

CHAPTER 13

A Tale of Two Stories

Visible and Less Visible Assaults on Academic Freedom in France

STÉPHANIE HENNETTE VAUCHEZ

INTRODUCTION

This chapter provides a personal perspective on the general issue of academic freedom based on reflections triggered by recent attempts to discipline academic freedom in France—some highly conspicuous and some less visible than others. It starts by recounting a rather blatant and conspicuous governmental assault on academic freedom that occurred in 2020 and 2021 when executive leaders suggested that a current of “Islamism” had come to “gangrene” French universities and warranted inquiry. It then recounts in the first person the ways in which the author’s findings in the framework of a collaborative research project on the standards of judicial review over administrative orders taken during the 2015–17 antiterrorist state of emergency led to tensions with the *Conseil d’Etat*—the highest administrative court. These tensions eventually led to a redrafting of the legal agreement that the *Conseil d’Etat* requires researchers who claim access to its internal databases to sign, with the agreement now containing a number of provisions that are questionable with respect to academic freedom. It reads stories

through the lens of both an institutional and political culture of unease with external intellectual critique.

THE VISIBLE: ACADEMIC FREEDOM AND REPUBLICAN INTEGRALISM

In June 2020, as he was starting to communicate on what was then called the bill against “separatisms,”¹ President Emmanuel Macron called academia “culpable” of encouraging “separatism” from republican values.² In an intervention in reaction to the global protests triggered by the killing of George Floyd by the Minneapolis police, Macron deplored that academia was encouraging “the ethnicization of social issues” and claimed that this was leading to new forms of “separatism” causing ominous threats to divide the Republic. A few months later, the minister of education used harsher language to express similar ideas. Jean-Michel Blanquer spoke of “intellectual forms of complicity with terrorism” that he claimed were prevalent in academia. As one of the major promoters of the catch-all label of “Islamofetism,”³ he used it to describe an array of academic works and inquiries that he read as attacks on what he claimed to be the “French model” of “republicanism” and “universalism.” Blanquer announced his determination to show extreme firmness toward all those who “while believing to be progressives, are making the bed of terrorism.”⁴ Finally, the minister of higher education, Frédérique Vidal, delivered the *coup de grâce* when she announced her decision to endow the French CNRS (Centre national pour la recherche scientifique) with the task of investigating and reporting on academic research in France, with a view to distinguish between “academic research”

1 The proposed bill eventually led to the adoption of the 2021 Act “comforting the principles of the Republic.”

2 Camille Stromboni, “Comment Emmanuel Macron s’est aliéné le monde des sciences sociales,” *Le Monde*, June 30, 2020, www.lemonde.fr/societe/article/2020/06/30/comment-emmanuel-macron-s'est-aliene-le-monde-des-sciences-sociales_6044632_3224.html.

3 Several authors have claimed that this anti-Islam rhetoric takes root in the Cold War; see, e.g., Russell Johnson, “Islamofetism?” *University of Chicago Divinity School*, March 1, 2021, <https://divinity.uchicago.edu/sightings/articles/islamo-fetism>.

4 Mathilde Durand, “Ce qu’on appelle l’islamo-gauchisme fait des ravages,” *Europe 1*, October 22, 2020, www.europe1.fr/politique/ce-quon-appelle-lislamo-gauchisme-fait-des-ravages-denonce-jean-michel-blanquer-4000366.

and “activism” and better assess “Islamism” that she also claimed was “gangrening” universities.⁵

These interventions form a series of unprecedented attacks on academic freedom emanating from the highest ranks of the executive branch. In doing so, government officials were reacting to singular events. On October 16, 2020, high school teacher Samuel Paty fell victim to the murderous madness of an eighteen-year-old Chechen refugee who claimed to be acting in the name of Allah. This horrific act profoundly shocked the country and certainly led the government to affirm its determination to reinforce public authorities’ arsenal of measures to not only combat terrorism but also prevent radical political ideologies and movements from taking root. This is the immediate context against which the important Act Comforting the Principle of the Republic that came into force in August 2021 needs to be read. These declarations of Macron, Blanquer, and Vidal also illustrate, however, a broader political shift. As *laïcité*, as well as “republican values” more generally, have become a key component of the rhetoric of fighting terrorism and security, they are increasingly turned into a tool wielded against a variety of forms of speech (including academic scholarship) that appear to be critical of said republican values.

Numerous legal developments that have taken place since the beginning of the twenty-first century have tainted *laïcité* with security (in French, “sécuritaire”) overtones.⁶ Broadly reconstrued as requiring religious neutrality or discretion (if not as the antonym of religion), *laïcité* is increasingly referred to as a crucial component of the public policy toolkit in the prevention of religious radicalization. The 2004 Act prohibiting public school students from wearing religious signs was certainly a breakthrough in this respect. The subsequent 2010 Act prohibiting the concealment of the face in public spaces (colloquially referred to as the “burqa ban”) was also presented as part and parcel of a broader effort to contain religious radicalization in society at large. The repeated terrorist attacks that have taken place since 2015

5 Soazig Le Névé, “Frédérique Vidal lance une enquête sur ‘l’islamo-gauchisme’ à l’université,” *Le Monde*, February 16, 2021, www.lemonde.fr/societe/article/2021/02/16/frederique-vidal-lance-une-enquete-sur-l-islamo-gauchisme-a-l-universite_6070195_3224.html; Ishaan Tharoor, “France and the Spectral Menace of ‘Islamism,’” *Washington Post*, February 21, 2022, www.washingtonpost.com/world/2021/02/22/france-macron-islam-leftism/.

6 Philippe Portier, “The Illiberal Turn of French Laïcité,” *Reset Dialogues on Civilizations*, December 22, 2020, www.resetdoc.org/story/the-illiberal-turn-of-french-laicite/.

further favored associations and amalgamations between Islam and terrorism. Already in the wake of the January 2015 killings at Charlie Hebdo, Montrouge, and a Jewish supermarket, government officials, political leaders, and much of the media had framed the attacks as caused by the forgetfulness and ignorance of the principle and culture of *laïcité* (secularism) or claimed that heightened/better education to and enforcement of *laïcité* was the remedy to homegrown terrorism. This narrative of *laïcité* as a key element of the response to terrorism only grew stronger as more attacks continued to unfold—in November 2015 at the Stade de France and Bataclan, in 2016 in Nice or St Etienne du Rouvray, as well as in other instances. A robust public policy aiming to combat religious radicalization, once focused on specific social spaces such as schools and prisons, was swiftly mainstreamed throughout all public policy domains.⁷

In 2021, the parliament adopted the Act Comforting the Principles of the Republic. Prime Minister Jean Castex had very symbolically chosen to present the bill as simultaneously placing *laïcité* at center stage and directing against one enemy, “radical Islam.”⁸ The bill was formally introduced on the 9th of December 2020, the date of the 115th anniversary of the Law of 1905 proclaiming the separation of churches and the State and commonly read as the bedrock of the French regime of *laïcité*. The Act also further pushed the securitization of *laïcité* through a variegated set of measures. Throughout the country, representatives of the State (*préfets*) can now judicially challenge acts of local authorities through expedited procedures if they believe they threaten the religious neutrality of public services. Hence the decision of the *préfet* of the department of Vienne to challenge a municipal ruling adopted by the city of Grenoble with a view to allow the wearing of “burkinis” in municipal swimming pools.⁹

7 Laurent Bonelli and Francesco Ragazzi, “La lutte contre la ‘radicalisation’: Genèse et expansion d’un nouveau lieu commun administratif en France et dans l’Union Européenne,” *Archives de politique criminelle* 41 (2019): 119.

8 Olivier Faye, Nicolas Chapuis, and Alexandre Lemarié, “Jean Castex: L’ennemi de la République, c’est une idéologie politique qui s’appelle l’islamisme radical,” *Le Monde*, December 9, 2020, www.lemonde.fr/politique/article/2020/12/09/jean-castex-l-ennemi-de-la-republique-c-est-une-ideologie-politique-qui-s-appelle-l-islamisme-radical_6062698_823448.html.

9 His challenge was upheld by the *Conseil d’Etat*, for the decision to allow modest swimwear was indeed deemed to violate the requirement of neutrality of public services, since it had been motivated by and tailored to the specific needs of a particular group of the population: CE, réf. June 21, 2022, n° 464648.

The 2021 Act also determines that any association that applies for public funding must sign a contract of republican commitment (*contrat d'engagement républicain*) by which it commits to respect a list of republican principles lest the funding be discontinued, and the association be requested to reimburse illegally perceived funds. The list of principles includes *laïcité* as well as “freedom,” “equality,” “human dignity,” and even “ordre public”¹⁰—all of which are fuzzy and indeterminate enough for many academics and human rights organizations to have expressed the fear that arbitrary decisions would ensue.¹¹ Take, for instance, the recent Poitiers affair, whereby the *préfet* of Vienne ordered the mayor of the city to withdraw the public funds it had awarded a local association (named *Alternatiba*), on the grounds that their advertising of “civil disobedience workshops” constituted a failure to respect “ordre public.”¹²

The 2021 Act also upended the legal regime of homeschooling, largely because of its purported risks in terms of religious radicalization. Once a choice families were free to make, homeschooling has now become illegal in principle, and can only be made available exceptionally upon administrative authorization.¹³ The law further specifies that municipal authorities can only grant such authorization in a limited number of circumstances (e.g., when homeschooling is required for health reasons, or because the children have an intense and semi-professional practice of sports or arts that is incompatible with regular school attendance, or due to the family’s traveling lifestyle, or for “any situation specific to a given child”).¹⁴

10 See Décret n° 2021-1947 du 31 décembre 2021 pris pour l’application de l’article 10-1 de la loi n° 2000-321 du 12 avril 2000 et approuvant le contrat d’engagement républicain des associations et fondations bénéficiaire de subventions publiques ou d’un agrément de l’Etat.

11 See, e.g., Observatoire des libertés associatives, “Promotion et défense des libertés associatives,” www.lacoalition.fr/Observatoire-des-libertes-associatives.

12 On the pending legal challenge opposing the municipality to the préfet: Aurore Coulaud, “Désobéissance civile; Subventions d’Alternatiba: le bras de fer se poursuit entre la maire de Poitiers et le préfet de la Vienne,” *Libération*, February 13, 2023, www.liberation.fr/environnement/subventions-dalternatiba-le-bras-de-fer-se-poursuit-entre-la-maire-de-poitiers-et-le-prefet-de-la-vienne-20230213_LC-45Z2A7RBCHDI3EEQM7ZD5E/.

13 Religious schools also became subjected to heightened controls and their freedom of establishment has been subjected to intensified checks: Loi n°2018-266 du 13 avril 2018 visant à simplifier et mieux encadrer le régime d’ouverture et de contrôle des établissements privés hors contrat. In the same vein, the 2021 Act comforting the principles of the republic later limited families’ freedom to choose homeschooling to educate their children; that choice is now conditional upon administrative approval.

14 In its initial version, the proposed bill explicitly mandated that religious, political, or philosophical beliefs were invalid grounds for a choice to homeschool—and that administrative authorization ought to

Political theorist Jean-Fabien Spitz has recently offered a powerful critique of the renewed centrality of *laïcité* as well as “republican values” more generally in French political discourse. As he describes this new rhetoric as a form of “integralism,” Spitz claims that the insistence on republican values is but a cover for the unprecedented levels of social and economic violence that result from the neoliberal agenda that is increasingly being pursued by the State: because it fails to justify the ever-increasing levels of inequality it produces, neoliberalism invokes—albeit hypocritically—universal moral values in an attempt to gain an axiological dimension.¹⁵ In his reading, *laïcité* has become a sort of collateral victim of neoliberalism, now wielded as a magic card in the face of an array of challenges it was never conceptually or historically supposed to speak to.

Understanding these broader dynamics allows us to identify the parallel ways in which this increasingly central concept of *laïcité* disciplines citizens and society at large and academia in particular. As the policy goal of preventing terrorism increasingly led to the notion that it was necessary to prevent the dissemination of “radical ideas” that “threaten the Republic,” a number of topics of academic inquiry and research have been framed as problematic. In particular, scholarship critical of republican narratives has become suspect in the eyes of segments of the political sphere—with, as recalled earlier, members of the government going as far as to suggest that it may indeed become the breeding ground of terrorism. The Minister of Education Jean-Michel Blanquer thus designated a very broad range of suspicious fields of academic inquiry in that respect, a list in which he included postcolonial studies, gender studies, antidiscrimination, intersectionality, race studies, and the like. He spoke of a necessary “combat” to be waged against these ideas that are also presented as generated by a North American intellectual matrix.¹⁶

be denied if such reasons motivated a family's request. The final version of the act no longer contains this language, but this genealogy illuminates the subtext of these provisions, which clearly echoes the prime minister's choice to fight a battle against “radical Islam.”

15 Jean-Fabien Spitz, *La République? Quelles valeurs?* (Paris: Gallimard, 2022).

16 “Interview de Jean-Michel Blanquer,” *Journal du Dimanche*, October 25, 2020: “Il y a un combat à mener contre une matrice intellectuelle venue des universités américaines et des thèses intersectionnelles, qui veulent essentialiser les communautés et les identités, aux antipodes de notre modèle républicain qui, lui, postule l'égalité entre les êtres humains, indépendamment de leurs caractéristiques d'origine, de sexe, de religion. C'est le terreau d'une fragmentation de notre société et d'une vision du monde qui converge avec

Blanquer's discourse did, of course, manage to secure some forms of support in academia. Shortly after one of his interventions describing institutions of higher education (especially in the social sciences) as infiltrated by such perverse ideologies, over a hundred intellectuals coauthored an op-ed in the national press expressing their support of his views.¹⁷ For them "indigenist, racist and 'decolonial' ideologies" (all of them imported from North American campuses where "wokism" is purportedly raging) are not only "well present" in universities. They are also, they claim, "feeding a hatred of 'whites' and France." In February 2021, another move by seventy-six academics occurred when an "Observatory of Decolonialism" was founded with a view "to put an end to the hijacking of research and the transmission of knowledge." The observatory held its inaugural conference in January 2022, with a keynote delivered by Jean-Michel Blanquer and the concluding remarks by a high-ranking official of the Ministry of Higher Education.¹⁸ Many of the scheduled talks addressed the necessary critique of critical social sciences.

In May 2022, Macron was reelected for a second mandate. He did not reappoint Blanquer and Vidal in his cabinet. In the meantime, a legal challenge had been initiated by six academics against Vidal's plan to launch an investigation into the alleged takeover of "Islamism-leftism" in academia. The claimants argued that the minister had overstepped her powers; and within the court proceedings, the Ministry of Higher Education was requested to communicate all the documents related to the investigation that had been announced. The ministry was, however, to communicate anything for, they claimed, no action or indeed investigation had ever followed the minister's announcement.¹⁹ The case was thus declared moot. The minister's words

les intérêts des islamistes. Cette réalité a gangrené notamment une partie non négligeable des sciences sociales françaises."

17 "Une centaine d'universitaires alertent: 'Sur l'islamisme, ce qui nous menace, c'est la persistance du déni,'" *Le Monde*, October 31, 2020, www.lemonde.fr/idees/article/2020/10/31/une-centaine-d-universitaires-alertent-sur-l-islamisme-ce-qui-nous-menace-c-est-la-persistance-du-deni_6057989_3232.html.

18 For a critique, see Monique Selim, "De la légitimation politique d'une trappe identitariste," *L'Homme et la société* 1–2 (2021): 7.

19 Soazig Le Névé, "Enquête sur 'l'islamo-gauchisme' à l'université: histoire d'une vraie fausse annonce," *Le Monde*, March 29, 2023, www.lemonde.fr/societe/article/2023/03/29/enquete-sur-l-islamo-gauchisme-a-l-universite-histoire-d-une-vraie-fausse-annonce_6167488_3224.html; Fabien Jobard, "L'islamo-gauchisme est un excès de pouvoir," in *La savante et le politique: Défense et illustration des libertés académiques*, ed. Eric Fassin and Caroline Ibos (Paris: Flammarion, 2024).

did, however, have a very real chilling effect. As Eric Fassin and others have noted: “The result of this campaign is that there are a number of research projects that have been abandoned, vocations discouraged, dissertations that will not come to fruition, articles and books that will not be published, funds that have not been allocated, job offers that have not been made.”²⁰

THE INVISIBLE: RESEARCHERS’ ACCESS TO SOURCES

I now turn to another illustration of the challenges that academic freedom is facing in contemporary France beyond this broader “republican” chilling effect, by sharing a first-hand account of some difficulties researchers may experience in their freedom to access relevant sources. Access to sources is, of course, a very broad question. To the extent that their political or economic interests may come into conflict with the dissemination of scientific studies, private and public authorities alike may exercise pressure on academics.²¹ And while such threats and pressure may reach incommensurable proportions in authoritarian regimes, democracies are not immune.²² And because, for a researcher, access to relevant sources of inquiry is crucial, it is important to think of hindrances and threats to academic freedom that may occur upstream from more conspicuous pressures on the publication of scientific results and analyses or the use of legal procedures (libel, defamation, or privacy) to silence academics (or whistleblowers, for that matter).²³ Yet, from bureaucratic hurdles to outright obstacles, access to relevant resources

20 Anne-Laure Amilhat Szary et al., “L’enquête sur ‘l’islamo-gauchisme’ à l’université n’aura pas lieu et n’avait pas lieu d’être,” *Le Monde*, March 29, 2023, www.lemonde.fr/idees/article/2023/03/29/l-enquete-sur-l-islamo-gauchisme-a-l-universite-n-aura-pas-lieu-et-n-avait-pas-lieu-d-etre_6167487_3232.html. More dramatically, as Fassin again has noted, these governmental assaults on critical social sciences as a threat to the republic have also resulted in unleashing threats and violence against academics; see Eric Fassin, “Qui est complice de qui? Les libertés académiques en péril,” *Blog Mediapart*, November 1, 2020, <https://blogs.mediapart.fr/eric-fassin/blog/011120/qui-est-complice-de-qui-les-libertes-academiques-en-peril>.

21 Joan W. Scott, *Knowledge, Power and Academic Freedom* (New York: Columbia University Press, 2018); Michael Ignatieff and Stefan Roch, eds., *Academic Freedom: The Global Challenge* (Budapest: CEU Press, 2017).

22 For a specific reflection on the challenges met by researchers in the field of social sciences who investigate sensitive political topics in democratic regimes, see Marwan Mohammed, “La fragilité juridique des chercheurs en sciences humaines et sociales face aux États démocratiques,” in *Liberté de la recherche: Conflits, pratiques, horizons*, ed. Mélanie Duclos and Anders Fjeld (Paris: Kimé, 2019), 135.

23 Olivier Leclerc, “Overarmed or Underdressed? Whistleblowers between Anti-discrimination Law and Freedom of Expression,” *International Journal of Discrimination and the Law* 23 (2023): 265.

can be barred in multiple ways. This section focuses on the access of French scholars to a specific category of legal sources that are often assumed to pose no particular challenge in terms of access but that can nonetheless run into the resistance of public authorities to academic inquiry: court decisions.

Before all else, a little bit of context is warranted. In France, court decisions have only recently been classified as open data. A 2016 Act prescribed they systematically be made accessible to the general public once they have been anonymized.²⁴ Respecting this basic privacy requirement for both the stock and flux of all court decisions, as well as designing the proper logistical tools for enabling access have, however, proved to be challenging goals—and close to ten years after this initial legislative commitment, the process is still underway. It is expected to be completed by 2025.²⁵ Until well into the 2010s, however, the only openly accessible database for court rulings was exhaustive for rulings by the supreme courts only (*Conseil d'Etat* and *Cour de cassation*),²⁶ while appellate and first-degree judgments were only available in a piecemeal fashion. As a consequence, any legal research project that needed to access, analyze, and classify the entirety of court decisions on any given topic in order to exhaustively document the judicial treatment of a particular issue, concept or question necessitated for the research team to request access to the internal databases of administrative, judicial (or other) courts.

In 2016, a few months into the antiterrorist state of emergency (SOE) that had been declared by President Hollande after the November attacks in Paris and the Stade de France, the Human Rights Law Center (CREDOF)²⁷ of University Paris Nanterre initiated a collaborative research project on the use of this emergency regime. The research project was supported and funded by the *Défenseur des droits*—the constitutional authority for the protection of fundamental rights. One of the project's goals was to scrutinize the standards of judicial review that apply to administrative measures such as house arrest or house search orders. The project's design supposed access and anal-

24 Loi n°2016-1321 du 7 octobre 2016 pour une République numérique.

25 See also Décret n° 2020-797 du 29 juin 2020 relatif à la mise à la disposition du public des décisions des juridictions judiciaires et administratives. In principle, court decisions are to be made publicly available within two (administrative courts) to six (judicial courts) months of the ruling.

26 As a high court separate from both the judicial and administrative courts system, the *Conseil constitutionnel* has long made all its decisions available on its own website.

27 Centre de recherches et d'études sur les droits fondamentaux.

ysis of all the (administrative) court decisions that challenges to the state of emergency measures had led to. The research team that I headed thus applied for authorization to access the administrative courts' internal database. Such requests are to be addressed to the *Conseil d'Etat*, the highest administrative court. Ours was granted and we were soon able to schedule appointments with the relevant department and start working and collecting data. At each of our visits, we were only met with openness and cordiality. As a principal investigator for the project, I had to sign an agreement stipulating the terms of our right to access.

In the meantime, the topic we were researching was growing in political salience. As we initiated the project, in January 2016, the first attempt by several human rights organizations to have a court enjoin the president of the Republic to lift the state of emergency had failed. The organizations claim that the conditions of clear and imminent danger that might have justified the declaration of an SOE in November were no longer met and that it was thus necessary to put an end to what was to remain a temporary legal framework allowing the executive to deal with exceptional circumstances (in the particular case, terrorist attacks) had not convinced the court. The *Conseil d'Etat* declared itself incompetent to deliver such an injunction to the chief of State.²⁸ Subsequently, the state of emergency was repeatedly renewed and prolonged for little short of two years. It only formally came to an end on the 1st of November 2017. During that time, concerns relative to the risks of normalization of emergency measures, increased human rights restrictions, and competence creep of the executive only grew bigger.

In this context, our research project and the findings it would lead to was drawing the attention and interest of numerous actors: human rights organizations and institutions, both national and international, were eager to understand exactly what this SOE regime was about, how it operated, and whether it was (or not) being tamed and controlled by courts. The study we were doing was going to provide a unique perspective on these and other questions. We were thus having sustained conversations with leading civil society organizations (Human Rights Watch, Amnesty International, *Ligue des droits de l'Homme*, among others) as well as with the office of the newly appointed UN Special Rapporteur for the protection and promotion

28 CE, ref. January 27, 2016, n° 396220.

of human rights in the fight against terrorism—who had, remarkably and because of her interest in this prolonged SOE, chosen France as the country of her first official visit at the outset of her mandate.²⁹ We were also in contact with journalists and several media outlets who were eager to learn about our findings and conclusions.

In terms of our project's calendar, our final report to the *Défenseur des droits* was due in May 2018. However, as is often the case with publicly funded research, we were to write an intermediary report—which we did in October 2017. On that basis, we agreed to meet with journalists who were running reports on the topic and to share some of our intermediary conclusions. We met with representatives of two important daily newspapers (*Libération* and *Le Monde*) and communicated some statistical elements based on the analysis of the over seven hundred court decisions we had drawn from the administrative courts' internal database: percentage of cases involving specific types of SOE measures (house arrest vs. house searches, for instance), the percentage of cases in which administrative authorities were defeated, and so on. We also discussed some instances of cases where we felt the standard of judicial review had been wanting. The newspapers published articles echoing our findings.³⁰

As the principal investigator of the project, I immediately received an email from the *Conseil d'Etat*, complaining that I had breached the agreement granting us (me and the entire research team) access to the administrative courts' internal database. The agreement did stipulate that we were under the obligation to communicate the final research report to the *Conseil d'Etat*. While we were well aware of this obligation—one that is very common indeed in the contemporary economy of academic research—we had felt that our intermediary report and results were only due to our funder (the *Défenseur des droits*) and not to other institutions we had been interacting with. I explained this to the *Conseil d'Etat* but hardly convinced them. I sub-

29 See Fionnuala D. Ní Aoláin, "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism on Her Visit to France," OHCHROR, 40th Sess., UN Doc A/HRC/40/52/Add.4 (2019).

30 Sonya Faure and Pierre Alonso, "Etat d'urgence: des travers dans l'Etat de droit," *Libération*, June 21, 2017, www.liberation.fr/france/2017/06/21/etat-d-urgence-des-travers-dans-l-etat-de-droit_1578625/; Anne Chemin, "Conseil d'état: quand les recours n'aboutissent pas ou peu," *Le Monde*, October 11, 2017, www.lemonde.fr/idees/article/2017/10/11/conseil-d-etat-quand-les-recours-n-aboutissent-pas-ou-peu_5199605_3232.html.

sequently received a formal letter of disapproval signed by the secretary-general herself, accusing me of playing with words and of breaching the elementary code of conduct between researchers and public institutions.

After this episode of tension, we continued to work on our project. As it did come to an end in 2018, we of course complied with the requirement of sending the final report to all parties including the *Conseil d'Etat*; and never really heard back from them.³¹ They never invited us to present our work, even when they later thematized their annual series of open seminars on states of emergency—other academics were invited, but none who had done the (unique) kind of work we had, and none that could seriously claim to have analyzed the level of judicial scrutiny exercised by administrative courts during states of emergency.³² They also hardly referenced our work in the subsequent annual report they authored on the same topic.³³

More twists and turns were to follow. By the end of 2017, I was also taking part in another—unrelated—collaborative research project. This project's topic was religion, secularism, and courts. Because once again the design was to provide in-depth studies of some specific areas of case law, this project's principal investigator also requested for the research team she had gathered to be granted access to the same administrative courts' internal database. This time, the request was denied. More accurately, the *Conseil d'Etat* asked her to renew her request after a few months, as (we were told) the agreement stipulating the terms and conditions for academics' access was being redrafted. Finally, in June 2018, the principal investigator's request was granted, under the revised convention.

Although none of the work packages I was personally involved in required access to the internal database, I was able to read the new agreement as a member of the research project—and indeed, to compare it to the one I had signed in 2016 in the framework of my SOE project. The new agreement was much stricter. In fact, some of its provisions raise a number of questions with respect to academic freedom. For instance, Article 1 of the agreement indicates that researchers' access to internal databases may be granted “given the

31 Stéphanie Hennette Vauchez, ed., *Ce qui reste(ra) toujours de l'urgence* (Paris: Éditions Varenne, 2018).

32 “Les états d'urgence: nouveau cycle annuel de conférences du Conseil d'Etat,” *Conseil d'Etat*, September 18, 2020, www.conseil-etat.fr/actualites/les-etats-d-urgence-nouveau-cycle-annuel-de-conferences-du-conseil-d-etat.

33 “Les états d'urgence: la démocratie sous contrainte,” *Conseil d'Etat*, September 29, 2021, www.conseil-etat.fr/publications-colloques-etudes/les-etats-d-urgence-la-democratie-sous-contraintes.

interest of the research project for the administrative courts' system." Article 4 stipulates that the researchers pledge to only use accessed data for the purposes of the research project. Other provisions further echo the agreement's relatively restrictive nature:

Art. 6: The co-contractor undertakes to provide the managers of the ... Conseil d'Etat, at least fifteen days before any distribution or publication, whatever its form and medium, with a copy of the file of the academic work for which the provision of the service has been agreed, even if this distribution or publication occurs at an intermediate stage.

Art. 9: The State Council may terminate the present agreement without prior notice in the event of a breach by the co-contractor of any of its stipulations. In this case, the co-contractor will not be able to use the data [from the Ariane and Ariane archives databases] that it has collected.

As it explicitly rebuts the argument I had previously made according to which the results we had communicated to the press on our SOE research were only included in an intermediary (rather than final) research report, this redrafted version of the agreement suggests that it might be a direct answer to my initial disagreement with the *Conseil d'Etat*.

ACADEMIC FREEDOM AND THE ACCEPTABILITY OF CRITIQUE

This story is arguably very specific and idiosyncratic. There are however many reasons why it is emblematic of more structural hindrances to academic freedom that are surely to be found in various national settings. The mere existence of an agreement that legal academics need to sign in order to gain access to meaningful databases of legal rulings is, in and of itself, problematic. Firstly, it constrains researchers to position themselves as applicants, and therefore in a position unequal to the courts—here, the Supreme Administrative Court—as it is ultimately the *Conseil* that holds the power to grant them access or not. The power imbalance exists regardless of whether these requests are generally agreed to or not (they are). It is only reinforced by the new version of the agreement, as the earlier quotes of specific provisions show: even though the *Conseil* is by no means an academic institution, it has empowered itself to deny access to projects (or researchers?) that *it* deems

lack interest. The new provisions pertaining to the researchers' obligation to communicate any results or findings to the *Conseil d'Etat* also testify to a desire to control the use of data—which, it is important to recall, only consists of court rulings that are, in principle, delivered in the name of the people and supposed to be public.

Secondly, this narrow and specific issue of the conditions under which researchers may access databases internal to court systems illustrates the weakness of a culture of critique within the French institutional system. Surely, the *Conseil d'Etat* is a very peculiar institution, one that is closely related to the State—historically, institutionally, and sociologically.³⁴ It is also, however, the Supreme Administrative Court and, to that extent, a major locus and field of inquiry for many legal (and other) scholars, especially those who are interested in judicial oversight of the executive branch.

In March 2021, the *Conseil d'Etat* found itself under an unusually high level of scrutiny as it was projected at the forefront of the new (sanitary) state of emergency created and declared by the government in March 2020 in the face of the COVID-19 pandemic. Because of the structure of powers in the French regime, most of the pandemic-related measures were governmental executive orders that the *Conseil d'Etat* was competent to review if and when they were challenged. The *Conseil* thus had to review numerous high-profile orders such as, emblematically, the March 2020 decree by which the government issued a general lockdown and stay-at-home order³⁵—and many more. A year later, as the first statistics compiled by legal scholars and investigative journalists started to become available, the *Conseil* was criticized for its leniency and lack of bite vis-à-vis the executive.³⁶ The figures were, indeed, troubling—to the extent that the issue left the somewhat padded walls of scientific journals and publication and became a story for the general press: the *Conseil d'Etat* and its relationship to the executive, especially under the state of emergency, was the main topic of a ten-page story in the weekly magazine published by the main national newspaper *Le Monde*. Emblematically, as he

34 Antoine Vauchez and Pierre France, *The Neoliberal Republic* (Ithaca: Cornell University Press, 2021); Danièle Lochak, *Le rôle politique du juge administratif français* (Paris: Librairie générale de droit et de jurisprudence, 1972).

35 These orders were upheld; see CE, ref. March 22, 2020, n°439674; CE, December 22, 2020, n° 439800.

36 Further details in Stéphanie Hennette Vauchez, "Taming the Exception? Lessons from the Routinization of States of Emergency in France," *International Journal of Constitutional Law* 20 (2022): 1793.

was interviewed by journalists, the head of the *Conseil* essentially discarded all questions and critique, disqualifying them as “partisan” and “political.”³⁷

CONCLUSION

In this chapter, I have argued that scholars interested in threats to academic freedom, particularly as they manifest themselves in democracies, must pay attention not only to obvious, top-down threats instilled by a particular political climate of hysteria but also to some of the more subtle ways in which the executive, as well as the courts, can make research on sensitive issues more complicated than it needs to be. France provides a vivid illustration of a State that, in the wake of a terrorist campaign, has been tempted by a blanket reassertion of one of its foundational myths (“Laïcité”) to deal with both actual and imagined radicalization. In the process, it has put obstacles in the way of critical but significant and useful research on the all-sensitive resort to a state of emergency. Researchers on academic freedom should be attuned to the polymorphous reality of such insidious threats.

37 Laurent Telo and Grégoire Biseau, “On sait d’où viennent ces critiques, balaye-t-il. Ce sont des considérations partisans et politiques,” *Le Monde*, March 12, 2021, www.lemonde.fr/m-le-mag/article/2021/03/12/crise-sanitaire-affaire-duhamel-entre-soi-le-quart-d-heure-warholien-du-conseil-d-etat_6072824_4500055.html?random=683684709.