veil wearing, chaired by the communist deputy André Gerin, portrayed the *voile integral* (“full veil”) as a negation of freedom. Face veiling was described as being so contrary to human dignity that it could not be understood as truly consensual, or as an exercise of “liberty of dress”. Rather, it was presumed to be the product of manipulation, coercion or at least of overwhelming communal pressure, as “free will” is “conditioned” by various social factors. 18 Echoing La Boétie’s *Discourse on Voluntary Servitude*, which features in the Government’s “Republican Guide”, 19 the report noted that “victims” often “internalize their oppression”. 20 And as the *Conseil Constitutionnel’s* later ruling affirmed, even truly voluntary face veiling was a *symbolic* offence to “equality” as well as “liberty”. 21

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20 *Rapport sur la pratique du port du voile intégral, 98*
21 Decision no. 2010-613, October 7, 2011
Thus, “combating the voile intégral” was portrayed as a “work of liberation”, whether in the broad sense of promoting moral autonomy, or in the narrower sense of protecting women from social and communal coercion. However, the anti-veiling discourse appealed to duty as well as rights – and thus, paradoxically, depicted veiled women as aggressors as well as victims. Specifically, the voile intégrale was depicted as undermining the third prong of the republican motto - fraternity – as well as the more obvious principles of liberty and equality. During the parliamentary hearings, a prominent feminist, Elisabeth Badinter, invoked republicanism’s “duty of fraternity” (devoir de fraternité) against the practice of public face veiling – a rationale that the report, and the accompanying discourse, largely endorsed. And this idea proved distinctive, in particular, because unlike “liberty” or “equality”, “fraternity” imposed social obligations and duties for citizens – obligations which, it was assumed, could be enforced or shored using state coercion.

Banning the burqa, then, was understood as being as much about republican duties of decorum as being a matter of “rights”. Of course, the face-veiling law was defended with reference to a wide range of different normative concepts – including a broad interpretation of the principle of secularism (laïcité) and public security concerns – as well as the so-called “duty of fraternity.” Yet it is noteworthy that it is the rationale the Strasbourg court ultimately accepted – that of promoting fraternal sociability – which seems most specific to France’s distinctive republican ideology. In recent decades, the French concept of laïcité has been transformed from a liberal concept, centred on state neutrality towards religion, into a much broader doctrine that requires private citizens, as well as public officials, to exercise “discretion” when publicly manifesting their religious beliefs. And increasingly, this understanding of laïcité as checking

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22 Rapport sur la pratique du port du voile intégral, 18
23 ibid, 46
ostentatious religiosity in social life generally, rather than the narrower institutional sphere of the state, has been understood in fraternalist terms. *Laïcité*, in this sense, is understood as shoring up those fraternalist norms of social interaction that are deemed essential to the stability and social cohesion of a republican polity. What Laborde calls “fraternalist republicans” will be concerned that “abstract citizenship must be complemented with allegiance to a republican public culture.”\(^{25}\) The state, then, assumes the role of a “public socialising agent”\(^ {26}\) across multiple public and quasi-public sites.

Thus, what I will call “fraternalism”, in the French discourse, stems from a particular interpretation of republican sociability – that is, a concept of the correct ways of acting and interacting in social space. Just as the expansive understanding of *laïcité* has been linked to concerns for social cohesion, face veiling was interpreted, in the *Gerin* report and elsewhere, as exemplifying a broader phenomenon of “incivility”, connected to assertions of religious and cultural particularism, and perceived refusals to abide by established norms of social conduct. Indeed, under the “fraternity” heading, the *Gerin* report described face veiling as a “form of incivility”.\(^ {27}\)

To some extent, the *voile intégrale* was understood as violating the “duty of fraternity” because it represented an extreme version of dour religious austerity, as a rejection of expressivity and sociability. In this reading, the rejection of interaction with others – the alienating *repli sur soi* – reflected a broader rejection of individuality and autonomy, and thus an anti-modernist religious fundamentalism. Indeed, this echoed a familiar tradition of emancipatory perfectionism: in France, historically, the secularist project, and the separation of church and state, had been conceived not solely as an instrument of republican stability and legitimation, but as a means of promoting human flourishing, by emancipating citizens from religious

\(^{25}\) *ibid*


\(^{27}\) *Rapport sur la pratique du port du voile intégral*, 118
practices perceived as servile or oppressive. Indeed, the understanding of veiled women as being under the thumb of oppressive religious doctrines, and as being in need of emancipation by the Republic, contains obvious echoes of the anti-clericalist thinking of late 19th-century France. Bowen notes that in France, veiling practices generally are often associated with “with an older, more demanding form of Catholicism”, and the “submission and modesty” attributed to female religious orders.

In this more obvious reading, fraternity requires willful openness expressivity, and self-disclosure on the part of citizens, and face-veiling is un-fraternal simply because it is excessively modest and austere – because it rejects the expressivity necessary to realize republican norms of social interaction. Thus one witness before the parliamentary commission referred to the importance of maintaining a “candid identity” in republican society.

Another described face-veiling as a “radical rupture with reciprocity and exchange.” Similarly, the explanatory memorandum for the eventual law referred specifically to face-veiling’s “reclusive” character, claiming it “fails to satisfy the minimum civility necessary in social relations.” Thus the “fraternal” citizen is portrayed as one who is prepared to interact and communicate – or least to be seen – in public space. Indeed, the defiant and resistive citizen, who is able to “look others in the eye”, has long been used as a metaphor for the “status freedom” that republican thought embraces. And while a religious face-veiler might object that they remain capable of discharging various communicative civic duties, including protest, debate, voting, etc, this fraternalist demand

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29 Bowen, 69
30 Rapport sur la pratique du port du voile intégral, 115
31 Ibid, 119
appeals to a broader sense of social cohesion rather than civic cohesion in the narrower sense.

In another reading, however, face-veiling was deemed anti-republican - and indeed, unfraternal – not because it was too austere or indeed too servile, but rather because it was too ostentatious, or even flamboyant. And accordingly, republican duty was constructed not in terms of expressive sociability, but rather, modesty, decorum and self-restraint. Far from religious modesty defying republican expressivity, religious expressivity undermined republican modesty.

Thus in some iterations of the republican discourse, the burqa was not a negation of self-expression or public self-disclosure, but rather too individualistic, and too expressive. While in some instances, the Gerin report depicted the burqa as representing an austere religious fundamentalism, it also framed face-veiling as the product of a modern and “hyper-individualist” form of religiosities, one that rejected basic standards of civility. Face-wearing, it was affirmed, served a function of individuation and distinction, and thus, essentially a form of attention-seeking. It represented, according to one of the testifying experts, a “radical affirmation of personality” and a “search for identity in social space”. Some observers even portrayed face-veiling women as attention-seeking narcissists, seeking “self-affirmation” through willful rejection of social conventions. Thus one testifying anthropologist claimed that face-veiling expressed an “adolescent” conception of religion – “a desire to set oneself apart from conventional practice”.

Similarly, Some sociological and anthropological literature claims the practice reflects a desire for authenticity and "originality", and that it operates as a “a

33 Rapport sur la pratique du port du voile intégral, 46
34 ibid
35 See S. Amghar, “Le niqab, pour s’affirmer” (2010) 314 Projet
36 Rapport sur la pratique du port du voile intégral , 46
strategy of social distinction” – one which, Amghar argues, is partly a reaction to discrimination and social exclusion.

Thus Liogier argues that the distinguishing characteristic of the burqa in the European context is its “ostentatious” nature – the fact that it expresses a desire for visibility or distinction in public space, comparing it to “gothism.” And it is this very characteristic, he argues, which makes it “hypermodern”. Correspondingly, the political discourse on the burqa betrayed a broader anxiety as to declining social cohesion, and the onset of a more atomistic, individualistic society.

In this interpretation, face-veiling does not represent an attempt to distance or separate oneself from mainstream society, but rather to distinguish oneself within it; it is seen as pretentious and posturing, in the same sense, say, as youth culture. Bowen observes that during the earlier debates concerning the hijab in public schools, many objected to what they saw as “Muslims show[ing] themselves in public as distinct from other people.” Elisabeth Badinter argued that the “full” veil “makes an exhibition of the wearer, with everyone staring at this exotic object … [who] thus becomes an object of fantasy”. More generally, the political and academic understanding of face-veiling as an act of self-differentiation largely mirrors Pierre Bourdieu’s understanding of social practice as being oriented towards distinction in competitive social “fields”, and, specifically, of religious practice as being structured by a competition for symbolic and social capital within religious micro-societies as well as within a wider, complex and differentiated society.

If, then, face-veiling is understood as aggressively expressive or ostentatious, “republican” duty is, accordingly, understood partly in terms of social conformity

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38 Amghar, 24
39 ibid 23
40 Liogier, 16
41 Liogier, 16
42 Bowen, 69, emphasis added.
43 Rapport sur la pratique du port du voile intégral, 47, emphasis added
– and specifically, the expectation that the republican citizen should not undermine social cohesion by aggressively differentiating herself from the social mainstream. Bowen, indeed, refers to a “a republican sameness, a social anonymity in the public sphere.” And paradoxically, such conformity is presented as a realization of “universalist” republican citizenship: Blandine Kriegel captured this in asserting that “we have to place ourselves in the public sphere by abstracting from our individual characteristics.” When mapped onto the virtue of “fraternity”, this means the “good republican” is not necessarily the expressive or convivial citizen, open to self-disclosure and willful reaction, but rather one who effaces their private identities in public. Thus, through the abstracting universalist lens of French-republican thought, fraternalism is given an austere translation.

This contradiction is captured in the symbol of the Marianne, used in the Government’s anti-burqa poster as a symbol of French values. She is ostensibly expressive and defiant; correspondingly, however, the use of the image implicitly legislates the correct modes of self-presentation for republican citizens.

The Gerin report seemed to contradict itself in ascribing a rather aggressive form of agency to veil-wearers while simultaneously treating them as victims in need of rescue (from their presumed oppressors) and of emancipation (from their own beliefs). Niqab-wearers were depicted as victims lacking agency, but also as being engaged in a hyper-individualistic struggle for distinction. Equally, it seems paradoxical that the Gerin report could portray face-veiling both as being the product of a fundamentalist religious modesty – and specifically, as the product of a Saudi-inspired Salafism – but also as reflecting the quintessentially modern social vices of “exhibitionism and voyeurism”.

Yet there is perhaps no necessary contradiction between religious clothing being interpreted as at once ostentatious and austere; Bowen, for example, argues that during the earlier hijab debates, veiling was understood as signifying “the wearer’s greater piety

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44 Bowen 158, emphasis added.
45 The advisor is Blandine Kriegel, quoted in Bowen, 14.
46 Rapport sur la pratique du port du voile intégral, 119
and purity than those around her.” Thus, modesty is perceived as an aggressively immodest form of self-differentiation in public space; a contradiction whose political function and political significance I will consider in the final section.

**Fraternalism and civility in republican theory**

I have described how the French discourse depicted the *voile intégrale* as undermining republican virtues not because it was excessively modest or austere, but rather because it was threateningly *immodest* or ostentatious. In short, it was *uncivil*; it defied the decorum expected of republican citizens. Accordingly, republican duty was not understood in terms of expressivity, sociability and openness, but rather, somewhat counter-intuitively, as requiring forbearance and self-restraint. How, then, does this real-life discourse about civility relate to the political theory of civility?

On the one hand, the notion of fraternalism, and the reaction against perceived ostentation and immodesty, reflects peculiarities of a specific French discourse. On the other hand, however, the concept of a “duty of fraternity” finds echoes in the republican history of thought, and specifically the peculiar account of civility that republican thinkers, and indeed historical republican polities have embraced.

Some central republican thinkers explicitly problematized ostentation and immodesty as undermining republican virtues. Rousseau, for example, condemned the flamboyant expressivity of modern, commercial societies as symptomatic of corruption. Whereas he famously claimed that servility and domination could only be remediated through the impersonal rule of the “general will”, Rousseau equally assumed that republican self-government could

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47 Bowen, 187
only be realized in highly austere and cohesive societies.\textsuperscript{48} He understood that complex social practices harbour insidious forms of intra-personal and structural domination. In highly differentiated societies, complex cultural practice - “pretentious pleasures”\textsuperscript{49} - reflect a corrupted \textit{amour-propre}, manifesting itself as a “frenzy for distinction”.\textsuperscript{50} Thus in the early-modern social context, he viewed luxury and ostentatious as subtle expressions of corruption, and as undermining those forms of fraternity and solidarity that were necessary for the general will to be legislated, and political freedom realized. In liberal society, he laments, ritualism and cultural consumption become increasingly specialised and privatized. Because they serve a purpose of individual distinction, ostensibly benign cultural practices negate republican fraternalism. Thus while Rousseau famously rejected the Genevan theatre, he was apprehensive of flamboyance and theatricality in the social world more generally.\textsuperscript{51}

And in turn, he argued that domination was insinuated in the everyday, especially in tastes and manners. While other 18th
century thinkers argued that commercial society would elevate virtue through the refinement of manners in “an increasingly transactional universe”,\textsuperscript{52} he understood that refined manners served a function of distinction and thus, of domination. Thus Rousseau’s social politics places a seemingly eccentric central emphasis on rituals and symbols, on speech and dress, decrying “the frivolous tastes created by opulence.”\textsuperscript{53} The corrupted \textit{amour-propre} he identifies in liberal societies assumes a partly embodied form: as Ellison puts it, Rousseau opines that “the language of the

\begin{itemize}
\item J.J. Rousseau, \textit{Considérations sur le Gouvernement de Pologne} (1772, hereinafter \textit{Poland}), Chapter 3
\item Rousseau, in his \textit{Discourse on Inequality} applies this term to \textit{amour-propre}. JJ. Rousseau, \textit{Discours sur l'origine et les fondements de l'inégalité parmi les hommes} (Paris : Flammarion, 1755/2008 (hereinafter \textit{Second Discourse}), 142.
\item Rousseau, \textit{Poland} Chapter 11
\end{itemize}
body [is] ... in public life ... always costumed.”

Much like other forms of self-expression in liberal society, flamboyant or immodest dress reflects a logic of self-distinction. Thus in his constitutional project for Poland, he urges the Poles to “revive simple customs and wholesome tastes”, and recommends specifically that public figures and officials should “wear nothing but the national costume.”

Simple civic rituals, instead – such as festivals and games – will “divert people from dangerous idleness, effeminate pleasures, and frivolous wit.”

And more generally, he emphasizes the transparency of spectacle and expression in republican society; in preference to complex ritualisms – or what he calls “exclusive spectacles”. In the republic’s “innocent spectacles,” “the many societies become one”, as our intoxicating togetherness erases the need for intra-personal distinction and pretentious expressivity or self-disclosure. And transparency of this kind requires, at a most basic level, that citizens first be seen, so that their amour-propre, their need for recognition and respect, can be exercised in transparent forms. We must appear to our fellow citizens, he insists, bereft of artifice; republican ritualism, then, will teach citizens “to live in the eyes of their fellow citizens and to desire public approbation.”

Thus, ostentation is interpreted as defying republican transparency because it sees amour-propre – our need for distinction and approbation – consummated in privatised, inaccessible sources.

This focus on decorum on manners is not a peculiarly Rousseauan quirk, and arises elsewhere in the republican history of thought. Viroli, for example, notes “an aesthetic sense of decency and dignity” in the Italian republican tradition in particular. Virtues like civility or fraternalism might be understood in

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54 C. Ellison, “Rousseau and the Modern City: The Politics of Speech and Dress” (1985) 13 Political Theory 497, 521
55 Rousseau, Poland, Chapter 11
56 Poland, Chapter 3.
57 ibid
58 Letter to d’Alembert 62, (my translation)
59 ibid, 63 (my translation)
60 Poland, Chapter 4
61 M. Viroli, Republicanism (New York: Hill and Wang), Chapter 5.
Aristotelian or perfectionist terms – that is, as a means of realizing particular understandings of human flourishing or excellence. Alternatively, the republican history of thought suggests these virtues might be promoted simply in the interest of fostering those civic and participatory dispositions that are needed to give life to republican ideas and institutions. They might comprise “the traits citizens need to talk with one another as equals in the public fora of a contemporary pluralistic society.”\textsuperscript{62} This concern stems from a wider republican anxiety that, in societies dominated by commercial and private interest, “the political community based on common political deliberation … gives way to a corrupted collective life constituted by egoism and competition.”\textsuperscript{63}

However, it is unclear how, even if they are in some sense necessary, these republican virtues – which is historically contemplated within cohesive, “face to face” polities – could be realized in complex, mass liberal societies.\textsuperscript{64} And feasibility aside, this project could only be pursued at considerable cost to private freedom and independence – as evidenced by the bracingly austere autarky Rousseau envisages for republican societies.\textsuperscript{65} While not aimed at fostering human excellence as such, the virtues the republican state promotes will have a formative effect on citizens’ dispositions across various “private” and non-political domains, encompassing “affective, intellective, and appetitive dispositions”.\textsuperscript{66} Thus John Adams insisted “public virtue cannot exist … without private.”\textsuperscript{67} The full-blown, rather demanding fraternalism that republicans tend to espouse may be contrasted with a narrower, rather less demanding account of civility associated with liberalism, one that is closely connected to the modern

\textsuperscript{62} P. Weithman, “Political Republicanism and Perfectionist Republicanism”, (2004) \textit{The Review of Politics} 294
\textsuperscript{66} J.F. Spitz, “The défense républicaine: some remarks about the specificity of French republicanism”, in S. Besson and J.L. Marti, \textit{Legal Republicanism: National and International Perspectives} (Oxford University Press, 2009), 292
\textsuperscript{63} R. Goodin, “Folie Républicaine” (2003) 6 \textit{Annual Review of Political Science} 55
\textsuperscript{64} R. Goodin, “Folie Républicaine” (2003) 6 \textit{Annual Review of Political Science} 55
\textsuperscript{65} on the costs of republican goals, see R. Goodin, “Folie Républicaine” (2003) 6 \textit{Annual Review of Political Science} 55
\textsuperscript{66} Weithman, 304
\textsuperscript{67} A. Kock and W. Peden, \textit{The Selected Writings of John and John Quincy Adams} (New York: Knopf, 1946), 52.
concept of toleration. While liberalism risks engendering alienation and instability in neglecting the “motivational anchorage” of civic self-government, republican fraternalism, in contrast, seems to countenance a kind of communitarian excess – the “unalluring features” of Jacobinism – as the price of civic efficacy. Goodin, indeed, argues that republican policies aimed at instilling virtue have engendered not only oppressive social conformity – driven by “dignity and embarrassment” – but also moral hypocrisy. Republican mores, he claims, require the appearance of honour and dignity – “empty exhortations to virtue”.

Fraternalism as habitus

The French debate concerning the anti-social or uncivil nature of face veiling, or of “ostentatious” religious garb generally, can be addressed in light of the philosophical concept of civility as a virtue or duty, whether as a matter of abstract ethics, or as a political virtue linked to the stability and vitality of republican government. And in the French debate, indeed, it is rooted at least ostensibly in a concern for the affective dimensions of republican stability.

For Rawls, for example, civility is linked to the practice of public reason, and is manifested as a preparedness to present political arguments in terms that are accessible to those holding conflicting and incompatible “comprehensive doctrines”. Thus “the civil citizen exercises tolerance in the face of deep disagreement about the good”. What renders civility necessary, it is presumed, is the existence of conflicts concerning the good, and its main social function is to mediate political life and especially, political speech in the face of such

68 C. Orwin, “Civility” (1991) 60 American Scholar 553, 559
70 Spitz, 281
71 Goodin, 72
disagreements. Civility, in short, is understood as a set of speech constraints, and it is understood in largely propositional terms, thus as a set of constraints on the content of public speech or political argument.

However, the problem, in part, is precisely the abstract level at which this debate occurs. One might contest liberal, Rawlsian civility based on the understanding of politics (the “circumstances of politics”) from which it stems. For example, it might be argued that civility is needed not merely because we disagree concerning the good life, but rather because we disagree on a more fundamental range of matters, that is, our basic political arrangements, including concepts of right, as well as our diverging understandings of the good. Civility might be required, for example, merely to maintain a modus vivendi, or a less ambitious account of political order than Rawls contemplates. But while civility, even in this sense, eschews the possibility of consensus on fundamental matters, and while it relates to what people do to each other (e.g. refraining from political violence) rather than what they merely argue, it is still understood in propositional and normative terms – because at its root lies a normative disagreement concerning the purpose and nature of political community.

Going further, it is possible that civility performs a much different social and political function – one that is irreducible to propositional questions and disagreements, whether concerning the good or the right. On the one hand, its subject is not necessarily political at all, at least in the narrow sense pertaining to the terms of our political arrangements. Rather, it is political in the slightly wider sense in that it pertains to our mutual interactions in the context of our social life in common. And what this suggests, on the other hand, is that in terms of its content, the constraints civility imposes are not normative, propositional or discursive in nature, because they do not respond to normative questions, whether of the right or the good. Since civility in this sense responds to the need to live together in visceral, affective and habitual terms, it is not an intellectual or discursive orientation, but rather a physical and linguistic one.

74 See e.g. C. Mouffe, The Democratic Paradox (London: Verso, 2000)
In turn, I argue that this clarifies the political significance and function of civility’s content – that is, the specific behaviours and dispositions that it actually requires of citizens within particular, historically situated polities.

Civility, in the adjusted since I outlined, is understood as a set of rules, norms and general orientations or dispositions through which citizens extend respect to each other within a particular social framework. And while it is often discussed in a political-philosophy context specifically, ethicists have sometimes suggested that civility or “good manners”, in a broader sense of courtesy or etiquette, may be understood as a means of extending respect as a more general moral virtue. In turn, such practices might plausibly be encouraged by political means. This blurs the distinction between the “political” civility thought relevant to the sphere of justice, and the “polite” civility usually thought of as outside it.\(^{75}\) But the important point is that what civility requires, in practice, will depend on a set of symbolic meanings that are culturally and historically specific. Civility in this wider sense will extend beyond political speech – or even speech per se – to include gestures and rituals. And civil, or “polite” practices (e.g. donning a hat) often make no logical sense considered in the abstract; they have an element of situational arbitrariness. Indeed, theorists of civility typically accept its content–that is, the specific rituals and gestures it requires – are culturally and morally arbitrary. Being civil simply requires “conforming to whatever the rules are”; moreover it requires the appearance of respect, through the performance of such codes, rather than actual respect.\(^{76}\) The point, in part, is that civility, in any social context, is performed, and that the behaviours civility comprises are highly learned, rather than being the product of ethical reflection as such. Nonetheless, moral theorists of civility insist that such “performance” still has a moral function, precisely because – as Buss puts it – “appearing to respect people is essential to really respecting them.”\(^{77}\) Despite manners having a situational

\(^{75}\) Calhoun, 257
\(^{76}\) ibid, 252
arbitrariness, respect can only be communicated in a given symbolic framework, through “codified social rules”.\(^{78}\)

What can this tell us about the concept of civility, or indeed fraternity, as a political duty? It is true that in imperfect worlds, moral respect can only be communicated in the framework of existing conventions, symbols and manners. Perhaps, in abstract terms, an ethical virtue of civility requires us to demonstrate respect through whatever conventional customs and symbols are used within a particular cultural and social framework. But such “manners” are first and foremost a social technique, and they must be learned. Borrowing Pierre Bourdieu’s phase, they represent a habitus, a set of strategies and orientations used to negotiate a particular social world.\(^{79}\) The social dynamics through which such techniques are learned and acquired perform a particular political function. What this duty of civility implies, effectively, is that a meaningful moral life requires us both to perform and first to learn manner-based codes of civility. In real-world politics, duties of civility (or fraternity) are, by necessity, instantiated and interpreted in concrete cultural and social frameworks. And it is only in this light, in turn, that the political value, and indeed the political function of “civility” can properly be understood.

Civility, I argue, should not be approached as an abstract ethical duty, but rather as a socially and historically situated discourse. As already noted, civility must be performed – indeed it only can be performed – within a culturally contingent framework of social conventions. And it can only be exercised by mastering a peculiar set of social techniques, that is, linguistic techniques and techniques of the body, through which the performer manages to communicate appropriate forms of respect in a culturally appropriate or coherent way. Bourdieu’s insight more generally is that power relations are embedded “in the most automatic

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\(^{78}\) Calhoun, 260

\(^{79}\) P. Bourdieu, Language and Symbolic Power (J. Thompson ed Harvard University Press, 1999),
gestures or the apparently most insignificant techniques of the body”,\(^80\) thus social power is located in morally arbitrary forms of know-how.

Thus, irrespective of whatever civility entails as an abstract ethical virtue, we may ask what kinds of exclusions, and indeed \textit{violence} it performs, in this instantiated, particularized guise. More concretely, for example, John Bowen argues that French \textit{laïcité}, with all the duties and restrictions it imposes on religious citizens, should not be understood not as an abstract philosophy, but rather as an expression of “collective narrative habits”\(^81\). Essentially, face veiling is problematised because it defies a republican \textit{habitus} – and in turn, this is irreducible to any set of normative propositions about the nature of republican freedom or republican politics.

By the republican \textit{habitus}, I mean a concept or sense of how republican citizens orient, and \textit{ought} to orient themselves in the social world – a set of bodily and linguistic techniques that serve as strategies for interaction and self-presentation. The republican \textit{habitus} consists partly of bodily dispositions, orientations and techniques through which the republican citizen positions and presents herself in the social world. And while the requirements of the \textit{habitus} – such as duties of civility or fraternity – are irreducible to normative republican theory, they are supported, explained and enforced in those terms.

As argued previously, the socially conformist nature of republican culture undermines the “universalist” claims of French-republican thought, and specifically, the claim that citizenship and political identity transcend pre-political, organic solidarities and commonalities.\(^82\) The republican polity cannot be understood as culturally neutralist, as a purely abstract and universal edifice, if, in practice, republican virtue requires “cultural convergence.” \(^83\) Thus

\(^{80}\) \textit{Ibid}, 466
\(^{81}\) Bowen, 5.
\(^{82}\) See generally O. Bui-Xuan, \textit{Le Droit Public Français entre Universalisme et Différentialisme} (Paris: Economica 2004).
\(^{83}\) Laborde, \textit{Critical Republicanism} (n 29), 178
fraternalism is interpreted in tacitly ethno-cultural lines, despite the abstract “republican” verbiage through which it is usually presented.

On the one hand, the “duty of fraternity” cannot be understood solely as an opportunistic appropriation of republican terminology for an ethnocentric, nationalist politics. The idea that “ostentatious” religious conduct is somehow un-republican has deeper and older roots: for example, in the hostility of 19th century republicans against Catholic processions perceived as provocative and “triumphal”. Nonetheless, it is clear that, in its specific content and its requirements, republican fraternalism weighs more heavily on ethnic and religious minorities. My argument, in part, is that these disparate real-world effects of the concept can best be understood precisely where fraternalism is understood as a *habitus*, a set of bodily and linguistic techniques that subjects use to orient themselves in a particular social world. This assumes, more generally, that when abstract political ideas are translated and instantiated in “real life”, they are alloyed to and mediated by organic, non-political solidarities. Neutralist concepts like republican citizenship are, in short, ethnicised in their social instantiation. Thus, while the French leitmotif “vouloir vivre ensemble” (the “will to live together”) refers abstractly to the inter-subjective political identity that underlies the social contract – one that transcends citizens’ non-political commonalities – more concretely it translates to a set of mundane dispositions and patterns of behaviour thought of as facilitating and stabilizing republican social order. But its specific instantiations in terms of conduct – say, the demand of visual availability – undermines the culturally-neutralist premise of the republican theology from which it is originally derived.

I have noted that Fraternalism can only be expressed through conventions and symbols that are inevitably contingent, historically and culturally. Inevitably, the standards and norms is comprises – say, requirements of discretion or modesty – will be interpreted in culturally specific ways. For example, there is no such thing as a culturally neutral understanding of discretion or modesty. In turn, the interpretation or translation of duties of this kind will tend to enshrine

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contingent social hierarchies, whether gendered or ethno-cultural. It is obvious how the burdens of fraternalism are unevenly distributed, along such lines. The ostentatious or provocative nature of clothing practices, or corporal display, is culturally specific in obvious ways. Moreover, the republicanised aversion to flamboyance in the French discourse, and the evocation of decency and dignity, echoes republicanism's historical emphasis on stereotypical masculine virtues.85 Thus the learning process for civility, understood as a social technique, imposes an unequal burden in not only in ethno-cultural, but also in social and gender terms. The techniques that civility or fraternalism comprise are differentially distributed and acquired along cultural and class lines. What the French example helps to demonstrate, then, is the location of this learning process within a broader linguistic and symbolic economy in which the republican habitus – and its norms of civility – is constituted and reproduced.

An understanding of fraternalism as a habitus helps illustrate, then, the degree to which its specific requirements – whether modesty, discretion, or expressivity, etc. – are culturally and indeed morally arbitrary. As pointed out earlier, face veiling was castigated for violating republican norms both because it was excessively modest and because it was excessively flamboyant. But this is perfectly consistent with the social logic of republican habitus, or the nature of habitus generally. To belong or to achieve legitimacy in a social field, on whatever scale, requires us to master the bodily and linguistic techniques that confer legitimacy or status within that field. For example, political discourse is highly stylized and encoded. To participate effectively in it, we must master certain idioms whose value is purely arbitrary independently of the participatory competence it confers. Social power is constituted partly in the possession of such techniques. In France itself, for example, public discourse operates through an esoteric republican jargon (through a set of republican idioms about public affairs (vivre-ensemble, repli identitaire, etc) 86 In political discourse, participatory competence is appraised and assigned based on mastery

86 Laborde, Critical Republicanism 7.
of those idioms which provide a highly-encoded form of currency or capital necessary to participate in the “field” of political discourse.  

Participation in political discourse, then, is fundamentally a matter of social rather than cognitive competence. For Bourdieu, agents are dominated where they lack “the linguistic competences valorized in a particular social or institutional domain.” But this equally applies to physical and corporeal skills – that is, in the ways we use our bodies. Participatory competence is not limited to the mastery of idiom; indeed it is located partly in the “embodied character of speech”. It is based partly on an “articulatory style” that encompasses accent, bodily technique, etc. In any event, whether discursive or corporeal, these skills and techniques are unevenly and incompletely acquired, even by those who actively seek to acquire them. Civility is highly encoded, then, both in its bodily performance as well as in its discursive justification. Thus the uninitiated are doubly disadvantaged in the linguistic and symbolic economy of republican discourse.

Thus, while the notion of civility as a virtue is often been dismissed as an insidious veil for bourgeois oppression – a “badge of class distinction” – this stems largely from the fact that it is constituted in linguistic and performative techniques. The bodily and linguistic techniques that constitute republican civility are highly encoded partly because they embrace a situational or cultural specificity which will appear arbitrary and perhaps incomprehensible to those not already endowed with it. Thus, those who speak with the wrong accent at a polite dinner party may be perceived as deviant, yet those who ape their betters’ accent will be phonies, try-hards, arrivistes. This is supported by Bourdieu’s analysis of the “field” and the various modes of acquisition for positional

87 See generally Language and Symbolic Power
88 K. Topper, “Arendt and Bourdieu between word and deed” (2011) 39 Political Theory 352, 360
90 Calhoun, 252
Whether republican civility requires expressivity or austere restraint, its performance requires certain bodily techniques, which in turn, represent a form of social capital, experienced as the “feel of the game”. Whatever its merits in the abstract, then, civility (or indeed “fraternity”) imposes unequal burdens precisely because it assumes (partly) embodied forms. Thus, the contradictory demands that republicanized discourse imposes on minorities – both to efface their identities and simultaneously, to become appropriately expressive liberal subjects – is perfectly in keeping with the logic of habitus generally. This contradictory aspect of the anti-veiling discourse makes sense in social, if not in logical or strictly propositional terms.

Conclusion

The anti-faceveiling law should not be interpreted as the expression of a coherent normative position concerning the emancipative responsibilities of the republican state, or as the expression of a perfectionist concern for human flourishing. Nor, however, should we understand it solely as a defensive “blood-and-soil” nativism. Instead, it can be seen as an attempt to legislate a republican habitus understood as a set of mores and dispositions concerning appropriate forms of sociability and interaction in republican society.

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