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The Biopolitics of Dignity

"Let us not allow, within a free nation, monuments of slavery, even voluntary."

—Pierre Anastase Torné,
French deputy, April 6, 1792

A few days after the shocking attacks on the offices of *Charlie Hebdo* in January 2015, several French political leaders called for the revival of the "crime of national indignity" as a possible sanction against terrorists of French citizenship. As the prime minister Manuel Valls put it, such a measure—backed up, according to surveys, by 76 percent of the French population—would "mark with symbolic force the consequences of the absolute transgression that a terrorist act constitutes" (Clavel 2015). Under French law, national indignity did indeed have a particular history and signification, one that was not simply "symbolic" but in fact quite concrete. As the historian Anne Simonin (2008) shows, "national indignity" was invented in 1944 by the legal experts of the Resistance as an exceptional measure to punish, retroactively, the supporters of the Vichy regime who had collaborated with the Nazi occupiers and promoted anti-Semitic legislation. Between 1945 and 1951, around one hundred thousand citizens were

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accused of indignity and punished by "national degradation." In practical terms, this meant that they were stripped of their civic rights and their possessions, banned from exercising certain public positions and professions (lawyers, bankers, teachers), and forbidden to live in particular regions of France. National indignity was an alternative to prison and to the death penalty that nonetheless imposed a form of "social or civic death," to use Simonin's terms. Although political indignity was originally formulated during the Terror as the antithesis of fraternity (primarily to convict émigrés and to justify the guillotine for those who conspired against the Republic), it was reimagined during the Liberation as a moral politics, as a way to "purge" the Vichy heritage and to purify the Republic. As Simonin (2008: 20) writes, national indignity served to codify the crime of *lèse-République* and to single out the new figure of the internal enemy: the *vichyiste*.

Given this history, it is easy to understand why so many French politicians invoked national indignity in the aftermath of the national trauma that *Charlie Hebdo* represented. Indignity appeared as a perfect tool, in a state of exception, to punish the new internal enemy who had attacked the Republic: the terrorist. But if indignity was linked in both cases to the revival of the Republic, by 2015 the notion was also deeply entangled with the question of national belonging. Indeed, none of the perpetrators of the *Charlie Hebdo* attacks was a foreign citizen. Saïd Kouachi, his brother Chérif Kouachi, and Amedy Coulibaly were all born and raised in France. Yet, in the weeks after the murders, much of the conversation focused on the social origins of these three young men: where they were born, where they grew up, where they traveled, where they converted to Islam, why they had failed to integrate or why France had failed to integrate them. This was the context in which the Right demanded that the government strip away French citizenship from any terrorist who might hold a second nationality, and in which several political leaders proposed to resuscitate national indignity for French citizens convicted of terrorism (Le Cain 2015). In effect, national indignity could bring about a form of "civic death" targeted at French jihadists—Coulibaly and the Kouachi brothers, for example. More specifically, national indignity offered the government a legal way to expel French citizens from the national community without violating the Universal Declaration of Human Rights, which affirms the "right to a nationality" and explicitly forbids any nation from "arbitrarily depriving" someone of his or her nationality—a concern particularly salient for the writers of this 1948 document given the fate of European Jews during World War II.[1]

My interest in these recent discussions of national indignity is that they bring to light the historical, legal, and political ties between dignity, security, public order, and citizenship. Although this longer history of the Liberation is crucial to explain the current return to indignity, the history of dignity in French law is also extremely revealing. Indeed, throughout the 1990s, the notion of "human dignity" flourished in French legal, political, and intellectual circles. Even though a handful of scholars cautioned against this sudden enthusiasm (Iacub 2002; Béchillon 2002; Cayla and Thomas 2002; Girard and Hennette-Vauchez 2005), academic journals, experts, politicians, and lawyers referred to human dignity as the self-evident, transcendental, and inalienable foundation of the individual and of society. To be sure, French judges and legal scholars were not alone in their celebration of human dignity. In recent years, courts in Canada, South Africa, India, Mexico, and many other countries have grounded their rulings in the unquestionable principle of human dignity, and various constitutions written recently have chosen to foreground the notion. The European Court of Human Rights has been referring to dignity for years now, and the first article of the 2000 European Charter of Fundamental Rights, modeled on the 1949 German Basic Law, posits human dignity as "inviolable." In the United States, the Supreme Court has appealed to dignity in many of its recent decisions, for example, in *Lawrence v. Texas*, which in 2003 struck down sodomy laws and reaffirmed the dignity of homosexuals in their "intimate and personal choices," and most recently, in *Obergefell v. Hodges*, which emphasized the "equal dignity" of same-sex couples in the eyes of the law as it legalized same-sex marriage throughout the United States.

In its current formulation, dignity appears remarkably simple, since it posits that we should value the human person simply because he or she is human. Yet, as many scholars point out, the concept has been used on both sides of some of the most controversial debates—abortion, assisted suicide, bioethics, gay rights, freedom of expression—to argue exactly opposite cases (McCrudden 2013). As Reva Siegel (2012) highlights, lawyers have turned to dignity to defend a woman's right to an abortion but also to protect the fetus; to argue for gay rights such as marriage but also to forbid them as violations of the most basic social norms. Sometimes dignity operates as a synonym or corollary of human rights, other times as a tool to limit them. Hence, much of the recent debate over dignity in the United States—at least in the fields of philosophy and of law—has focused on whether the notion is, can be, or should be normatively useful (Rosen 2012; Waldron 2012; Kateb 2011).

My own interest in dignity is neither legal nor philosophical but historical. More specifically, my goal in this essay is to trace the genealogy through which dignity in France has come to be associated with national belonging and public order, as evidenced in the example of *Charlie Hebdo*. My argument is thus twofold. First, I want to suggest that the notion of dignity circulating in French law since the 1990s is a corporatist one. Rather than promote abstract individual freedom, this notion of dignity insists on the obligations that the individual has toward the community, toward the social, and, in its most recent formulations, toward France. In this sense, the French version of dignity is theoretically much closer to that of political Catholicism and personalism than to the Kantian or liberal understanding of dignity (such as the one underpinning Anthony Kennedy's opinions in recent years).[2]

Although dignity in France has been used to gain a few specific rights (mostly in labor and housing law), the term has primarily been used to *oppose* individual rights, liberalism, and legal positivism. More specifically, dignity has emerged as one of the best instruments to curb the perceived excesses of democracy and human rights, what many critics since the 1980s have called *droits-de-l'hommisme* or *démocratisme* (Robcis 2014). Throughout the 1990s, various French legal scholars turned to dignity but also to other transcendental concepts such as the symbolic, the human person, the anthropological function of the law, the nondisposability of the body, and human ecology to counter the rhetoric of equality and privacy that lawyers and activists were mobilizing around the same time in hopes of acquiring specific rights. The law's purpose, they insisted, was not to grant individuals various rights that they considered "private" and idiosyncratic but to guarantee the social and psychic integration of all citizens into the national community: in other words, to guarantee their dignity. Dignity thus served to condemn pornography and sadomasochism (against the dignity of women), to oppose same-sex domestic partnerships, to prevent single women and homosexuals from having access to reproductive technologies, to sterilize transsexuals, and to outlaw surrogacy (all against the dignity of their potential children). Most recently, politicians brought up dignity to justify the 2010 law that banned the niqab and other "face coverings" in public spaces, and to cancel the performances of the controversial comedian Dieudonné M'bala M'bala in 2014 (Pottier 2014).

This leads me to my second point. In French contemporary legal and political culture, dignity has become a way to regulate the border between public and private and, more generally, to define the boundaries of the nation

as an imagined community. This is why dignity is so often tied to national belonging, social cohesion, the "common good," or to use a recurring term, life-in-common: *le vivre-ensemble*. This is also why the references to dignity have proliferated in cases concerning the expression and organization of gender, sexuality, religion, and race. As I want to suggest, in the French context, human dignity is best understood not as a value intrinsic to a person but as a project of biopolitical rule. In this sense, French dignity is fundamentally different from the American deployment of the term as synonymous with human rights and democratic inclusion. I propose instead to think of dignity as closer to *laïcité* and republicanism, in the sense that these three concepts—often used interchangeably and self-evidently—have progressively lost their historical meaning in order to signify the constraints on individual autonomy, the process of disciplining subjects into a particular division of public and private believed to be necessary because specifically, immutably, and transcendentally French.

The Discovery of Dignity

As Stéphanie Hennette-Vauchez argues, human dignity did not become a constitutional principle in French law until 1994 (Girard and Hennette-Vauchez 2005; Hennette-Vauchez 2014). Dignity was never mentioned in the 1789 Declaration of the Rights of Man and the Citizen or in any other of France's foundational legal texts. Although there were traces of this legal concept prior to the end of the twentieth century, these, as James Whitman (2004) shows, were mostly derived from the ancient notion of *dignitas*, related to social and professional statuses, to rank and etiquette, rather than a universal human nature (see also Hennette-Vauchez 2007). Dignity entered the French legal discourse in the 1980s through the vector of social law and the "defense of the workers' dignity."[3] It was also important in cases pertaining to freedom of expression, as certain publications were fined for printing pictures of dead bodies and other intimate scenes that judges believed had violated the basic parameters of human dignity, as with the photos of François Mitterrand's deathbed featured in *Paris Match* in 1996.

In July 1994, sixty-eight deputies, mostly from the right, called on the Conseil Constitutionnel—France's highest constitutional authority—to challenge various clauses in the series of laws that came to be known as the "bioethics laws." These laws, eventually adopted by parliament on July 29, 1994, were the result of ten years of controversial debates that had played out in the political arena, in lower courts, in expert committees, in academic

journals, and in the media, on contentious topics of bioethics including embryo research, surrogacy, assisted reproductive technologies, and organ transplants (La Documentation Française n.d.; Borrillo 2011; Hennette-Vauchez 2009). For complicated reasons related to the particularities of French family law and the political and social context of the 1990s in which same-sex and single-parent households were becoming more visible and demanding state recognition, the final version of the 1994 bioethics laws was extremely conservative, especially for reproduction (Robcis 2013). After many heated discussions, the French government chose to ban surrogacy and to restrict assisted reproductive technologies to heterosexual couples of procreative age, married or living together for at least two years, who had been diagnosed with infertility. As the legal scholar Marcela Iacub (2002: 147) puts it, these laws were designed as a "perfect crime": they carefully covered all traces of medical intervention so that children could believe that they were the product of their parents' sexual act, as if technology had never intervened. Thus, one of the most obvious and most disputed consequences of the 1994 bioethics laws was to ensure that it would be legally impossible for single individuals and for same-sex couples to have children and form families in France.

Yet, despite the bioethics laws' legal (and symbolic) consecration of the heterosexual reproductive family, the deputies who appealed to the Conseil Constitutionnel (n.d.1) nonetheless argued that even these laws presented a fundamental challenge to "the constitutional principles of the right to life, equality, the right to the respect of the integrity of the person and of the human body, family law, the right to the genetic protection of humanity, the right to the health of the child and to the free fulfillment of his personality, personal responsibility and the separation of powers." Although the deputies did not use the term *dignity* in their report, they referred to the "sacred character of human life" from which derive the "inalienable and sacred rights proclaimed in the Declaration of the Rights of Man and reaffirmed in the preamble of the 1946 Constitution." In addition, they warned against the potential of "soft eugenics" and insisted on the fact that the embryo was a "subject of law" (as opposed to an object), with all the "attributes of a human person" (as opposed to an animal). Finally, the deputies returned to the 1946 preamble to caution against anonymous sperm donation, which, aside from causing irremediable psychic damage to the child, would inaugurate a "new conception of the family." This, they argued, represented a direct affront to the vision of the family promoted by the writers of the 1946 Constitution of the Fourth Republic, who conceived of the family as the "natural community whose sole purpose [*vocation*] was to welcome children" and to "guarantee

their harmonious development." As the deputies pleaded, the bioethics laws offered a perfect occasion for the constitutional judge to "affirm with vigor that the protection of the genetic patrimony of each human being and of *humanity as a whole* is a principle of constitutional value particularly necessary in our time" (Conseil Constitutionnel n.d.1; my emphasis). This was exactly what the Conseil Constitutionnel did in its decision of July 27, 1994.

Although the Conseil ultimately found the bioethics laws constitutionally sound, it addressed the concerns of the deputies using their own terms and arguing that these laws, in fact, supported and affirmed the general principles that they were calling for: "the primacy of the human person, the respect of the human being from the inception of life, the inviolability, integrity, and non-marketability of the human body, the integrity of the human race," and, they added, "the constitutional principle safeguarding the dignity of the human person" (Conseil Constitutionnel n.d.2).[4] To make their case and to claim human dignity as a constitutional principle, the members of the Conseil Constitutionnel relied on three statutes. First, they acknowledged the importance of individual freedom as proclaimed by articles 1, 2, and 4 of the Declaration of the Rights of Man and of the Citizen. But individual freedom, they noted, "needed to be reconciled with the other principles of constitutional value," principles that the court drew from the preamble to the 1946 Constitution. The decision thus cited at length the preamble's opening paragraph: "In the morrow of the victory achieved by the free peoples over the regimes that had sought to enslave and degrade the human person, the people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights." From this passage, the Conseil Constitutionnel (n.d.2) argued: "It follows that the protection of the dignity of the human person against all forms of enslavement or degradation is a principle of constitutional status." Finally, the Conseil (n.d.2) concluded by citing a third statute, also drawn from the 1946 preamble: "The Nation shall provide the individual and the family with the conditions necessary to their development," and "the Nation shall guarantee to all, notably children [and] mothers . . . protection of their health."

That the Conseil Constitutionnel based its decision on the preamble of France's last constitution (as opposed to the current 1958 Constitution) was not surprising per se. Indeed, following a landmark decision in 1971, the Conseil had agreed to consider various legal texts, including the 1946 preamble, as integral to France's constitutional norms, as its "constitutional block" (*bloc de constitutionnalité*). What was more surprising, however, was that it chose to use the term *dignity* when neither the deputies nor the

authors of the 1946 Constitution actually had. As Samuel Moyn (2015) argues, it was during the interwar years that dignity first thrived in European legal and political circles. More precisely, Moyn contends, Ireland was the first country to inscribe the protection of human dignity in its constitution of 1937. For Irish leaders, appealing to dignity was part of a broader strategy of preserving certain key aspects of Catholic social thought (notably the emphasis on the family and on the natural inequality of women) while rejecting a more reactionary and authoritarian version of Catholicism. Dignity, along with the notion of the "human person," offered a model of individualism distinct from both socialism, judged to be psychically and socially too homogenizing, and market-driven liberalism, considered too atomizing. In other words, in its early twentieth-century juridico-political iteration, dignity was always linked to community, to society, and to the family—a connection encouraged by Pope Pius XI, who was also adamant in his condemnation of totalitarianism and extreme liberalism. It was this version of what Moyn calls "religious constitutionalism" with dignity at its center that was taken up in the postwar period, first in the UN Charter in 1945, in the new constitutions of Christian Democratic states such as Italy and Germany, and in the 1948 Universal Declaration of Human Rights.

Although France was never a Christian Democratic state as such, it did have a strong tradition of social Catholicism, one that was especially vibrant—politically and intellectually—during the interwar years and one that played a central role in the Resistance (Chappel 2012; McMillan 1996). During the Liberation and the Fourth Republic, many Social Catholic activists joined the MRP (Mouvement Républicain Populaire), which emerged as one of the three leading parties in France in the 1945 and 1946 elections, along with the socialists and communists (Woloch 2007). In the years after the war, French political leaders were extremely conscious of the need to mark a clear break with Vichy, to promote different values, and create new institutions to uphold the restoration of republican legality. For the MRP, however, this mission was somewhat more difficult than it was for the socialists or the communists. Indeed, in the eyes of many Catholics, the Vichy regime had implemented the kind of strong corporatist social policy anchored in the family that they had lobbied for since the late nineteenth century (Bordeaux 2002; Childers 2003; Muel-Dreyfus 1996; Pollard 1998). To be sure, many leftist Catholics rejected the overt racism of the État Français and the authoritarianism of Philippe Pétain—two of the many reasons why so many Catholics joined the Resistance. But how could the republic be resolutely "social" and "humanistic" without hewing too closely to the Vichy experiment?[5]

The two constitutive assemblies elected in 1946 to draft a new constitution for the Fourth Republic were acutely aware of this dilemma, especially the representatives of the MRP, which after the June elections became the dominant party in France. Throughout the legislative debates on the constitution and especially its preamble, MRP deputies insisted on the importance of "curbing" liberalism with a strong social policy anchored in the concepts of dignity, the person, and a revised human rights. As the MRP deputy Lionel de Tinguy du Pouët put it, "What we want is a mandatory and complete declaration of rights. . . . We want the condemnation of the liberalism and the individualism of 1789. . . . We want the affirmation of the pluralist community [*cité*] . . . the freedom of groups [*groupement*], the freedom of the person and of the family, the freedom of the father in particular" (*Journal Officiel*, n.d.2: August 23, 1946, 3303–4). In the words of Maurice Guérin, also from the MRP, it was not enough to defend the essential rights of man proclaimed in 1789 because "the framers in 1789 . . . could not foresee the social evolution and especially the economic evolution" that their revolution had brought about (*Journal Officiel*, March 8, 1946, 640). Dignity was one way to reframe human rights against liberalism but also against communism while insisting on the republic's intrinsically social nature. As one MRP deputy, Jacques Bardoux, explained in reference to the preamble (of which he claimed to be the author):

> Why . . . did I write this text . . . ? Because it seemed to me necessary to affirm, at the head of the declaration, the spirit, the objective, and the method of republican reconstruction after this war. . . . What spirit? To affirm the supreme dignity of the human person. What method? To define the rights and guarantee the liberties of the human person. How? First, to return—by intensifying and then generalizing—to the foundations of French civilization in their origin and in human rights; to react, on all fronts, against the terrifying regression that totalitarian regimes represented, especially Hitler's regime. (*Journal Officiel*, April 9, 1946, 1632)

Bardoux's reference to totalitarianism is interesting and significant given his political trajectory. During the interwar years, Bardoux distinguished himself through aggressively anticommunist pamphlets. Elected to the Assembly in 1938, he supported Pétain in 1940 and eventually participated in Vichy's Conseil National, the administrative body created in 1941 to replace the parliamentary regime that had ended with the German Occupation (Cointet 1989; Wieviorka 2009). After the war, Bardoux was pardoned and reelected to the National Assembly.[6] Although Pétain and his associates

were highly critical of the parliamentary regime of the Third Republic—which in their minds was responsible for the political instability, the social crisis, and the exacerbated individualism of the 1920s and 1930s—they believed it was important to set up some kind of legislative structure that would function in the war's aftermath. Writing a constitution was part of this effort, and although the text was never made public (partly because of the refusal of the German authorities), the Conseil National did indeed finish a draft that Pétain signed on January 30, 1944. This new constitution, which was firmly communitarian (and which, for example, replaced universal suffrage with the family vote, as familialist activists had called for throughout the 1920s), proclaimed in its first article: "The liberty and dignity of the human person are supreme values and intangible goods. To guarantee them requires order and justice from the state, and discipline from the citizens. The constitution thus delimits the duties and rights of public power [*puissance publique*] and of citizens by instituting a state whose authority lies in the adherence to the Nation" (Projet de constitution du 30 janvier 1944, n.d.; Le Floch 2003).

If we consider these "transwar continuities," to use Philip Nord's helpful expression, then perhaps the absence of the term *dignity* in the final version of the 1946 Constitution is not merely accidental. Indeed, the MRP deputies who wrote the constitution were not all right-wing sympathizers like Bardoux. The party also included people like Maurice Schumann, who was a member of the Socialist Party (SFIO) prior to the war, or Francisque Gay, a close collaborator of Marc Sangnier at the Sillon, a movement that began in the 1890s to put an end to the long-standing battle between the Republic and the church and to spread the ideas of Social Catholicism within the Left. For those who had fought Pétain, perhaps a direct reference to "dignity" would fail to provide the break from Vichy that seemed so necessary. From this perspective, the final version of the constitution promulgated in October 1946 could be read as a compromise: it kept many of the clauses, and certainly the "spirit," of Christian Democracy, without using certain specific loaded terms.

Dignity and Public Order

The point of this detour through the 1940s is not to suggest that the Conseil Constitutionnel was thinking of Vichy's failed constitution or of the parliamentary debates around dignity during the Fourth Republic when it formulated its decision on the bioethics laws in July 1994. Rather, I want to argue

that the version of dignity that was taken up by legal scholars and politicians after this ruling was similar to the communitarian, antiliberal, antitotalitarian, and pro-family notion that persisted through Vichy and the Fourth Republic. The context of the 1990s was significantly different from that of the 1940s, but, interestingly enough, the same animus against "savage liberalism" and totalitarianism pervaded many of the discussions. For critics of the bioethics laws, the deregulation of reproductive technologies was both the origin and the result of a particular liberal and capitalist (often termed "Anglo-Saxon") multiplication of rights *and* of a totalitarian erasure of sexual difference (Robcis 2013). Law, and family law especially, they argued, needed to preserve its normative and integrative capacity (believed to be transhistorical and universal) instead of simply reflecting social mores.

Thus, according to Muriel Fabre-Magnan, a professor of law at the Sorbonne and one of the main defenders of the notion of dignity in law, notably to condemn surrogacy, unlike the immediate postwar period when the "enemy was the state and the main threat was oppression and the loss of liberty," the real enemy was no longer the state but "barbarism and the risk of dehumanization [*déshumanisation*] brought about by the inordinate development of technology and of the market." Dignity, Fabre-Magnan (2007: 5–6) continues, served to restrain consent, the "modern juridical expression of individualism and liberalism," which had become "a keyword to lift all prohibitions and to legitimate all behaviors." Dignity did not aim to "protect a particular person, or even a category of persons, but humanity in general" (21). It accounted for "what exceeds man, what remains a transcendence despite what we have called the disenchantment of the world" (25). Or, as Fabre-Magnan puts it in "Sadomasochism Is Not a Human Right," nobody could renounce human dignity, neither for others nor for oneself, because "there is an aspect of the relationship of oneself with oneself which does not pertain to the sphere of the private but which has to do with the public sphere" (Fabre-Magnan 2006: 291).

This understanding of dignity as a safeguard against the "new totalitarianism" of capitalism and individualism, and as the last transcendent value to resist secularization and positivism, spread in legal journals, conferences, and publications throughout the 1990s and 2000s. It was defended in different ways by legal scholars such as Bernard Edelman (1999), Alain Supiot (2005), Catherine Labrusse-Riou (2007), and Fabre-Magnan, as well as philosophers such as Sylviane Agacinski (2013) and Thibaud Collin (2012), but also theologians like Olivier de Dinechin (1999) and France Quéré (2006) (see also *La dignité humaine* 2004). This vision of dignity as

the foundation of the social also circulated in the discussions and reports of the Comité Consultatif National d'Éthique (CCNE), a national ethics committee founded in 1983 to advise legislators on how best to regulate the new technologies that had developed in biology, medicine, and public health (Sicard 2003; Memmi 1996). Much of the language adopted in the final version of the bioethics laws was taken directly from the CCNE reports and amended after the parliamentary deliberations in which dignity played, once again, a central role. Citing the works of Labrusse-Riou and of Edelman, Christine Boutin, for example, an elected representative with close ties to the Vatican and one of the few French politicians to publicly oppose abortion, opened her speech on the bioethics laws by asking the government to "give voice to moral principles, give voice to human dignity, give voice to the foundations of our humanist tradition" (*Journal Officiel*, n.d.1: November 19, 1992, 5737).

Boutin, who was also a key figure in the battle against same-sex partnerships and marriage, opposed the 1994 laws for failing to protect the embryo sufficiently. Legislators, according to Boutin, were still guided by science rather than by "the inalienable and sacred rights of man consecrated in the preamble of our 1946 Constitution" (*Journal Officiel*, November 19, 1992, 5741). It is also interesting to note that Boutin served as a consultant for the Pontifical Council for the Family founded by Pope John Paul II (n.d.: Article 139) in 1981 to "promote the pastoral care of families" and "to protect their rights and dignities in the Church and in civil society." As I argue elsewhere, dignity was especially important in the thought of John Paul II, who sought throughout his life to elaborate a new anthropology, a new conception of man and of society anchored in sexual complementarity, a new political model that could provide an alternative to liberalism and socialism at once (Robcis 2015; Case 2012). Dignity, in other words, circulated in overlapping circles—legal, religious, political, and intellectual—and through a series of thinkers, lawyers, and politicians who navigated these different fields.

Even though the Conseil Constitutionnel played a crucial role in establishing dignity as a constitutional principle in French law in its 1994 bioethics decision, it was the Conseil d'État—France's highest court of appeals in administrative matters—that definitively inscribed dignity as a key component of public order in its famous "dwarf-throwing" decision of October 27, 1995. The case involved the owners of a nightclub in Morsang-sur-Orge, a Paris suburb, who, in October 1991, decided to organize dwarf-throwing competitions in which dwarves, dressed in protective suits, were thrown into the air before landing on a mattress. Alarmed by this form of "entertainment," the town's mayor shut down the event through a municipal order.

Manuel Wackenheim, a twenty-four-year-old dwarf who claimed to have voluntarily participated in what he considered a form of work, challenged the decision in court demanding the right to exercise his profession. The case traveled through various administrative tribunals including that of Versailles, which in 1992 declared that dwarf throwing did not disturb any of the three pillars of public order (security, peacefulness, and public health) and that the mayor had violated Wackenheim's human rights.

Three years later, however, the Conseil d'État (1995) reversed the decisions of the lower courts, stating that, in fact, "the respect of the dignity of the human person was one of the components of public order." As such, the municipal police—whose role was to guarantee public good order and safety—was correct in suspending the show. Being projected into the air could not possibly be construed as a "right," the court continued, because throwing a person affected by a physical handicap was "in its very objective [*par son objet même*]" an infringement on the dignity of the human person. The Morsang-sur-Orge decision, which became one of the most discussed legal cases in recent years, was remarkable on many fronts. As commentators noted, Morsang-sur-Orge inaugurated a new role for the judges of the Conseil d'État, who suddenly left their "splendid isolation" to enter the field of politics and actually *make* the law instead of simply applying it (Cayla 1998). But for my purposes here, the decision confirmed that dignity could now redefine private entities (whether it be individual consent or the privately owned nightclub) into public spaces subject to government regulation and intervention. Dignity, in other words, had become explicitly biopolitical.

Dignity, Catholicism, and Islam

Given the redefinition of dignity that proceeded from Morsang-sur-Orge, it is not surprising that the French government under President Nicolas Sarkozy turned to dignity once more when it sought a legal justification for its 2010 law banning "face coverings" in public spaces, a law specifically targeting the burqa and the niqab. Referring to "face covering" as a "communitarian manifestation of the rejection of the values of the Republic" and as a "symbolic and dehumanizing violence that hurts the social body," the government explained:

> The voluntary and systematic covering of the face poses a problem because it is simply contrary to the fundamental requirements of life-in-common of French society [*le vive-ensemble*]. The defense of public order is not limited to

> the preservation of tranquillity, public health, or security. It also allows the prohibition of certain behaviors that go directly against the rules essential to the republican social contract that founds our society. . . . This form of public reclusion, even when it is voluntary or accepted, evidently constitutes an infringement on the dignity of the person. (Fillon 2010)

Despite the fact that the Conseil d'État (this time serving as adviser to the state) expressed some reservations on the government's legal formulation—especially on the ambiguity that the category of dignity had acquired over the years—the Conseil Constitutionnel upheld the law, and the government signed it on October 11, 2010 (Languille 2012).

Both this "face-covering" law and the pleas to revive "national indignity" after the terrorist attacks on *Charlie Hebdo* reveal how dignity and national belonging have become intertwined in recent years. While the 1994 bioethics laws sought to control sexuality and to exclude homosexuality from reproduction (the reproduction of children but also of the nation), these other two cases point to the complex articulation of France, Islam, and secularism. As many scholars point out, the concept of *laïcité* has evolved significantly from its 1905 formulation as freedom of religion to its current "republican" mobilization, in which the state, in view of a "neutral public sphere," consciously regulates behaviors that were recently considered intrinsically private—clothing or eating, for example (Fernando 2014; Hennette-Vauchez and Valentin 2014). It is in this sense that I suggested in the introduction that dignity, like *laïcité* and republicanism, has become a self-evident, transcendental, and dehistoricized concept that has been increasingly used to exclude certain bodies and certain communities from the limits of the nation. Just as the historicization of *laïcité* and republicanism is crucial to map the multiple forms and meanings that these concepts have taken since the eighteenth century, it seems equally important to bring to light this particular genealogy of dignity, which at the very least complicates the insistently secular self-understanding of French law.

Notes

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1 Hannah Arendt famously addressed the relationship between statelessness, rights of man, and dignity in *The Origins of Totalitarianism* (1951). Simonin (2015) also warned against the reestablishing of national indignity to punish terrorists in the aftermath of *Charlie Hebdo* precisely because it would create "nonsubjects of law."

2 Samuel Moyn's recent work, and in particular his new book *Christian Human Rights*, is especially helpful for understanding how human rights and dignity, as they emerged in the 1940s, had no obvious correlation with liberal democracy. Rather, they were promoted by Christian conservatives to provide a moralized political and social model that could counter communism and liberalism.

3 According to Alain Supiot (2013: 34), social law was responsible for promoting the principle of human dignity after World War II. Interestingly, Supiot, currently a professor at the Collège de France, has been one of the most important supporters of this "anthropological turn" in law. Very much indebted to the work of Pierre Legendre, Supiot (2005, 2010) argues for the importance of dignity to ground social solidarity and resist the marketization of culture and the dominance of positive law, as evidenced, for example, in the demands for same-sex unions.

4 I have slightly modified the English translation provided by the Conseil Constitutionnel to preserve the idea of the *personne humaine*, which has a particular meaning and history in Roman law and in Catholic social thought. On the human person, see Moyn 2015, chap. 2; and Cayla and Thomas 2002, pt. 2.

5 This was a concern for the MRP but also for Charles de Gaulle, whose vision of social policy was close to social Catholicism, especially in the field of family law (Robcis 2013, chap. 1). On de Gaulle and corporatism, see Elbow 1953: 202–3; and Shennan 1989.

6 Because so many Vichy supporters joined the MRP, the party was sometimes called by its opponents "Machine à Recycler les Pétainistes" ("machine to recycle Pétain supporters"). On these continuities, see Lenoir 2003 and Nord 2010.

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