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Burkini re-energises discussion of public virtues, private vices



Illustration: Eric Lobbecke

HENRY ERGAS THE AUSTRALIAN 12:00AM August 29, 2016

To Australians, who are regularly told by the Cancer Council not to venture into the sun without being covered from head to toe, the ban on the burkini always seemed far-fetched. We may have to fight the terrorists on the beaches, but only the Gallic mind could believe that replacing *liberte, egalite, fraternite* by *liberte, egalite, nudite* would drive the Islamists, repelled by serried ranks of scantily clad women and men in budgie smugglers, into the sea.

Friday's decision of Le Conseil d'Etat, France's highest administrative tribunal, to annul the ban, which it found unnecessarily restricted individual freedoms, was therefore a victory for commonsense. But that decision has not ended the controversy. Launching his campaign for re-election to the presidency, Nicolas Sarkozy promptly announced he would introduce legislation to override the conseil's decision; and the Socialist Prime Minister, Manuel Valls, has also suggested legislative action might be appropriate.

Nor would that sequence of action and reaction be unusual. Rather, it mirrors the path that led to the prohibition in 2003 on "ostentatious" religious symbols, such as the Muslim headscarf, in public schools, setting the precedent for the 2010 legislation that banned the burka from public places.

The issue had first arisen in September 1989, when three girls, who showed up at a middle school in Creil in northern France wearing headscarves, were told to either remove the scarfs or go home. Several other schools then adopted that policy, prompting appeals to Le Conseil d'Etat.

The conseil's position was always the same: unless there was evidence of disruption to the school's functioning, the girls had every right to remain in school. Public opinion, however, swung sharply the other way; the result was a commission of inquiry that recommended a statutory ban the conseil would have to respect.

It would be easy to mock the law that put that ban into effect. Among its notable victims have been young Sikhs who only managed to remain in public schools thanks to an ever more contorted interpretation of what constitutes a turban.

As for Muslim girls, the subtle distinction between bandannas, which the law apparently permits, and head scarfs, which it forbids, has been grist to the mill of the philosophy classes that are the pride of the country's best lycees, exemplifying the inescapable chasm between words and things.

Adding to the theatrics, because the symbol, to infringe the law, must attest to the wearer's religious affiliation, atheists cannot be prohibited from wearing head scarfs, Muslims skullcaps or Jews large crosses in youthful protest. And there are less innocuous consequences too, with the growth in state-funded Islamic schools, where the bans do not apply, being the most prominent.

In short, the Jacobin belief in legislation's capacity to reshape society by decree has, once again, provoked a spate of unintended consequences.

But the fact that the response seems so worthy of Inspector Clouseau — “there is a time to laugh and a time not to laugh, and this is not one of them” — hardly means there is not a real issue.

In the French debate, that issue is expressed in terms of a distinction between the private sphere where, as Sarkozy put it in 2003, “freedom is the rule”, and a public sphere, such as the school system, where the community expects and can impose a degree of “Republican conformity” so long as it does so only to the extent needed to promote social integration and does not, in the process, undermine private freedoms.

The danger, if “particularistic identities” are instead allowed to invade public life, is that individuals will not have enough that binds them together to forge the shared values democracy requires. The terms are foreign but the underlying issue is not. In his notebooks, the British philosopher Michael Oakeshott put it

well when he stressed that civil association “is concerned with people we may even despise, but with whom we must have a relationship because we live near them”. Politics — the “art of accommodating moralities to one another” — must make that relationship sustainable, not by “imposing a way of life” but by “organising a common life”. Yet it cannot do so if a misguided pluralism is taken to mean that anything goes.

Where the limits should be drawn is inevitably controversial. But the great social theorist Erving Goffman thought social interaction had to be based on a “principle of disattendability”, which says behaviour in open contexts, such as public places and institutions, ought not to intrude on the moral norms of those to whom the contexts are open. At the very least, the behaviour should not be threatening; Goffman himself suggested the principle demanded of those using public places a high degree of unobtrusiveness, allowing others to treat their presence as mere background noise.

Just stating the principle says nothing about its appropriate application. What is certain, however, is that the stresses on it are growing — and not only in France. After all, as the economist Paul Collier argues in *Exodus*, his masterly book on international migration, the shrinking of distance brought by information technology has not only propelled globalisation, it has also allowed enclave cultures to flourish in places like Sydney’s Lakemba, resisting the forces that traditionally made for integration and incubating separatism and extremism.

Set against that challenge, banning the burkini is a teaspoon solution to an ocean problem — and the wrong teaspoon at that.

It is not on the beaches that Islamist fundamentalism will be defeated but if the threats to which the French are reacting are simply ridiculed, what little social cohesion we have left risks being washed away, in Michel Foucault’s arresting image, like a face drawn in sand at the water’s edge.