Special Section Article

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'When I see what democracy is…': bleak liberalism in a French court

Despite extensive writing about liberalism in anthropology, liberal subjects and publics remain strangely elusive as objects of ethnographic enquiry. Anthropologists have mostly studied liberalism in light of new forms that supersede and reconfigure it, or in light of the marginalised subjects it excludes. These approaches have produced useful critical insights, but they have left liberal publics and subjects themselves hanging in a zone of ethnographic indistinction, front and centre of the picture as objects of critique, and yet persistently out of ethnographic focus. Liberalism itself features in the end as little more than a mirage, a constitutive impossibility: a practice that is abstract, a place of no place, an impersonal form of personhood. This paper explores the limits of these approaches by considering different possible readings of an ethnographic setting in which 'the liberal public sphere' is imagined, challenged and policed: a courtroom in Paris that specialises in press law. The paper suggests one potential way out of the ethnographic elusiveness of liberalism, by taking seriously the ways in which the impossibility of liberal ideals is already critically acknowledged by (and written into) the practices, institutions and forms of subjectivity that nevertheless seek to orient towards them.

Key words liberalism, law, free speech, ethnography, France

Introduction

Mr Bekkouche[1] looks very alone. He stands at the bar in the middle of the nearly empty wood-panelled courtroom. Straight ahead, three judges are looking down, by turns, at him and at their notes. The prosecutor, to his right, is in full flow: 'Are you aware of the extent to which these words make you personally liable? Associating the word "believe" to the Holocaust…'. She says, sounding incredulous. From her raised wooden box, on a level with the judges' bench, the petite black-robed woman towers over the heavy-set man. Her contained but palpable anger sounds to me as I imagine it sounds to him, ever-so-slightly stilted with legalese, a recognisable affect stretched over angular sentence structure and (to us) awkwardly formal terminology: 'One cannot, without penal repercussions, doubt the existence of the Holocaust, insofar as one does so in public!' she thunders. Mr Bekkouche stands and takes the remonstrances. It is not his turn to speak.

Despite intense concern with and extensive writing about the topic in anthropology, liberalism remains a strangely elusive object of ethnographic enquiry. This is due in part to anthropologists' widely shared commitment to a critical unveiling of the privileges, inequalities and exclusions that are camouflaged by liberal ideals, procedures and institutions. Important as this is, it has typically led the ethnographic gaze to focus not on self-consciously liberal subjects and practices, but on those subjects and

[1] All names in this paper are pseudonyms.

groups who are marginalised or excluded by liberal systems, visions and structures. Thus, anthropologists have studied the intrusive ministrations of western liberalism on populations that outsiders define as improperly liberal and in need of reform (e.g. Englund 2006). Others have focused on the effects of purportedly liberal policies and institutions on minorities within western states – such as Muslims in France (Asad 2006; Bowen 2007; Fernando 2014; Iteanu 2013). This commitment to studying liberalism 'through its shadows' – as Talal Asad (2003) recommended for the closely related category of secularism – has been the rule in anthropological accounts, with a few notable exceptions (Kelly 2015; Reed 2015). Yet this now familiar form of argument comes with some ethnographic blind spots. Anthropological evocations of liberalism 'through its shadows' tend to be pointedly asymmetrical, parsing out critique of liberal discourses, institutions, procedures and assumptions on the one hand, and on the other hand ethnographic elucidation of the subjectivities of persons living in their shadow. Valuable and important as this approach is, it leaves self-consciously liberal subjects themselves hanging in a zone of indistinction, front and centre of the picture in some ways, and yet ethnographically out of focus.

This asymmetrical approach stems in part from a political commitment to critically interrogating liberalism while making ethnographic space for its alternatives. As a reviewer of this paper put it, anthropologists may want to be more critical of liberals than of other groups because (some kinds of) liberals are in very privileged positions. I will return to this argument in the conclusion. However, the asymmetry also responds to a more fundamentally methodological difficulty. Liberal subjects, practices and spaces are frequently defined, both by proponents and by critics of liberalism, in terms of impersonality, abstract universality and proceduralism. Since ethnography gets its hallmark realism from dealing with specific, situated, embodied persons and their practices, an *ethnography* of 'liberalism' thus defined seems like a constitutive impossibility. As soon as they become accessible to ethnography, liberal subjects, institutions, publics and practices can no longer be quite what they claim to be – universal, abstract, anonymous and impersonal. The ethnography of liberalism, from this perspective, seems to be necessarily and unavoidably coterminous with a critique of liberalism's self-understanding, a negation of its possibility. To the project of studying 'real existing liberalism' (introduction, this volume), ethnography seems to bring the blunt rejoinder that, because of its commitment to universalism and bloodless abstractness, in actual fact 'liberalism doesn't exist.' (Fish 1994: 134).

The paper suggests a way out of this impasse, building on literary scholar Amanda Anderson's observation that widespread scholarly critiques of liberalism (and also some classic defences of liberalism) underplay the complexity of liberal subjects' aesthetic and ethical commitments (Anderson 2016). Anderson notes that liberalism is not, as has often been assumed, the negation of ethos in favour of procedure (2006) or of detachment (2001), but rather the re-imagination of procedure and detachment as thick substantial commitments, as constitutive of an ethos.

These arguments dovetail with anthropological explorations over the past decade or so, of the ways in which abstraction and detachment are themselves social, material and embodied achievements (Candea et al. 2015). This point has been explored, for instance, in relation to studies of bureaucratic formalism (Du Gay 2000), of scientific objectivity (Candea 2010, 2013; Daston and Galison 2007; McDonald 2015), of political subjectivity (Candea 2011; Mahmud 2014; Reed 2015) or in relation to the crafting of secular bodies (Hirschkind 2011; Scheer et al. 2019). All of these cases point

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to the ways in which ideal horizons of abstraction, distance, detachment or disembodiment can be made accessible to ethnography as long as one stops dismissing them as mere fictions and considers instead the ways in which they motivate and inspire actual embodied practice, emotions and affects.

Singling out the specificity of liberalism within this broad collection of family resemblance terms (objectivity, formalism, secularism, etc.) is a more complex task than I have space for here. As a starting point, however, one might follow Anderson's observation about a widespread and characteristic aesthetic attitude, which she terms 'bleak liberalism' (2016): bleak liberalism is characterised by a self-conscious split between an 'aspirational moral viewpoint' (2016:49) and a sustained 'sociological realism' (2016:35). Bleak liberalism describes the peculiar aesthetic, affective and ethical sensibility of subjects who remain committed to liberal ideals while keeping in view 'the intractability of liberal vices, the limits of rational argument, the exacting demands of freedom amidst value pluralism, the tragedy of history and the corruptibility of procedure' (2016: 2). Anderson's formulation usefully reminds us that liberal subjects (like all other subjects) orient towards ideals that they are nevertheless often keenly aware of not being able to fully realise in practice. It suggests a focus for ethnography in that the consciousness of this failure is itself a richly aesthetic, affective and embodied experience. From this perspective, the seeming self-contradictions of 'real existing liberalism' fall away.

This paper explores the ethnographic traces of bleak liberalism in one specific, self-consciously liberal setting: the Chamber of the Press and of Public Liberties of the Paris tribunal. Often known simply as 'the 17th chamber', this courtroom is entirely devoted to cases concerning freedom of public expression and its limits. The 17th chamber has seen a number of historic cases, including a famous trial in which Charlie Hebdo's re-publication of the controversial 'Mohammed cartoons' was not ruled to constitute an instance of hate-speech. These and other high-profile trials concerning Holocaust denial, whistle-blowing or defamation claims involving French politicians, intellectuals and public figures, draw large audiences and are reported extensively in the French media. They make the 17th into one of the key locations in which French public debates over freedom of speech and its limits take place.

Within the maddeningly diverse constellation of phenomena that have at some point or other been described as 'liberal' (cf. Bell 2014), this setting is thus specific in at least two key ways. First, among the many historical and regional varieties and traditions of liberal thinking, this one harks back to a characteristically French history of concern and ambivalence around the relationship between 'the public', 'the State' and 'communities' (Bowen 2007). Second, among the many freedoms that have exercised liberals in France and elsewhere, we are here primarily concerned with freedom of expression, a theme that brings with it certain assumptions and concerns about the ways in which persons and publics are constituted in and through public expression.

In particular, the legal apparatus of the 17th chamber can seem to vindicate a now classic critique concerning liberal approaches to hate speech: the law is set up to single out individuals as the responsible actors of harmful speech. Judith Butler (1997) has argued persuasively that doing so sidesteps the question of the ways in which systemic and structural racism, sexism or homophobia endow particular expressions with the performative capacity to harm in the first place. Developing a similar point in her analysis of anti-racism initiatives in Latvia, Dace Dzenovska has critiqued the way in which liberal anti-racism 'displaces' the problem of racism onto individuals, and

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consequently 'overlooks the constitutive role of racism in modern state formations and techniques of power' (2010: 501). These critiques are valuable and important, and the cases examined here could be made to bear them out. Yet, I will argue that, like many similar critiques of liberalism, these work by singling out the limits of a liberal 'ideal' (here, individual freedom and responsibility), without a corresponding attention to the 'sociological realism' that self-conscious liberals apply in attempting to pursue or instantiate this ideal. In the ethnography presented below, I will illustrate the various ways in which this sociological realism – this painful awareness of the imperfection and corruptibility of liberal forms – inhabits practices, institutions and actors who are nevertheless espousing liberal ideals. I will also show how this bleak liberal aesthetic of self-critique differs from an all-out critique of liberalism itself by self-consciously non-liberal actors.

This critical tension between idealism and sociological realism is embedded in the institutional setting as a whole. The remit of the 17th chamber is set by a law introduced in 1881 that establishes a special regime for public expression within the broader corpus of French law. While the law begins with a strong statement of the freedom of the press, its most visible effect is to frame a set of limits to public expression – it is thus regularly accused in some quarters of introducing a highly illiberal form of censorship. Yet most commentators hold up the 1881 law as quite the opposite – 'one of the great liberal laws of the Third Republic' (Ader 2019). This is because the law self-consciously sets out to exempt public expression from the 'normal' run of civil and penal responsibility. The point here is not to imagine naively that speech is not a form of conduct (cf. Fish 1994: 105). Rather it is to mark out *public* speech as a specific form of conduct that ought to be regulated in a different – and, crucially, more lenient – way to other forms of conduct.

The ambivalent structural form of the law, which simultaneously declares freedom and curtails it, simultaneously defines speech offences, yet extracts them from normal legal regimes of responsibility, finds its logic and coherence in a distinctly 'bleak liberal' vision of the press that accompanied the enacting of the law at the end of the 19th century. On the one hand the law set out to protect the press considered – in a 'hopeful moral perspective' – as the guarantors of a critical public sphere, whose role is to scrutinise the doings of public figures. On the other hand the law sought to protect individuals and the polity from the press considered – with a measure of 'sociological realism' – as a potential weapon, wielded by rich and powerful newspaper owners, of mass destruction of individual reputations and of mass manipulation of crowds. As Leprette and Pigeat note, in relation to the freedom of the press, 'what French practices retained from the intellectual effervescence of the Enlightenment … was not a confidence in freedom but rather doubt and mistrust' (2003: 1). This doubt and mistrust of the press has been transferred wholesale to the new forms of public expression introduced by the internet.

But what makes this a bleak *liberal* institutional set-up is precisely the tension between this sociologically realistic doubt and mistrust and a principled commitment to nevertheless hold in abeyance the temptation of state censorship. The key device that seeks to mediate this tension is the public form of the trial itself. Anyone can – in principle – come to witness the exchanges I describe in this paper, and this is precisely so that members of the public can satisfy themselves that their judges and their justice system is still properly liberal. Thus, in addressing defendants, judges and prosecutors

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are always also addressing a broader public – real or imagined. This is an important point to which I will return below.

This point also informs the approach of this paper, which builds on the anthropological tradition of courtroom ethnography (Merry 1990; Richland 2008; Terrio 2009), to examine trials themselves as scenes, public events in which important cultural forms and assumptions are transacted, probed and shaped. As Warner argues,

> [t]o address a public or to think of oneself as belonging to a public is to be a certain kind of person, to inhabit a certain kind of social world, to have at one's disposal certain media and genres, to be motivated by a certain normative horizon, and to speak within a certain language ideology. (2005: 10)

Following Warner's lead, we will attend to the 'metapragmatics' of liberal subjectivity that the actors are debating and setting out through their words, gestures, implications, silences and attitudes. As Bens (2018) notes, however while close analysis of discourse is a traditional strength of courtroom ethnography, it is important also to reach beyond words in order to capture the affective and embodied arrangements of the courtroom. Much of what passes in the courtroom scenes below turns on subtle shifts in gesture, stance and spatial arrangement as different actors deploy their own and others' bodies and the material affordances of the courtroom itself, in affectively charged contests over the possibility of a liberal public sphere, and the nature and practice of the subjects who properly belong there.

The rest of this paper turns on a close ethnographic reading and comparison of two court cases I witnessed at the 17th chamber, both dealing with charges of online hate speech. In the first scene, diversely situated actors probe each other's liberal credentials while asserting their own. In the second scene, the court becomes the stage for a strident critique of liberalism itself, which illustrates by contrast the tense efforts through which liberal actors and settings attempt to perform and sustain abstractness in the face of such challenges. Both cases, and the differences between them, highlight the constitutive bleakness of this liberal setting, the ways in which 'real existing liberalism' becomes accessible to ethnography once we learn to capture the very tension between its sociological realism and its hopeful moral perspective.

'I'm sorry, I wasn't well': compromised liberal subjects

As noted above, the 17th chamber is regularly the site of spectacular, highly publicised cases. We shall turn to one such case in the second part of this paper. The bulk of its case-load, however, flies below the media radar – it consists of small cases, both civil and criminal, concerning defamation, insult and hate speech. Cases such as that of Mr Bekkouche, a man in his 40s who was denounced to the authorities for two messages he had posted on Twitter.

As in most courts on its jurisdictional level, each case at the 17th is considered by a collective of three judges, one of whom takes the lead during the courtroom procedures. Here the leading judge is Judge S, a quiet, collected man in his early forties. In a striking contrast to the prosecutor's tone of surprise and outrage, Judge S speaks flatly and dispassionately as he quotes Mr Bekkouche's words back at him: 'Really for 160

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billion dollars, I'd believe in the Holocaust too!' and 'Have you gone back to Israel, or are you still tax evading in France?'

Mr Bekkouche shifts uncomfortably on his feet.

'Why did you choose the pseudonym @judeophobecool?' asks Judge S calmly, as if he were asking directions or the price of vegetables.

'I'm sorry, I wasn't well.' Mr Bekkouche responds meekly 'I had lost my job and I was using [Twitter] to pass the time.'

Looking down at his file, Judge S reminds him that he had said more than this to the police officers who interrogated him after his IP address was traced.

'I can't remember, it was a year and a half ago'. Mr Bekkouche seems genuinely at a loss.

The judge reads back to him, from the file: '… in answer to internet users who were indicting Islam …'.

Mr Bekkouche remembers: 'Yes, it was a response to people who were doing Islamophobia', and elaborates 'but it wasn't political'.

'You say you are not antisemitic. What is antisemitism for you?'

'It's hatred of Jews … My godmother is Jewish. My aunt and other relatives lived with Jews in Algeria …'.

The judge's next 'question' is just a statement 'The police investigators found a photo of Hitler on your computer.'

'Yes, I must have downloaded it to provoke. It's the person who can provoke the most.'

The prosecutor chimes in: 'You no longer have a Twitter account? So you've learnt your lesson?'

Mr Bekkouche allows himself just a hint of bitterness, alongside the general and sustained contrition: 'Well yeah, now I know that you can't hide anything, the police investigate you …'.

For Mr Bekkouche has come to apologise, but also to challenge. Some months previously he was judged in absentia for incitement to racial hatred and denial of the Holocaust, and sentenced to a €1500 fine. He is challenging the judgement and asking for the fine to be quashed, and for the offence not to be put down on his official record. 'That would allow me to work, to be like everyone else'. He glances briefly at the court clerk, typing away above him in a box which mirrors that of the prosecutor on the left. 'I'm sorry, I regret it, I'm guilty! That's why I'm here, I want to move on to something else', Mr Bekkouche pleads earnestly. The judge swings his words back at him, reminding him who, here, controls the timeline: 'Yes, but before we move on to something else, we are here to judge this.'

In rounding up her petition, the prosecutor, following the formal choreography of the trial, addresses the judges rather than the defendant: 'He speaks of provocation. In his mind, this began with a provocation by Jews. But antisemitism is never the answer to a provocation, to Islamophobia. Judeophobia is not "cool"!' She petitions the court for the fine to be raised to €2000 and to reject Mr Bekkouche's request that the offence be hidden from his official record.

We are in early December. Deploying the ritual formula that closes every case, the judge states the date, in late January, when the court will announce its decision. To the uninitiated audience member, hoping for a resolution (courtroom drama-style), the anticlimax resounds like the echo of a thunderclap. On audience benches that can seat a hundred, five people had witnessed Mr Bekkouche's half an hour in court: the young

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woman who had sat patiently with him through the previous cases of the afternoon, three random members of the public, and me, an ethnographer of the traces of imaginaries and practices of freedom of speech in France.

To anthropological readers, the scene above will evoke a number of familiar critical observations about liberal publics and how they are policed. Graan, for instance, notes that

> liberal publics, despite their pretense to egalitarianism, presupposed norms of participation that privileged some groups and marginalized or excluded others. In consequence, members of marked social groups could only participate in these liberal publics insofar as they bracketed off positive markers of their identity to conform to the unmarked public norms. (Graan 2016: 297; see also Cody 2011: 41)

In the case of France, where anthropologists have written about liberal publics, this has almost exclusively been in relation to the way French Muslims are marginalised and muted by dominant liberal norms (Asad 2006; Bowen 2007; Fernando 2014; Iteanu 2013).

The scene above lends itself to this critical reading all the more readily since it is the express purpose of the judges, prosecutor and the judicial apparatus they stand for in this setting to police the legitimate norms of public discourse. These norms can be stated abstractly, in terms of standards of civility and non-discrimination, but the exchanges above are also structured by a number of more substantive assumptions about community and religion in contemporary France. Anyone familiar with liberal French concerns in the last decade or so will detect, peeking through the words of the judges and prosecutor, the contours of what one might call a sociology of antisemitism. Periodically, French mainstream commentators have been locked in bitter debates over claims that, alongside the 'traditional' antisemitism of the far right, a 'new' antisemitism is on the rise, fuelled by the rise of '*le fondamentalisme islamique*' and the Israeli–Palestinian conflict (e.g. Monnin 2012, Collectif 2018, Lebourg 2018). One of the implicit stakes of the trial, then, is whether Mr Bekkouche's tweets are to be situated within this landscape. This places particular burdens on him to extricate himself from this framing and prove that he is a proper liberal subject, albeit one whose past actions have fallen short of the standard of liberal public discourse.

An anthropology of liberalism 'through its shadows' might at this point move on to unpick critically the logic of mainstream discourses about 'Muslim antisemitism'. Commenting on the related public discourse about 'Muslim homophobia', Mayanthi Fernando has argued that liberal demands for 'tolerance', by focusing blame and moral opprobrium on a marginalised subset of French citizens, these discourses serve to detract attention from the many systemic forms of discrimination that characterise the liberal state, while "recast[ing] the state as a neutral arbiter among warring minorities". (Fernando 2014:240). In her discussion of French discourses about 'Muslim homophobia', Fernando argues that in "summoning", with particular insistence, French Muslim subjects to display tolerance, the liberal state displaces onto them the burden of contradictions internal to the liberal notion of tolerance itself (ibid: 221-259).

An ethnography of liberalism cannot do without these critical insights. And yet staying ethnographically with this particular scene elicits further nuances and complexities in the way the burdens and contradictions of liberal subjectivity are embodied and demonstrated by actors in this setting.

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The fact that this scene is itself self-consciously *public* matters here. The judges, the prosecutor and the defendant are addressing themselves to each other in front of what they understand to be a gathered public, in a courtroom whose doors are, by law, open to all and sundry. From that perspective, the various subjects in this scene can be seen as probing each other's belonging to a shared liberal public as well as demonstrating their own. Two points are particularly salient here, and I will examine them in turn. The first is that, in response to the judges' probing explorations, Mr Bekkouche is characterising himself as a liberal subject, albeit one who has been compromised in some ways by his context and circumstances. In other words, Mr Bekkouche is drawing on the sociological realism built into liberal visions of the subject. The second is that despite the many ways in which he is obviously the weaker party in this encounter, Mr Bekkouche is nevertheless in a position to issue subtle challenges, not *against* liberalism but precisely in its name, querying the properly liberal nature of the proceedings he is undergoing. The judges in turn are thus not merely probing but also justifying their own liberal credentials as they do so.

Is Mr Bekkouche a liberal subject, the judge seems to want to know? A liberal subject, the judge's words, tone and sentence structure imply, is the sort of person to whom the presence of an image of Hitler on a computer is obviously a puzzle in need of explanation. No need to ask a question. It is the sort of person who – particularly perhaps in France – doesn't issue or respond to 'provocations' as a member of a particular religious community. It is a person who knows the meaning of the word 'antisemitism', and who more generally, stands by their words – a person whose comments today match those made previously in a different context, and whose words match their actions. All of these assumptions are embedded in the material record provided by the file, the judge's ability to quote Mr Bekkouche's statements made in a different context nearly a year ago, and the requirement that Mr Bekkouche stand by those words and explain them today. Anthropologists have usefully noted the ways in which such assumptions about sincerity and transparency structure liberal visions of the subject (Keane 2009).

Mr Bekkouche in this setting self-consciously inhabits, shares and deploys these same forms of liberal subjectivity. He knows what is expected of a liberal subject when it comes to the complex balancing act of accounting for one's actions. Mr Bekkouche reminds his judges that a liberal subject can fail, can fall short of expected behaviour. They understand, as he does, that a liberal subject can mitigate their past actions by referring them to extrinsic causes – an adverse economic situation, fragile mental health, the irresistibly addictive pull of social media's antagonistic form – as long as they nevertheless formally take responsibility and apologise for what they must still, ultimately, recognise as their own actions. That back and forth between the ideal of individual responsibility and an acknowledgement of sociological, psychological and technological entanglements that stand in its way is the very essence of a bleak liberal subjectivity. In expressing and displaying in a fully embodied way remorse for these 'failings', Mr Bekkouche is not merely making arguments, he is also demonstrating an appropriately 'bleak liberal' affect.

Furthermore, standing in the courtroom in which Charlie Hebdo have so often won their court cases, Mr Bekkouche knows also that a liberal subject – particularly perhaps in France – is entitled to be 'provocative'. Yet, *la provocation* walks a knife edge – in the guise of '*provocation à la haine raciale*', it is a serious legal offence. In the guise of humorous or good natured '*provoc*' it is often hailed as both a delightful

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French particularism and a fundamental element of a healthy public sphere, a pedagogical device through which liberal actors admonish each other not to hold on too dearly to their beliefs and commitments (Gershon 2014; Keane 2009).[2] Anthropologists have unpicked the logic of these liberal assumptions and claimed that they contribute to marginalising subjects – paradigmatically some Muslim subjects – for whom the relational commitments of faith are not reducible to detached propositional 'beliefs' (Asad 2009; Fernando 2010). This is in many ways convincing. Equally though, 'provocation' provides a language in which Mr Bekkouche can remind his judges that not every sign has to be interpreted literally, such that the presence of a picture of Adolf Hitler on his computer doesn't mean that he is a committed neo-Nazi.

More than this, Mr Bekkouche can even subtly challenge (if only fleetingly) the properly liberal nature of the proceedings he is undergoing – the extensive police powers of investigation, the fragility of online anonymity that contribute to a world in which 'you can't hide anything'. Given the way the communicative odds are stacked against him, Mr Bekkouche has little margin of manoeuvre in this respect. Other defendants, as we shall see below, are in a much stronger position to issue challenges. And yet Mr Bekkouche's evanescent critique strikes a chord with widespread concerns among liberals about the dangers of surveillance and censorship.[3] In fleetingly raising the question of police surveillance, and more broadly in his own rendering of his situation as that of an everyman (and crucially, in his own words, not a 'political' actor) faced with a muscular and unyielding system, Mr Bekkouche is indexing the ways in which, while he may have fallen short of liberal ideals in his own past actions, the whole set-up of French judicial management of public speech itself bears scrutiny in that respect.

From this angle, the status of the judges and prosecutor as liberal subjects is revealed as rather less unassailable than we might initially have been led to think. Formally and majestically clad, in austere and impressive surroundings, they stand in judgement over their fellow citizens' speech offences. The set-up leaves them perilously close to epitomising the popular figure of the censor, the anti-liberal character if ever there was one (Boyer 2003). As I argued in the introduction, the public form of the trial is the key device through which this institutional set-up seeks to mediate the tension between an ideal of freedom of speech and a sociologically realist concern with managing harms to individuals and communities. Each trial at the 17th chamber is thus a double event. It is not merely a device for managing speech, it is also a public demonstration that this management is done according to the norms and forms of liberal governance and has not descended into state censorship.

The judge and prosecutor's interventions can thus themselves be read in a double light. In their questions and admonitions to Mr Bekkouche, the magistrates are not merely 'expressing' their assumptions about liberal subjectivity and the proper norms of discourse, they are also *displaying* them. In examining whether Mr Bekkouche is a proper liberal subject, in reminding and admonishing him ('have you learnt your

[2] As Toby Kelly (2015) argued in respect of the trials of conscientious objectors in Second World War Britain, successfully demonstrating that one is a liberal subject requires one to walk a fine line between displaying conviction and detached moderation.

[3] Gabriella Coleman notes that it is a 'long-standing liberal principle that anonymous speech is necessary for a healthy democratic society' (2011:np).

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lesson?') to be such a person, the judges and prosecutor are, incidentally and implicitly, reminding everyone that they themselves are. No one in this setting is beyond scrutiny. The judges scrutinise Mr Bekkouche, but their scrutiny itself is under the scrutiny of a real or imagined broader public. In the questions they ask and the comments they make, the judge and prosecutor are implicitly justifying themselves, explaining to Mr Bekkouche and to anyone else who might care to drop by why they find themselves sitting in judgement over another man's words, even though they are liberal subjects who value freedom of speech. Noting this requires a sensitivity to the complex tension between standardised roles and individual ways of filling and going beyond them (Reed 2019; Strathern 2008). I will return to this point, and to the distinctive forms of liberal subjectivity required of judges and prosecutors below.

For now I hope to have shown that my initial scene might be read not only as a story about a marginalised French Muslim subject faced with a liberal system. That story is true and convincing in many respects, but it only captures one layer of what is at stake here. Another layer is revealed when we attend to the ways in which all of the actors in this scene (Mr Bekkouche very much included) are engaged in demonstrating that they are liberal subjects, albeit liberal subjects who are in various ways uncertain or compromised, and whose liberalism is always potentially under challenge. The trick is to learn to see this second layer of the story without losing sight of the first. There is no 'level playing field' here. This scene is – of course – profoundly structured by spatial, procedural, legal, socio-economic, sociolinguistic and other inequalities that make it easier and less urgent for some actors (here the judges) than for others (Mr Bekkouche) to articulate their claim to being properly liberal subjects. Nevertheless, we lose the sense of this scene if we allow this important observation to erase the (bleak) liberal framework, assumptions and horizons these actors nevertheless share.

Unlike Mr Bekkouche, other defendants at the 17th chamber do not seek to demonstrate their liberal credentials in this way, but rather use the setting as one in which an alternative form of subjectivity can be displayed and the very grounds and horizons of a liberal vision of the public can be challenged. Examining a scene of this very different kind will allow us to further probe the ethnographic contours and limits of liberal subjectivity and publicity.

'You naughty male chauvinists!': Some persons and offices

Judge S glances up from his files at the lawyer for the defence: 'Is he there, Mr…? He's to come forward.'

'He's outside', replies a lawyer.

'It's time', says Judge S. As someone goes to fetch the defendant, Judge S proceeds to list the plaintiffs, four anti-racist organisations, whose lawyers, together with some juniors and the president of one of the associations, form a compact group on the right-hand benches at the front of the courtroom. Some of them turn and raise an eyebrow or shoot a sarcastic smile at the man now striding through the middle aisle of the courtroom. Tall, thin and broad-shouldered, 60-year-old Jean Charles cuts an intimidating figure in his green bomber jacket and slim jeans. His head is closely shaved, as are those of a number of his supporters, who fill most of the audience benches of the court.

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Charles, writer, activist and blogger, is a regular defendant at the 17th chamber of the Paris tribunal. As he himself will later defiantly remind the court, he has been tried over 50 times – and a number of times convicted – of charges including incitement to racial hatred. It is because of an image published by the website of his organisation, during the 2017 presidential election, that he is here today. This is a collage, representing then presidential candidate Emmanuel Macron sporting a Nazi-style armband with a dollar sign in its centre. Behind him stand three well-known French Jewish businessmen, and to the sides float an American and an Israeli flag. The above-mentioned anti-racist organisations keep a careful vigil over online hate-speech, and one of them has alerted the public prosecutor to this image, leading the latter to bring charges of incitement to racial hatred.

These combatants have met before – they are familiar enemies. The 17th is their battle ground, a stage on which to confront different versions of the French public sphere. For the associations, bringing such cases to the 17th chamber is part of an ongoing project of legal activism against hate-speech, part of which involves pushes for greater regulation of the internet. In their concerted activism against certain forms of expression, they seek to enact and bring about a particular liberal space from which certain extreme positions are excluded. This is a vision of French public space structured around an attentive mindfulness to some of the tragic episodes of French history in which liberal tolerance has failed.

Regular defendants such as Charles are addressing and seeking to bring to life and prominence an alternative public. Each court appearance seems to be an occasion to demonstrate, to his supporters both in the courtroom and online, his victimisation at the hands of the state and of what he describes, pointing to the associations' representatives, as minority pressure groups; an occasion to claim for himself the mantle of a political leader and of a fearless speaker, representing the authentic voice of a truly French people.

Charles can certainly put on a show. His every answer to the judges' questions is a pretext for a speech: a rising tide of words, increasingly fast and loud, delivered with oratorical gusto and emphatically masculine chin thrusts. 'This is a political trial,' he hammers, 'I am being persecuted as the leader of a political movement!' He characterises his followers, in a phrase that hints at ethnicity without quite naming it, as youths 'descended from the French people' (*issus du peuple Français*). Charles notes with a smile that he is 'president for life' of his association, and his faithful supporters in the audience laugh. Judge S begins rather sarcastically: 'That's not very … ', but as he pauses for a second to catch the right word, Charles cuts in without missing a beat: 'Not very democratic, no – but then when I see what democracy is … '.

It is important to note that Charles' challenge to liberal norms and forms is not merely discursive (as in his explicit critique of democracy), but also metapragmatic and affective. It comes through in the many ways in which Charles flouts expected norms of politeness and deference: in the volume and tone of his interventions, his aggressive speechifying, his repeated attempts to interrupt the judge, his habit of breaking with court protocol by addressing the plaintiffs, the prosecutor or the audience directly rather than addressing all his remarks to the judge. As we saw in the previous case, despite what some anthropological critiques of liberal public space claim, there is no expectation here that the space of the court should be devoid of affect. There are, however, expectations of proper affects for each participant – contrition and shame is wholly appropriate for the defendant, a tone of righteous outrage is fitting for the

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prosecutor (and for plaintiffs and lawyers), but would seem somewhat worrisome if expressed by the judge. Charles rides roughshod over these expectations.

Among the various histrionics of Charles' trial, one moment stands out as the unambiguous 'fever pitch'. When the prosecutor – the same slight but steely young woman whom we saw in Mr Bekkouche's case – asks the judges to hand down a prison sentence, Charles squares up to her and fairly shouts: 'It's not your five years in prison that are going to scare me, little lady [*ma petite dame*]'. Uproar ensues as the judges and the lawyers across the aisle simultaneously try to shout Charles down, demanding that he observe the protocol of the court by addressing the prosecutor correctly. Addressing the three male judges and predominantly male lawyers, Charles rejoins, with a broad smile, 'Why don't you let the woman defend herself, you naughty male chauvinists [*vilains machistes*]!'

Charles' transgression of the liberal norms and forms of the trial here is multilayered, and this explains why it so successfully raises the hackles of the judges and lawyers. One aspect is that which Charles himself sarcastically picks out – the judges and lawyers' reaction could be seen as that of men policing a breach of gendered proprieties, rushing to defend a younger woman – and in so doing falling into a performative contradiction. Simultaneously, however, these actors are reacting with outrage to the fact that Charles is addressing the prosecutor as a gendered individual *tout court*, rather than, properly, as an officeholder.

The prosecutor in a French court is the 'representative' in an unusually strong sense of the *ministère public* – the state authority charged with defending society and applying the law. According to the French legal doctrine of the indivisibility of the *ministère public*, any individual prosecutor stands for the whole body. Requests and recommendations made by a prosecutor are thus made in the name of this collective body. Individual prosecutors are referred to in court by the collective noun '*le ministère public*', and they may be substituted by a colleague during the course of a trial without any prejudice to the proceedings. In this sense, the role of prosecutor (like that of judge, albeit as we shall see in a slightly different way) is set up as a cipher in a Weberian-style impersonal, procedural, hierarchical organisation (cf. Du Gay 2000: 8). In addressing the prosecutor as '*ma petite dame*', Charles is not merely flexing his patriarchal muscles and insulting the bearer of the state's authority. He is also pointedly stripping away the norms and forms of liberal governance to 'reveal' a purportedly cruder, simpler, more embodied reality: here he stands, a tall muscular man, telling a younger woman that her threats don't scare him. This visceral alternative world stripped of liberal bureaucratic proprieties and roles is the one that his followers have come to see in action. It is the one judges and lawyers for the plaintiffs are trying to shout down.

In other words, Charles' performance here and throughout the trial taps into a familiar tradition of critiques of liberalism as a form of disenchanted proceduralism (Anderson 2016), a depersonalising, fragmenting modernism whose role-boundedness alienates individuals from their full, rounded personhood (Du Gay 2000). This well-established critique of liberalism as an abstract and bloodless fiction lends strength to the thought that there is, beneath or beyond a liberal arrangement of roles, a more fundamental, substantial and real world of fully embodied and holistically integrated persons. Charles' performance seeks to bring into view one such 'real' world of gendered, affectively charged persons locked in unmediated struggle.

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One should not rush, however, to accept this casting: mere roles for liberals and real substantive embodied individuality for Charles and his followers. First, and most superficially, because Charles is evidently also playing a role for his audience in the various ways I have been outlining. Second, and more profoundly, because Charles' challenge is effective precisely insofar as judges, prosecutors and others are as attuned as their critics to this vision of 'real' persons beneath the roles they embody. As Charles' mocking rejoinder to his 'male chauvinist' opponents lays bare, everyone in this setting implicitly accepts that the prosecutor is not merely a role, but a gendered individual of a particular age (and class, race, etc.) within a role. Charles' challenge has 'bite' because it exploits a tension internal to the liberal bureaucratic arrangement of roles epitomised by the court, a tension reminiscent of what Strathern has termed the 'latent frisson between person and office' (Strathern 2008:133). As Strathern notes, drawing on Du Gay:

> The specific persona of the bureaucrat is of one who takes pride in preserving impartiality and overcoming his or her own opinions. The moral agency here involves initiative and independent judgment on the part of the incumbent, although it is an agency that has its source not in the individual but in institutionally given obligations. However, while authority comes from outside the individual, this does not mean that individuals doff and don personae at will. On the contrary, personal dedication to instituted (impersonal) purposes becomes an index of the bureaucrat's ethical habitation of his or her office (du Gay 2008: 132, 136). (Strathern 2008: 132)

This 'frisson' between the personal and the impersonal is strikingly visible in the affective charge of the prosecutor's interventions that I described in Mr Bekkouche's case. On the one hand, the prosecutor is emphatically not expected to speak in court as an individual person expressing her affect, emotions and opinions, but as the representative of a collective body. And yet, as a person dedicated to her office she is entitled (and in many cases expected) to experience and express highly charged outrage. The ethical habitation of the office of prosecutor requires a certain affective commitment and a highly personal engagement in her role as the 'defender of society'.

The situation is subtly different for judges. Judges too are subject to role expectations that bind them to impersonality and procedure. Unlike prosecutors, French judges cannot be substituted in mid-trial – their personal judgement is engaged in the process in a non-interchangeable way. But this judgement is nevertheless depersonalised through other means. Key among these is the practice of *collegialité*, the standard expectation in courts of this jurisdictional level that each case is decided not by a single judge but through discussion by a collective of judges. Other practices and devices are similarly deployed by judges to 'de-subjectify' their decision process. One judge I spoke with explained the ways in which writing out a draft decision can help to test and share one's intuitive sense of a case (see also Latour 2004). She also noted how useful she finds the practice of letting some time pass between the trial itself and the collegial discussion in order to allow any strong feelings created in court to settle down. This and other comments made clear that the stance of stony passivity that judges often exhibit in court can be a hard-won achievement. This contrasts again with the prosecutor whose personal outrage can have a formal place in her role.

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This is not to say, however, that the judges' role is devoid of affect, or entirely eliminates the 'frisson' of the personal. In particular in their role as managers of the courtroom, judges had a greater latitude to express something like a personal style. Judge S's way of managing a courtroom, for instance, differed markedly from that of judge A. Judge A was decisive, funny and forensically sharp. In an agitated session, she would make herself pervasive, minutely managing the interactional space of the court, marking out the proprieties of the discursive environment with scalpel-like interventions that kept lawyers, parties and witnesses on a short lead. Judge S by contrast seemed more relaxed, letting others' words flow. His was a self-deprecating style with a good dose of detached irony. But make no mistake, there was a steely determination beneath that gently amused exterior.

This came out very clearly in his management of the court in Charles' trial, where his authority was sorely tested, and yet – with the exception of the 'my little lady' incident – he managed to keep an even, unruffled tone throughout. At the end of every one of Charles' lengthy tirades, Judge S calmly rejoined by restating for the record the simple answer to the question he had actually asked ('So you're saying you're not the director of the publication'; 'So you are claiming you are not antisemitic. Very good – the clerk has noted your answer' etc.). He never hesitated to respond to direct challenges to his authority, but did so mostly in a polite, even and measured tone, with a hint of mild sarcasm or contained irritation at most.

In other words, Judge S's procedural, formalist blankness in this context was anything but 'thin'. It embodied a starkly alternative vision of strength and resilience to Charles' performance of virulent masculine fearlessness. To fully understand the meaning of Judge S's efforts in this setting, it pays to compare Jean Charles' case with that of Mr Bekkouche. Maintaining procedural form and managing the tension between person and office in the face of virulent attacks is a visible achievement. Less visible, yet even more of an achievement in a sense, is maintaining procedural form across settings as disparate as the two I have described in this paper. A thicker ethnographic account of liberalism begins when such achieved stabilities are treated not as a simple, obvious backdrop, but as the substance of the object of study.

I have argued in this section that ethnographers seeking to understand liberal forms of subjectivity would do well to attend to the 'frisson between person and office' (Strathern 2008). Doing so provides an antidote to the facile assumption that liberal subjectivity is 'thin', abstract and monochromatic, something short of a full experience of personhood. That contrast between 'full' persons and 'partial roles' is *internal* to the experience of liberal subjectivity in many settings. Liberal subjectivity takes shape precisely in that tension, in the varied ways in which liberals experience the complexities of being office-holders, persons-in-roles. Sometimes this internal duality is smooth and empowering, as in the figure of the prosecutor whose personal and official outrage can find mutual support. At other times, this frisson can take the form of a struggle, such as between the judge's personal feelings and the outward passivity she or he nevertheless strives to embody and sustain.

Here, the figure of liberals as persons in roles re-joins the discussion of bleak liberalism, an aesthetic and ethical form of life tensed between a hopeful orientation towards ideals and a sociological realism about their limits. Therein lies the cleverness of Charles' cynical quip about 'naughty male chauvinists'. To dismiss this as mere gaslighting by a self-conscious chauvinist is to miss the point. Rather, Charles' provocation hits home insofar as it points to the abiding difficulty of fuly separating

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an abstract liberal persona from a specific, gendered, situated subjectivity. Is there a patriarchal strand interwoven in the judges and lawyers reaction to his provocatio? Is their (formalist) outrage as defenders of proper impersonal norms of address in court is shadowed by their (patriarchal) outrage as men defending a woman from another man? The persistent way in which gendered (and also classed and racialised) assumptions and inequalities shadow liberal attempts at universalism and abstraction is a well-established trope of critiques of liberalism by academics as well as by political actors from various parts of the political spectrum. But the crucial point for an ethnography of liberalism is to notice that a consciousness of this 'intractability of liberal vices' (Anderson 2016: 2) is also an affective and ethical struggle for many self-conscious liberals themselves. In pointing to it, Charles is putting his finger where it hurts.

Conclusion: anthropological critique and/as bleak liberalism

This paper has suggested that, as a complement to studying liberalism 'through its shadows' (cf. Asad 2003), anthropologists might benefit from gazing at the thing more directly. Taking liberals seriously on their own terms requires a sensitivity to the ethical and aesthetic ambivalences of self-conscious liberalism, to the self-critique which is already embedded in liberal subjectivities and processes. Doing so gets us around the conundrum of how to give real substance to something that claims to be mere form. Liberalism *does* exist (*pace* Fish), and it exists precisely in these, sometimes bleak sometimes hopeful, struggles between a commitment to ideal liberal horizons and a sociological realism about the here and now.

In conclusion, let me return to the potential objection I raised at the outset. Even if they can take liberalism seriously on its own terms, shouldn't anthropologists stick to their critical commitments by unpicking this dominant social form in order to make space, epistemologically and politically, for alternatives that liberalism marginalises and excludes? To this one might reply that, as the two defendants in this paper exemplify, it is perfectly possible to articulate a critical claim in the language of liberalism from a subaltern position, just as it is possible to be deeply critical of liberalism from a position of white male middle-class privilege. The politics of liberalism and the politics of its critics are surely complex enough to leave some space for anthropologists to also take liberals seriously.

More profoundly, I have tried to show throughout this piece that the implied tension between 'critique' and 'taking seriously' is a red herring. On the contrary, insofar as anthropological critiques end up having any political purchase, it will often be precisely because real existing liberals of the kind I have been writing about in this paper are themselves ready to listen to such critiques. Bleak liberals (which is to say probably pretty much all real existing liberals at some point or other) are themselves often the first to critique, in a realist sociological vein, the shortcomings of the system they operate within and their own as liberal subjects.

I suspect some readers will remain unconvinced by these points, and worried about the idea of taking liberalism seriously. And at heart this is because anthropological critiques of liberalism are often understood more or less explicitly as critiques of the *self* – in line with the discipline's broader commitment to challenging 'our own

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assumptions' through frontal comparisons with 'other' realities (Candea 2018). And that, in turn, suggests that there is something distinctly 'bleakly liberal' about the very form of these anthropological critiques of liberalism. Anderson (2016) argues that critics of 'neoliberalism' are themselves often displaying a distinctly bleak liberal aesthetic. Similarly, in the midst of its sociological realism, as it seeks to bring to light and make analytical and political space for a host of counter-publics and alternative versions of the public, this critical anthropological literature has not entirely abandoned the utopian hope that a properly constituted public sphere might somehow open itself up to new forms of radical diversity and inclusiveness (Cody 2011). This is where, despite some uncomfortable family resemblances (cf. Holmes 1993), anthropological critiques of liberalism part company with the challenges issued by figures like Jean Charles. Unlike the latter, the former remain, when all is said and done, part of a bleak liberal conversation.

Acknowledgements

The research and writing of this paper were supported by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement 683033).

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« Quand je vois ce que c'est que la démocratie … »: libéralisme sobre dans un tribunal français

Malgré les nombreux écrits sur le libéralisme en anthropologie, les sujets et les publics libéraux restent étrangement insaisissables en tant qu'objets d'enquête ethnographique. Les anthropologues ont surtout étudié le libéralisme au regard des nouvelles formes qui le remplacent et le reconfigurent, ou des sujets marginalisés qu'il exclut. Ces approches ont produit des aperçus critiques utiles, mais elles ont laissé les publics et les sujets libéraux eux-mêmes suspendus dans une zone d'indistinction ethnographique – au centre de l'image en tant qu'objets de critique, mais toujours hors du champ ethnographique. Le libéralisme lui-même n'apparaît finalement que comme un mirage, une impossibilité constitutive : une pratique abstraite, un lieu sans lieu, une forme d'individualité impersonnelle. Cet article explore les limites de ces approches en examinant les différentes lectures possibles d'un cadre ethnographique dans lequel « la sphère publique libérale » est imaginée, contestée et contrôlée : une chambre du tribunal de Paris spécialisée dans le droit de la presse. L'article suggère un moyen potentiel de sortir de l'insaisissabilité ethnographique du libéralisme, en prenant au sérieux les manières don't l'impossibilité des idéaux libéraux est déjà reconnue de manière critique par (et inscrite dans) les pratiques, les institutions et les formes de subjectivité qui cherchent néanmoins à s'orienter vers eux.

Mots-clés libéralisme, droit, liberté d'expression, ethnographie, France

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