

FROM THE « EXCEPTION TO THE RULE

UNIVERSITY OF HAMBURG

European Master's Degree in Human Rights and Democratisation
A.Y. 2015/2016

FROM THE « EXCEPTION » TO THE « RULE » : THE CASE
OF THE STATE OF EMERGENCY IN FRANCE FOLLOWING
THE NOVEMBER PARIS ATTACKS

Author: CHOUZENOUX Morgane
Supervisor: KAHL Martin

FROM THE « EXCEPTION TO THE RULE

I would like to thank my supervisor Martin Kahl to have accepted to take care of me although he had already enough work to do. I would also like to thank Xu with whom I shared so many moments in the office and who was always very kind and supportive with me. My thoughts also go to Achraf, my roommate who knew how to make me laugh during my stay in Hamburg. Because they supported me in their own way during my doubts and stress, I would like to truly thank my family. Finally, because he helped me through the peak of my hardship by being loving and comforting, I would like to thank Carl with all my heart.

FROM THE « EXCEPTION TO THE RULE

CS	Copenhagen School
CCIF	Collectif Contre l'Islamophobie en France
CNCDH	Commission Nationale Consultative des Droits de l'Homme
FN	Front National
HRW	Human Rights Watch

TABLE OF CONTENTS

6	General Introduction
11	Title I. Definitions
11	Chapter I. The Theory of Exception
12	I. The Schmittian Paradigm
14	II. The Paradigm of Agamben
19	Chapter II. The Theory of Securitisation
19	I. The approach of the Copenhagen School
22	II. A critical analysis of the Copenhagen School Approach
23	A. The need for a precise definition
26	B. Professionals in the management of unease
29	Chapter III. Normalisation of the State of Exception
29	I. Definition
33	II. Normalising the State of Exception through routinised practices
33	A. Panopticon and Banopticon
34	B. Normalisation, exception and government of unease
37	Conclusion of Title I
38	Title II. The practice of the state of exception by the French government of « unease »
38	Chapter I. The securitisation through discourse
38	I. Francois Hollande as a war leader
39	A. Speech of 13 November
41	B. Speech of 16 November
44	II. Securitisation of the exception
47	Chapter II. The law on the emergency and its application in practice
48	I. The laws on emergency
48	A. The French law
53	B. The non-compliance with international and European law
56	C. French jurisprudence
57	II. The implementation of emergency measures in practice
58	A. Administrative searches

61	B. House arrests
65	Conclusion of Title II
67	Title III. The new criminal law extending the exception beyond the emergency
68	Chapter I. The new criminal law: the normalisation of the emergency practice
69	A. Reinforcement of the public prosecutor and eviction of the examining magistrate
70	B. A perversion of the criminal justice system
71	C. An omnipotent police
73	D. Normalisation of night searches
73	E. Computer searches without judicial guarantee
74	F. Legalisation of « returns from Syria »
76	Chapter II. The challenges of France's normalisation of the exception
76	I. Maintenance of a generalised state of fear
77	A. Uncertainty and terror
78	B. Disciplinaryisation and exclusion in the name of protecting the future
79	C. The threat of Front National
81	II. Risk of further marginalisation of Muslims
84	Chapter III. Terrorism as a permanent threat
89	Conclusion of Title III
90	General Conclusion
93	Bibliography

GENERAL INTRODUCTION:

*« France is at war. The acts committed in Paris and near the Stade de France on Friday evening are acts of war. They left at least 129 dead and many injured. They are an act of aggression against our country, against its values, against its young people, and against its way of life. They were carried out by a jihadist army, by Daesh, which is fighting us because France is a country of freedom, because we are the birthplace of human rights ».*¹

Only 10 months after the Charlie Hebdo tragedy, Paris was once again subjected to acts of terrorism, leading to the declaration of the state of emergency. With 130 people dead and many more injured on 13 November 2015, France experienced the worst terrorist attack in Europe since the Madrid train bombings of 2004.² The seven « attacks claimed by the Islamic State (IS) were complex and well-coordinated, involving home-

¹ Speech by the President of the French Republic François Hollande before a joint session of Parliament, Versailles, November 16, 2015, available at <http://www.diplomatie.gouv.fr/en/french-foreign-policy/defence-security/parisattacks-paris-terror-attacks-november-2015/article/speech-by-the-president-of-the-republic-before-a-joint-session-of-parliament> (consulted on 22 June 2016).

² Henleyand, J. & Chrisafis, A, « Paris terror attacks: Hollande says Isis atrocity was act of war » in *the Guardian*, 14 November 2015, available at: <https://www.theguardian.com/world/2015/nov/13/paris-attacks-shootings-explosions-hostages> (consulted on 22 June 2016).

*grown as well as (returned) foreign fighters».*³ The French government reacted promptly and vigorously in Europe and the Middle-East. Indeed immediately after French President François Hollande qualified the attacks as « an act of war », he intensified the number of French airstrikes against IS in Syria⁴ and implemented considerable counter-terrorism policies, inter alia, the closure of France's borders and the declaration of a state of emergency.

*« Unlike ordinary crimes, terrorist attacks are designed to have an impact on a much bigger scale than the direct victims, expressly to possibly affect an entire nation ».*⁵ Besides, there is today a likelihood that terrorists use weapons capable of causing enormous damage of unique scale.⁶ Therefore, « terrorism » is today perceived as « *an exceptional threat* ».⁷ Going back in history, various legal systems have faced emergency situations threatening their functional continuance.⁸ To react to these emergency circumstances, they often used institutional tools.⁹ Such tools are commonly « *referred to as emergency institutions or states of exception* ».¹⁰ « *They include the Roman dictatorship, martial law or the French state of siege* ».¹¹ « *Though it has gone by different names over time, the state of exception—or reason of state, or state of emergency, or*

³ Colijn, Ko and al., « Paris: 11/13/15 Analysis and Policy Options », in *International Centre for Counter-Terrorism- The Hague*, November 2015, available at : https://www.clingendael.nl/sites/default/files/Policy_Brief_Clingendael_ICCT-Paris111315Analysis_and_Policy_Options_November%202015_final.pdf.

⁴ Rubin J. Alissa & Barnard Anne, « France Strikes ISIS Targets in Syria in Retaliation for Attacks », in *The New York Times*, 15 November 2015, available at: <http://www.nytimes.com/2015/11/16/world/europe/paris-terror-attack.html>.

⁵ Manin, Bernard, *The Emergency and the New Terrorism: What if the end of terrorism was not in sight?*, in *La Vie des Idées*, 15 December 2015, pp.1.

⁶ Ibidem, footnote 5.

⁷ Ibidem, footnote 5, pp.2.

⁸ Ibidem, footnote 7.

⁹ Ibidem, footnote 7.

¹⁰ Ibidem, footnote 7.

¹¹ Ibidem, footnote 7.

état de siege—has referred to the situation in which a state is confronted by a threat and responds by taking action that would never be justifiable under»¹² ordinary circumstances.

Since the attacks on the World Trade Centre on 11 September 2001, a striking change has happened in political discourse and practice. Politicians argued that « *rules of the game have changed* »¹³, that this is a « *new kind of war* »¹⁴, that « *exceptional times require exceptional measures* ».¹⁵ Under this discourse, « *an array of illiberal policies and practices are legitimated through claims about necessary exceptions to the norm* ».¹⁶ Thus, « *Guantánamo Bay, Abu Ghraib, extraordinary rendition or surveillance practices deployed in the war on terror after 9/11 were defined as states of exception and as arbitrary decisionism* ».¹⁷

Under the 1955 law, the French President is empowered to declare a « state of emergency » which bestows exceptional powers to the Minister of the Interior and prefects. It allows, among other measures, the warrantless search and seizure of property, the prohibition of certain meetings and detention without charges.¹⁸ The state of emergency

¹² Scheppele, Kim, Lane, « Law in a Time of Emergency », in *University of Pennsylvania Journal of Constitutional Law*, vol.6:5, 1 October 2004, pp.1001.

¹³ Neal, A.W., *Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security and the War on Terror*, Routledge, 2010, pp.1.

¹⁴ Ibidem, footnote 13.

¹⁵ White, Jonathan, « Emergency Europe », in *Political Studies*, 63 (2), June 2015, pp.1.

¹⁶ Neal, A.W. « Foucault in Guantanamo: Towards an Archaeology of the Exception », in *Security Dialogue*, vol. 37, no. 1, March 2006, pp.31.

¹⁷ Aradau Claudia & Van Muster Rens, « Exceptionalism and the War on Terror », in *British Journal of Criminology*, 12 June 2009, vol 49, Issue 5, pp.697.

¹⁸ « Etat d'urgence et autres régimes d'exception », 23 May 2016, available at: <http://www.vie-publique.fr/actualite/faq-citoyens/etat-urgence-regime-exception/> (consulted on 22 June 2016).

has been prolonged until July 26 ¹⁹ since « *the Euro 2016 soccer tournament and the Tour de France cycling race have prompted fear of additional terrorist attacks* ». ²⁰

This research paper will analyse the way France implemented exceptional measures in the name of fighting jihadism. This research also seeks to present the potential adverse affects of a normalisation of the state of exception in France. Further, this paper sets out to answer the following question : In what way is the prolongation of the state of exception a sign that France is going towards normalisation and what would be the consequences of this normalisation?

This research is divided into three parts. Title I is devoted to the analysis of the state of exception. The intensification of the discourse on exceptionalism led to a resurgence in the concept of exception with Nazi jurist Carl Schmitt being the first to attempt the construction of a theory of the state of exception. The contemporary Italian philosopher Giorgio Agamben also produced some of the most serious works on the problem of the theory of exception. The Chapter I will therefore analyse both paradigms of exception. The « state of exception » finding its legitimisation through the process of securitisation, the theory of securitisation developed by the Copenhagen School (CS) and its weaknesses will be examined in the Chapter II. The Chapter III introduces a definition of normalisation and illustrate Bigo's arguments concerning the importance of taking into consideration the practices of exceptionalism by a government of unease.

Title II then focuses on the practice of the state of emergency in France characterising a government of unease by using discriminatory and illiberal measures. While Chapter I will focuses on the securitisation process through the discourse of François

¹⁹ [GOUVERNEMENT.fr](http://www.gouvernement.fr/argumentaire/prolongation-de-l-etat-d-urgence-jusqu-au-26-juillet-4425), « Prolongation de l'état d'urgence jusqu'au 26 juillet », 19 May 2016, available at: <http://www.gouvernement.fr/argumentaire/prolongation-de-l-etat-d-urgence-jusqu-au-26-juillet-4425>, (consulted on 22 June 2016).

²⁰ Breeden, Aurélien, « French Parliament Votes to Extend State of Emergency » in *the New York Times*, 19 May 2016, available at: <http://www.nytimes.com/2016/05/20/world/europe/french-parliament-votes-to-extend-state-of-emergency.html> (consulted on 22 June 2016).

FROM THE « EXCEPTION TO THE RULE

Hollande, chapter II will concentrate on the international and French law on emergency. and its application in practice.

Title III will concentrate on the new criminal law to reinforce the fight against terrorism and organized crime promulgated on 3rd June 2016 by showing how it precisely exemplifies the prolongation of the state of emergency without a state of emergency being declared. The Chapter I will focus on the normalisation of practices usually only authorised under the state of emergency but permitted by the new law. The Chapter II will show the challenges of the normalisation of the state of exception in France. Chapter III will try to show in what extend terrorism is a permanent threat and therefore requires permanent legal instruments that are necessary to counter it.

FROM THE « EXCEPTION TO THE RULE

Title I.

DEFINITIONS

The purpose of Title I is to provide a definition of the state of exception and analyse the main theories related to it. While Chapter I starts with the study of the state of exception's main theories, Chapter II presents the theory of securitisation along with its critical aspects. Finally, Chapter III introduces the concept of normalisation.

CHAPTER I. THE THEORIES OF EXCEPTION

As explained by Huysmans, « *Carl Schmitt and Giorgio Agamben are the key authors through whom the idiom of exception is currently introduced in political and international studies. While Schmitt and Agamben are often quoted together and while Agamben heavily draws on Schmitt's work putting him at the centre of the contemporary debate, they develop a quite different understanding of exceptionalism. As a matter of fact, Agamben's work declares the bankruptcy of the Schmittian paradigm of exception.* » ²¹ This Chapter seeks to analyse Schmitt's and Agamben's theory of exception.

²¹ Huysmans« The Jargon of Exception—On Schmitt, Agamben and the Absence of Political Society », in *International Political Sociology*, vol.2, Issue 2, June 2008, pp.166.

I. THE SCHMITTEAN PARADIGM

One of the « *most rigorous endeavours to construct a theory of the state of exception was made by Carl Schmitt mainly in the 1920s* »²² with the books *Dictatorship* ²³ and *Political Theology*.²⁴ As stated by Agamben, in both books, the state of exception is inscribed within a juridical context.²⁵ According to Carl Schmitt, the sovereign is the one « *who decides on the exception* ». ²⁶ The author meticulously interconnects the state of exception to the dictatorship.²⁷ Indeed, the « *dictator or sovereign unites the legal and the non-legal by means of an extralegal decision having the force of law* ». ²⁸ Since the state of exception allows a « *suspension of the entire existing juridical order* » ²⁹ it subtracts « *itself from any consideration of law* ». ³⁰ Schmitt specifies that the state of exception in its « *factual substance, that is in its core, cannot take a juridical form* ». ³¹ As Stephen Humphrey clarifies, « *in this way, the juridical order is preserved even when the law itself is suspended* ». ³² « *This can take place in two ways* ». ³³ First, in a

²² Agamben, Giorgio, *State of Exception*, University of Chicago Press, 2008, pp.32.

²³ Schmitt, Carl, *Dictatorship*, 1921.

²⁴ Schmitt, Carl, *Political Theology*, 1922.

²⁵ Ibidem, footnote 22, pp.60.

²⁶ Ibidem, footnote 22, pp.35.

²⁷ Humphreys, Stephen, « Legalizing Lawlessness: On Giorgio Agamben's State of Exception », in *The European Journal of International Law*, Vol. 17 no.3 EJIL, June 2006, pp.680.

²⁸ Ibidem, footnote 27.

²⁹ Ibidem, footnote 22, pp.79.

³⁰ Agamben, Giorgio, *State of Exception*, pp. 32-33.

³¹ Ibidem, footnote 30, pp.33.

³² Humphreys, Stephen, « Legalizing Lawlessness: On Giorgio Agamben's State of Exception », in *The European Journal of International Law*, Vol. 17 no.3 EJIL, June 2006, pp.680.

³³ Ibidem, footnote 32.

« *commissarial dictatorship* », the norm « *can be suspended, without thereby ceasing to remain in force* ».³⁴ Hence, commissarial dictatorship embodies a state in which, « *even if the law is not applied, it remains in force* ».³⁵ « *In a second version called sovereign dictatorship, the state of exception signifies the exercise of constituent power* ».³⁶ It refers to a situation in « *which the old constitution no longer exists and the new one is present in the minimal form of constituent power* »³⁷, namely « *a situation in which the law is applied but is not formally in force* ».³⁸ To illustrate his argument, Schmitt gives the example of the « *immediate aftermath of the French revolution* »³⁹ and specifies that wherever an old order is « *removed from power and a new one introduced, there is a moment where the law* »⁴⁰ is suspended. This period corresponds to the « *sovereign dictatorship* » in « *which only the sovereign decides on the existence and content of law* ».⁴¹

According to Schmitt, « *both commissarial dictatorship and sovereign dictatorship entail a reaction to a juridical context* ».⁴² Thus, « *because the state of exception is always something different from anarchy and chaos, in a juridical sense, an order still exists in it, even if it is not a juridical order* ».⁴³

³⁴ Ibidem, footnote 30, pp.36.

³⁵ Ibidem, footnote 32.

³⁶ Ibidem, footnote 32.

³⁷ Ibidem, footnote 30, pp.36.

³⁸ Ibidem, footnote 30, pp.36.

³⁹ Ibidem, footnote 32.

⁴⁰ Ibidem, footnote 32.

⁴¹ Humphreys, Stephen, « Legalizing Lawlessness: On Giorgio Agamben's State of Exception », in *The European Journal of International Law*, Vol. 17 no.3 EJIL, June 2006, pp.680.

⁴² Agamben, Giorgio, *State of Exception*, pp. 33.

⁴³ Ibidem, footnote 42.

FROM THE « EXCEPTION TO THE RULE

Schmitt also affirms that *« in suspending the norm, the state of exception reveals in absolute purity, a specifically juridical formal element: the decision »*.⁴⁴ *« The two elements, norm and decision, thus show their autonomy »*.⁴⁵ Indeed, *« in the normal situation the autonomous moment of decision is reduced to a minimum whereas in the exceptional one the norm is annulled »*.⁴⁶ But still the *« exceptional situation remains accessible to juridical knowledge, because both elements, the norm as well as the decision, remain within the framework of the juridical »*.⁴⁷

Thus, Schmitt considers that *« in order to apply a norm it is ultimately necessary to suspend its application to produce an exception »*.⁴⁸ The distinguishing *« contribution of Schmitt's theory is specifically that it articulates a connection between the notion of state of exception and juridical order »*.⁴⁹ This is particularly what Agamben finds interesting in the work of Schmitt. Indeed, as stated by Georgio Agamben, this articulation contains a significant paradox since *« what must be inscribed within the law is something that is essentially exterior to it, that is, nothing less than the suspension of the juridical order itself »*.⁵⁰

II. THE PARADIGM OF AGAMBEN

⁴⁴ Ibidem, footnote 42, pp.34.

⁴⁵ Ibidem, footnote 42, pp.34.

⁴⁶ Ibidem, footnote 42, pp.34.

⁴⁷ Ibidem, footnote 42, pp.34.

⁴⁸ Ibidem, footnote 42, pp. 40.

⁴⁹ Ibidem, footnote 42, pp. 33.

⁵⁰ Agamben, Georgio, *State of exception*, 2008, pp.33.

According to Giorgio Agamben, the state of exception constitutes a « *point of imbalance between public law and political fact that is situated—like civil war, insurrection and resistance—in an ambiguous, uncertain, borderline fringe, at the intersection of the legal and the political* ». ⁵¹

Agamben acknowledges « *two major schools of thought on the legality of the state of exception* ». ⁵² The first one considers the state of exception as « *an integral part of positive law because the necessity that grounds it is an autonomous source of law* ». ⁵³ This view is nowadays characterised by the « *notion of derogation* ». ⁵⁴ Whenever an emergency « *threatens the life of the nation* », ⁵⁵ international human rights treaties enable states to interrupt the « *protection of basic rights* ». ⁵⁶ The presence of derogation is commonly perceived as a « *concession* » ⁵⁷ to the ineluctability of exceptional state measures in times of emergency and as a way to deal with these measures. « *In practice, the derogation model creates a space between fundamental rights and the rule of law wherein states can stay lawful while transgressing individual rights* ». ⁵⁸

Agamben's second group deems « *the state of exception to be essentially extrajudicial even though it may have consequences in the sphere of law* ». ⁵⁹ For these authors, because « *the circumstances that endanger the safety of nations are infinite, no constitutional shackles can wisely be imposed on the power to which the care of it is*

⁵¹ Ibidem, footnote 50, pp.1.

⁵² Humphreys, Stephen, « Legalizing Lawlessness: On Giorgio Agamben's State of Exception », pp.678.

⁵³ Ibidem, footnote 52.

⁵⁴ Ibidem, footnote 52.

⁵⁵ Ibidem, footnote 52.

⁵⁶ Ibidem, footnote 52.

⁵⁷ Ibidem, footnote 52.

⁵⁸ Humphreys, Stephen, « Legalizing Lawlessness: On Giorgio Agamben's State of Exception », pp.678.

⁵⁹ Agamben, Giorgio, *State of Exception*, pp.23.

committed ».⁶⁰ Thereby, they argue « *that it is neither feasible nor preferable to control executive action in times of emergency by using judicial liability mechanisms* ». A « *legal space must instead exist for unrestrained state action but only for the moment it takes to restore the constitutional order* ».⁶¹

Agamben, « *however, rejects both approaches* ».⁶² Indeed, he argues that « *the state of exception is neither internal nor external to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other* ».⁶³ Agamben proposes a theory of the state of exception as « *the preliminary condition for any definition of the relation that binds and at the same time abandons the living being to the law* ».⁶⁴ He emphasises the « *origins and liminal space of law* »⁶⁵, namely « *how law copes when confronted by the non-legal* »⁶⁶ order. Thus, « *Agamben rejects Schmitt's position and any theory* »⁶⁷ that « *seeks to annex the state of exception immediately to the law* »⁶⁸ or to « *inscribe it indirectly in a juridical context* ».⁶⁹ Hence, he pinpoints that « *the state of exception is not a state of law but a space without law* »⁷⁰, a « *zone of anomie* ».⁷¹

⁶⁰ Ibidem, footnote 58.

⁶¹ Ibidem, footnote 58, pp.678-679.

⁶² Ibidem, footnote 58, pp.679.

⁶³ Ibidem, footnote 59.

⁶⁴ Ibidem, footnote 59, pp.1.

⁶⁵ Ibidem, footnote 58, pp.680.

⁶⁶ Humphreys, Stephen, « Legalizing Lawlessness: On Giorgio Agamben's State of Exception », pp.678.

⁶⁷ Ibidem, footnote 66.

⁶⁸ Agamben, Giorgio, State of Exception, pp.50.

⁶⁹ Ibidem, footnote 68.

⁷⁰ Ibidem, footnote 68, pp.51.

⁷¹ Ibidem, footnote 68, pp.59.

He aims at showing that the state of exception is not similar to a dictatorship,⁷² « *where laws continue to be made and applied but one in which law is instead completely emptied of content* ».⁷³ In Agamben's analysis, Schmitt's formulation is an attempt to reinsert a « *juridical vacuum* »⁷⁴ into the legal order and is conceived to promote « *sovereign violence at all costs* ».⁷⁵

As explained by Andrew W. Neal, on the one hand, « *Schmitt uses the hypothetical problem of exceptional contingency in order to eulogise the primacy of exceptional sovereign power* »⁷⁶ whereas Giorgio Agamben on the other hand prefers a « *less political and more philosophical* »⁷⁷ definition of exceptionalism. Thus, Agamben argues that sovereignty is a fiction covering the deficiency of the law and the illegitimacy of authority.⁷⁸ The purpose of Agamben's analysis is open the door for a new perspective of the « *relationship between law and political action* ».⁷⁹

However, it should here be emphasised that at its root, « *the ability of the state to declare the state of exception or state of emergency is the fundamental political process that the Copenhagen School (CS) identifies as securitisation* ».⁸⁰ For Schmitt and Agamben the key lies in the phrase « *the sovereign is the one who decides on the ex-*

⁷² Ibidem, footnote 66, pp.681.

⁷³ Ibidem, footnote 66, pp.681.

⁷⁴ Ibidem, footnote 68, pp.48.

⁷⁵ Ibidem, footnote 66, pp. 681.

⁷⁶ Neal, A., W., Foucault in Guantanamo : Towards an Archaeology of the Exception, in *Security Dialogue*, vol. 37, no. 1, March 2006, pp.32.

⁷⁷ Ibidem, footnote 76.

⁷⁸ McLoughlin, Daniel, « The Fiction of Sovereignty and the Real State of Exception: Giorgio Agamben's Critique of Carl Schmitt », in *Law Culture and the Humanities*, 14 May 2013, abstract.

⁷⁹ Ibidem, footnote 78.

⁸⁰ Salter, B.M., « When Securitisation fails: the Hard case of counter-terrorism programs », in *Understanding Securitisation Theory: How Security Problems Emerge and Dissolve*, 2010, pp.118.

ception ». Securitisation is thereby a variant of the declaration of the state of exception.⁸¹

⁸¹ Ibidem, footnote 80.

CHAPTER II. THE THEORY OF SECURITISATION

« *Securitisation being a variant of the declaration of the state of exception, the CS analysis inherits the statist, decisionist and rather monolithic view of speech acts* ». ⁸²

Those weaknesses are in particular scrutinised by Matt McDonald and Didier Bigo who provide further criteria to complete the CS's approach. This Chapter thereby seeks to provide a definition of securitisation by presenting the Copenhagen School's approach and by pointing out its weaknesses.

I. THE APPROACH OF THE COPENHAGEN SCHOOL

The concept of securitisation is commonly attributed to the Copenhagen school of security studies and in particular to its main protagonists : Ole Wæver and Barry Buzan.⁸³ According to the Copenhagen School, « *the bottom line of security is survival* ». ⁸⁴ Initially formulated by Ole Wæver, the concept of securitisation provided a new look on the debate « *between those who maintained that threats are objective (what constitutes threats to international security) and those that asserted that security is subjective (what is perceived to be a threat)* ». ⁸⁵

Conversely, « *the Copenhagen school suggests that security should instead be seen as a speech act, where the core concern is not if threats are real or not, but the ways in which a certain issue (for example migration or environmental degradation) can be so-*

⁸² Ibidem, footnote 80.

⁸³ Van Muster, Rens, « Securitization », in *International Relations*, June 2012, preview.

⁸⁴ Buzan, Barry, *New Patterns of Global Security in the Twenty-first Century*, *International Affairs*, 67.3, 1991, pp.432-433.

⁸⁵ Van Muster, Rens, « Securitization », in *International Relations*, June 2012, preview.

*cially characterised as a threat ».*⁸⁶ These theorists define « *securitisation as a speech act that has to fulfill three criteria ».*⁸⁷ Indeed, it is a discursive process through which an actor « *claims that a referent object is existentially threatened »*, demands the right to take « *extraordinary countermeasures to deal with that threat »*⁸⁸ and « *convinces an audience that rule-breaking behaviour to counter the threat is justified »*⁸⁹ because « *the issue is securitised only if and when the audience accepts it as such ».*⁹⁰ In other words, « *the special nature of security threats justifies the use of extraordinary measures ».*⁹¹ Thus, the existential threat « *has to be argued and just gain enough resonance for a platform to be made from which it is possible to legitimise emergency measures that would not have been possible ».*⁹² If there are no signs of acceptance, there is only a « *securitising move not an object actually being securitised ».*⁹³

« *Copenhagen School proponents portray a securitising move as a highly intentional, strategic action »*⁹⁴ since the invocation of security « *has been the key to legitimizing the use of force but more generally has opened the way for the state to mobilize or to take special powers to handle existential threats ».*⁹⁵ Indeed, by « *saying security a state representative declares an emergency situation, thus claiming the right to use whatever*

⁸⁶ Ibidem, footnote 85.

⁸⁷ Ibidem, footnote 85.

⁸⁸ Buzan, B. & Wæver O., *Regions and Powers: the Structure of International Security*, Cambridge University Press, 2003, pp.491.

⁸⁹ Ibidem, footnote 85.

⁹⁰ Buzan, B., Waever, O., & De Wilde, J., *Security. A new Framework for Analysis*, Lynne Rienner Publishers, Boulder/London, 1998, pp.25.

⁹¹ Ibidem, footnote 90, pp.21.

⁹² Buzan, B., Waever, O., & De Wilde, J., *Security. A new Framework for Analysis*, Lynne Rienner Publishers, Boulder/London, 1998, pp.25.

⁹³ Ibidem, footnote 92.

⁹⁴ McDonald, Matt, *Securitization and the construction of security*, European Journal of International Relations, 14:4, 2008.

⁹⁵ Ibidem, footnote 92, pp.21.

means necessary »⁹⁶ to stop a threat. The notion of speech acts refers to the process that « *by saying something, something is done* ».⁹⁷ Indeed, as argued by Rens van Muster, « *the uttering of security can be identified as an act by which all kind of issues (military, political, economic, and environmental) can become threats* ».⁹⁸ By declaring that a « *specific referent object is threatened in its existence* »⁹⁹, a « *securitising actor* »¹⁰⁰ demands a right to « *extraordinary measures* »¹⁰¹ to guarantee the referent object's survival. The issue is then removed from the sphere of « *normal politics* »¹⁰² and brought into the area of emergency politics, where it can be dealt with quickly and without the normal rules. Thus, by calling something an issue of « *security* », « *supreme priority* »¹⁰³ is given to this issue.

Furthermore according to the CS, there are conditions that may facilitate transforming a securitising move into successful securitisation. Firstly, the securitising actor must « *be in a position of authority* » i.e have the necessary legitimacy to perform a securitisation move. Secondly, « *the most important is to follow the security form, the grammar of security, and construct a plot that includes existential threat, point of no return* ».¹⁰⁴ Thirdly, « *it is more likely that one can conjure a security threat if certain objects can be referred to that are generally threatening* ». He explains that in themselves, « *these*

⁹⁶ Ibidem, footnote 92, pp.21.

⁹⁷ Van Muster, Rens, « Securitization », in *International Relations*, June 2012, preview.

⁹⁸ Ibidem, footnote 97.

⁹⁹ Ibidem, footnote 97.

¹⁰⁰ Ibidem, footnote 92, pp.40.

¹⁰¹ Ibidem, footnote 92.

¹⁰² Ibidem, footnote 92, pp.24.

¹⁰³ Ibidem, footnote 97.

¹⁰⁴ Buzan, B., Waever, O., & De Wilde, J., *Security. A new Framework for Analysis*, Lynne Rienner Publishers, Boulder/London, 1998, pp.33.

*objects never make for necessary securitisation but are definitely facilitating conditions ».*¹⁰⁵

Yet, the CS maintains that « *security should be seen as a negative, as a failure to deal with issues of normal politics* ». ¹⁰⁶ Therefore, they support a strategy of « *desecuritisation* » ¹⁰⁷ whereby issues can be addressed « *in accordance to the rules of the democratic political system* ». ¹⁰⁸

The central proponents of securitisation theory, Barry Buzan and Ole Wæver, thus provide an important deduction, warning against the designation of issues as security threats. Although the Copenhagen School's concedes that securitisation is sometimes essential, they highlight the benefits of having recourse to issues through political dialogue and negotiation, rather than designating something a security issue. Yet, this theory is not without criticism, criticism which is necessary to carry out this research.

II. A CRITICAL ANALYSIS OF THE COPENHAGEN SCHOOL'S APPROACH

For the purpose of this thesis, it is necessary to develop the critics of the securitisation theory of the Copenhagen School. While McDonald gives a precise definition of securitisation by showing the limits of this theory, Didier Bigo alerts us about how important

¹⁰⁵ Buzan, B., Waever, O., & De Wilde, J., *Security. A new Framework for Analysis*, Lynne Rienner Publishers, Boulder/London, 1998, pp.25.

¹⁰⁶ Ibidem, footnote 104, pp.29.

¹⁰⁷ Buzan, B., Waever, O., & De Wilde, J., *Security. A new Framework for Analysis*, Lynne Rienner Publishers, Boulder/London, 1998, pp.29.

¹⁰⁸ Rita, Floyd, « Securitization theory and securitization studies », in *Journal of International Relations and Development*, 2006, Vol.9 (No.1). pp. 56.

it is not only to focus on the speech act but also on the professional in the management of unease.

A. THE NEED FOR A PRECISE DEFINITION

In developing an analytical framework for security, some questions are left unanswered by the Copenhagen School. For example, what are the criteria for a successful securitisation of an issue? « *Which audience needs to be convinced of the legitimacy of a securitising move* »? ¹⁰⁹ Are there other forms of representation than speech that can be regarded as securitising moves? In this matter, Matt McDonald showed the weaknesses of the « Copenhagen School's securitisation framework ». ¹¹⁰ He argues that while the Copenhagen School brought an « *important and innovative contribution to the understanding of security and its construction* » ¹¹¹, its securitisation framework is « *problematically narrow* » ¹¹² in three different senses.

First, McDonald explains that the « *form of act constructing security is defined narrowly with only a focus on the speech of dominant actors* » ¹¹³ i.e. political leaders. Thus, he argues that other forms of representation (images or material practices) are excluded which leads to only focusing on the « *discursive interventions of voices deemed institutionally legitimate to speak on behalf of a particular collective, usually the state* » ¹¹⁴.

¹⁰⁹ Williams, Paul, D., *Security Studies: An Introduction*, Routledge, 2008, pp. 74.

¹¹⁰ McDonald, Matt, *Securitization and the construction of security*, European Journal of International Relations, 14:4, 2008.

¹¹¹ McDonald, Matt, *Securitization and the construction of security*, European Journal of International Relations, 14:4, 2008, pp.1.

¹¹² Ibidem, footnote 111.

¹¹³ Ibidem, footnote 111, pp.1-2.

¹¹⁴ Ibidem, footnote 111, pp.2.

Indeed, by only focusing on speech and language, the CS ignores non-verbal expressions of security since language is only one mean of communication. Consequently, both « *physical action* »¹¹⁵ and « *visual representation* »¹¹⁶ are neglected. Besides, it ignores potential silences because it marginalises « *the experiences and articulations of the powerless in global politics, presenting them at best as part of an audience that can collectively consent to or contest securitising moves, and at worst as passive recipients of elite discourses* ».¹¹⁷ Hence by quoting Hansen, McDonald pinpoints that it contributes to the « *silencing of women whose suffering and engagement with security is neglected in a framework that focuses only on the articulations of the powerful* ».¹¹⁸ Inherently, those who cannot speak security are neglected by the securitisation theory of the CS.

Secondly, McDonald argues that the « *context of the act is defined narrowly with the focus only on the moment of intervention* »¹¹⁹ leading to ignore gradual processes of security construction. Indeed, issues can come « *to be viewed as security issues or threats over an extended period of time* »¹²⁰ and issues can be characterised as security issues « *without dramatic moments of interventions* ».¹²¹ Besides, « *focusing on the moment of*

¹¹⁵ Ibidem, footnote 111, pp.10.

¹¹⁶ Hansen, Lene, « The Little Mermaid's Silent Security Dilemma and the Absence of Gender », in *the Copenhagen School Millennium* 29(2), 2000, pp. 17.

¹¹⁷ Ibidem, footnote 111, pp.19.

¹¹⁸ Ibidem, footnote 117.

¹¹⁹ McDonald, Matt, *Securitization and the construction of security*, European Journal of International Relations, 14:4, 2008, pp.1.

¹²⁰ Ibidem, footnote 119, pp.22.

¹²¹ Ibidem, footnote 120.

*intervention does not explain how and why that particular intervention becomes possible at that moment ».*¹²²

Finally, McDonald aims at showing how the « *framework of securitisation is narrow in the sense that the nature of the act is defined solely in terms of designation of threats to security* ». ¹²³ Indeed, this « *focus neglects the importance of how security is understood in specific situations and suggests that security acquires content only through representations of danger and threats* ». ¹²⁴ « *Such a framework encourages a conceptualisation of security politics as inherently negative and reactionary* ». ¹²⁵

Thereby, McDonald gives its own definition of securitisation : « *the positioning through speech acts (usually by a political leader) of a particular issue as a threat to survival which in turn (with the consent of the relevant constituency) enables emergency measures and the suspension of normal politics in dealing with that issue* ». ¹²⁶

Holger Stritzel also emphasises the importance of the securitisation process rather than the speech act as a singular event and « *the broader discursive contexts from which both the securitising actor and the performative force of the articulated speech act/text gain their power* ». ¹²⁷ The author examines the conceptual tension inside the securitisation theory according to which security is at once a speech act event and the result of a negotiated process between an actor and the relevant audience. Stritzel observes that this tension undermines the development of a comprehensive theory of securitisation. Indeed,

¹²² Ibidem, footnote 119, pp.23.

¹²³ Ibidem, footnote 119, pp.2.

¹²⁴ Ibidem, footnote 119, pp.27.

¹²⁵ Ibidem, footnote 119.

¹²⁶ McDonald, Matt, *Securitization and the construction of security*, European Journal of International Relations, 14:4, 2008, pp.7.

¹²⁷ Stritzel Holger, *Towards a theory of security of securitization: Copenhagen and beyond*, 2007, pp.360.

he stresses that the « *performativity of security utterances as opposed to the social process of securitisation, involving (pre-exciting) actors, audiences(s) and contexts(s), are so different that they form two rather autonomous centers of gravity* ». ¹²⁸ He also underlines that « *in empirical studies one cannot always figure out clearly which audience is when and why most relevant, what implications it had if there are several audiences and when exactly an audience is persuaded* ». ¹²⁹ He asserts that the CS approach is too silent about the exact mechanism of their trilogy and too unspecific about the substance of their terms.

B. PROFESSIONAL IN THE MANAGAMENT OF UNEASE

Didier Bigo, « *the most eminent scholar of the Paris School, argues that security is often marked by the handing over of entire security fields to professionals of unease who are tasked with managing existing persistent threats and identifying new ones* ». ¹³⁰ The term « professionals » refers to different securitising actors in a given field. This field includes « police organisations », « private corporations and organisations dealing with the control of access to the welfare state », « intelligence services » and some « military people ». « *Their speech acts are not decisive* » but « *the result of structural competition between actors over contradictory definitions of security and different interests* ». ¹³¹ Bigo also specifies that those who speak security must have the ability to produce a discourse on the figure of the enemy and impose their own definition on what constitutes a

¹²⁸ Ibidem, footnote 127, pp.364.

¹²⁹ Ibidem, footnote 127, pp.363.

¹³⁰ Diskaya, Ali, « Towards a Critical Securitization Theory: The Copenhagen and Aberystwyth Schools of Security Studies », in *E-International Relations Students*, 1 February 2013.

¹³¹ Bigo, D. and Tsoukala, A., *Understanding (in)security, in Terror, Insecurity and Liberty: Illiberal Practices of Liberal regimes after 9/11*, Oxon, Routledge, 2008, pp. 4-5.

threat.¹³² In other words, « *the success of voices which speak security depends on the positions actors hold as well as on the capacity to produce a discourse which supports and reinforces a particular reading of reality* ». ¹³³

Bigo asserts that « *some securitisation moves performed by bureaucracies, the media, or private agents are so embedded in routines that they are never discussed and presented as an exception but, on the contrary, as the continuation of routines or institutionalised security* ». ¹³⁴ Thus according to Didier Bigo, security is devised and applied to different issues and fields through routinised practices and not only through specific speech acts permitting emergency measures. « *It comes from a range of administrative practices such as population profiling, risk assessment, statistical calculation, category creation, proactive preparation* ». ¹³⁵

He criticises the fact that security is treated by the more traditional groups as the apex of a political problem where « exceptional measures », « measures beyond law », need to be taken. Thus, the security process itself is « *the result of mobilisation of the work of political discourses and of practices of security agencies based on the argument of danger and emergency* ». ¹³⁶ Bigo explains that many studies of security including the CS tend to forget this primary work of political mobilisation leading to securitisation. « *They reproduce at the analytical level the discourses of the hardliners or security professionals* ». ¹³⁷ They analyse security as being a different realm from politics.

¹³² Bigo, D., *Security and immigration: Toward a critique of the governmentality of unease*, Alternatives, 27, 2002, pp. 75-76.

¹³³ Aradau, Claudia, « Security and the democratic scene: desecuritization and emancipation », in the *Journal of International Relations and Development*, Volume 7, Number 4, 2004, pp. 395.

¹³⁴ Ibidem, footnote 131, pp.5.

¹³⁵ Bigo, D., « Security and immigration: Toward a critique of the governmentality of unease », in *Alternatives*, 27, 2002, pp. 65.

¹³⁶ Ibidem, footnote 135, pp.72.

¹³⁷ Ibidem, footnote 135, pp.72.

Securitisation is not usefully characterised as a discursive practice creating « exceptionalisation », even though it may find its origins in this practice. « *Authors like Buzan have little sense of the routines, the day-to-day practices, of the bureaucracies that are necessary to understand how discourses work in practice* ». ¹³⁸ Thus to Bigo, « *securitisation works through everyday technologies, through the effects of power that are continuous rather than exceptional, through political struggles, and especially through institutional competition within the professional security field in which the most trivial interests are at stake* ». ¹³⁹

Thus, « *the state of exception legitimises itself through the process of securitisation in reference with an external threat which has to be dealt with through exceptional measures* ». ¹⁴⁰ However, as shown by McDonald, the process of securitisation defined by the CS is too narrow since it only focuses on speech acts of political leaders only and not on other means of communication. Didier Bigo also present a critic of the securitisation theory by explaining that the process of securitisation does not occur only through the speech act but through routinised practices of professional of unease.

¹³⁸ Ibidem, footnote 135, pp.72.

¹³⁹ Ibidem, footnote 135, pp.73.

¹⁴⁰ Ibidem, footnote 130.

CHAPTER III.

NORMALISATION OF THE STATE OF EXCEPTION

For the purpose of this thesis, it is here important to define meticulously the notion of « normalisation » and explain its process. While the definition given by Günter Frankenberg will be introduced, the arguments of Didier Bigo concerning the necessity of taking into account the routinised practices to delimitate the exception will be presented.

I. DEFINITION

Normalisation means that emergency measures and emergency law are gradually inscribed in the norm, are preserved and become part of everyday life through their juridification. In other words, the exception is incorporated into the norm. Günter Frankenberg explains that normalisation of the extraordinary manifests itself at three levels.¹⁴¹

First, « *it becomes visible in a semantics camouflaging or trivialising deviance from democratic law-rule* ». ¹⁴² Hence, security policy-makers request the military to use military means i.e weapons « *when they assist domestic authorities or use the armed forces*

¹⁴¹ Frankenberg, Günter, *Political Technology and the Erosion of the Rule of Law: Normalizing the State of Exception*, 2015, pp.27.

¹⁴² Ibidem, footnote 141.

domestically ».¹⁴³ Incidentally, this « *vocabulary also opens the door for the systematic legal rehabilitation of the concept of the enemy* ».¹⁴⁴

Secondly, normalisation also manifests itself in a new legal architecture. Indeed the limitations of state intervention aimed at guaranteeing freedom are camouflaged by the « *new design of a security state* ».¹⁴⁵ A clear indication of the « *normalisation process are the structural distortions and materialisations of danger prevention law (police law) in the framework of a new security architecture* ».¹⁴⁶ Thereby, within this framework the differences between « *peace breaker* » and « *peaceful citizen* », between « *danger and risk* » are suppressed and « *danger prevention law is transformed into a danger invention law* ».¹⁴⁷ Certain « *dangerous elements* » and even suspects are deprived of any legal protection and thus are « *relegated, if so required by necessity, to the status of enemies* ».¹⁴⁸

Thirdly, this normalisation process « *becomes functionally manifest in norms which inscribe new tasks and competences into the topography of law, in particular into danger prevention law and criminal codes* ».¹⁴⁹ The features of this new security architecture : are « *the extension of the agenda of counter-terrorism* », « *data sharing and cooperation between police, security agencies and intelligence services as the inner structure of the surveillance state* », « *efforts to extend the domestic use of the armed forces* », « *the screening of online and offline communication, video-surveillance of public areas, wi-*

¹⁴³ Ibidem, footnote 141

¹⁴⁴ Ibidem, footnote 141

¹⁴⁵ Ibidem, footnote 141.

¹⁴⁶ Ibidem, footnote 141.

¹⁴⁷ Ibidem, footnote 141.

¹⁴⁸ Ibidem, footnote 141, pp.28.

¹⁴⁹ Ibidem, footnote 148.

*retapping, and the registration of economic transactions » and the « advance and institutional increase of cyber-espionage ».*¹⁵⁰

Agamben

Moreover, it is important to underline the arguments of Agamben regarding the risk of the normalisation of the state of exception. Indeed, he starts from the premise that « *under modern liberal democracy, the state of exception, once a temporary suspension of law, became a stable, generalised condition: the declaration of the state of exception has gradually been replaced by an unprecedented generalisation of the paradigm of security as the normal technique of government* »¹⁵¹; « *This tendency provided the totalitarianisms which emerged in the 20th century with the framework by which rule by a permanent state of emergency was possible.* »¹⁵² Indeed, Agamben argues that during the years before Hitler's take-over, the social-democratic governments of Weimar often had exercised recourse to the state of emergency (*Ausnahmezustand*).¹⁵³ He assured that after his nomination, « *Hitler's first act was to proclaim a state of emergency* »¹⁵⁴ that was never withdrawn. This allowed the Nazis to commit crimes « *with impunity in Germany* » since such actions were then technically legal and « *because the country was subject to a state of exception in which individual freedoms had been suspended* ».¹⁵⁵

¹⁵⁰ Ibidem, footnote 148.

¹⁵¹ O'Donoghue, Amy, « Sovereign Exception: Notes on the Thought of Giorgio Agamben », in *Critical Legal Thinking*, 2 July 2015.

¹⁵² Ibidem, footnote 151.

¹⁵³ German appellation of « state of emergency ».

¹⁵⁴ Gavroche, Julius, « From the state of law to the security state: Giorgio Agamben on the state of emergency in France », in *Autonomies*, 29 December 2015

¹⁵⁵ Ibidem, footnote 154.

Schmitt

Schmitt shows that « *the opposition between the norm and the decision is irreducible* ». ¹⁵⁶ When « *the decision on the state of exception occurs, the norm is suspended or even annulled* ». ¹⁵⁷ However, Schmitt demonstrates that what matters in this suspension is « *the creation of a situation that makes the application of the norm possible* ». ¹⁵⁸ In other words, « *the state of exception separates the norm from applying in order to make its application possible* ». ¹⁵⁹ Yet, following the logic of Schmitt if « *the exception becomes the rule* » ¹⁶⁰, i.e if there is a « normalisation of the state of emergency », « *the machine can no longer function* ». ¹⁶¹ In this sense, Agamben explains that « *the undecidability of norm and exception puts Schmitt's theory* » ¹⁶² into question. Hence, « *sovereign decision is no longer capable of performing its task* » ¹⁶³ and the rule, « *which now coincides with what it lives by, devours itself* ». ¹⁶⁴

Thus, Schmitt and Agamben both focus on the moment of exception, on the declaration of the state of exception and thus forget to take into consideration the routinised practices of the government of unease.

¹⁵⁶ Agamben, Giorgio, *State of Exception*, 2008, pp.36.

¹⁵⁷ Ibidem, footnote 156.

¹⁵⁸ Ibidem, footnote 156.

¹⁵⁹ Ibidem, footnote 156.

¹⁶⁰ Ibidem, footnote 156, pp.58.

¹⁶¹ Ibidem, footnote 160.

¹⁶² Ibidem, footnote 160.

¹⁶³ Ibidem, footnote 160.

¹⁶⁴ Ibidem, footnote 160.

II. NORMALISING THE EXCEPTION THROUGH ROUTINISED PRACTICES

To demonstrate how exceptional practices are used within the government of unease, it is necessary to first examine the notion of banopticon developed by Bigo. With the help of the banopticon, Didier Bigo shows how surveillance technologies and attitudes towards constant monitoring of activities have drifted and have and greatly expanded to become routines of everyday life, rather than exceptional practices.

A. PANOPTICON AND BANOPTICON

Didier Bigo developed the notion of Banopticon which describes a situation where profiling technologies are used to determine who to place under surveillance. Banopticon comes from the term « ban » of Jean Luc Nancy, as refigured by Giorgio Agamben, and the term « opticon » as used by Foucault. Michel Foucault's notion of panopticon¹⁶⁵ characterises a situation where observation is used as a disciplinary tool. Starting from the setup of Jeremy's Bentham panopticon, Foucault describes the prisoner of a panopticon as being at the receiving end of asymmetrical surveillance: « *he is seen, but he does not see; he is an object of information, never a subject in communication.* »¹⁶⁶ The author of *Discipline and Punish* thus employs the concept of « panopticon » to picture the development of the Orwellian society and its transformation. He describes the evolution from a « society of discipline » to a « society of management » which monitors the life of populations « *encapsulated in a territorial container controlled by the state* ». ¹⁶⁷

¹⁶⁵ Foucault Michel, *Discipline and Punish*, 1975.

¹⁶⁶ Ibidem, footnote 207.

¹⁶⁷ Bigo, Didier, « Security, Exception, Ban and Surveillance », in *Theorizing Surveillance*, 2006, pp.46.

Bigo prefers the notion of panopticon to the banopticon. He asserts that the dispositif on new surveillance depends no longer on immobilising bodies under the look of the watcher but « *on profiles that signify differences, on exceptionalism with respect to norms* ». ¹⁶⁸ That corresponds to the banopticon.

The Ban-opticon is thus « *characterised by the exceptionalism of power (rules of emergency and their tendency to become permanent) and by the way it excludes certain groups in the name of their future potential behaviour (profiling)* ». ¹⁶⁹ « *The ban-opticon dispositif is established in relation to a state of unease* ». ¹⁷⁰ The governmentally if unease is characterised by « *practices of exceptionalism, acts of profiling and containing foreigners* ».

B. NORMALISATION, EXCEPTION AND GOVERNMENT OF UNEASE

According to Bigo, exceptionalism is not only linked with derogatory measures and special laws against presumed terrorists, but also with a « *specific form of governmentality* ». ¹⁷¹ Bigo demonstrates that « *the governmentality of unease increases the exception* » ¹⁷², normalises and « *banalises it* ». However, Bigo is firmly convinced that the declaration of an emergency « *is not the central element of the banopticon* ». ¹⁷³ Indeed, even if « *these declarations of emergency* » attempt to modify the way the government

¹⁶⁸ Bigo, D. and Tsoukala, A., *Understanding (in)security, in Terror, Insecurity and Liberty: Illiberal Practices of Liberal regimes after 9/11*, Oxon, Routledge, 2008, pp. 44.

¹⁶⁹ Ibidem, footnote 168, pp.35.

¹⁷⁰ Ibidem, footnote 168, pp.6.

¹⁷¹ Bigo, Didier, « Security, Exception, Ban and Surveillance » in *Theorizing Surveillance*, 2006, pp.47.

¹⁷² Ibidem, footnote 171.

¹⁷³ Ibidem, footnote 171, pp.48.

acts, « *they do not have the ability to upset the rule of law* ». ¹⁷⁴ Thus, he holds that a large majority of countries have not « declared » a « state of exception » but have carried out « *old and new surveillance technologies, and reinforced control over foreigners without citing any emergency or terrorism activities* ». ¹⁷⁵

As an example, he evokes the behaviour of professionals of politics post 9/11. He clarifies that those professionals created a « *specific period for the enunciation of a discourse of necessity of war against terrorism and suspicion against foreigners, ethnic and religious minorities, but it was rooted in previous practices* ». ¹⁷⁶ These previous « routines » allowed the government in time of emergency, « *to use the justification of prolonged derogatory measures (such as indefinite detention, the demand for longer retention of telecommunications traffic data, introduction of new biometric identifiers in visas, passports and ID cards, as well as the use of transnational exchange of passenger name records) with the argument that it is necessary to act to protect people and to reassure the task of collective survival* ». ¹⁷⁷

He then specifies that « *after a while, these technologies are regarded so banal (such as ID checks in many countries, military with heavy armaments in public places in France under Vigipirate, and biometric identifiers in documents) that no one (including the judges) asks for their legitimacy after a certain period of time* ». ¹⁷⁸

Bigo aims at showing that these technologies are also forgotten by « *those who want to reduce the analysis of the situation to a specific state of exception with one sovereign*

¹⁷⁴ Ibidem, footnote 173.

¹⁷⁵ Ibidem, footnote 173.

¹⁷⁶ Ibidem, footnote 171, pp.49.

¹⁷⁷ Ibidem, footnote 171, pp.49.

¹⁷⁸ Ibidem, footnote 177.

*actor, one unique moment, one unique justification »*¹⁷⁹ : Agamben and Schmitt. Instead of focusing on « *the debate of the exception as a moment of decision, at the declaration of the executive, or a the opposite of a norm »*,¹⁸⁰ Bigo affirms that it is more important to take into consideration « *a specific form of governmentality »*¹⁸¹ that is the government of unease. He rightfully asserts that « *the ban-opticon is interested not only by the declaration of the executive and its effects on society and democracy but also by the process »*¹⁸² of exceptional measures become routinised practices.

¹⁷⁹ Ibidem, footnote 171, pp.50.

¹⁸⁰ Ibidem, footnote 180.

¹⁸¹ Ibidem, footnote 180.

¹⁸² Ibidem, footnote 180.

CONCLUSION OF TITLE I

The state of exception refers to a situation in which a state is confronted with a threat and responds with actions that would never be justifiable under ordinary circumstances. Both Agamben and Schmitt developed theories of exception in order to grasp the notion of exception. However, for Schmitt « *the juridical order is preserved even the law itself is suspended* »¹⁸³, Agamben argues « *that the state of exception is not a state of law but a space without law* ».¹⁸⁴

The ability to declare the state of exception is only possible through the process of securitisation. The theory of securitisation is developed by the CS but is not without criticism since it is too narrow and only takes into account the speech act of securitisation and not the work by the professional of unease through routinised practices. Instead of focusing on the debate of the exception as a moment of decision, Schmitt and Agamben forget to take into consideration the routinised practices of the government of unease.

In order to be able to respond to this paper's particular research question, i.e in what way the state of exception is being normalised in France, an analysis of how the state of emergency was precisely securitised and implemented in practice is required.

¹⁸³ Ibidem, footnote 32.

¹⁸⁴ Ibidem, footnote 70.

Title II.

THE PRACTICE OF THE STATE OF EXCEPTION BY THE FRENCH
GOVERNMENT « OF UNEASE »

While the first Chapter seeks to analyse the state of exception's securitisation through the discourse of François Hollande, Chapter II examines the law on emergency and its practical application in France since the declaration on the state of emergency.

CHAPTER I. THE SECURITISATION THROUGH DISCOURSE

The first part analyses how François Hollande imposes himself as a « war leader » in his addresses following the November Paris attacks. The second part then explains the process through which François Hollande securitises the issue of terrorism and thereby justifies the recourse of exceptional measures.

I. FRANÇOIS HOLLANDE AS A WAR LEADER

For the purpose of this thesis, only two of Hollande's speeches will be dissected: the speech of 13 November 2015 (A) and the one of 16 November 2015 (B).

A. SPEECH OF 13 NOVEMBER

It must be here emphasised that this discourse from the French President François Hollande was pronounced when the attacks were happening: « *as I speak, terrorist attacks of unprecedented proportions are underway in the Paris area.* »¹⁸⁵ This specific timing highlights the gravity of the event that is still not under control. « *The intonation is very deep* »¹⁸⁶, especially when he announces that : « *there are tens of people killed, there are many injured people, this is terror* ». It is important to underline here that the lexical field of « fear » is used with the words: « scare »; « afraid »; « terror » and « dread » which is employed three times. It aims at showing that there is a dangerous threat i.e terrorism which justifies the two major security decisions to counter it: declaring the state of emergency and closing the borders.¹⁸⁷ Thus, the speech focuses on security matters:

« Faced with terror, France must be strong, it must be great and the state authorities must be firm. We will be. We must also call on everyone to be responsible. What the terrorists want is to scare us and fill us with dread. There is indeed reason to be afraid. There is dread, but in the face of this dread, there is a nation that knows how to defend

¹⁸⁵ Sharma, Swati, « It is horror: French President Hollande's remarks after Paris attacks », 13 November 2013, in The Washington Post, available at: <https://www.washingtonpost.com/news/worldviews/wp/2015/11/13/it-is-horror-french-president-hollandes-remarks-after-paris-attacks/> (consulted on 23 June 2016).

¹⁸⁶ Slim, H  la, « The strategic communication of Fran  ois Hollande after the terror attacks in Paris in January and November 2015 », in *Academia*, 22 March 2016, available at https://www.academia.edu/23829317/The_strategic_communication_of_Fran%C3%A7ois_Hollande_after_the_terror_attacks_in_Paris_in_January_and_November_2015 (consulted on 1 July 2016).

¹⁸⁷ Ibidem, footnote 186.

*itself, that knows how to mobilise its forces and, once again, will defeat the terrorists. »*¹⁸⁸

President Hollande puts the state authorities and security forces at the heart of his speech.¹⁸⁹ By adopting a « firm » tone, « *President Hollande establishes himself as a chief of state* »¹⁹⁰ who affirms his authority : « *We have, on my decision mobilised all forces* »; « *I have also asked for military reinforcements* »; « *the second decision I have made is to close the borders* ». The repetition of the first person pronoun expresses the idea that during those times of « ordeal », François Hollande is the « man of the situation », the ultimate decision-maker able to protect « *the nation against terrorists acts* ».

Not only François Hollande imposes himself in this discourse as a chief of state, he also comes across as an emblematic war leader. Indeed, the semantic field of war is employed with several terms such as: « combat »; « defeat »; « assaults »; « security forces »; « assault »; « military »; « victims »; « injured »; « defend »; « operations »; « killed »; « neutralise »; « horror ». This notion of war leader is also reinforced by the French Constitution which grants the President of the Republic major powers regarding national defense since he is the « guarantor of national independence, territorial integrity »¹⁹¹ and the « Commander-in-Chief of the Armed Forces ».¹⁹²

François Hollande then finishes his speech by asking for the « *public's trust in solving the crisis* »¹⁹³:

¹⁸⁸ Speech by the President of the Republic before a joint session of Parliament, 16 November 2015, in Versailles, available at <http://www.diplomatie.gouv.fr/en/french-foreign-policy/defence-security/paris-attacks-paris-terror-attacks-november-2015/article/speech-by-the-president-of-the-republic-before-a-joint-session-of-parliament> (consulted on 23 June 2016).

¹⁸⁹ Ibidem, footnote 186.

¹⁹⁰ Ibidem, footnote 186.

¹⁹¹ Article 5 of the French Constitution from 1958.

¹⁹² Article 15 of the French Constitution.

¹⁹³ Ibidem, footnote 186.

FROM THE « EXCEPTION TO THE RULE

« I ask you to keep all your trust in what we can do with the security forces to protect our nation from terrorist acts. »

The exceptional measures are justified for the sake of the security in order to « protect » France and its population and make it « safe ».

B. SPEECH OF 16 NOVEMBER

François Hollande is the third president since 1848 organising such a reunion.¹⁹⁴ The speech before the Joint Session of Parliament¹⁹⁵ has thus the character of exceptional circumstance:

*« At this exceptionally solemn moment, I wanted to address a joint session of Parliament to demonstrate our national unity in the face of such an abomination and to respond with the cool determination that this vile attack against our country calls for ».*¹⁹⁶

¹⁹⁴ Only Louis-Napoléon Bonaparte and Nicolas Sarkozy organised such a Session.

¹⁹⁵ Article 18 of the French Constitution.

¹⁹⁶ Speech by the President of the Republic before a joint session of Parliament, 16 November 2015, in Versailles, available at <http://www.diplomatie.gouv.fr/en/french-foreign-policy/defence-security/paris-at-tacks-paris-terror-attacks-november-2015/article/speech-by-the-president-of-the-republic-before-a-joint-session-of-parliament> (consulted on 23 June 2016).

FROM THE « EXCEPTION TO THE RULE

The French President starts his speech by declaring that « France is at war »¹⁹⁷ with « *a solemn tone* ».¹⁹⁸ The whole speech is an illustration of this first sentence since it furnishes arguments to justify the declaration of war¹⁹⁹ and the use of exceptional measures to defend the state and « the safety of its people ».

In this address, the dichotomy US / THEM is omnipresent:

US: « *They were carried out by a jihadist army, by Daesh, which is fighting us because France is a country of freedom, because we are the birthplace of human rights* ».

« *On Friday, the terrorists' target was France as a whole. France, which values life, culture, sports, celebrations. France, which makes no distinction as to color, origin, background, religion. The France that the assassins wanted to kill was that of its young people in all their diversity* ».

THEM: « *Their objective was quite clear: to sow fear in order to divide us and to keep us from fighting terrorism in the Middle East* ».

By using this dichotomy, François Hollande includes the entire nation regardless of « color », « origin » or « religion ». He aims at unifying the French population against the enemy : Daesh.

¹⁹⁷ Speech by the President of the Republic before a joint session of Parliament, 16 November 2015, in Versailles, available at <http://www.diplomatie.gouv.fr/en/french-foreign-policy/defence-security/parisattacks-paris-terror-attacks-november-2015/article/speech-by-the-president-of-the-republic-before-a-joint-session-of-parliament> (consulted on 23 June 2016).

¹⁹⁸ Ibidem, footnote 186.

¹⁹⁹ Ibidem, footnote 186.

He also makes clear that « *the response to the crisis will be the eradication of terrorism* »²⁰⁰:

« *Those who ordered the Paris attacks must know that far from undermining France's resolve, they further strengthened our determination to destroy them* ».

Once again, the dominant lexical field is « war ». Indeed, the term « war » is repeated more than fifteen times. Besides the words: « act of aggression »; « army »; « enemies »; « defy »; « destroy »; « fierceness »; « fight »; « kill »; « merciless »; « eradicate »; « killers »; « horrors »; « airstrikes »; « operations »; « arms »; « weapons » also characterise the semantic field of war. And here again, in this « merciless » war, Hollande presents himself at the war leader of France: « *I shall marshal the full strength of the state to defend the safety of its people* ». He is the one who will mobilise the securities forces against the threat of terrorism in order to ensure the safety of the France and its people.

Declaring that France is « at war » reflects a political, « rhetorical assumption of the mantle of a war leader ».²⁰¹ In his speech he presents himself as the « protagonist in this story ».²⁰² Indeed, he « overuses the first person pronoun, and constantly refers to himself as the originator of all decisions whether they relate to emergency, policy, military or diplomacy ».²⁰³ He represents himself as not only the « central domestic but also international actor – the mediator between Putin and Obama ».²⁰⁴

²⁰⁰ Ibidem, footnote 186.

²⁰¹ Gaffney John, « French politics after the Paris attacks: polarised and deeply personal », in *The Blog of the London School of Economics and Political Science*, 1 December 2015, available at :<http://blogs.lse.ac.uk/euoppblog/2015/12/01/french-politics-after-the-paris-attacks-polarised-and-deeply-personal/> (consulted on 5 July 2016).

²⁰² Ibidem, footnote 201.

²⁰³ Ibidem, footnote 201.

²⁰⁴ « *In the next few days, I will therefore meet with President Obama and President Putin to unite our forces and to achieve a result which, at this point, has been put off for far too long* ».

II. SECURITISATION OF THE EXCEPTION

For the purpose of this thesis, the definition of securitisation given by McDonald will be preferred, namely « *the positioning through speech acts (usually by a political leader) of a particular issue as a threat to survival which in turn (with the consent of the relevant constituency) enables emergency measures and the suspension of normal politics in dealing with that issue* ».

The « state of emergency » declared by François Hollande following the November Paris attacks illustrate this precise phenomenon. The implementation of the state of emergency was only made possible because securitisation in particular through his speeches took place beforehand. Indeed, in his discourses François Hollande legitimises the use of exceptional measures and in particular the state of emergency because terrorism represents a threat to the survival of France and its population. Indeed, the sentences: « *What's at stake is the protection of our fellow citizens and our ability to live together* » and « *We are fighting terrorism wherever the very survival of states is under threat* » reinforce this idea.

The French President is thus performing a securitising move. Since the survival of the State and its population is at stake, exceptional measures are required in the fight against terrorism. Besides, as Bigo specifies « *those who speak security must have the ability to produce a discourse on the figure of the enemy and impose their own definition on what constitutes a threat* »²⁰⁵ Being the President of the French Republic, François Hollande holds a particular position which enables him to speak security. The reaction of the audience after the end of the speech from November 14th was an elongated

²⁰⁵ Bigo, D., *Security and immigration: Toward a critique of the governmentality of unease*, Alternatives, 27, 2002, pp. 75-76.

standing ovation²⁰⁶ followed by the collective singing of the National Anthem.²⁰⁷ This seems to prove that the President's securitising move was successful.

The designation of terrorist violence targeting civilians as an urgent national security threat effectively grants this issue its priority. With the security of the state being at stake due to the threat posed by terrorism, exceptional measures find their legitimacy in the « *global war against terrorism* ». ²⁰⁸ Indeed since political actors are limited by norms of conduct, the process of securitisation allows French President François Hollande and the French government to take exceptional measures such as « house arrests » and « police searches ». These measures should be « implemented and strengthened » in order to ensure the survival of France and its population. There is also a « *transnational nature of securitisation in Hollande's address demonstrated by his decision to close France's borders and reinstate identity checks at major crossings* ». ²⁰⁹

The phenomenon of Securitisation, Bigo argues, « *is not an expression of traditional responses to a rise of insecurity, crime, terrorism, and the negative effects of globalisation; it is the result of the creation of a continuum of threats and general unease in which many different actors exchange their fears and beliefs in the process of making a risky and dangerous society* ». ²¹⁰ The security professionals of unease, in this case François Hollande, respond to new threats requiring exceptional measures beyond the normal demands of everyday politics.

²⁰⁶ Ibidem, footnote 186.

²⁰⁷ The lyrics of the French National Anthem, La Marseillaise, is a call for war.

²⁰⁸ Buzan, Barry, « Will the global war on terrorism be the new Cold War? » in *International Affairs*, Volume 82, Issue 6, November 2006, pp.1101–1118.

²⁰⁹ Greaves, Wilfrid, « Paris 2015: Terrorism, Climate Change, and the Politics of Securitization », in *The Fletcher Security Review*, 17 February 2016.

²¹⁰ Bigo, Didier, « Globalized (In)Security: The field and the Ban-Opticon », in *Terror, Insecurity and Liberty. Illiberal practices of liberal regimes after 9/11*, 2008, pp. 44.

FROM THE « EXCEPTION TO THE RULE

This successful securitisation through François Hollande's speech act illustrate the theory of securitisation of the CS.

The state of emergency declared after the attacks in Paris exemplifies the complexity of securitisation theory. This theory helps to understand how political issues are turned into security issues. Thus, François Hollande securitised the issue of the terrorist threat which allows him to implement exceptional measures. However following Bigo, this is not only through this speech act that the securitisation occurs. This is indeed the result of the French government of unease through routinised practices such as « Vigipirate ».²¹¹

For the purpose of this research, it will only be analysed the practice of the state of emergency since its declaration on 13 November 2015.

²¹¹ Bigo, Didier, « Security, Exception, Ban and Surveillance », in *Theorizing Surveillance*, 2006, pp.46.

CHAPTER II. THE LAW ON THE EMERGENCY AND ITS APPLICATION IN PRACTICE

On 14 November 2015, following the previous days's terrorist attacks, the President of the French Republic invoked the state of emergency according to Article 16 of the French Constitution.²¹² Thus, he declared a state of emergency via three decrees²¹³ defining the content of the measures authorised with reference to Law no.55-385 of 3 April 1955 on states of emergency.²¹⁴ After being extended by law no 2015-1501 of 20 November 2015,²¹⁵ until 26 February 2016, the state of emergency was further prolonged by three months until 26 May 2016.²¹⁶ Finally, the law no. 2016-629 extended the state of emergency by 2 months until 26 July 2016²¹⁷ in order « *to protect major*

²¹² Article 16 of the French Constitution : « *Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council* ».

²¹³ Décret n° 2015-1475 du 14 novembre 2015 portant application de la loi n° 55-385 du 3 avril 1955, available at : <https://www.legifrance.gouv.fr/eli/decret/2015/11/14/INTD1527633D/jo> (consulted on 23 June 2016).

²¹⁴ Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000695350> (consulted on 23 June 2016).

²¹⁵ Loi n° 2015-1501 du 20 novembre 2015 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence et renforçant l'efficacité de ses dispositions, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031500831&categorieLien=id> (consulted on 23 June 2016).

²¹⁶ Loi n° 2016-162 du 19 février 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence (1), available at: <https://www.legifrance.gouv.fr/eli/loi/2016/2/19/INTX1602418L/jo/texte>, (consulted on 23 June 2016).

²¹⁷ Loi n° 2016-629 du 20 mai 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence (1), available at: <https://www.legifrance.gouv.fr/eli/loi/2016/5/20/INTX1610761L/jo>, (consulted on 23 June 2016).

*events such as the Tour de France and the Euro 2016, which must be made secure whilst continuing to be celebrations, with full stadiums and fan zones ».*²¹⁸

In addition to the extension of the state of emergency, the law of 20 November 2015 modifies several provisions of the Law from 1955. It is now required to analyse the implementation of the new law in practice (II) and the different laws on the state of emergency (I).

I. THE LAWS ON EMERGENCY

A. THE FRENCH LAW

1. The law of 1955

The state of emergency is defined by the law of 1955. Thus, the state of emergency can only be declared on a part or the totality of the Republic's territory in the following circumstances: « *an imminent peril resulting from grave disturbances to public order, or events presenting, by their nature or gravity, the character of a public calamity* ». ²¹⁹ It is pronounced by Presidential decree, subject to the countersignature of the Prime Minis-

²¹⁸ Extension of the state of emergency for a further two months, [GOUVERNEMENT.fr](http://www.gouvernement.fr), 21 April 2016, available at: <http://www.gouvernement.fr/en/extension-of-the-state-of-emergency-for-a-further-two-months>. (consulted on 23 June 2016).

²¹⁹ Ibidem, footnote 107.

ter, and deliberated in the Council of Ministers.²²⁰ However, a law is needed to extend it beyond 12 days.²²¹

« *The emergency measures called of administrative police which are taken by the civil authorities and authorised by the law of 1955 include* »²²²: « bans on the circulation of persons or vehicles »²²³; « the establishment of protection or security areas where the presence of individuals is regulated »²²⁴; « residence bans in relation to all or part of the county (« *département* ») against any person seeking to hinder in any way the action of the public authorities »²²⁵; « restricted residence orders »²²⁶ (« *assignation à résidence* »); « temporary closure of concert halls/theaters, pubs and places of meeting of any kind »²²⁷ ; « prohibition of meetings likely to cause or maintain disorder »²²⁸; « obligation to surrender, for reasons of public order, certain firearms and ammunition legally held or acquired »²²⁹ and « searches during both daytime and nighttime ». ²³⁰

²²⁰ Article 13 from the 1958 French Constitution, available at: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/constitution/constitution.pdf, (consulted on 23 June 2016).

²²¹ Article 2, Law n° 55-385, 3 April 1955.

²²² « Opinion on the Draft Constitutional Law on Protection of the Nation », *European Commission For Democracy Through Law* (Venice Commission), 14 March 2016.

²²³ Article 5, 1°, Law n° 55-385, 3 April 1955.

²²⁴ Article 5, 2°, Law n° 55-385, 3 April 1955

²²⁵ Article 5, 3°, Law n° 55-385, 3 April 1955.

²²⁶ Ibidem, footnote 107, Article 6.

²²⁷ Ibidem, footnote 107, Article 8.

²²⁸ Ibidem, footnote 107, Article 8, para 2

²²⁹ Ibidem, footnote 107, Article 9.

²³⁰ Ibidem, footnote 107, Article 11 1

2. The law of 20 November 2015

The law of 20 November modified several provisions of the Law from 1955.

a. Administrative searches strengthened

Under the 1955 law, the government had a broad license to conduct warrantless searches of homes day and night.²³¹ Under the current law and its Article 11.I prefects—who represent the state at the local level— can authorise a search when there are « *serious reasons to believe that the location is frequented by a person whose behaviour constitutes a threat to public order and security* ».²³²

The government is not allowed to search places engaged in the exercise of parliamentary duties or the professional activities of lawyers, magistrates, and journalists.²³³ Moreover, « *unlike under the previous law, the government must now specify the time and place of the search* »²³⁴ and the occupant, or his representative or two witnesses, must be present during the search.²³⁵ « *The searches under the current state of emergency are conducted by police, at any time of the day or the night and without prior notice* ».²³⁶

b. House Arrests reinforced

Under the 1955 law, the government could require house arrests for persons whose activities « prove to be dangerous to security and the public order »²³⁷. According to Arti-

²³¹ Article 11 law of 1955.

²³² Article 11.I of the Law from 20 November 2015.

²³³ Article 11.I. of the law from 20 November 2015.

²³⁴ Severson, Daniel, « France's Extended State of Emergency: What New Powers Did the Government Get? », in *Lawfare*, 22 November 2015

²³⁵ Ibidem, footnote 232.

²³⁶ « France: Upturned lives: The disproportionate impact of France's state of emergency », in *Amnesty International*, 4 February 2016.

²³⁷ Article 6 Law 1955.

cle 6 of the new law, the Minister of the Interior may put anyone under house arrest when « *there are serious reasons to believe that a person's behaviour constitutes a threat to public security and order* ». Under this provision, « *a person could be confined to their home for up to 12 hours a day, and be required to check in regularly at a police station, and to turn over their passport or other identity document to the police for a certain period* ».²³⁸ Moreover, « *they can also be forbidden to have contact with certain people if there are serious reasons to believe that their behaviour constitutes a threat to public order and security* ».²³⁹

c. Dissolution of organisations

« *The government may now disband groups and associations of persons* » that « *take part in committing acts that present serious harm to the public order* »²⁴⁰ or who « *facilitate such acts* ».²⁴¹

d. Internet control

The Minister of Interior may take « *any measure* » to « *block websites and social networks inciting acts of terrorism or glorifying such acts* »²⁴² « *immediately and without judicial control* ».²⁴³ The Interior Minister may act immediately.

²³⁸ France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016.

²³⁹ Ibidem, footnote 238.

²⁴⁰ Ibidem, footnote 234.

²⁴¹ Article 6-1, Law 20 November 2015.

²⁴² Article 11.II., Law 20 November 2015.

²⁴³ Ibidem, footnote 234.

*e. « Penalties are increased »*²⁴⁴

While « violations of house arrests now result in up to three years in prison and a 45,000 Euro fine »²⁴⁵, « violations of traffic bans or security zones now result in six months in prison »²⁴⁶ and a 7,500 Euro fine.²⁴⁷ In the previous law, both violations resulted in a maximum of two months in prison and 3, 750 Euro fine.

f. « Press controls removed »

« The 1955 law contained a provision that allowed the government to take »²⁴⁸ « all measures to control the press and publications »²⁴⁹ but it was abolished by the new law.

3. The attempt of state's of emergency constitutionalisation

On 23 December 2015, the Council of Ministers adopted —upon proposal of the Prime Minister—a draft constitutional law on « protection of the Nation »²⁵⁰ seeking to « constitutionalise the state of emergency and the deprivation of nationality for a person born as a French national and also holding another nationality in the event of them being convicted for a crime gravely undermining the life of the Nation ».²⁵¹ This draft legislation was announced by François Hollande at the Congress of Parliament in Versailles on

²⁴⁴ Ibidem, footnote 234.

²⁴⁵ Ibidem, footnote 234.

²⁴⁶ Ibidem, footnote 234.

²⁴⁷ Article 13, Law 20 November 2015.

²⁴⁸ Ibidem, footnote 234.

²⁴⁹ Article 11 Law of 1955.

²⁵⁰ Projet de Loi Constitutionnelle de Protection de la Nation, 23 December 2015 available at:<http://www.assemblee-nationale.fr/14/pdf/projets/pl3381.pdf>

²⁵¹ Opinion of the Draft Constitutional Law on Protection of the Nation of France, European Commission for Democracy Through Law, 11-12 March 2016.

16 November 2015.²⁵² This attempt of constitutionalisation has provoked furious debate and outraged the left which argued that it would create deeper fissures in French society by creating two classes of citizens. François Hollande eventually abandoned his constitutional reform.

In his opinion on 11 March 2012, the Venice Commission affirms that « *Constitutionalising the state of emergency would have amounted to placing it at the same level in the normative hierarchy as fundamental rights and freedoms, notably those enshrined in the Declaration of human rights of 1789* ». ²⁵³ Besides, it adds that : « *Emergency powers and fundamental rights and freedoms would have then be placed on the same normative level* ». ²⁵⁴ Thus, if the exceptional powers are included in the Constitution, they can of course no longer truly be considered as exceptional powers. This illustrates here again the wish from the French government to normalise the state of emergency.

B. THE NON-COMPLIANCE WITH INTERNATIONAL AND EUROPEAN LAW

On 25 November 2015, the French authorities sent a letter to the Secretary General of the Council of Europe concerning the French state of emergency measures taken following the terrorist attacks and that they may derogate from certain rights guaranteed by the European Convention on Human Rights. « *The derogation is foreseen by Article 15*

²⁵² Speech of 16 November 2016: « *A constitutional scheme is needed to deal with this emergency* » ; « *This revision of the Constitution must be accompanied by other measures. The issue at stake is the deprivation of nationality* ».

²⁵³ « Opinion of the Draft Constitutional Law on Protection of the Nation of France », European Commission for Democracy Through Law, 11-12 March 2016.

²⁵⁴ Ibidem, footnote 253.

*of the European Convention on Human Rights in times of public emergency threatening the life of a nation ».*²⁵⁵

It is therefore crucial to review the potential threats introduced by the new law of European and International law.

Threat to freedom of movement, right to private and family life

On the basis of vague reasons—« reasons to believe »—the emergency law grants the police the power to « *confine a person at their home for up to 12 hours a day and keep their passport or other identity documents for a certain period* ». ²⁵⁶ This may restrict the liberty of movement ²⁵⁷ and it threatens the right to private and family life²⁵⁸ « *guaranteed by the International Covenant on Civil and Political Rights*²⁵⁹ (ICCPR) and the *European Convention on Human Rights*²⁶⁰ (ECHR) which are both ratified by France ». ²⁶¹

²⁵⁵ France informs Secretary General of Article 15 Derogation of the European Convention on Human Rights, 25 November 2015, available at: http://www.coe.int/en/web/secretary-general/home/-/asset_publisher/oURUJmJo9jX9/content/france-informs-secretary-general-of-article-15-derogation-of-the-european-convention-on-human-rights (consulted on 5 July 2016).

²⁵⁶ « France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016.

²⁵⁷ Freedom of Movement; Article 2 Protocol No. 4 to the ECHR: « *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence* » & Article 12 ICCPR: « *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence* ».

²⁵⁸ Right to respect for private and family life; Article 8 ECHR: « *Everyone has the right to respect for his private and family life, his home and his correspondence* » & Article 17 ICCPR: « *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation* ».

²⁵⁹ Multilateral treaty adopted by the United Nations General Assembly on 16 December 1966.

²⁶⁰ International treaty drafted in 1950 to protect human rights and fundamental freedoms in Europe.

²⁶¹ « France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016.

Threat to freedom of association

« The new law also threatens the right to freedom of association²⁶² guaranteed under the ICCPR and the ECHR, by allowing the government to dissolve organisations and groups broadly described »²⁶³ as « participating in carrying out acts that seriously breach public order or whose activities facilitate carrying out or incite such an activity »²⁶⁴. The law specifies that such measures will not end when the state of emergency ends.

Threat to freedom of expression

« The new law also threatens the rights to freedom of expression²⁶⁵ under the ECHR and the ICCPR by allowing the authorities conducting the search to access and copy digital data saved on electronic devices ».²⁶⁶

²⁶² Right of Association; Article 11 ECHR: « Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests » & Article 22 ICCPR: « Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests ».

²⁶³ « France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016.

²⁶⁴ Article 6-1, Law n° 55-385, 3 April 1955.

²⁶⁵ Freedom of expression; Article 10 ECHR: « Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises » & Article 2 ICCPR: « Everyone shall have the right to freedom of expression ».

²⁶⁶ Ibidem, footnote 263.

C. FRENCH JURISPRUDENCE

On 11 December 2015, a priority question of constitutionality was brought before the Constitutional Council by the State Council in its decision of 22 December 2015.²⁶⁷ The Constitutional Council declare that restricted residence orders « *are not unconstitutional on the grounds that they involve a failure to exercise powers* »²⁶⁸ and « *do not cause a disproportionate violation to the freedom of movement* ».²⁶⁹ Moreover, it stated that these « *provisions do not violate either the right to respect for private life or the right to lead a normal family life* »²⁷⁰, « *or freedom of expression and communication nor any other right guaranteed by the Constitution* ».²⁷¹

On 18 January 2016, a priority question of constitutionality was brought before the Constitutional Council by the Council of State on behalf of the *Ligue des droits de l'homme* association.²⁷² The Constitutional Council, in a decision of 19 February 2016,²⁷³ stated that Article 8 of the Law of 1955 on the « *temporary closure of perfor-*

²⁶⁷ Decision no. 2015-527 QPC of 22 December 2015, available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2015/2015-527-qpc/version-en-anglais.146959.html> (consulted on 5 July 2016).

²⁶⁸ Ibidem, footnote 146.

²⁶⁹ Ibidem, footnote 146.

²⁷⁰ Ibidem, footnote 146.

²⁷¹ Ibidem, footnote 146.

²⁷² « Opinion of the Draft Constitutional Law on Protection of the Nation of France », European Commission for Democracy Through Law, 11-12 March 2016.

²⁷³ Decision no. 2016-535 QPC of 19 February 2016 - Human Rights League - [Policing of meetings and public places during a state of emergency] , (consulted on 5 July 2016).

mance halls, public houses and meeting places of all kind »²⁷⁴ « does not violate any right or freedom guaranteed under the Constitution »²⁷⁵ and « is constitutional ».²⁷⁶

As explained by Human Rights Watch (HRW), « *under article 15 of the ECHR and article 4 of the ICCPR, the government has the right to impose restrictions on certain rights, including freedom of movement, expression, and association, during states of emergency but only to the extent strictly required by the exigencies of the situation »²⁷⁷, and must ensure that any measure taken under the law is strictly proportionate to the aim pursued and non-discriminatory ».²⁷⁸*

However, the practice has shown that some of the concrete adopted measures were disproportionate and discriminatory.

II. THE IMPLEMENTATION OF EMERGENCY MEASURES IN PRACTICE

Since the declaration of the state of emergency on 14 November 2015, several types of administrative measures have been ordered: searches, house arrests, closures of places of worship and bans on demonstrations. This research will particularly focus on the main measures : the implementation of the administrative searches and the house arrests.

²⁷⁴ Ibidem, footnote 150.

²⁷⁵ Ibidem, footnote 150.

²⁷⁶ Ibidem, footnote 150.

²⁷⁷ « France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016.

²⁷⁸ Ibidem, footnote 277.

FROM THE « EXCEPTION TO THE RULE

The grounds to authorise both administrative searches and house arrests are broad and vague since « reasons to believe » that a person is involved in a terrorist activity are enough. This can lead to abuses considering that it is difficult to establish criteria characterising reasons to believe.

A. ADMINISTRATIVE SEARCHES

1. Numbers

Since declaration of the state of emergency the « *strategy implemented* »²⁷⁹, together with the « *number of exceptional measures implemented* », has been intensified. On the basis of information provided by the French government, 3,579 administrative searches have taken place between 14 of November 2015 and 13 May 2016.²⁸⁰ It is however important to pinpoint that most of the searches happened during the first period—between 14 November 2015 and 26 February 2015—with total a number of 3,427 for that period.²⁸¹ The administrative searches allowed the seizure of 756 weapons, the noticing of 557 infractions, the realisation of 420 arrests for questioning leading to 364 police custodies.²⁸² If the number of administrative searches dropped in the second period,²⁸³ only 67 convictions have been secured by the courts including 56 imprisonments.²⁸⁴ In par-

²⁷⁹ Extension of the state of emergency for a further two months, government.fr, 21 April 2016.

²⁸⁰ Raimbourg, D., Poisson J.F, « Communication d'étape sur le contrôle de l'état d'urgence Réunion de la commission des Lois du mardi 17 mai 2016 ».

²⁸¹ Ibidem, footnote 279.

²⁸² Ibidem, footnote 280.

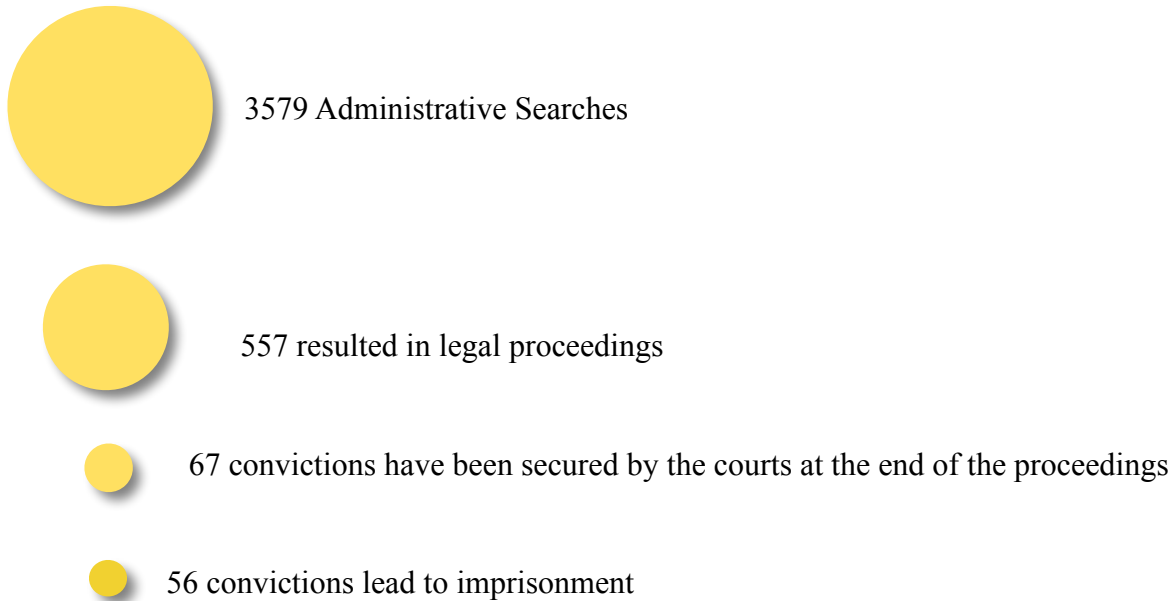
²⁸³ The second period of the state of emergency's extension refers to the period between the 26 February 2015 and 26 May 2016.

²⁸⁴ Ibidem, footnote 280.

FROM THE « EXCEPTION TO THE RULE

ticular, it must be underlined that solely 31 convictions were likely to be linked with terrorism.²⁸⁵

ADMINISTRATIVE SEARCHES RESULTS FROM 14 NOVEMBER UP THE 13 MAI 2016



SOURCE: *Ministry of the Interior* ²⁸⁶

2. Abuses

The deployment and the mobilisation of the gendarmerie and police forces has on occasions appeared « disproportionate ». For example, « *on 20 November 2015 at 3.20 in the morning, a search took place in a mosque in Brest carried out by one hundred police*

²⁸⁵ Ibidem, footnote 280.

²⁸⁶ Raimbourg, D., Poisson J.F, « Communication d'étape sur le contrôle de l'état d'urgence Réunion de la commission des Lois du mardi 17 mai 2016 », available at : http://www2.assemblee-nationale.fr/static/14/lois/communication_2016_05_17.pdf (consulted on 5 July 2016).

officers, gendarmes and CRS and led to no arrests ».²⁸⁷ Moreover, the NGOs and associations heard by the CNCDH ²⁸⁸ have reported an important number of searches carried out in the homes of « *persons already under house arrest* ».²⁸⁹

Regarding the conducting of searches, the information collected by the CNCDH and Amnesty International have helped pinpointing excesses. First, they indicate a failure to « *take into account the potential presence of minors or vulnerable persons (pregnant women, elderly persons or persons with a disability, etc.) in the premises being searched* ».²⁹⁰ They also assert that such operations were having « long-term consequences »²⁹¹ on the people subjected to searches. These effects included « fear, stress or other health-related issues ».²⁹² Secondly, physical violence such as: « *wrestling persons present to the ground in the place of dwelling, blows, physical immobilisation accompanied by the pointing of weapons* » by the gendarmerie and police took place numerous times. Besides, police sometimes « *handcuffed or pointed firearms at those who were occupying the premises subjected to the search* ».²⁹³

Moreover, they pointed out the almost systematic « damage to property »²⁹⁴ such as « *breaking down of doors without having been refused entry beforehand* »²⁹⁵ and « un-

²⁸⁷ « Statement of Opinion on the State of Emergency », CNCDH, 18 February 2016, available at: http://www.cncdh.fr/sites/default/files/english_avis_statement_of_opinion_on_the_state_of_emergency.pdf

²⁸⁸ Commission Nationale Consultative des Droits de l'Homme is a French governmental organisation created in 1947 to control the respect of human rights in the country

²⁸⁹ Ibidem, footnote 287.

²⁹⁰ Ibidem, footnote 287.

²⁹¹ « France: Upturned lives: The disproportionate impact of France's state of emergency », Amnesty International, 4 February 2016, available at : <https://www.amnesty.org/en/documents/eur21/3364/2016/en/>.

²⁹² Ibidem, footnote 291.

²⁹³ Ibidem, footnote 159.

²⁹⁴ Ibidem, footnote 287.

²⁹⁵ « Etat d'urgence: pour la police, une perquisition tient en trois lignes », Le monde, available at: <http://delinquance.blog.lemonde.fr/2015/12/06/etat-durgence-pour-la-police-une-perquisition-tient-en-trois-lignes/> (consulted on 5 July 2016).

FROM THE « EXCEPTION TO THE RULE

necessary destruction of furniture and personal belongings ». ²⁹⁶ Furthermore, « *inappropriate, vexatious, and even abusive remarks* »²⁹⁷ were pronounced by the police and the gendarmerie as for instance: « *read it if you can read* »; « *we are in a state of emergency so we do what we want* »²⁹⁸ or « *there are still some places in Guantanamo* » or with a discriminatory effect « *you worship more than you should* ». ²⁹⁹ In addition, « *excessive duration of the operations (up to 12 hours)* »³⁰⁰ and the « *failure to present the search warrant were registered* ». ³⁰¹ Thus, many of those subjected to searches assured to Amnesty International that authorities « *had not provided them with information about the specific reasons justifying the search of their homes* ». ³⁰²

It must be here highlighted that since the 26 May 2016, the government stopped the administrative searches.

B. HOUSE ARRESTS

1. Numbers

Between 14 November 2015 and 25 February 2016, 400 house arrests were implemented whereas only 72 between 26 February 2016 and 25 May 2016 which characterises a

²⁹⁶ *Statement of Opinion on the State of Emergency*, CNDH, 18 February 2016, available at :http://www.cncdh.fr/sites/default/files/english_avis_statement_of_opinion_on_the_state_of_emergency.pdf

²⁹⁷ Ibidem, footnote 295.

²⁹⁸ Etat d'urgence : « Le serrurier nous l'a bien dit : En ce moment, on n'arrête pas! », Le Monde, 9 December 2015, <http://delinquance.blog.lemonde.fr/2015/12/09/etat-durgence-le-serrurier-nous-la-bien-dit-en-ce-moment-on-narrete-pas/> (consulted on 7 July 2016).

²⁹⁹ Ibidem, footnote 162.

³⁰⁰ Ibidem, footnote 296.

³⁰¹ Ibidem, footnote 296.

³⁰² « France: Upturned lives: The disproportionate impact of France's state of emergency », *Amnesty International*, 4 February 2016.

FROM THE « EXCEPTION TO THE RULE

significant decrease.³⁰³ Still on the basis of the numbers provided by the French government, 199 interim orders have been served against these house arrest measures between 14 November 2015 and 25 May 2016 and only 15 of these were cancelled.

HOUSES ARRESTS BETWEEN 14 NOVEMBER 2015 AND 26 MAY 2016

	From 14 November 2015 up to 25 February 2016	From 26 February up to 25 May 2016	Since 26 May 2016
<i>Number of House Arrests</i>	400	72	75
<i>Number of interim orders against house arrest measures</i>	179	20	4
<i>Annulation of House arrests</i>	12	3	0

SOURCE: *Ministry of the Interior* ³⁰⁴

2. Abuses

In several cases, « *authorities made allegations of serious crimes in order to justify assigned residence orders, with little evidence to substantiate those claims* ». ³⁰⁵ For

³⁰³ Mesures administratives prises en application de la loi n° 55-385 du 3 avril 1955 depuis le 14 novembre 2015, 1 July 2016, available at: <http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence/donnees-de-synthese/mesures-administratives-prises-en-application-de-la-loi-n-55-385-du-3-avril-1955-depuis-le-14-novembre-2015> (consulted on 5 July 2016).

³⁰⁴ Ibidem, footnote 303.

³⁰⁵ « France: Upturned lives: The disproportionate impact of France's state of emergency », *Amnesty International*, 4 February 2016.

example, authorities justified the execution of residence orders on the grounds that those targeted were « radicalised » without proofs that they were a threat to public order.³⁰⁶

There were also situations where the measures of house arrest « *were insufficiently individualised with respect to the situation (personal, family, professional, social, etc.) of those under house arrest* ». ³⁰⁷ Regarding this matter, the CNCDH alerts about the « *numerous obstacles to working life due to the frequency of reporting at police stations* ». ³⁰⁸ These obstacles are worsened by the fact that « *often the place of attendance is a considerable distance from the home of the person concerned* ». In this regard, it appears that the context of the state of emergency has led certain employers to dismiss their employees. As an example, « *two security guards working at Orly airport were dismissed on the grounds that the length of their beards was not compatible with the roles defined in their contracts* » ³⁰⁹ of employment. ³¹⁰

Finally, one of the most striking « *examples of the abusive application of the emergency measures took place during the United Nations Conference on Climate Change (COP 21)* » ³¹¹ in Paris. ³¹² Indeed, the Ministry of Interior —Bernard Cazeneuve— ordered 26 climate change activists to « assigned residence for the whole duration of the conference ». ³¹³ In several instances, authorities justified the measures « *on the basis of their membership of “radical left” groups and their past alleged participation in violent de-*

³⁰⁶ Ibidem, footnote 305.

³⁰⁷ Ibidem, footnote 162.

³⁰⁸ Ibidem, footnote 162.

³⁰⁹ Ibidem, footnote 287.

³¹⁰ « Etat d’urgence : à Orly, des agents licenciés pour une barbe trop longue », Le Monde, available at: <http://delinquance.blog.lemonde.fr/2015/12/18/etat-durgence-a-orly-des-agents-licencies-pour-une-barbe-trop-longue/> (consulted on 7 July 2015).

³¹¹ Ibidem, footnote 305.

³¹² The UN COP 21 took place between 30 November and 12 December 2015.

³¹³ Ibidem, footnote 159.

*monstrations that had disrupted public order ».*³¹⁴ Nevertheless, according to Amnesty International, « *most of the activists had never been subjected to any investigation, nor have they been charged or convicted for any crime before the COP21, when authorities imposed the assigned residence orders against them ».*³¹⁵

The Ministry of Interior argued before the courts that « *the measures against the activists had been taken with the aim of protecting public order and security during the COP 21 ».*³¹⁶ As the government acknowledged, « *the climate activists did not themselves present a threat to national security ».* The state thus employed emergency measures for purposes other than those which were the basis of the declared state of emergency.

The vague criteria on the basis of what authorities can impose assigned administrative searches or residence orders have resulted, in some cases, in the measures being « *applied arbitrarily and in a discriminatory manner against individuals considered to be radicalised because of their religion beliefs and practice ».*³¹⁷

³¹⁴ Ibidem, footnote 159.

³¹⁵ Ibidem, footnote 159.

³¹⁶ Ibidem, footnote 159.

³¹⁷ Ibidem, footnote 159.

CONCLUSION OF TITLE II:

It is important to show here that is not only through the securitisation process that the measures adopted within the framework of the state of emergency tend to become the norm. It is a much longer process since surveillance technologies and attitudes towards constant monitoring and activities have shifted and greatly expanded to become routine of everyday life rather than exceptional practices.

Through the speech of 13th November and 14th November 2015, François Hollande realises a securitising move. Thus, the criteria of the Copenhagen School are fulfilled. Indeed, François Hollande represents the securitising actor who claimed that « a referent object » i.e the security nation is at threatened. François Hollande demanded the right to take extraordinary measures countermeasures through that threat : the measures authorised within the framework of the state of emergency. He also convinced the audience to accept those measures. Indeed, in order to ensure their safety, french citizens are willing to give away a part of their liberty. However, it is here important to underline that it is not only through the speech act that François Hollande was able to make a successful securitisation. Indeed, as argued by Bigo, the fundamental aspect of the securitisation is the routinised practices realised by security professionals of unease before the declaration of exception. Those illiberal practices of surveillance and profiling were already performed before the state of emergency. Yet, the state of emergency offers a legal framework to those exceptional measures and make them « lawful ». The state of emergency thus allows to temporarily close places of meeting of any kind, to ban the circulation of person, to place someone under arrest if there are reasons to believe that the behaviour of this person constitutes a threat to public security and to conduct administrative searches on the same grounds. Those grounds are random and arbitrary since they have no judicial meaning. Who is entitled to believe? What are the criteria to constitute reasons to believe? What is the threshold? Judging by the vagueness of the grounds of authorisation, it is not surprising that multiple abuses were committed since the declaration of the state of emergency in November. Those abuses committed threaten liberties

FROM THE « EXCEPTION TO THE RULE

and freedom guaranteed by European and International. In this regard, it would not be surprising if the European Court of Human Rights rule against the measures taken during the state of emergency—ending on 26 July 2016—and condemns France for violation of freedom of movement or freedom of respect to private and family life.

Titre III.

THE NEW CRIMINAL LAW EXTENDING THE « EXCEPTION » BEYOND
THE « EMERGENCY »

On the 25th May 2016,³¹⁸ French Parliament adopted a new criminal law « to reinforce the fight against terrorism and organised crime» which was promulgated on the 3rd of June 2016 which modified the Criminal Procedure Code.³¹⁹ This law allows the same measures than those permitted during the state of emergency or even broadens the prerogatives of the executive. It implement in a legal framework measures that usually only falls within the framework of the state of emergency. On the basis of the article from" Jean-Claude Paye,³²⁰ The Chapter I will dissect this new criminal law and demonstrate how it exemplifies the normalisation of the state of exception while the Chapter II seek to examine the challenges of France's normalisation of the exception. Chapter III is devoted to the analysis of the difficulty of reasons in terms of exception when the threat of terrorism is nothing but a permanent threat.

³¹⁸ « Adoption définitive du projet de loi contre le crime organisé et le terrorisme », in Europe 1, 25 Mai 2016, <http://www.europe1.fr/politique/adoption-definitive-du-projet-de-loi-contre-le-crime-organise-et-le-terrorisme-2754706>

³¹⁹ Law n° 2016-731 of 3 June 2016, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORF-TEXT000032627231&categorieLien=id>

³²⁰ Paye, Jean-Claude, « Exceptional procedures without a state of emergency », voltage.net.org, 30 March 2016.

CHAPTER I. THE NEW CRIMINAL LAW : THE NORMALISATION OF THE
EMERGENCY PRACTICE

The new criminal law imported into common law contains specific dispositions which are usually considered « exceptional ». Thus as asserted by the government, the aim is to « *permanently reinforce the tools and means at the disposition of the administrative and judicial authorities, outside of the temporary legal framework implemented in the context of a state of emergency* ». ³²¹

This law facilitates the « lawful » « *espionage of French citizens* ». ³²² Thus, it is clearly introduced to complete the law from 2015 concerning Intelligence ³²³ by a judicial appendix. ³²⁴ It allows to use information « *obtained by false IMSI-catcher antennae, by video surveillance and house bugging as a ground for criminal proceedings* ». ³²⁵

³²¹ « Les pouvoirs de police renforcés pour se passer de l'état d'urgence », *Le Monde*, <http://ldh-midi-pyrenees.org/wp-content/2016/01/Le-Monde-les-pouvoirs-de-police-renforce%CC%81s-pour-se-passer-de-le%CC%81tat-durgence-mercredi-06-janvier-2016.pdf>

³²² Paye, Jean-Claude, « Exceptional procedures without a state of emergency », voltage.net.org, 30 March 2016.

³²³ Law n° 2015-912 of 24 July 2015 concerning Intelligence, <https://www.legifrance.gouv.fr/affich-Texte.do?cidTexte=JORFTEXT000030931899&categorieLien=id>

³²⁴ Avis sur le projet de loi renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale, 17 March 2016, https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=8B12EE8ABB0B15A2B7DE5AD05EC2A8B3.tpdila22v_2?cidTexte=JORFTEXT000032628821&idArticle=JORFARTI000032628822&dateTexte=20160604&categorieLien=cid

³²⁵ Ibidem, footnote 322.

A. « REINFORCEMENT OF THE PUBLIC PROSECUTOR AND EVICTION OF
THE EXAMINING MAGISTRATE »³²⁶

As asserted by Jean-Claude Paye, the law strengthened the powers of the Public Prosecutor who depends on the executive powers.³²⁷ This leads to « *reducing the role of the investigating magistrate which the executive considers to be too independent* ». ³²⁸ The purpose is to remove certain powers of the investigating magistrate such as the control « *of the procedure for intrusive enquiries* »³²⁹ and put them « *in the hands of the Public Prosecutor of the Republic* ». ³³⁰

In addition, the Public Prosecutor turns into a «Director of Enquiries». ³³¹ Thus, he conducts the «preliminary enquiries» and can bring the suspect before the court.³³² He then carries out the prosecution during the trial.³³³ He is also in charge of checking if « *enquiries carried out by the criminal investigation department* »³³⁴ have been conducted « *effectively* »³³⁵ by reflecting the truth both for the prosecution and the defence.³³⁶

³²⁶ Ibidem, footnote 322.

³²⁷ Ibidem, footnote 322.

³²⁸ Ibidem, footnote 322.

³²⁹ Ibidem, footnote 322.

³³⁰ Ibidem, footnote 322.

³³¹ Ibidem, footnote 322.

³³² Article 56, Law n° 2016-731 of 3 June 2016.

³³³ Ibidem, footnote 332.

³³⁴ Ibidem, footnote 322.

³³⁵ Ibidem, footnote 322.

³³⁶ Article 54, Law n° 2016-731 of 3 June 2016.

In those enquiries conducted by the Prosecutor, the suspect can only have access to his file at the end of the investigation.³³⁷ Thereby, « *the suspect is not able to contest the legality of the necessity of an enquiry at the moment of his accusation* ».³³⁸

The Prosecutor of the Republic now possesses an « *increasing number of prerogatives which used to belong to the examining magistrate* »³³⁹ since this magistrate is now deprived of the ability to bring the accused before the court and to conduct « *investigations for the prosecution and the defence* ».³⁴⁰ Besides as examined by Paye, « *image capture, audio bugging and video surveillance* », ³⁴¹ which used to be within the domain of competence of the examining magistrate, can now be requested by the Prosecutor during the preliminary enquiry.³⁴²

B. « A PERVERSION OF THE CRIMINAL JUSTICE SYSTEM »³⁴³

Thus, the law inserts a significant transformation of the criminal legal system. Indeed, this law characterises the change from an « *inquisitorial procedure* »³⁴⁴ centralised around the magistrate to a system closer to the accusatory procedure.³⁴⁵ The lawyers can

³³⁷ Ibidem, footnote 322.

³³⁸ Ibidem, footnote 322.

³³⁹ Ibidem, footnote 322.

³⁴⁰ Ibidem, footnote 322.

³⁴¹ Ibidem, footnote 322.

³⁴² Article 4, Law n° 2016-731 of 3 June 2016

³⁴³ Ibidem, footnote 322.

³⁴⁴ Ibidem, footnote 322.

³⁴⁵ « Comment la réforme pénale renforce les pouvoirs des procureurs », Le Monde, 4 March 2016, http://www.lemonde.fr/societe/article/2016/03/04/reforme-penale-les-procureurs-prennent-la-main-sur-les-enquetes_4876575_3224.html

now ask the Prosecutor for specific determinant proofs.³⁴⁶ With the insertion of these new procedures only more affluent people will have the possibility defend themselves. Indeed, for the « poorest », the law enables to modify the « *mode of passage before the judge of freedoms and detention in order to judge them faster within the framework* »³⁴⁷ of an immediate trial.³⁴⁸

Jean-Claude Paye also demonstrates that whereas before the law luggage inspection was only allowed by a legal authorisation,³⁴⁹ the Prosecutor now possesses the possibility— « *in the absence of any suspicious or illegal behaviour* »³⁵⁰— to authorise a luggage inspection.³⁵¹ It is important to highlight that these inspections not only target suspects but anyone who may be at a certain place.³⁵²

C. « AN OMNIPOTENT POLICE »³⁵³

Paye also points out that the new powers granted to the Prosecutor by the law only intensify their work and make any surveillance of police work impossible.³⁵⁴ Thus, the police force « *seemingly benefits from this reform* ».³⁵⁵ If police personnel use their fire-arms in cases of «absolute necessity» against « a person who has killed or attempted to

³⁴⁶Article 56, Law n° 2016-731 of 3 June 2016 .

³⁴⁷ Ibidem, footnote 322.

³⁴⁸ Article 86, Law n° 2016-731 of 3 June 2016.

³⁴⁹ Ancient Article 72-2-2 Criminal Procedure Code.

³⁵⁰ Ibidem, footnote 322.

³⁵¹ Article 47, Law n° 2016-731 of 3 June 2016.

³⁵² Ibidem, footnote 322.

³⁵³ Ibidem, footnote 322.

³⁵⁴ Ibidem, footnote 322.

³⁵⁵ Ibidem, footnote 322.

kill, and is about to attempt this again», they are not legally responsible.³⁵⁶ Under the new law, police officers are enabled to detain a person—even a minor— without access to a lawyer if there are «serious reasons» to believe that they may have a «link» with terrorist activity.³⁵⁷ This is possible even if the person is in possession of an identity card.³⁵⁸

The law also extends the practice of surveillance by the police in public places as for example « *the use of IMSI-catchers, or false relay-antennae which spy on telephones and computers* »³⁵⁹ without the user's permission. The police « can also pick up all the mobile phones »³⁶⁰ within their range of action.³⁶¹ Paye denounces this as being a gigantic « *system for data-capture and is not only limited to anti-terrorist investigations* ». ³⁶² Paye alerts that this opens the door to a « *massive capture of information from French citizens* ».³⁶³ It must be approved by the « *judge for freedom and detention, or, «in emergencies, by the Public Prosecutor* ».³⁶⁴ However, as exhibited by Paye, it is usually the police that qualifies a situation as an emergency.

³⁵⁶ Article 51. Law n° 2016-731 of 3 June 2016.

³⁵⁷ Article 48, Law n° 2016-731 of 3 June 2016.

³⁵⁸ Ibidem, footnote 322.

³⁵⁹ Ibidem, footnote 322.

³⁶⁰ Article 3, Law n° 2016-731 of 3 June 2016.

³⁶¹ Ibidem, footnote 322.

³⁶² Ibidem, footnote 322.

³⁶³ Ibidem, footnote 322.

³⁶⁴ Ibidem, footnote 322.

D. NORMALISATION OF NIGHT SEARCHES

Night searches are now « *authorised in private homes from the very beginning of the preliminary investigation with the prior authorisation of the judge for freedom and detention* ». ³⁶⁵ As expressed by Paye, this procedure supplants the authorisation given by the examining magistrate during the enquiry. The law allows searches to be carried out as a « *preventive measure* » ³⁶⁶ to « *prevent the risk of a threat to life or physical integrity* ». ³⁶⁷ Night searches in private homes are thus normalised by the new reform. The text refers to «the risk of a threat» without qualifying it. The criteria are vague and broad. Indeed, it is difficult to establish what can constitute a threat. This can cover various « *situations where there might be a threat to life and physical integrity* ». ³⁶⁸

E. « COMPUTERS SEARCHES WITHOUT JUDICIAL GUARANTEE » ³⁶⁹

Paye clarifies that « *until now, IMSI-catchers could only be authorised in the context of judiciary information, but have been used only rarely by the investigating judge, due to the confusion which reigns in the legal system. The law concerning Intelligence has legalised their use by the secret services* ». ³⁷⁰ Article 3 of the law also permits the exten-

³⁶⁵ Ibidem, footnote 322.

³⁶⁶ Ibidem, footnote 322.

³⁶⁷ Ibidem, footnote 322.

³⁶⁸ Ibidem, footnote 322.

³⁶⁹ Ibidem, footnote 322.

³⁷⁰ Ibidem, footnote 322.

sion of data capture to data archives³⁷¹ which means that all the information contained in computer archives may be taken and very old data can be inspected.³⁷²

F. LEGALISATION OF « RETURNS FROM SYRIA »³⁷³

Paye also warns that «returns from Syria», are now legalised.³⁷⁴ Indeed, anyone who left the French territory and who poses a reason to believe that this displacement aims at joining the theater of terrorist organisations in conditions likely to be prejudicial to public security, can be indicted, imprisoned or placed under judicial review.³⁷⁵ Paye also highlights that they can be « placed under house arrest », obliged to « give their phones and computer codes » and prohibited « to speak to certain people ». These measures undoubtedly characterise a « criminal procedure ».³⁷⁶ Yet, these actually are purely « *administrative acts without any control of a judge* ».³⁷⁷ Paye notifies that « *this leaves the door wide open for random judgments and takes away any possibility of the suspect to defend himself* ».³⁷⁸

³⁷¹ Article 3, Law n° 2016-731 of 3 June 2016.

³⁷² Ibidem, footnote 322.

³⁷³ Ibidem, footnote 322.

³⁷⁴ Ibidem, footnote 322.

³⁷⁵ Article 52, Law n° 2016-731 of 3 June 2016.

³⁷⁶ Ibidem, footnote 322.

³⁷⁷ Ibidem, footnote 322.

³⁷⁸ Ibidem, footnote 322.

FROM THE « EXCEPTION TO THE RULE

As warned by Jeanc-Claude Paye, this law prolongs and normalises the state of emergency by introducing such civil liberty « *restricting measures authorised by the state of emergency, but without a state of emergency being declared* »³⁷⁹ any longer. Moreover, by giving all the prerogatives to the police and the Public Prosecutor which is dependent on the executive, the law « *dissolves the judicial function* »³⁸⁰ and alters the principe of « checks and balances » of « *séparation des pouvoirs* », « *claimed as part of the national heritage* »³⁸¹ and cherished by Montesquieu.³⁸²

³⁷⁹ Ibidem, footnote 322.

³⁸⁰ Ibidem, footnote 322.

³⁸¹ Ibidem, footnote 322.

³⁸² French author who developed the theory of « *Séparation des pouvoirs* » in *L'esprit des Lois*.

CHAPTER II: THE CHALLENGES OF FRANCE'S NORMALISATION OF THE EXCEPTION

As presented by Giorgio Agamben, by extending three times the state of emergency, the french government maintains a climate of suspicion against mostly muslims, fear and uncertainty.³⁸³ Since almost identical measures than those permitted under the state of emergency framework, the new law recently promulgated on 3rd June 2016 will perpetuate the phenomenon when the state of emergency is going to end on 26th July 2016 and engender further islamophobia.

I. MAINTENANCE OF A GENERALISED STATE OF FEAR

Agamben shows that according to Thomas Hobbes, « *the contract that confers powers to the sovereign presupposes reciprocal fear and a war of all against all* ». ³⁸⁴ Thus, Agamben explains that it is « the state which ends the fear ». ³⁸⁵ He adds that in the security state, such as the French state of emergency, this scheme is opposite. The state is thoroughly based on fear and must at all cost maintain it since it derives from it its « legitimacy ». ³⁸⁶

³⁸³ Gavroche, Julius, « From the state of law to the security state: Giorgio Agamben on the state of emergency in France », in *Autonomies*, 29 December 2015.

³⁸⁴ Ibidem, footnote 383.

³⁸⁵ Ibidem, footnote 383.

³⁸⁶ Ibidem, footnote 383.

A. UNCERTAINTY AND TERROR

By referring to « *all persons with regards to whom there exist serious reasons to think that their behaviour constitutes a threat to public order and security* »³⁸⁷, the law of the 20th of November 2015 and the one of the 3rd of June 2016 is characterised by uncertainty. In this regard, Agamben notifies that the expression « *serious reasons to think has no judicial meaning* ».³⁸⁸ It appeals to the « *arbitrariness of the one who thinks which can be applied at any time to anyone* ».³⁸⁹ But Agamben warns that « *then in the security state, these indeterminate formulas, which were always considered by jurists as incompatible with the principle of legal certitude tend to become the norm* ».³⁹⁰

He denounces the fact that the exceptional measures seek to establish « *a new relation with men and women of generalised and unlimited control* ».³⁹¹ Indeed, the possibility to « *control communication data and to seize the complete content of computers* »³⁹² perfectly illustrates this idea. The first danger that Agamben envision is the « *creation of a systematic relationship between terrorism and the security state* ». If the « *state necessitates fear for its legitimacy* »³⁹³, it must create terror or at least « *not prevent it from happening* ».³⁹⁴ Furthermore, as pointed out by Agamben, it seems that France conducts

³⁸⁷ Article 8 Law 1955.

³⁸⁸ Ibidem, footnote 383.

³⁸⁹ Ibidem, footnote 383.

³⁹⁰ Ibidem, footnote 383.

³⁹¹ Ibidem, footnote 383.

³⁹² Ibidem, footnote 383.

³⁹³ Ibidem, footnote 383.

³⁹⁴ Ibidem, footnote 383.

a foreign policy that feeds terrorism by maintaining « *cordial relations with states that are known to finance terrorist organisations* ». ³⁹⁵

Agamben specifies that the same imprecision and ambiguity reappears in the speeches of François Hollande and Manuel Valls ³⁹⁶ « according to whom France is at war against terrorism ». ³⁹⁷ Thereby Agamben argues that « a war against terrorism is a contradiction in terms ». ³⁹⁸ Indeed, « *the state of war is defined precisely by the possibility of identifying the specific enemy* » ³⁹⁹ that must be combatted. Agamben thus emphasises that on the contrary, « from a security point of view », the enemy must abide « vague so that anyone can be identified as such ». ⁴⁰⁰

B. DISCIPLINARISATION AND EXCLUSION IN THE NAME OF PROTECTION THE FUTURE

The argument of the imminence and danger of the attack is often used to justify a precautionary defence because of the « *irreparable character of the action* » argues Bigo. ⁴⁰¹ He also pinpoints that the persuasion in the « *imminent danger also justifies proactive policing actions, pre-emptive military strikes where suspicion is perceived as*

³⁹⁵ Ibidem, footnote 383.

³⁹⁶ « *We are at war* », Speech by French Prime Minister Manuel Valls in the National Assembly, 19 November 2015, available at: <http://basedoc.diplomatie.gouv.fr/exl-doc/FranceDiplomatie/PDF/baen2015-11-19.pdf>

³⁹⁷ Ibidem, footnote 383.

³⁹⁸ Ibidem, footnote 383.

³⁹⁹ Ibidem, footnote 383.

⁴⁰⁰ Ibidem, footnote 383.

⁴⁰¹ Bigo, Didier, « Security, Exception, Ban and Surveillance », in *Theorizing Surveillance*, 2006, pp.61.

*a sufficient element to act ».*⁴⁰² « *The decisions on those who decide are based on profiles, on assumptions concerning the possible future »*, or more accurately on the conviction that the intelligence services can « *read the future through their technologies of profiling »*.⁴⁰³

Bigo also advances that « *it is easy for the professionals of politics to say that they rely in science and teams of profilers who can anticipate before the act who is potentially going to commit an offence and what their actions will be in the future »*. However, this is science fiction. The dream of security agencies is to « *foresee the future and arrest people before they commit a crime »*.⁴⁰⁴

Following Bigo's opinion, it is important to insist on this normalisation of emergency « *as a technique of government by unease »*.⁴⁰⁵ Indeed, « *the surveillance and monitoring of the movement of individuals is increasing and controls and restrictions of freedom are concentrated on particular targets »*.⁴⁰⁶ The so-called « need » for preventive action creates thus uncertainty and fear.

C. THE THREAT OF FRONT NATIONAL

The stunning gains made by France's far-right National Front party ⁴⁰⁷ (F.N) in the first round of voting in regional elections on the 6th of December 2015 « *were clearly bols-*

⁴⁰² Ibidem, footnote 401.

⁴⁰³ Ibidem, footnote 401.

⁴⁰⁴ Ibidem, footnote 401, pp. 63.

⁴⁰⁵ Ibidem, footnote 401.

⁴⁰⁶ Ibidem, footnote 404.

⁴⁰⁷ The National Front (FN) is a french right wing extremist party established in 1972. Its founders and sympathisers included former Nazi collaborators and members of the wartime collaborationist Vichy regime. The National Front is now led by Marine Le Pen, who took over from her father, Jean-Marie Le Pen, in 2011.

*tered by fears arising from the Nov. 13 terrorist attacks in Paris, and from months of relentless news of the waves of foreigners arriving in Europe ».*⁴⁰⁸ Although it was defeated by a « mass tactical voting »⁴⁰⁹ and thereby did not win a single region, political representatives of F.N « *are now spreading themselves out all over France* ».⁴¹⁰

As argued by Agamben, the state of emergency is specifically the means used by totalitarian authorities regimes to settle in Europe.⁴¹¹ Agamben alerts that this does not exclude the possibility that a comparable scenario may repeat itself in France.⁴¹² Indeed, it can be easily imagined that the F.N will benefit from of a state of emergency to which « *citizens of previous socialist governments* »⁴¹³ are accustomed to. He is also convinced that in a country living in an infinite state of emergency and in « *which police operations* » gradually supplant judicial power, an irrevocable deterioration « *of public institutions may be expected* ».⁴¹⁴

The security state into which France currently is transforming sustains uncertainty, fear and terror which constitutes an undeniable breeding ground to extremist parties such as

⁴⁰⁸ « *In France, the Political Fruits of Fear* », in The New York Times, 7 December 2015, <http://www.nytimes.com/2015/12/08/opinion/in-france-the-political-fruits-of-fear.html>

⁴⁰⁹ Henly John, « French elections: seven regions for centre right, none for Front National – as it happened », in *The Guardian*, 13 December 2015, available at <https://www.theguardian.com/world/live/2015/dec/13/french-regional-elections-2015-live>

⁴¹⁰ Nossiter, Adam, « Marine Le Pen Far From Humbled by National Front's Bruising Defeat », in *The New York Times*, 14 December 2015, available at : <http://www.nytimes.com/2015/12/15/world/europe/marine-le-pen-far-from-humbled-by-national-fronts-bruising-defeat.html>

⁴¹¹ Gavroche, Julius, « From the state of law to the security state: Giorgio Agamben on the state of emergency in France », in *Autonomies*, 29 December 2015.

⁴¹² Ibidem, footnote 411.

⁴¹³ Ibidem, footnote 411.

⁴¹⁴ Ibidem, footnote 411.

the F.N. This rise of F.N and the extension of the state of emergency in this context of fear is also likely to lead to a further marginalisation of Muslims in France.

II. THE RISK OF FURTHER « MARGINALISATION » OF MUSLIMS

According to HRW, « *the majority of the people put under house arrest or whose homes were searched are Muslims and persons of North African descent* ». ⁴¹⁵ Indeed, most of the measures targeted Muslim homes and establishments such as halal restaurants. ⁴¹⁶ HRW also reported that many people asserted that « *they felt they had been targeted because of their religion* ». ⁴¹⁷

Moreover, many of those interviewed by HRW said they have been « *shunned by their neighbors* ». ⁴¹⁸ In the same regard, under the information provided by Amnesty International, searches had in several cases « *a negative impact on neighbours' or acquaintances' perceptions of those subjected to them, especially in smaller cities or towns* ». ⁴¹⁹ Besides, some people « *raised concerns that the searches could lead to further stigmatisation of Muslims and to discrimination in their everyday lives* ». ⁴²⁰

In several cases documented by Amnesty International, « *the authorities often justified the execution of residence orders by alleging that those targeted were either themselves a threat because of their religious practices or supposed radicalisation or individuals*

⁴¹⁵ « France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016.

⁴¹⁶ Ibidem, footnote 415.

⁴¹⁷ Ibidem, footnote 415.

⁴¹⁸ Ibidem, footnote 415.

⁴¹⁹ « France: Upturned lives: The disproportionate impact of France's state of emergency », *Amnesty International*, 4 February 2016.

⁴²⁰ Ibidem, footnote 419.

*had connections with other Muslims who were supposed to be radicalised , without providing any specific allegations as to why the behaviour or beliefs allegedly constituted a threat to public order ».*⁴²¹

Thus, in its report the Collectif Contre l'Islamophobie en France (CCIF)⁴²² denounced the arbitrary targeting of Muslims⁴²³ and pinpointed the « *correlation between the attacks and the increase of islamophobic acts* ». ⁴²⁴ The spokesman for the CCIF asserted that « *the Muslim minority in France feels like it is being treated as the public enemy* » and « *they are afraid of the government* ». ⁴²⁵

« *In a context of growing Islamophobia,*⁴²⁶ *the French government should urgently reach out to Muslims and give them assurances that they are not under suspicion because of their religion or ethnicity* »⁴²⁷ warned the human researcher Izza Leghtas.

In this climate of general fear, the normalisation of the targeting and discriminating against Muslims based on « *reasons to believe that their behaviour is a threat to the public order and security* » is indisputably leading to further marginalisation of Muslims and islamophobia within the French society. Those practices alienate French Muslims and compromise « *cooperation* » between law enforcement authorities and Muslims

⁴²¹ Ibidem, footnote 419.

⁴²² Collectif Contre l'Islamophobie en France is a french organisation of Human Rights Defenses created in 2000 with the mission of combatting Islamophobia.

⁴²³ CCIF Report 2016, available at : http://www.islamophobie.net/sites/default/files/CCIF-Annual-Report-2016_0.pdf.

⁴²⁴ Ibidem, footnote 423.

⁴²⁵ Acosta, Deborah, « French Police Make 2,700 Raids in Month, Raising Tension With Muslims », 23 December 2015, in *The New York Times*, available at: <http://www.nytimes.com/2015/12/24/world/europe/french-police-make-2700-raids-in-month-raising-tension-with-muslims.html>

⁴²⁶ The CCIF defines Islamophobia as: « *all acts of rejection, discrimination or violence against institutions or individuals on the basis of their real or perceived belonging to the Muslim faith* ».

⁴²⁷ Ibidem, footnote 415.

which « *could assist in identifying potential local terrorism threats based on radical Islam* ».

Thus, in its report the CCIF ⁴²⁸ denounced the arbitrary targeting of Muslims⁴²⁹ and pinpointed the correlation between the attacks and the increase of islamophobic acts. The spokesman for the CCIF asserted that « *the Muslim minority in France feels like it is being treated as the public enemy* » and « *they are afraid of the government* ». ⁴³⁰

« *In a context of growing Islamophobia*⁴³¹, the French government should urgently reach out to Muslims and give them assurances that they are not under suspicion because of their religion or ethnicity »⁴³² warned the human researcher Izza Leghtas.

In this climate of general fear, the normalisation of the targeting and discriminating against Muslims based on « *reasons to believe that their behaviour is a threat to public order and security* » is indisputably leading to further marginalisation of Muslims and islamophobia in the french society. Those practices alienate French Muslims and compromise « *cooperation* » between law enforcement authorities and Muslims and which « *could assist in identifying potential local terrorism threats based on radical Islam* ». ⁴³³

⁴²⁸ Collectif Contre l'Islamophobie en France is a french organisation of Human Rights Defenses created in 2000 with the mission of combatting Islamophobia.

⁴²⁹ CCIF Report 2016, available at : http://www.islamophobie.net/sites/default/files/CCIF-Annual-Report-2016_0.pdf.

⁴³⁰ Acosta, Deborah, « French Police Make 2,700 Raids in Month, Raising Tension With Muslims », 23 December 2015, in *The New York Times*, available at: <http://www.nytimes.com/2015/12/24/world/europe/french-police-make-2700-raids-in-month-raising-tension-with-muslims.html>

⁴³¹ The CCIF defines Islamophobia as: « *all acts of rejection, discrimination or violence against institutions or individuals on the basis of their real or perceived belonging to the Muslim faith* ».

⁴³² « France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016.

⁴³³ Ibidem, footnote 432.

CHAPTER III. TERRORISM AS PERMANENT THREAT

As explained by Denis Salas in his article « La Banalisation Dangereuse de l'Etat d'Urgence »⁴³⁴, « *the state of exception is the critical moment of the rule of law and not its pure and simple suspension* ».⁴³⁵ It is precisely therefore that the exception is inscribed in the law. Indeed, « *the exception sets an articulation with the law* ».⁴³⁶ Salas argues « *that it does not breach the string with legality as long as the absence of legal guarantees is authorised and controlled* ».⁴³⁷ He pinpoints that « *the state of exception is founded on the trust of the regime's capacity to facing periods of crisis* ».⁴³⁸ This amounts to « *thinking law not as an obstacle of action* ».⁴³⁹ However, he notifies that it is precisely « *what is unfamiliar to France's political culture* ».⁴⁴⁰ Salas emphasises that in France, « *law seems a rule that has to be moved aside or exploited* ».⁴⁴¹ The reference to the law seems to fade in favour of « political action » (if political action there is). The will animated by the decision is preferred « instead of caution » which is considered to be « weak ». Denis Salas denounces the fact that « *obsessed with security, democracy tends to be forgotten* ». This could lead to a permanent state of emergency as Agamben suggests as long as the threat is considered to be permanent as well. However, Salas specifies that the threat of terrorism « *is not exceptional* ».⁴⁴²

⁴³⁴ Salas, Denis, « La Banalisation Dangereuse de l'Etat d'Urgence », in *Etudes*, 3 March 2016, pp.32.

⁴³⁵ Ibidem, footnote 434.

⁴³⁶ Ibidem, footnote 434.

⁴³⁷ Ibidem, footnote 434.

⁴³⁸ Ibidem, footnote 434.

⁴³⁹ Ibidem, footnote 434.

⁴⁴⁰ Ibidem, footnote 434.

⁴⁴¹ Ibidem, footnote 434.

⁴⁴² Ibidem, footnote 434.

Indeed, « *there are a number of reasons for doubting that the present terrorist threat will be temporary* ». ⁴⁴³ Thus, « *a number of studies by experts in counter-terrorism have emphasised for quite some time the long-term character of this threat* ». ⁴⁴⁴ One student of terrorism expressed the point in striking fashion soon after the 9/11 attacks: « *terrorism is not a threat that is temporary. We cannot count on ending a phenomenon that can be brought about by any small group in a world of seven billion people* ». ⁴⁴⁵

One of the authors to recognise the permanence of the terrorist threat and therefore the need to react to it in a sustainable and constitutionally sound manner is Bernard Manin. ⁴⁴⁶ Manin identifies three primary reasons that seem to be pointing in the direction of a long lasting terrorist threat. The first such reason is suggested by history. ⁴⁴⁷ He suggests that terrorist acts tend to occur in waves hitting several countries over the same period of time. « *A crucial feature is its international character; similar activities occur in several countries driven by a common predominant energy that shapes the participating groups' characteristics and mutual relationships* ». ⁴⁴⁸

Secondly, Manin considers that « *a reason for thinking that the current terrorist threat is unlikely to become insignificant in the near future lies in organizational structures* ». ⁴⁴⁹ He goes on to argue that there seems to be a « consensus among experts that for example Al Qaeda » is not essentially a hierarchical organization with a central

⁴⁴³ Manin, Bernard, « The Emergency Paradigm and the New Terrorism - What if the End of Terrorism was not in Sight? », in *La Vie des idées.fr*, 15 December 2015, pp. 27.

⁴⁴⁴ Ibidem, footnote 443.

⁴⁴⁵ Ibidem, footnote 443.

⁴⁴⁶ Manin, Bernard, The Emergency Paradigm and the New Terrorism - What if the End of Terrorism was not in Sight? *La Vie des idées.fr*, 2015, pp.1-35.

⁴⁴⁷ Ibidem, footnote 446, pp. 28.

⁴⁴⁸ Ibidem, footnote 446, pp. 28.

⁴⁴⁹ Ibidem, footnote 446, pp.31.

leadership controlling the various component units.⁴⁵⁰ « *Rather the group seems to be organized more along the lines of a network, in which the participant units have a large degree of autonomy and do not necessarily communicate with the center while communicating with each other (via the Internet in particular). The decentralized character of Al Qaeda is related to the importance of the ideological motivation in it* »⁴⁵¹. He therefore concludes that Al Qaeda terrorists have often been described as « *mission driven* », not « *leader driven* » .⁴⁵²

Finally, Manin views that « *the third reason for thinking that the threat posed by the present variety of terrorism, Islamist or otherwise, is not likely to dissipate soon has to do with technology* »⁴⁵³. He considers that the development of technology and its accessibility will increase the likelihood for even smaller terrorist groups to gain access to harmful weaponry such as so called weapons of mass destruction. He argues that « *therein lies the gravest danger we face, and it will be with us for a very long time* » .⁴⁵⁴

Indeed, if one applies Manin's methodology and the three reasons for the permanence of the terrorist threat to the French context and the threat posed by IS to the French state and society, similar observations can be made that may lead to the assumption that France continues to be under a permanent threat. IS has targeted France and many other countries such as Belgium, Turkey and Iraq in a continuous wave of attacks. These were usually carried out by independently operating cells who in their actions were not dependent on the hierarchy of the organisation. They have also been able to easily and widely access weapons that they were able to use to a devastating effect. The terrorist

⁴⁵⁰ Ibidem, footnote 446, pp.31.

⁴⁵¹ Ibidem, footnote 450.

⁴⁵² Ibidem, footnote 450, pp.31.

⁴⁵³ Ibidem, footnote 446, pp.32.

⁴⁵⁴ Ibidem, footnote 446, pp.32.

threat in the French context is therefore not likely to recede quickly, as Manin argues in general with regards to a more international context.

However, he also considers another reason for the unlikelihood of the terrorist threat to diminish in the nearer future.

He considers this to be « *the transnational character of the present terrorist threat that according to him further exacerbates the epistemic problem* ».⁴⁵⁵ He states that « *under the present circumstances it is especially hard to determine what would or should count as an end of the threat for any given country would or should count as an end of the threat for any given country* ».⁴⁵⁶ He then goes on to give an example, namely that the U.S. « *has put in place various security arrangements, perhaps using some kind of emergency institution* ».⁴⁵⁷ Thus, ten years have passed since 9/11 and no terrorist attacks have occurred on U.S. soil. However, « *Karachi and London have suffered terrorist strikes claimed by jihadist groups* ».⁴⁵⁸ He argues that it would be « *highly unlikely that the U.S. would dismantle its security arrangements or terminate the emergency legislation that has been in force for ten years* ».⁴⁵⁹

He continues his argument by « *stressing that emergency institutions are designed for national dangers, not for borderless threats. Therefore the emergency paradigm is fundamentally inappropriate for confronting the present terrorist threat* ».⁴⁶⁰ According to Manin, it is a grave error that the seemingly permanent threat of terrorism is constantly confronted with short term measures that seem to legitimise potentially undemocratic

⁴⁵⁵ Ibidem, footnote 453.

⁴⁵⁶ Ibidem, footnote 453.

⁴⁵⁷ Ibidem, footnote 446, pp.33.

⁴⁵⁸ Ibidem, footnote 457.

⁴⁵⁹ Ibidem, footnote 457.

⁴⁶⁰ Ibidem, footnote 457.

and illiberal policies and practices in order to ensure the security of the state and its population.⁴⁶¹ On the other hand, it would be more suitable to address this threat with more long term measures of adopting laws and policies that lie within the confines of upholding consistent constitutional values in order to be sustainable on a long term basis from the very beginning when dealing with not a temporary but a more permanent notion of threat.⁴⁶²

Again his argument is very valid for the French context, where, by calling out the state of emergency, a short term measure has been quickly adopted that allows the executive power to go beyond the normal confines of the rule of law. However, the terrorist threat to France is clearly of a more permanent nature. It would therefore be appropriate to respond to it in an efficient, yet constitutionally lawful manner to ensure that basic liberties as well as security are upheld equally on the long run, as these are both essential pillars of a free and democratic society. However, with the prolongation of the state of emergency and the change of law resulting in it, it is clear that this need for a more sustainable and constitutional approach to the threat of terrorism has not been recognised by the French state, but it instead demonstrates exactly the opposite, mainly the short term reaction of sacrificing some liberties to speedily demonstrate strength and thus try to ensure security.

⁴⁶¹ Ibidem, footnote 446, pp. 33.

⁴⁶² Ibidem, footnote 446, pp.33-34.

CONCLUSION TITLE III.

The recent criminal law promulgated in June is thus the continuation, the normalisation of the state of exception. Indeed, it allows the same measures and even go further. Indeed, it permits administrative searches during the night, computers searches without a judicial guarantee and « returns to Syria ». Besides, by giving all the prerogatives to the Prosecutor—who depends on the executive—and the police the judicial loses all its powers. This undeniably alters the principle of separation of powers which is a guarantee in a democratic society. This new criminal thus allow to have recourse to « emergency measures » without a state of emergency being declared. It a normalisation of the exception. This normalisation will further maintains fear and suspicion of muslims in the french society. This will probably lead to further radicalisation of muslims who will be even more « targeted ».

There is thus a normalisation of what tends to be the « exception ». An « exception » as argued by Agamben and Schmitt correspond to a « moment », a short time. However, the threat of terrorism if not an exceptional threat, it is a permanent one. Therefore, it be useful to implement legal instrument that protect basic liberties as well as security on the long run.

GENERAL CONCLUSION

The state of exception » or « state of emergency » is a complex notion since it appears during a short period of time. It is a point of imbalance between law and politics. Thus, as advanced by Agamben, it is not external nor internal to the juridical order. The state of exception is not a state of law rather a space without law, a zone of anomie. The Securitisation of the issue of terrorism realised by the french government goes in hand with the declaration of the state of emergency. Indeed, the securitisation allows to give legitimacy to these exceptional measures granted by the state of exception. Securitisation transfers issues from the realm of normal politics, where different opinions could be inserted into debate, negotiation, and compromise, into the realm of security, where extraordinary decision-making powers are granted to small groups of political elites. In addition, securitisation legitimates the violation of norms and rules that would otherwise structure and constrain political behaviour. However, securitisation is not only the process of the securitising speech. It works through everyday technologies, through the effects of power that are continuous rather than exceptional, through political struggles. The security process itself is the result of mobilisation of the work of political discourses and of practices of security agencies based on the argument of danger and emergency by professional of unease.

In the same regard, by only focusing on the moment of exception, Schmitt and Agamben forget the importance of routinised practices conducted by a specific form of government : the government of unease. Indeed, before the state of emergency was decla-

red, abuses against Muslims, acts of profiling, ID checks, military with heavy armaments in public places under Vigipirate, abuses were already happening. However, the particularity with the implementation of the measures granted by the state of emergency such as house arrests, night searches is that they become « legal » and are authorised under random and arbitrary reasons « if there are reasons to believe » that a person's behavior constitutes a threat to the public security and order. Besides, those measures represent threats to fundamental liberties and freedoms—guaranteed by international and european law—such as in particular : freedom of movement, right to private and family life, freedom of association and freedom of expression. Besides, the state of emergency and its prolongation maintain a climate of suspicion, uncertainty and fear constituting a perfect fertile ground to extreme parties like the FN to grow since the targeted persons are muslims. This leads and will lead to a further marginalisation of muslims in France. The law promulgated on the 3rd of June 2016 is the prolongation of the state of emergency beyond the exception since it allows to take the same measures bestowed by the state of emergency. By giving all the powers to the Prosecutor who is depending on the executive, the principle of separation of powers is altered.

As pointed out by Bigo, the so-called measures of anti-terrorism provoke an increase of terrorism legislation. Instead of presenting a direct solution to the violence, they risk becoming an « ultra solution », ⁴⁶³ one which « *creates more problems than it resolves* ». ⁴⁶⁴ « *Reflections on security, its limits and its possible excesses should keep the ideas of justice and « innocence until proven guilty* » ⁴⁶⁵ at the center of the judicial system, rather than the « *ideas of vengeance, prevention and suspicion* » ⁴⁶⁶ as explains Bigo. An excess of « response » can bring the world into « *as many problems as a total*

⁴⁶³ Bigo, Didier, « Comment briser le cercle de la vengeance? », 30 November 2015, <https://blogs.media-part.fr/didier-bigo/blog/301115/comment-briser-le-cercle-de-la-vengeance> (consulted on 5 July 2016).

⁴⁶⁴ Ibidem, footnote 463.

⁴⁶⁵ Ibidem, footnote 463.

⁴⁶⁶ Ibidem, footnote 463.

absence of response ».⁴⁶⁷ « *Maximum securitisation through control and global preventive and predictive surveillance* »⁴⁶⁸ are not the appropriate solution. The attacks of Madrid demonstrated the way to a more judicial solution by « *not declaring war on the Maghreb* ».⁴⁶⁹ The attacks of London indeed « *reintroduced the image of an enemy and changed the attitude of many countries by building a political paranoia which wins over all institutions* ».⁴⁷⁰ As rightfully explained by Bigo, illiberal practises of liberal regimes « *do not restore peace but only help politicians with extremist views on security* ».⁴⁷¹

Even if the French President announced on the 14th of July 2016 the end of the state of emergency, the new criminal law reinforcing the fight against terrorism and organised crime prolongs the state of emergency. The exception thus becomes the norm. However, since terrorism is a permanent threat, it seems that a French and international legislation to counter terrorism would be useful. Only, those legal instruments must not go against democratic values.

⁴⁶⁷ Ibidem, footnote 463.

⁴⁶⁸ Ibidem, footnote 463.

⁴⁶⁹ Ibidem, footnote 463.

⁴⁷⁰ Ibidem, footnote 463.

⁴⁷¹ Ibidem, footnote 463.

BIBLIOGRAPHY

Legislation and other Legal Documents

Decision no. 2015-527 QPC of 22 December 2015, available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2015/2015-527-qpc/version-en-anglais.146959.html> (consulted on 5 July 2016).

Decision no. 2016-535 QPC of 19 February 2016 - Human Rights League - [Policing of meetings and public places during a state of emergency] , (consulted on 5 July 2016).

Décret n° 2015-1475 du 14 novembre 2015 portant application de la loi n° 55-385 du 3 avril 1955, available at : <https://www.legifrance.gouv.fr/eli/decret/2015/11/14/INTD1527633D/jo> (consulted on 23 June 2016).

European Convention on Human Rights of 4 November 1950, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf (consulted on 4 July 2016)

« Etat d'urgence et autres régimes d'exception », 23 May 2016, available at <http://www.vie-publique.fr/actualite/faq-citoyens/etat-urgence-regime-exception/> (consulted on 22 June 2016).

Extension of the state of emergency for a further two months, [GOUVERNEMENT.fr](http://www.gouvernement.fr) , 21 April 2016, available at: <http://www.gouvernement.fr/en/extension-of-the-state-of-emergency-for-a-further-two-months>. (consulted on 23 June 2016).

[GOUVERNEMENT.fr](http://www.gouvernement.fr), « Prolongation de l'état d'urgence jusqu'au 26 juillet », 19 May 2016, available at: <http://www.gouvernement.fr/argumentaire/prolongation-de-l-etat-d-urgence-jusqu-au-26-juillet-4425>, (consulted on 22 June 2016).

Law n° 2015-912 of 24 July 2015 concerning Intelligence, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030931899&categorieLien=id> (consulted on 2 July 2016).

Loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000695350> (consulted on 23 June 2016).

FROM THE « EXCEPTION TO THE RULE

Loi n° 2015-1501 du 20 novembre 2015 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence et renforçant l'efficacité de ses dispositions, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORF-TEXT000031500831&categorieLien=id> (consulted on 23 June 2016).

Loi n° 2016-162 du 19 février 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence (1), available at: <https://www.legifrance.gouv.fr/eli/loi/2016/2/19/INTX1602418L/jo/texte>, (consulted on 23 June 2016).

Loi n° 2016-629 du 20 mai 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence (1), available at: <https://www.legifrance.gouv.fr/eli/loi/2016/5/20/INTX1610761L/jo>, (consulted on 23 June 2016).

Law n° 2016-731 of 3 June 2016, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032627231&categorieLien=id> (consulted on 21 June 2016).

Mesures administratives prises en application de la loi n° 55-385 du 3 avril 1955 depuis le 14 novembre 2015, 1 July 2016, available at: <http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence/donnees-de-synthese/mesures-administratives-prises-en-application-de-la-loi-n-55-385-du-3-avril-1955-depuis-le-14-novembre-2015> (consulted on 5 July 2016).

Multilateral Treaty Nr. No. 14668; International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966. Optional Protocol to the above-mentioned Covenant. Adopted by the General Assembly of the United Nations on 19 December 1966. available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (consulted on 22 June 2016).

Opinion of the Draft Constitutional Law on Protection of the Nation of France, European Commission for Democracy Through Law, 11-12 March 2016. available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)006-e) (consulted on 22 June 2016).

Projet de Loi Constitutionnelle de Protection de la Nation, 23 December 2015 available at: <http://www.assemblee-nationale.fr/14/pdf/projets/pl3381.pdf> (consulted on 18 June 2016).

Raimbourg, D., Poisson J.F, « Communication d'étape sur le contrôle de l'état d'urgence Réunion de la commission des Lois du mardi 17 mai 2016 », available at : <http://>

www2.assemblee-nationale.fr/static/14/lois/communication_2016_05_17.pdf (consulted on 5 July 2016).

The French Constitution from 1958, available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html> (consulted on 22 June 2016)

Academic Articles

Aradau, Claudia, « Security and the democratic scene: desecuritization and emancipation », in the *Journal of International Relations and Development*, Volume 7, Number 4, 2004, pp. 395.

Aradau Claudia & Van Muster Rens, « Exceptionalism and the War on Terror », in *British Journal of Criminology*, 12 June 2009, vol 49, Issue 5, pp.686-701.

Bigo, Didier, « Security and immigration: Toward a Critique of the Governmentality of Unease », *Alternatives, Special Issue*, 27, 2002, pp. 63-92.

Bigo, Didier, « Comment briser le cercle de la vengeance? », in *Mediapart*, 30 November 2015.

Buzan, Barry, « Will the global war on terrorism be the new Cold War? » *International Affairs*, Volume 82, Issue 6, November 2006, pp.1101–1118.

Buzan, B., « New Patterns of Global Security in the Twenty-first Century », *International Affairs*, 67.3, 1991, pp.432-433.

Diskaya, Ali, « Towards a Critical Securitization Theory: The Copenhagen and Aberystwyth Schools of Security Studies », in *E-International Relations Students*, 1 February 2013, available at :<http://www.e-ir.info/2013/02/01/towards-a-critical-securitization-theory-the-copenhagen-and-aberystwyth-schools-of-security-studies/> (consulted on 25 June 2016).

Floyd, Rita, « Securitization theory and securitization studies », in *Journal of International Relations and Development*, 2006, Vol.9 (No.1). pp. 53-61.

Greaves, Wilfrid, « Paris 2015: Terrorism, Climate Change, and the Politics of Securitization », in *The Fletcher Security Review*, 17 February 2016, available at : <http://www.fletchersecurity.org/#!greaves/c20ig> (consulted on 15 April 2016).

Hansen, Lene, « The Little Mermaid's Silent Security Dilemma and the Absence of Gender », in *the Copenhagen School Millennium* 29(2), 2000, pp. 17.

Humphreys, Stephen, « Legalizing Lawlessness: On Giorgio Agamben's State of Exception », in *The European Journal of International Law*, Vol. 17 no.3 EJIL, June 2006, pp.677-687.

Huysmans, Joris-Karl, « The Jargon of Exception—On Schmitt, Agamben and the Absence of Political Society », in *International Political Sociology*, vol.2, Issue 2, June 2008, pp.165-183.

Manin, Bernard, « The Emergency and the New Terrorism: What if the end of terrorism was not in sight? », in *La Vie des Idées*, 15 December 2015, pp.1-35.

McDonald, Matt, « Securitization and the construction of security », in *European Journal of International Relations*,14:4, 2008.

McLoughlin, Daniel, « The Fiction of Sovereignty and the Real State of Exception: Giorgio Agamben's Critique of Carl Schmitt », in *Law Culture and the Humanities*,14 May 2013, doi:10.1177/1743872112469863.

Neal, A.,W., « Foucault in Guantanamo: Towards an Archaeology of the Exception », in *Security Dialogue*, vol. 37, no. 1, March 2006, pp.31-46.

Salas, Denis, « La Banalisation Dangereuse de l'Etat d'Urgence », in *Etudes*, ISSN 0014-19413, March 2016, pp.29-40.

Scheppele, Kim, Lane, « Law in a Time of Emergency », in *University of Pennsylvania Journal of Constitutional Law*, vol.6:5,, 1 October 2004, pp.1001-1083.

Severson, Daniel, « France's Extended State of Emergency: What New Powers Did the Government Get? », in *Lawfare*, 22 November 2015, available at : <https://www.lawfareblog.com/frances-extended-state-emergency-what-new-powers-did-government-get> (consulted on 3 July 2016).

Slim, H  la, « The strategic communication of Fran  ois Hollande after the terror attacks in Paris in January and November 2015 », in *Academia*, 22 March 2016, available at https://www.academia.edu/23829317/The_strategic_communication_of_Fran%C3%A7ois_Hollande_after_the_terror_attacks_in_Paris_in_January_and_November_2015 (consulted on 1 July 2016).

Stritzel, Holger, « Towards a Theory of Securitization: Copenhagen and Beyond », in *European Journal of International Relations*, 13 (3), 2007 p. 357-383.

Van Muster, Rens, « Securitization », in *International Relations*, June 2012, ISBN: 9780199743292.

White, Jonathan, « Emergency Europe », in *Political Studies*, 63 (2), June 2015, pp. 300-318.

Newspaper Articles

Acosta, Deborah, « French Police Make 2,700 Raids in Month, Raising Tension With Muslims », 23 December 2015, in *The New York Times*, available at: <http://www.nytimes.com/2015/12/24/world/europe/french-police-make-2700-raids-in-month-raising-tension-with-muslims.html> (consulted on 13 June 2016).

« Adoption définitive du projet de loi contre le crime organisé et le terrorisme », in Europe 1, 25 Mai 2016, <http://www.europe1.fr/politique/adoption-definitive-du-projet-de-loi-contre-le-crime-organise-et-le-terrorisme-2754706> (consulted on 4 June 2016).

Avis sur le projet de loi renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale, 17 March 2016, <https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=8B12EE8ABB0B15A2B7DE5AD05EC2A8B3.tpdi-1a22v2?cidTexte=JORFTEXT000032628821&idArticle=JORFARTI000032628822&dateTexte=20160604&categorieLien=cid> (consulted on 2 July 2016).

« Brest. Perquisitions à la mosquée Sunna et chez l'imam », in Le Télégramme, available at: <http://www.letelegramme.fr/bretagne/brest-spectaculaire-operation-de-police-autour-de-la-mosquee-20-11-2015-10857574.php> (consulted on 5 July 2016).

Breeden, Aurélien, « French Parliament Votes to Extend State of Emergency » in *the New York Times*, 19 May 2016, available at: <http://www.nytimes.com/2016/05/20/world/europe/french-parliament-votes-to-extend-state-of-emergency.html> (consulted on 22 June 2016).

« Comment la réforme pénale renforce les pouvoirs des procureurs », Le Monde, 4 March 2016, http://www.lemonde.fr/societe/article/2016/03/04/reforme-penale-les-procureurs-prennent-la-main-sur-les-enquetes_4876575_3224.html (consulted on 19 June 2016).

« Etat d'urgence : à Orly, des agents licenciés pour une barbe trop longue », *Le Monde*, available at: <http://delinquance.blog.lemonde.fr/2015/12/18/etat-durgence-a-orly-des-agents-licencies-pour-une-barbe-trop-longue/> (consulted on 7 July 2015).

Etat d'urgence : « Le serrurier nous l'a bien dit : En ce moment, on n'arrête pas! », *Le Monde*, 9 December 2015, <http://delinquance.blog.lemonde.fr/2015/12/09/etat-durgence-le-serrurier-nous-la-bien-dit-en-ce-moment-on-narrete-pas/> (consulted on 7 July 2016).

« Etat d'urgence: pour la police, une perquisition tient en trois lignes », *Le monde*, available at: <http://delinquance.blog.lemonde.fr/2015/12/06/etat-durgence-pour-la-police-une-perquisition-tient-en-trois-lignes/> (consulted on 5 July 2016).

« *From the state of law to the security state: Giorgio Agamben on the state of emergency in France* », *Le Monde*, 23 December 2015, available at: http://www.lemonde.fr/idees/article/2015/12/23/de-l-etat-de-droit-a-l-etat-de-securite_4836816_3232.html (consulted on 23 March 2016).

Henleyand, J. & Chrisafis, A, « Paris terror attacks: Hollande says Isis atrocity was act of war » in *the Guardian*, 14 November 2015, available at: <https://www.theguardian.com/world/2015/nov/13/paris-attacks-shootings-explosions-hostages> (consulted on 22 June 2016).

Henly John, « French elections: seven regions for centre right, none for Front National – as it happened », in *The Guardian*, 13 December 2015, available at <https://www.theguardian.com/world/live/2015/dec/13/french-regional-elections-2015-live> (consulted on 12 June 2016).

« *In France, the Political Fruits of Fear* », in *The New York Times*, 7 December 2015, <http://www.nytimes.com/2015/12/08/opinion/in-france-the-political-fruits-of-fear.html> (consulted on 22 June 2016).

« Les pouvoirs de police renforcés pour se passer de l'état d'urgence », *Le Monde*, <http://ldh-midi-pyrenees.org/wp-content/2016/01/Le-Monde-les-pouvoirs-de-police-renforce%CC%81s-pour-se-passer-de-le%CC%81tat-durgence-mercredi-06-janvier-2016.pdf> (consulted on 12 June 2016).

Nossiter, Adam, « Marine Le Pen Far From Humbled by National Front's Bruising Defeat », in *The New York Times*, 14 December 2015, available at : <http://www.nytimes.com/2015/12/15/world/europe/marine-le-pen-far-from-humbled-by-national-fronts-bruising-defeat.html> (consulted on 22 June 2016).

Rubin J. Alissa & Barnard Anne, « France Strikes ISIS Targets in Syria in Retaliation for Attacks », in *The New York Times*, 15 November 2015, available at: <http://www.nytimes.com/2015/11/16/world/europe/paris-terror-attack.html>. (consulted on 5 July 2016).

Sharma, Swati, « It is horror: French President Hollande's remarks after Paris attacks », 13 November 2015, in *The Washington Post*, available at: <https://www.washingtonpost.com/news/worldviews/wp/2015/11/13/it-is-horror-french-president-hollandes-remarks-after-paris-attacks/> (consulted on 23 June 2016).

Speeches

Speech by the President of the French Republic François Hollande before a joint session of Parliament, Versailles, November 16, 2015, available at <http://www.diplomatie.gouv.fr/en/french-foreign-policy/defence-security/parisattacks-paris-terror-attacks-november-2015/article/speech-by-the-president-of-the-republic-before-a-joint-session-of-parliament> (consulted on 22 June 2016).

Speech by the President of the Republic before a joint session of Parliament, 16 November 2015, in Versailles, available at <http://www.diplomatie.gouv.fr/en/french-foreign-policy/defence-security/parisattacks-paris-terror-attacks-november-2015/article/speech-by-the-president-of-the-republic-before-a-joint-session-of-parliament> (consulted on 23 June 2016).

« *We are at war* », Speech by French Prime Minister Manuel Valls in the National Assembly, 19 November 2015, available at: <http://basedoc.diplomatie.gouv.fr/exl-doc/FranceDiplomatie/PDF/baen2015-11-19.pdf> (consulted on 22 June 2016).

Others

Colijn, Ko, Singleton Mark, Van Ginkel Bibi, Chauzal, Grégory, Zavagli, Sofia, Paulussen, Christophe, « Paris: 11/13/15 Analysis and Policy Options », in *International Centre for Counter-Terrorism- The Hague*, November 2015, available at : https://www.clingendael.nl/sites/default/files/Policy_Brief_Clingendael_ICCT-Paris111315Analysis_and_Policy_Options_November%202015_final.pdf.

Collectif Contre l'Islamophobie en France (CCIF) Report 2016, available at : http://www.islamophobie.net/sites/default/files/CCIF-Annual-Report-2016_0.pdf. (consulted on 28 June 2016).

Extension of the state of emergency for a further two months, [government.fr](http://www.gouvernement.fr), 21 April 2016, available at : <http://www.plagscan.com/highlight?doc=8117491&source=55&cite=3#jump> (consulted on 6 July 2016).

« France: Abuses Under State of Emergency », *Human Rights Watch*, 3 February 2016, available at: <https://www.hrw.org/news/2016/02/03/france-abuses-under-state-emergency> (consulted on 17 June 2016).

« France: Upturned lives: The disproportionate impact of France's state of emergency », *Amnesty International*, 4 February 2016, available at: <https://www.amnesty.org/en/documents/eur21/3364/2016/en/> (consulted on 16 June 2016).

« France informs Secretary General of Article 15 Derogation of the European Convention on Human Rights », in *Council of Europe*, 25 November 2015, available at: http://www.coe.int/en/web/secretary-general/home/-/asset_publisher/oURUJmJo9jX9/content/france-informs-secretary-general-of-article-15-derogation-of-the-european-convention-on-human-rights (consulted on 5 July 2016).

Gaffney John, « French politics after the Paris attacks: polarised and deeply personal », in *The Blog of the London School of Economics and Political Science*, 1 December 2015, available at : <http://blogs.lse.ac.uk/europpblog/2015/12/01/french-politics-after-the-paris-attacks-polarised-and-deeply-personal/> (consulted on 5 July 2016).

Gavroche, Julius, « From the state of law to the security state: Giorgio Agamben on the state of emergency in France », in *Autonomies*, 29 December 2015, available at : <http://autonomies.org/pt/2015/12/from-the-state-of-law-to-the-security-state-giorgio-agamben-on-the-state-of-emergency-in-france/> (consulted on 23 March 2016).

« Statement of Opinion on the State of Emergency », *CNCDH*, 18 February 2016, available at: http://www.cncdh.fr/sites/default/files/english_avis_statement_of_opinion_on_the_state_of_emergency.pdf (consulted on 10 June 2016).

O'Donoghue, Amy, « Sovereign Exception: Notes on the Thought of Giorgio Agamben », in *Critical Legal Thinking*, 2 July 2015, available at : http://criticallegal-thinking.com/2015/07/02/sovereign-exception-notes-on-the-thought-of-giorgio-agamben/#_ftn3 (consulted on 5 July 2016).

Paye, Jean-Claude, « Exceptional procedures without a state of emergency », in *Voltaire Network*, 30 March 2016, available at : <http://www.voltairenet.org/article191025.html> (consulted on 2 April 2016).

Books

Agamben, Giorgio, *State of Exception*, University Chicago Press, 2008.

Bigo, D. and Tsoukala, A., *Understanding (in)security, in Terror, Insecurity and Liberty: Illiberal Practices of Liberal regimes after 9/11*, London: Routledge, 2008.

Buzan, Barry, *Regions and Powers: the Structure of International Security*, Cambridge University Press, 2003.

Buzan, B., Waever, O., & De Wilde, J., *Security. A new Framework for Analysis*, Lynne Rienner Publishers, Boulder/London, 1998.

David Lyon, *Theorizing Surveillance. The panopticon and beyond.*, Wilan. Security, Exception, Ban and Surveillance., Bigo, Didier, 2006, pp.46-68.

Foucault, Michel, Sheridan, Alan, *Discipline and punish*. Harmondsworth, Middlesex: Penguin Books, 1991.

Frankenberg, Günter, *Political Technology and the Erosion of the Rule of Law: Normalizing the State of Exception*, Cheltenham: Edward Elgar Publishing, 2015.

Neal, Andrew, W., *Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security and the War on Terror*, London: Routledge, 2010.

Salter, B.M., *When Securitisation fails: the Hard case of counter-terrorism programs*, in Balzacq, Thierry, *Understanding Securitisation Theory: How Security Problems Emerge and Dissolve*, London: Routledge 2010.

Schmitt, Carl, Hoelzl, Michael; Ward, Graham, *Dictatorship*, 1921.

Schmitt, Carl, *Political Theology*. Cambridge, Mass.: MIT Press, 1985.

Wæver, Ole, *Regions and Powers: the Structure of International Security*, Cambridge University Press, 2003.

Waever, O., Buzan, B., & De Wilde, J., *Security. A new Framework for Analysis*, Lynne Rienner Publishers, Boulder/London, 1998.

FROM THE « EXCEPTION TO THE RULE

Williams, Paul, D., *Security Studies: An Introduction*, London: Routledge, 2008.