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THE “HOMELAND OF HUMAN RIGHTS”
PUT AT THE TEST IN THE TERRORIST THREAT ERA

France, collective memory and counterterrorism

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ABSTRACT

The impact and instrumentalization of collective memory has been broadly addressed in nationalist/ authoritarian contexts, albeit very much less in democratic ones. France's national identity has been very much constructed on its rich History, and still upholds today –to the world but most of all for its citizens– an image of “Homeland of Human rights” rooted on the 1789 French Revolution. The thesis questions this image as to its origins, validity and perpetration through the years. In the light of this idealized national image, it then addresses the current counterterrorism measures adopted by the French State since 2015 Charlie Hebdo dreadful attacks.

Through an analysis of the stakes and implication of the measures taken –an endlessly renewed state of emergency, then a new law in 2017– the study highlights the threat of counterterrorism, and the hypocrisy of that present situation regarding the Homeland of Human rights image. Secondly, the study questions the potential interaction between these two elements: how the image actually appears strengthened by the current situation on the one hand, and how this situation's gravity might be cloaked by the glorious image on the other hand. The thesis in the end highlights the dangerousness of counterterrorism measures in particular, and on a broader picture questions the collective memory process' implications in this context: as it is known to transform past historical events, could it not also have a similar deforming impact on current events? In the French case, the idealized Homeland of Human rights image could then weaken the society's immune system to recognize and fight against threats. Without reaching a conclusive terms, for further studies on the topic would be needed, the French society's –usually famous for their protest culture– passivity towards the current situation indeed seem to support such an impact.

ABBREVIATIONS

CM	Collective memory
HHR	Homeland of Human rights
HR	Human rights

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INTRODUCTION

*'The state is always looking to limit liberty,
and a terrorist emergency provides a fine opportunity'¹*

Jeremy Waldron

When addressing terrorism issues, emphasis is often put on the uniqueness and greatness of the mortal threat it represents. In the post-2001 era, most of European citizens' awareness of these features has been shaped and developed over the years. Nonetheless, as countries that have been targeted –though not exclusively those– take action to combat this threat, another question arises. Indeed counterterrorism measures are, in turn, very likely to restrict or reshape a number of *liberties*, in order to provide a greater *security* nationwide. The dilemma of the State when operating a balance between these two core elements is an ancient one: the terrorism context can be said to be just another example. However the shock generated by 21th century's new wave of attacks in the Western world has created an unprecedented climate amongst the global population, and has led to the adoption of particularly strong counterterrorism measures. The latter cannot just be accepted blindly, but have to be critically analyzed.

France has been under the yoke of this new terrorism since 2015 Charlie Hebdo attacks. Several others followed², and with them the rise of an anxiety climate within the population, as well as the pressure for the government to react. The state of emergency was declared on November 13th, day of the 2nd dreadful attacks in Paris, initially for a limited period of twelve days. Since then, it has been prolonged six times, before finally being called off with great pomp on November 1st 2017: the state of emergency was no more. A subsisting detail nevertheless, one day before had been promulgated a new law, presented as to solve those security issues in a lasting way. It

¹Waldron, J., "Security and Liberty: The Image of Balance", *The Journal of Political Philosophy*, 11(2), 191–210, 2003

² They will be further detailed hereinafter

enshrined numerous of the once *exceptional* measures of the state of emergency into the *common* legislation. Thus, in the name of combating terrorism, the restrictions to long-acquired liberties and extension of police and administrative powers made their way into the permanent French law. While a strong public action is obviously not automatically to condemn – terrorist threat is real and needs to be dealt with –, the spectrum of this law is nevertheless worrying.

Such securitarian drifts have been observed in other contexts: i.e. France is not a specific case on this sole ground. Nevertheless, one national particular element undeniably sheds a new light while assessing the implication of the never-ending state of emergency and its perpetuation in the 2017 law. France, at least since 1789 and the *Révolution Française*, is regularly presented and perceived as the ‘Homeland of Human rights’ – ‘*Patrie*³ *des droits de l’Homme*’ – which precise content will be exposed hereinafter. The statement is strong, as the term “*patrie*“ encompasses not only historical elements grounding this image, but also its persistence until nowadays. Yet these two elements are broadly unquestioned in the French landscape, and much more taken for granted as a mere fact. Indeed, the image is perpetrated through the years and undeniably enshrined in the citizens' minds. The liberty-threatening drift observed nowadays, in the counterterrorism spectrum, is even more interesting to consider when put in parallel with this idealized perception/presentation of France.

This specific context provides an opportunity to question the very meaning and *raison-d’être* of France’s golden image on one hand, and of course to point at the current problematic measures taken by the State to fight terrorist attacks on the other hand. From this starting point, the thesis will pursue several connected objectives. First of all, to reveal the apparent contrast, at first sight, between those two elements – between image and reality. However underneath this task, the study will also aim at highlighting the overlooked threat of counterterrorism, and at questioning the potential impact of France’s idealized image on the latter. These elements appear particularly relevant to address, as while the current counterterrorism measures have been decried quite unanimously by NGOs, HR institutions and media, the overall image of France – and most of all its perception by the French citizens – does not seem to totter.

³ Also often referred to as ‘pays’ – country - or ‘berceau’ – cradle.

In order to understand and reflect on these issues, an emphasis will be put on the process and impact of *collective memory* - understood notably by the French historian Pierre Nora as “the memory or set of memories, conscious or not, of a lived and/or mythicized experience by a living collectivity, of the identity in which the feeling of the past is an integral part”⁴.

RESEARCH QUESTIONS

The thesis will address the present situation in France by following three connected aims:

- challenging the rarely questioned HHR image
- highlighting the current threat of counterterrorism
- addressing the potential impact of the first element on the perception of the second by the population

The objective is therefore to evaluate the (in)adequacy between image and reality, and further to reflect on the hypothesis that the perpetration of the image of France as the “HHR” can impact its population’s ability to fight new threats, such as current counterterrorism measures. The second part of this postulate implies that these measures *are* a threat, it will therefore be a central part of the research to demonstrate so. Using the prism of collective memory, the thesis will address three main questions to reach its objectives:

- how to explain the existence and persistence of this “HHR” image in French society?
- to what extent does France live up to its image while responding to the terrorist threat?
- can the image support or impeach the population criticism/resistance to these responses?

The thesis will address these issues in awareness that the last question might only lead to partial answers, as a full scale quantitative empirical research exceeded this study's scope. The hypothesis will therefore be accessed through theoretical and empirical arguments pointing into a direction, however aware that further research is needed to fully confirm its likelihood.

This study appears relevant on several grounds. *First*, although the HHR is very widely spread amongst the population, there is very little literature thoroughly questioning it: there are critical papers on some specific issues contrasting with HR standards in French case – recently about

⁴Nora, P., « La mémoire collective », in *La nouvelle histoire*, Retz-CEPL, 1978

laïcité and the Islamic veil for example⁵ – however not much on the overall presentation of France and its potential impacts. *Second*, in a broader picture, i.e. beyond the specific French case, the thesis will also question the role of collective memory in dealing with the past and shaping the present - this in a consolidated democracy. Indeed the impact of an idealized image, through legitimation of past events, has mainly been used in literature to address nationalist mechanisms for example⁶. *Third*, the issue of counterterrorism is still often overlooked⁷, even if scholars address it more thoroughly since 2001, albeit often with a US focus. Yet in an era where these terrorist attacks are becoming ubiquitous, and radical governmental responses tend to normalize, the topic needs to be highlighted and assessed critically. France, which finally called off a 2-years long state of emergency and immediately pursued it in a common new law, provides an undeniably relevant ground for such an analysis.

METHODOLOGY

The theoretical framework of this research will mainly rely on the concepts of collective memory, securitization, and counterterrorism. It will use historical, political, sociological and legal considerations: an interdisciplinary choice made as to encompass the complexity of the issues addressed. Academic literature on the issues indicated above will nourish the thesis at each of its steps. In addition to this indispensable element will also be used, notably: considerations of history events, History education, political discourse, legal documents and theories, analysis of protests, media coverage, and an original survey. The latter –annexed to the thesis- has been created for the purpose of this research: due to the thesis' limited scope, it cannot be considered as a central basis for argumentation, nevertheless it will permit to support or contradict several elements in a practical way. About the survey:

- 12 questions about the perception of France as the HHR, of the terrorist threat, of the governmental response to it.
- 194 people's sample, 187 French, 7 foreigners (whose answers have been treated accordingly).

⁵ Pelletier, D., “L'école, l'Europe, les corps : la laïcité et le voile“, *Vingtième Siècle. Revue d'histoire*, 87(3), 159-176, 2005

⁶ Hamels, P-J, The use of history in democratization processes, EIUC (Master thesis), 2012

⁷ Wolfendale, J., “Terrorism, Security, and the Threat of Counterterrorism“, *Studies in Conflict & Terrorism*, 29(7), 753-770, 2006

- responses collected between May 15th and July 13th 2018.

If the survey will undeniably back up some argumentation, the data collected will be nuanced for the sample is 1) relatively small and 2) on some aspects unrepresentative of the population's diversity – notably as an excessive share of the sample come from a politicized and leftist background. As an example, to the question “Do the topics in this survey matter to you?”, 87% positioned themselves answered positively. In comparison, only 17% of the French population declared to be “interested in politics” in general in a 2017 national survey⁸.

The thesis will limit its scope to France's specific case. Comparison with analogue situations in others countries will be occasionally evoked, however not on a systematic basis.

OUTLINE

Part I will challenge the ‘Homeland of Human rights’ image's construction and legitimacy, through the concept of collective memory.

Part II will highlight the contrast between this image and the current situation, underlining the often overlooked threat of counterterrorism.

Finally, Part III will question the possible interaction between the two elements exposed in the previous parts. On the one hand, how is the image resisting to the current situation, and on the other hand, what is the impact of the idealized collective memory in this context. The citizens' apparent passivity towards the elements exposed in Part II notably appear to reveal an influence of the HHR image on the perception of the threat. This final part will however address these issues in a cautious way, aware of the need for further research to explore them more conclusively.

⁸Statista, “Intérêt des Français pour la politique en 2017“, Statista.com, 2018

PART I

A SELF-PROCLAIMED “HOMELAND OF HUMAN RIGHTS”: SHAPING AN IDEALIZED COLLECTIVE MEMORY

“If one controls people’s memory, one controls their dynamism”⁹

Michel Foucault

The construction of a country's collective memory appears indeed a major element to consider (1), and the existence in France of this “Homeland of Human rights” image certainly fits in this mechanism. While it is undeniably rooted in actual parts of French History (2), it has not been supported only by these, but constructed and shaped by a chosen presentation of the country's past and current role in the promotion and protection of Human rights and democratic values. These are elements that have been notably undertaken by the State, and that have enshrined the image in the French citizens' mind (3).

⁹ Foucault, M., “Film and popular memory” in *Foucault Live: Interviews, 1966-84, 1989*, cited in Morris, C.E. Ed., *Queering Public Address: Sexualities in American Historical Discourse*, Uni of South Carolina Press, 2007

CHAPTER 1

UNDERSTANDING THE IMPACT OF COLLECTIVE MEMORY

First of all, need is to clarify the core notions and elements on which the next parts will rely. Indeed, in order to later discuss the legitimacy of France's image as the HHR, the latter needs to be presented (3), after having underlined the complex process of collective memory it is part of (1) and its potentiality to instrumentalization (2).

1.1.DEFINITION

Concept and implications

The concept takes its roots in the beginning of the 20th century in Europe. With the idea of questioning the relation between a certain generation and their collective past, several scholars addressed this issue under different terms. Notably the works of Carl Jung, who developed a theory of “collective unconscious”¹⁰, and of Emile Durkheim with his study of “collective effervescence”¹¹. But it was one of the latter's students, the French sociologist Maurice Halbwachs, that firstly – in a significant way – theorized the actual concept of collective memory in the early 1900s. He notably wrote the founding¹² book *La memoire collective* posthumously published in 1950¹³, in which he advanced the idea of a group memory existing beyond individual memories, the former impacting strongly the latter's' perception of the past¹⁴. The idea is that a given group has a common memory, shared and constructed by its social structures and institutions: the group may differ but can refer to a nation for example, as in our case with France. Since this initial conceptualization, numerous academics pursued – or challenged – Halbwachs' work in the field of sociology, but also in others such as psychology, history, or political science. These different angles provide a very diverse but complex overview, which

¹⁰ Jung, C.G., *The Archetypes and the Collective Unconscious*, 1959

¹¹ Durkheim, E., *Les Formes élémentaires de la vie religieuse*, 1912

¹² Yet unfinished, he died in Buchenwald concentration camp in 1945

¹³ Gongaware, T.B., “Collective Memories and Collective Identities“, *Journal of Contemporary Ethnography*, 32(5), 483-520, 2003

¹⁴ Halbwachs, M., *La Mémoire collective*, Presses universitaires de France, 1968

does not enable to reach a consensus on the definition of collective memory¹⁵. Furthermore, some criticized the concept as too simplistic, and claim that there actually is a way broader set of memories¹⁶. In any case, collective memory (CM) can be elementary presented as “an intricate set of cues by which the past is invoked to make sense of the present”¹⁷. For the purpose of this thesis, CM will be understood more precisely as a socially constructed perception of the collective past, constituting a central and inherent element of communal identity¹⁸.

The concept encompasses two processes. On one side is CM creation, by which recent events’ memories pass from only a small portion of a community to all the latter’s members. On the other side is CM maintenance, by which the community’s past’s memories are carried forward to the current members¹⁹.

Now to understand the specificity of the concept, it is crucial to underline the distinction between memory and history. Pierre Nora, French historian, undertook major works on collective memory and identity in the last century. He drew the line between the two notions that are “far from being synonymous”²⁰, although easily entwined. Where on the one side *history* is past, fixed, factual ; on the other *memory* is living, evolving, interpreted. While *history* is intellectual and critical, *memory* is affective and mythicized. The basis of *history* lies in the past, those of *memory* still exist in the present. Finally, *history* aims at being comprehensive and one, where *memory* is selective and multiple: there are as many memories as there are groups²¹. The two concepts appear therefore not only different, but even in a way opposed, as “collective memory constitutes the appropriate counterpart to history”²², and vice versa. Indeed, while a thorough historical prism would essentially deconstruct a given collective memory, CM shapes and selects historical truths subjectively in a way that removes its scientific substance.

¹⁵ Leichter, D.J., “Collective Identity and Collective Memory in the Philosophy of Paul Ricoeur“, *Ricoeur Studies*, 3(1), pp. 114-131, 2012

¹⁶ Olick, J.K., Robbins, J., “From 'Collective Memory' to the Historical Sociology of Mnemonic Practices“, *Annual Review of Sociology*, 24, 105-140, 1998

¹⁷ Zelizer, B., “Seeing the Present, Remembering the Past: Terror’s Representation as an Exercise in Collective Memory”, *Television & New Media*, 19(2) 136–145, 2018

¹⁸ Hamels, P-J, The use of history in democratization processes, EIUC (Master thesis), 2012

¹⁹ Gongaware, T.B., “Collective Memories and Collective Identities“, *Journal of Contemporary Ethnography*, 32(5), 483-520, 2003

²⁰ Nora, P., « Entre mémoire et histoire », in Nora, P., *Les lieux de mémoire-Tome I, La République*, 1984

²¹ Boivin, J., « De la place du passé dans le présent : maladies vénériennes et mémoires collectives dans le Québec contemporain », *Conserveries mémorielles*, 4, 2007

²² Ricoeur, P., *Memory, History, Forgetting*, University Of Chicago Press, 2004

Collective identity

Numerous theories have tried to identify a common identity within a targeted group, for example the national one. As the present study aims at addressing a common perception of France by its citizens, these theories are particularly relevant. However such an exercise can prove delicate as the border is thin between, on one hand, attaching specific collective features to a people because of its nationality and, on the other hand, some kind of racism or at least stereotypes; some theories have therefore been criticized and rejected on these grounds²³. Nevertheless, still several main ones remained to support such a common identity. The existence of a collective identity has been explained as a response to the need, for a group, to define itself vis-à-vis others in order to attribute meaning to itself and in a stable way over time²⁴. Indeed it is a form of social identity, which results from the urge of any cognitive structure to classify the world around them²⁵, and to position themselves accordingly: it is the identification of oneself as part of a community –for example national– which then enables a comparison with others.

Coming back to the CM concept, and accordingly to its previously established definition, guiding the construction of a collective identity is precisely a core function of collective memory²⁶. The main reason for this is that collective identity fosters a community's unity, and at the same time is itself fostered by this unity: if there is no unity, the identity loses its collectiveness. Now, on the other hand, the building of the community's unity is also undeniably helped by the awareness of a common past: by the interactional construction of collective memories²⁷. This element highlights the appealing character of CM's instrumentalization for and by the State: in order to enhance national unity, which can then serves several purposes.

1.2.INSTRUMENTALIZATION

The history/memory opposition in CM relies mostly on their respective objectivity/subjectivity,

²³ The theory of National character was, for example, very popular and progressively faded away

²⁴ Eder, K., "A Theory of Collective Identity", *European Journal of Social Theory*, 12(4), 427-447, 2009

²⁵ Müller-Peters, A., "The significance of national pride and national identity to the attitude toward the single European currency", *Journal of Economic Psychology*, 19, 701-719, 1998

²⁶ Coman, A. et al, "Collective Memory from a Psychological Perspective", *International Journal of politics culture and society*, 22, 125-141, 2009

²⁷ Gongaware, T.B., "Collective Memories and Collective Identities", *Journal of Contemporary Ethnography*, 32(5), 483-520, 2003

and one underlying implication of this is crucial to understand collective memory. The specific features of collective memory presented above indeed entail another opposition: memory is not truth²⁸. Oppositely, it is a socially *constructed* entity, as stated in the chosen definition. As CM is multiple and individualized, one may illusorily attribute his or her memory of the communal past to him/herself as the original owner²⁹. Howbeit this instinctive interpretation is overlooking CM's real nature. Its affective, selective and evolving character makes it, in fact, a very receptive and vulnerable subject to instrumentalization; and what one might consider as his or her own perception is actually most likely the product of the shaping of the past by (a) third party/ies. This underlines an essential element for this thesis, which is the “interconnected conceptual triad of history, memory, and narrative”³⁰. In this context careful attention must be put on *who* does this narrative and *for what* purpose³¹: i.e. who is/are the third party/ies. The most obvious answer in this matter is the State, for indeed, when considering the two processes of CM³², it is the most powerful actor to influence them: the State is the main guarantor of current events' and even more past's transmission to the population. But more broadly, the third parties co-framing collective memory usually belong to the political sphere. Indeed, collective memory has already proven to represent a major tool for politicians to legitimate their positions and shape the citizens' perception of various issues³³.

The stake is primordial, as numerous cases in history show that who writes history can in fact shape the future. The political usages of the past are indeed broadly recognized³⁴ and multiply exemplified by nationalist politics, with 20th century dreadful events such as the Holocaust or the Spanish civil war that were supported by diverse types of “historiographical nationalism”³⁵. Historians in this era played an undoubtedly decisive role in legitimating – or even initiating –

²⁸ de Saint-Laurent, C., “Collective memory and social sciences in the post-truth era”, *Culture & Psychology*, 23(2), 147–155, 2017

²⁹ Ricoeur, P., *Memory, History, Forgetting*, University Of Chicago Press, 2004

³⁰ Freeman, M., *Rewriting the Self- History, Memory, Narrative*, Routledge, 1993

³¹ Obradovic, S., “Whose memory and why: A commentary on power and the construction of memory”, *Culture & Psychology*, 23(2), 208–216, 2017

³² CM creation and CM maintenance, Cf *Part I, 1.1. Definition*

³³ de Saint-Laurent, C., “Collective memory and social sciences in the post-truth era”, *Culture & Psychology*, 23(2), 147–155, 2017

³⁴ Hamels, *supra* note 18

³⁵ Berger, S., “History and National Identity: Why They Should Remain Divorced”, *History and Policy*, 2007

those acts of violence: whether in Germany with the *Generalplan Ost*, in former Yugoslavia for the ethnic cleansing and genocide, or in Greece with the *Megali* idea³⁶.

The past's instrumentalization in authoritarian or totalitarian contexts is therefore well-established. It is however very much less addressed, or even neglected, in democratic contexts. Yet the potentiality for that political use, although maybe smaller in democratic societies, does not disappear, and thus needs be taken into account. Indeed, it is the State's institutions that are the most influent actor regarding how the communal past is transmitted and shaped³⁷, through various means that will be discussed hereinafter. However, it is true that the term "instrumentalization" may imply some kind of malicious intent, as in the mentioned examples of murderous regimes; it might then appear misplaced to apply the claim of instrumentalization to a democratic State. In this regard, instrumentalization will be considered in this thesis as more neutral: using the past narrative as an instrument to achieve a goal –without presupposing anything about this goal. Indeed the goal can actually serve even democratic purposes, as some scholars established that collective identity not only grounds social and political institutions, but that "one of the very objectives of any democratic order entails the preservation of these established identities (preferably national identity)"³⁸. However the question is worth to be asked even considering a less democratic instrumentalization, and even more nowadays: the shaping of the past is indeed particularly relevant in what some call the current post-truth world, where "objective facts are less influential in shaping public opinion than appeals to emotion and personal belief"³⁹. Where we already underlined CM's complicated relation with truth, this specific context seems to foster potential political uses of it⁴⁰.

1.3.FRANCE'S PRIDE

National pride

As this thesis addresses the case of French image's idealization, another concept in the same vein that those just evoked is interesting to mention: national pride. It is sometimes hastily associated

³⁶ *Ibid*

³⁷ Obradovic, *supra* note 31

³⁸ Hamels, *supra* note 18

³⁹ Oxford dictionary, "Post-truth", on oxforddictionaries.com

⁴⁰ de Saint-Laurent, *supra* note 33

with patriotism, although the latter is actually more a consequence of the former than an equivalent. It was previously explained that collective identity was a social identity, based on the need for a group to position itself to others⁴¹. National pride is a perception of the national collective by the group, therefore it follows the social identity idea with an additional element: when positioning itself, the group aims at a feeling of *positive* distinction⁴². Such an objective necessarily impact how national collective identity is constructed, as it can be fostered or undermined by the latter's content. This CM, instrumentalized by the State, can in this context serve as to foster national pride.

National pride is a delicate entity to assess, as it relies on multiple –and contradictory– components: citizens can be proud of some elements and ashamed by others. In this regard, French citizens' pride in their country cannot be asserted certainly by any mean, nonetheless regular surveys at the national scale enable to give a significant overview. In 2016, 75% of the population declared they were proud of being French –the survey also indicated the previous years from 2013 on, with substantially the same results⁴³; a 2017 survey from another source comforted this tendency with again a 75% rate, a third of the respondents even declaring themselves “very proud” of their country⁴⁴. These results, already quite significant, must even be considered with one specificity of French people –also illustrated in various surveys: i.e. their renowned pessimistic⁴⁵ and ever-complaining⁴⁶ character. These 75% can therefore be analyzed as even a pale representation of French's actual pride, in the sense others national group would consider it.

The Homeland of Human rights

At all events, as was just evoked, national pride is not one homogeneous entity, but the addition of multiple elements. Elements fostering this national pride would paint the nation in positive and glorious colours, as to make citizens able to position themselves above other national groups if compared. In this regard, France's qualification and presentation as the “Homeland of Human rights” (HHR) appears particularly interesting to consider. This expression – in French *Patrie des*

⁴¹ Müller-Peters, *supra* note 25

⁴² *Ibid*

⁴³ Science Po, Baromètre de la confiance en politique- Vague 8, Cevipof , p. 84, 2017

⁴⁴ Statista, “Êtes-vous fier/fière d'être Français(e)?”, *statista.com*, 2017

⁴⁵ Huffington Post, “Les Français ne sont jamais contents”, *huffingtonpost.fr*, November 11 2016

⁴⁶ Mediapart, “Les français sont des râleurs!”, *mediapart.fr*, April 9 2013

droits de l'Homme, sometimes *Pays des droits de l'Homme*⁴⁷ – is mainly used in schools, universities, governmental speeches, official documentation, and media⁴⁸. The thesis original survey established that 97% (188 out of 194) of respondents knew this expression as to qualify France⁴⁹. The answer can be considered significant as the profiles are very diverse in age (16 to 80 y.o.), residence (big French cities, suburbs, medium and small cities, towns, villages, and French living abroad), occupation (student, retired, unemployed, executive, civil servant, teacher, manual worker, etc.) notably. However, as mentioned in the introduction, a notable problematic element is that the sample is likely to be more interested/informed about this topic than a scientifically representative survey at the national scale, as a large part of the respondents is rather to very politicized. At all events, the evoked result still gives a strong picture of how widespread this image is amongst very different layers of the French population. Now this expression does not entail that 1) the postulate is necessarily used to praise France and 2) that the population agrees with it. However here also the survey gives quite clear answers: 15 times more respondents said that the expression was used positively, compared to negatively⁵⁰, and 65% of them declared that this image was justified in their eyes⁵¹. The HHR image then seems to correspond to a widely *positive* and *shared* understanding of the nation by its citizens: therefore clearly an element likely to foster their national pride. An additional consequence to underline is that, if the image is broadly spread and agreed upon, most of French citizens actually accept this qualification of their country as a fact. More than just an expression, it then can provide them with a confidence in the State's guarantees and standards regarding Human rights.

French image as HHR is spread in the society as to represent an overt component of French national identity. Its overall positive connotation and trusted value by the citizens makes it an element contributing to their national pride, the latter closely linked to the nation's collective identity, in turn strongly impacted by collective memory. It is now necessary to understand which elements of the collective past ground this image, and to what extent they rely on idealized facts.

⁴⁷ Country of Human rights

⁴⁸ Survey Q. 2 – i.e. survey question n°2, *idem* for the following references

⁴⁹ Survey Q.1

⁵⁰ Survey Q.3

⁵¹ Survey Q.5

CHAPTER 2

ROOTING THE IMAGE IN ACTUAL FACTS

National pride expresses itself in two ways: cultural-historical pride and economic-political pride⁵². They can both be found in the following elements which base France's image of HHR, whether in reality or in French citizens' psyche. The two entities are difficult to differentiate, for as Raymond Rudorff put it, France is founded on "great myths which have been repeated for so long that they have been taken for realities, and like most myths they have a basis of historical truth"⁵³.

The elements have been organized in this chapter notably following the most common justifications given to legitimate the expression in the original survey. They will be exposed here in quite an uncritical way, and nuanced later as to their validity. Most obviously, the image takes its roots in France's apparent pioneer role in HR and democracy which lies notably in the 1789 Declaration (1), a role then comforted by its omnipresence in international institutions (2). A less considered aspect is this time national, and has been widely evoked in the original survey, is French social model (3). Finally, the global flattering view of France on these issues participate to foster this idealized image on national soil (4).

2.1. PIONEER IN HUMAN RIGHTS AND DEMOCRACY

Original survey

The historical role of France in the recognition of promotion of HR and democratic values appears the most logical and evident ground to justify this image. Out of 194, 147 respondents answered⁵⁴ to the survey question "Does this image seem justified to you?"⁵⁵ –those who did not answer being for the most part agreeing with the image. At all events, the pioneer aspect came up

⁵² Müller-Peters, A., "The significance of national pride and national identity to the attitude toward the single European currency", *Journal of Economic Psychology*, 19, 701-719, 1998

⁵³ Rudorff, R., *The myth of France*, Hamish Hamilton, 1970

⁵⁴ The possibility was left to not answer the survey's "open" questions, i.e. not "tick" ones

⁵⁵ Survey Q.6

regularly: “precursor in the guarantee of fundamental rights”, “country of *emergence* of these rights”, “at the *origin* of human rights”, “we are the *firsts* to have done it”, “determining role in the *emergence* of this concept”, etc. Now for the precise events justifying this position, the responses were unanimous: “Declaration of the rights of the Man and the Citizen” (26 occurrences), “French revolution” (14), “Enlightenment” (5), as well as a broad “history/historical events” (24) most likely encompassing the latter.

Historical facts

Some scholars even argue that France was “the country of liberty and human fraternity [...] with tradition of openness and democracy” already before the Revolution⁵⁶. Nevertheless, the very basis of France’s image can notably be traced back to the 18th century and these well-known parts of French History. The three historical elements evoked above will be briefly presented chronologically, in order to give a sense of the validity of their justification of France’s image, or not. First of all, France is indeed often considered to be the main –at least one of the main– breeding ground of the Enlightenment⁵⁷: the intellectual, philosophical, political movement that dominated Europe in the 17th and 18th century, based on progressive principles such as primacy of reason, emancipation from religion, preeminence of individual liberties, etc. It must be said that the movement was extremely wide and diverse⁵⁸, and its contributors should not be considered as homogeneous. In any case, for each in their own different way, numerous of the emblematic philosophers that developed this movement were French: at an early stage Descartes, then Rousseau, Voltaire, Montesquieu and Diderot– one of the greatest written achievement of the Enlightenment was indeed edited by the latter with the *Encyclopédie*⁵⁹. However they were not exclusively French, one should not forget the influence of others such as, early on, the Dutch Spinoza or the English Locke and, later, the German Kant or the Scottish Smith. This period is indeed also known precisely to be one of prolific exchange and confrontation of ideas between great thinkers from *different* horizons. In spite of this, France has maintained a special status in

⁵⁶ Lloyd, C., “Antiracist ideas in France: Myths of origin”, *The European Legacy*, 1(1), 126-131, 1996

⁵⁷ Brewer, D., *The Enlightenment past*, Cambridge Uni Press, 2008

⁵⁸ McLean, R., “The Enlightenment”, in *Historical Insights: Focus on Teaching*, History at the Higher Education Academy, 2010

⁵⁹ Published between 1751 and 1772, it is divided in 35 volumes and has been realized with the contribution of dozens of thinkers and experts, the *encyclopedistes*: among them were the ones already cited and other such as d’Alambert or Daubanton.

the Enlightenment development: for scholars⁶⁰, and for its society, as this movement is said to have had a crucial role in the development of the French national identity⁶¹.

France also holds this special place mainly for it has seen the practical completion of this intellectual turmoil, in one of the most famous revolutions worldwide. The *Révolution française* of 1789 is indeed considered by most to have succeeded in overthrowing the French absolute monarchy, but also to have influenced the whole (Western) world to follow its path⁶². If other revolutions –notably the American one– preceded France’s, the latter is considered by a lot to have a unique and major dimension globally⁶³. Now, the core element that *enshrined* the French image as a pioneer in the Human rights history is, of course, the renowned *Déclaration des droits de l’Homme et du citoyen*⁶⁴ – Declaration of the rights of the Man and the citizen. “Man” is the literal translation of “Homme”, however the French expression “droits de l’Homme” is less restrictive and tends to refer to the Anglophones’ “Human rights” –although rights consecrated in 1789 obviously did not consider sexes on an equal basis yet. In any event, the document consecrated a very progressive line of thinking when recognizing “natural, unalienable and sacred” rights⁶⁵. The text is considered as a reference all around the world, although it is not, properly speaking, the first of its kind: the English notably passed their Bill of rights a century earlier.

These elements appear the most logical and evident ground to justify the origin of the HHR image, albeit not its persistence until today. Indeed it could justify France to be called the country of *birth* of HR, but not *of* HR. Let us proceed to some more actual elements supporting the image for the citizens.

⁶⁰ Roche, D., *France in the Enlightenment*, Harvard Uni Press, 1998

⁶¹ Brewer, D., *supra* note 57

⁶² Kitromilides, M., “The Revolution in France: Glow and shadow” in *Enlightenment and Revolution*, Harvard University press, 2013

⁶³ Campbell, P.R., *The origins of the French Revolution*, Palgrave MacMillan, 2006

⁶⁴ Adopted on August 26 1789, full text on <https://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789>

⁶⁵ *Déclaration des droits de l’Homme et du citoyen*, Preamble, August 26 1789

2.2.ACTOR IN INTERNATIONAL INSTITUTIONS

Original survey

This aspect was markedly less evoked in the survey than the historical reasons previously presented. They were of course mentioned: “involvement in the UN”, “creation of the LN”, “international legislation [inspired by the DRMC]”, more broadly some evoked France’s “foreign policy”, etc. ; however one must bear in mind that these elements –international organizations, international treaties, and in general legal considerations– are very poorly known by the population. This aspect is therefore not the most influent one when considering the perception of France’s image by the citizens themselves, nevertheless it is fundamental to mention as it still undeniably supports this image in current days.

Historical facts

French image as a central actor in the HR field indeed does not lie entirely in the ancient, albeit preeminent, legacies evoked above. The image perpetrated through a more recent History, starting from the 20th century. It is true that, when focusing on the last century, France can be regarded as one of the leading actor in the most influent institutions in the HR landscape. The most obvious example of the latter is the United Nations (UN), but its predecessor, the League of Nations, should not be ignored. The institution’s creation was provided for in the 1919 treaty of Versailles⁶⁶. It came as an answer to the First World War’s disaster, and ensured that this would never happen again. But it also responded to a larger call for guarantees, for the world population to be able to live under a minimal quality of life –including issues such as labor conditions, native inhabitants’ treatment, human trafficking, and diseases preventions⁶⁷. The League of Nations’ creation is provided for in the treaty which, although formally established by 27⁶⁸ states, formally, was drafted mainly under the influence of four main ones: the United States, the United Kingdom, Italy and *France*. Although it is W. Wilson, on behalf of the USA, who carried the idea of the League, France’s presence in this ultimate global quartet shows its prominent importance. Besides, as the American Congress paradoxically refused to join the League, its executive body – the League Council – counted four permanent members, including France once

⁶⁶ *Treaty of peace with Germany (Treaty of Versailles)*, June 28 1919, entered into force January 10 1920

⁶⁷ League of Nations, *Covenant of the League of Nations*, signed in 1919, Art. 23

⁶⁸ 32 states in reality, the United Kingdom speaking on the behalf of five others

again. The country was acknowledgingly, with the United Kingdom, its two most important members.

As the League of Nations eventually failed, the Second World War atrocities led, in a similar logic although more successfully, to the creation of a new organization: the UN, aiming at “maintain[ing] international peace and security”⁶⁹. This original goal was however not the only one, as the 1945 Charter underlined in its preamble the determination “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”⁷⁰. As one of the war’s losers, France was not invited at Dumbarton Oaks in 1944 to debate the details of the peace treaty that also created the UN. Nevertheless, it managed to become first tolerated and then an actual member of the Security Council⁷¹, the very exclusive and powerful executive board of the new organization, alongside the winners of the war. In addition to this prime position in the general chart of this influent organization in HR related issues, France played a key role in the next big step⁷² in the area: the redaction of the Universal Declaration of Human Rights. French René Cassin, as one of the nine members of the drafting Committee, played a decisive role⁷³. And above that specific influence, the content of the text has been impacted in a deeper way by France as “the proclamation of human rights during the French Revolution -from which most historians date the beginning of the modern era- has had a major impact on the form and content of the UDHR”⁷⁴.

In the same way, at a regional level now –although not only, as the influence of the institution is actually global– France maintains itself as a historical and current predominant figure in the protection of HR in Europe notably through the Council of Europe, and by capillarity, the European Convention on Human Rights⁷⁵. Besides hosting the headquarters of the organization

⁶⁹ United Nations, *Charter of the United Nations*, 1945, Art. 1

⁷⁰ *Ibid*, Preamble, §2

⁷¹ Duroselle, J.B., “France and the United Nations”, *International Organization*, 19(3), 1965, pp. 695-713

⁷² Ministry of Foreign Affairs, *France and the Universal Declaration of Human Rights of 10 December 1948*, 2008

⁷³ Glendon, M.A., *A world made new: E. Roosevelt and the UDHR*, Random House, 2001

⁷⁴ Marks, S.P., “The Roots of the UDHR in the French Revolution”, *Human Rights Quarterly*, 20(3), 459-514, 1998

⁷⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4 1950, in vigor since 1953

in Strasbourg, France was once again one of the organization's founding countries in 1949, and imposed itself in a strong manner⁷⁶.

2.3. WELFARE STATE

Original survey

One aspect that is, oppositely to the precedent, widely known and cared about within a society is the social system the citizens are living in. Indeed, contrary to distant considerations such as international legal documents, this impacts more visibly and daily one country's inhabitants. This aspect may not appear as obvious as the former one from a scholar perspective, however it is very anchored in the French society. It has indeed been broadly mentioned in the original survey to justify France's image: "social policies", "human values", "right to strike and demonstration", "public aid" for "healthcare", "unemployment", "education", etc.

Historical facts

Before developing on this aspect, we must note that, as said above, the original survey sample relatively overrepresents the politicized and leftist part of the population –which tends to put a positive emphasis on social progresses⁷⁷. The result evoked must be appreciated in this regard. However, a 2012 national survey from a different source clearly supports this result: 82% of French people declared being attached to the French social model. Relevantly to our study, they even considered this model to be an important component of their national identity⁷⁸.

The French social model derives from the welfare state, a "system that allows the government of a country to provide social services such as healthcare, unemployment benefit, etc. to people who need them, paid for by taxes"⁷⁹. France indeed became, in the aftermath of the WWII, one of the "most generous"⁸⁰ welfare states globally by developing its social policies, based on solidarity, taxes and redistribution. The French resistance is seen as an important root of such a

⁷⁶ Schmahl, S., Breuer, M., "Origin and further development", in *The Council of Europe: Its law and policies*, Oxford Uni Press, 2017

⁷⁷ Atlantico, "Politique pour les riches, politique de droite, etc.", *Atlantico.fr*, November 16 2017

⁷⁸ LeParisien, Sondage: les Français plébiscitent leur modèle social“, *leparisien.fr*, April 2 2012

⁷⁹ Cambridge dictionary, "Welfare State“, *cambridgedictionary.org*

⁸⁰ Ambler, J.S., *The French Welfare State: Surviving Social and Ideological Change*, NYU Press, 1993

development, notably through the 1944 National Resistance Council's programme⁸¹. Elaborated in the perspective of the most important measures to take after the liberation, it indeed advocated for "the establishment of a true economic and social democracy" which contained the main features of the welfare state to come in 1945⁸². The main pillars of this system, nowadays, are the State support or system for (un)employment, housing, retirement, education, and healthcare – the latter is indeed ranked among the best in the world⁸³. Further are the progressive rights and weight of the trade unions, strikes, protests, etc. In the 2012 survey, French cited some of the most important features of the system to their eyes: health insurance (96%), SMIC – minimum wage (92%), the Labour Code (91%), unemployment insurance (90%), PAYG pension system (89%), family allowances (83%), public services (82%), minimum social benefits (74%), and 35 working hour-week (52%)⁸⁴. For many of these elements, the State assistance and support is recognized as one of the highest of Europe⁸⁵.

Another element worth to mention when addressing French pride in their system's values, is the one in those established as the primary principles defining the country: the national motto "liberté, égalité, fraternité", and the practical completion it entails. The elements presented above partly illustrate notably the two last terms of the motto, and the survey incidentally gathered 14 references to "liberty", and 5 to "justice" as justifying France's image as the HHR.

2.4. WORLDWIDE REFLECTION

France's glorified image does not only reach its citizens, but also impacts the worldwide vision of it. The country indeed beneficiates in most of the others of a similar – albeit less deep – biased perception⁸⁶. As an illustration, an American survey asked its readers to give their opinions on France in 2008⁸⁷. The question did not focus on Human rights or politics, answers could also concern culture or else. And still, on about 30 published answers, the elements evoked in the previous parts or generally supporting the HHR image rose quite strikingly: "incredible number

⁸¹ Andrieu, C., "Le programme du CNR dans la dynamique de construction de la nation résistante", in *Histoire@Politique*, 24(3), 5-23, 2014

⁸² *Ibid*

⁸³ CEU/EBSCO Library, France's page, , on June 29 2018

⁸⁴ LeParisien, "Sondage: les Français plébiscitent leur modèle social", *leparisien.fr*, April 2 2012

⁸⁵ Institut Kergevan (think tank), *Le modèle social Français*, 2016

⁸⁶ Kelly, M., *French culture and society*, "Preface", Arnold, 2001

⁸⁷ CNN, "Your opinions on France", *cnn.com*, June 3 2008

of great philosophers and authors (from Voltaire and Rousseau to[...]), “France is the country of the DRMC, one of the bedrocks of democracy”, “The country was, and still is, the diplomatic center of the world”, “socialized healthcare and retirement, as well as the interest the government takes in the welfare of the citizens”, “the ability to enjoy [...] the famous 'Liberté, Egalité, Fraternité’”, “Many people also consider France as the human rights country”, etc.

This sole survey cannot ground a firm conclusion, however it still illustrates how spread these elements are, even outside the French borders. Indeed the *Déclaration des droits de l'Homme et du citoyen* is globally known, and with it the Human rights' image⁸⁸. It is also the case of the French motto “liberté, égalité, fraternité”, which aims at reflecting the HR values France upholds –allegedly. This motto even influenced foreign entities to adopt similar official maxims: countries, as it appears in the Indian constitution's preamble⁸⁹, or political parties such as the Danish Social Democratic Party⁹⁰ and the British Liberal Democrats⁹¹. Furthermore, the image is spread at a cultural level, i.e. in the French clichés: examples are given by web articles or videos⁹². The HHR expression is also used sometimes in the foreign media or academic articles – even if to refute it, participating to its enshrinement in people's mind: “home of human rights”⁹³, “beacon of human rights”⁹⁴, etc. France's image abroad undeniably impacts, in turn, how the French population perceives its own country. The elements evoked then surely participates at maintaining/ supporting the national myth in the French citizens' eyes.

Several elements of the collective past and of the system's current features therefore ground France's image of HHR, elements fostering both cultural-historical and economic-political pride⁹⁵. As we established that this overall national pride is part of the French national identity, it is fundamental to understand how the CM –which impacts this identity– is constructed. Indeed,

⁸⁸ Kelly, *supra* note 86, “Humanism”

⁸⁹ “Liberty, equality, fraternity”, Constitution of India, Preamble, 1949

⁹⁰ “Frihed, Lighed, Solidaritet”, Official website of the party Enhedslisten [May 25 2018]

⁹¹ “Liberty, equality, community”, Federal Constitution of the LibDem, Preamble, as amended in March 2018

⁹² Villain, C., “Cliché! English version”, September 20 2010 [at 5'32”]

⁹³ Mulholland, H., “In France, the home of Human rights, a grown woman asked my permission to seat on the beach”, *The Telegraph*, August 27 2016

⁹⁴ AFP, “France a beacon for Human rights?”, *The Local*, January 17 2018 [retrieved from www.thelocal.fr]

⁹⁵ Müller-Peters, *supra* note 25

regarding Chapter 1 conclusions, it is necessary to analyze how close French CM is to History, and to what extent it is shaped by the national authorities.

CHAPTER 3

SHAPING AND CULTIVATING THE COLLECTIVE MEMORY

Collective memory grounds itself in historical truths, that is what makes it powerful. However it is memory, and not history, precisely because its content comes to distance itself from these truths. This process can occur naturally, as time shades some elements and transforms others. But it also is a well-known tool for States, which through various means will spread a national narrative nationwide. This *récit national* –in French– is, oppositely to history, selective/selected and oriented.

The construction of such a national narrative indeed serves to strengthen collective identity, thus foster the nation's unity, a goal always cherished by the State. For the identity to foster unity however, the elements constituting the narrative must paint the country in a way that makes its citizens proud. The flattering HHR is an obvious example. National pride has been explained as based notably on “the positive affective bond to specific national achievements and symbols”⁹⁶. Indeed, one mean to support this process is through History education, as it roots the narrative in the citizens-to-be in a way that legitimates this version of History for the next generations (1). Then, the narrative is enshrined in the population's mind continuously by the way a State presents himself, through official discourses and national symbols (2).

3.1.HISTORY EDUCATION

Importance of History

Almost 70% of the original survey respondents heard the HHR expression in school⁹⁷, plus 20% in university. History education in school appears therefore as the second principal vehicle of this image⁹⁸. History indeed, because it is the subject where the elements above mentioned are relayed –also in civic education courses, but the latter is often encompassed in History classes.

⁹⁶ Kavetsos, G., “National Pride: War Minus the Shooting“, *Social Indicator Resources*, 106, 173–185, 2012

⁹⁷ Understood as until the end of highschool

⁹⁸ Survey Q.2

This appears obvious when briefly looking into French school curriculum⁹⁹ and History books¹⁰⁰ –“briefly” indeed, for a complete overview of French programs would have exceeded this thesis’s scope, however the elements appeared easily in the several books consulted. The fact that the image is spread by these means is very interesting for several reasons. *First* because we exposed the very tight and complex link between history and memory. How historical events are transmitted to the next generations represents a core aspect of how collective memory is shaped and possibly biased¹⁰¹. Which elements are addressed, in what order and in which way, will define the national CM’s colour. *Secondly*, because education in schools –for 80% of French students, state schools– are directly impacted by the State. We have underlined above how receptive CM can be to instrumentalization, notably by the powerful actor that is the State¹⁰². Education is one main mean by which this impact can be assessed.

Thirdly, because history holds a particularly important place in France’s case, therefore must be considered even more thoroughly in this national context. Indeed it has been stated by numerous scholars that France’s construction and identity is very closely based on its history –that is, more than in most national cases. In order to foster its unity, France shaped its identity through history in a very oriented way. The country has constructed *itself*, not from the outside but from the inside: “French people history is their doing”¹⁰³. The historian Pierre Nora, who worked greatly on French identity, also highlighted –and criticized– this aspect. For him, history in France has been the core of national unity. However for dozens of years, history has been instrumentalized and substituted by memory¹⁰⁴. He therefore focused his research on a historiographical work, aiming at correcting this biased history education that had become so common in France. He did so mainly in *Les lieux de mémoire*¹⁰⁵, where he addressed not so much the proper historical events of France’s history, but the way those have been taught, their construction through memory and myth. The books have been defined as “the grandest, most ambitious effort to

⁹⁹ Ministry of National Education, *Programme pour les cycles 2, 3, 4*, 2016

¹⁰⁰ 10th grade History book: Nathan edition, 2014

10th grade History book: Hathier edition, 2012

5th grade History-Geography book: Nathan edition, 2015

3rd to 5th grade Moral and civic education book, Hatier edition, 2015

¹⁰¹ Nora, P., « Entre mémoire et histoire », in Nora, P., *Les lieux de mémoire-Tome I, La République*, 1984

¹⁰² Cf *Part I, 1.2. Instrumentatization*

¹⁰³ Lipiansky, E.M., “L’idéologie française” in *L’identité française*, Ed de l’espace européen, 1991

¹⁰⁴ Toranian, V., “Interview of Pierre Nora”, *revuedesdeuxmondes.fr*, November 6 2017

¹⁰⁵ Nora, P., *Les lieux de mémoire*, published between 1984 and 1992, consists of seven large volumes with essays by 120 collaborators

dissect, interpret and celebrate the French fascination with their own past” by the Lmy survey Angeles Times¹⁰⁶. The word *fascination* here is particularly interesting. As Pierre Nora puts it:

“The French identity suffers from its history, which is consubstantial to it, unlike other countries whose identity has been forged, for example, by language as in Germany or by the economy as in the Netherlands. France has indeed experienced a period, from the Revolution to General de Gaulle, during which was gradually woven a match between historians, politics and schools to write and transmit a great national narrative”¹⁰⁷

Regarding this particular bound between France, History, identity and memory, it is indispensable to understand not only what is being *extentially* taught to the new generations, but also what is *partially or not* taught. Indeed, when talking about memory, what is considered is not so much what elements are remembered, but also what is forgotten. The process of selective forgetting is in fact one core aspect of the construction of collective memory¹⁰⁸.

Glorious elements

The elements, evoked above, grounding the HHR image –and more broadly France’s glorious tradition– are heavily stressed upon in History education. Notably, France’s role during the Enlightenment and the impact of the French revolution constitutes 1) a major topic, 2) very regularly addressed and 3) in a way that often puts France as a pioneer and global influencer. In a 10th grade History book for example, when summarizing *les Lumières*¹⁰⁹, only French philosophers are evoked –mainly Diderot, Voltaire and Rousseau, and are said to have spread their ideas through France and Europe¹¹⁰. As a result, French influence is emphasized, when foreign influence barely evoked. Stressing on glorious parts of national history is however quite a usual process in identity building, in order to foster national unity and pride¹¹¹. But even while these elements are not specific to our case, they are still very interesting to highlight in the French context. Furthermore, on the three main elements evoked that supports France HHR image for the citizens, all are often *partially* presented and therefore remembered in the French collective memory. The next part will underlines the overlooking of strikingly inconvenient

¹⁰⁶ University of Chicago Press, “review: Les lieux de mémoire, Vol.1“, *press.uchicago.edu*

¹⁰⁷ Les Echos, “Pierre Nora: L'histoire rassemble, la mémoire divise“, *lesechos.fr*, 2007

¹⁰⁸ Ricoeur, P., *Memory, History, Forgetting*, University Of Chicago Press, 2004

¹⁰⁹ As the French translation of the Enlightenment, not French part of it

¹¹⁰ History books, *supra* note 100

¹¹¹ Müller-Peters, *supra* note 25

events of French history, however we must also underline the common overlooking of the glorious events' less flattering sides. *First*, regarding the Enlightenment, Revolution and 1789 Declaration. The latter are addressed as grounding the unique and progressive new HR and democratic values that France installed and swore to uphold. What is less mentioned –and very less present in the citizens' idea of France –is the main criticism¹¹² to this new HR regime: 1) sexist¹¹³: rights of men, not of women (de Gouges¹¹⁴) ; 2) racist: rights of French people, not of foreigners ; 3) abstract, imprecise¹¹⁵: subject to misinterpretation (Condorcet¹¹⁶) ; and 4) revolution vs evolution: too much rights proclaimed too fast (Burke, who actually criticized the Revolution on many points¹¹⁷) ; etc. *Secondly*, when addressing France's role in international organizations, an emphasis is put on France's global influence and “rayonnement”¹¹⁸, much less on its actual decline these past years on the global political stage¹¹⁹. *Thirdly*, while the French social model/ welfare state is often praised, little emphasis is put on the defects of this model nowadays. Yet they are regularly denounced by scholars and journalists, pointing at a social model in crisis for several decades¹²⁰, notably compared to others – liberal or social-democrat¹²¹.

Inconvenient elements

These were some overlooked aspects of still globally positive elements of French history or system. However an even more important side of how French CM is constructed, is linked to how some *entire* elements of this History are very often either minimized, or almost omitted, when referring to the period concerned. The mechanism is quite similar for several major embarrassing events in France's History. They are not denied, nevertheless they are only briefly mentioned and cloaked by flattering events of the same time period. France's image of HHR dates back to 1789, and so does the main events subjects to this mechanism.

¹¹² When relevant, an example of thinkers that exposed the criticism will be mentioned in parenthesis

¹¹³ Scott, J.W., “French Feminists and the Rights of 'Man': Olympe de Gouges's Declarations“, *History Workshop*, 28, 1-21, 1989

¹¹⁴ de Gouges, O., *Déclaration des droits de la femme et de la citoyenne*, 1791

¹¹⁵ de Champs, E., *Enlightenment and Utility: Bentham in French, Bentham in France*, Cambridge Uni Press, 2015

¹¹⁶ de Condorcet, N., *Réflexions sur ce qui été fait et sur ce qui reste à faire*, 1789 *cited in* De Champs, E., *Enlightenment and Utility: Bentham in French, Bentham in France*, Cambridge Uni Press, 2015

¹¹⁷ Burke, E., *Reflections on the Revolution in France*, 1965

¹¹⁸ See hereinafter, in 3.2. *Official discourses*

¹¹⁹ European Council on Foreign Relations, *European Foreign policy scorecard 2015*, ECFR, 2015

¹²⁰ Algan, Y., Cahuc, P., *La société de défiance : comment le modèle social français s'auto-détruit*, Broché, 2007

¹²¹ Lefebvre, A., Méda, D., *Faut-il brûler le modèle social français?*, Le Seuil, 2006

The first important one to evoke is the dreadful era of *the Terror*, which lasted from 1789 to 1794¹²². Called by some “the cursed part of the Revolution”¹²³, it refers to a series of beheadings, massacres and arbitrary trials that occurred concomitantly with the revolutionary events. Even considering the horrendous casualties, this part of History is often just slightly evoked in the education system, and disappears in the collective mind behind the glorious *Révolution française*’s narrative and prestige. A more recent case concerns France’s role during the *Second World War*. When checking the raw facts: the country militarily lost the war, surrendered¹²⁴, and collaborated with Nazi Germany under the Vichy regime¹²⁵. Yet when talking about France in the WWII context, what most frequently comes up is the heroic French resistance¹²⁶; and when looking at the outcome of the war, France is actually part of the winner camp, and got its permanent seat at the UN. These positive elements such as the resistance movement are not derisory of course, but they are often emphasized in a way that cloaks the obscure part of the events. Indeed the Vichy regime was, for fifty years, unconsidered and France’s responsibility ignored. The latter was truly recognized only in 1995 with former President J. Chirac speech at the Vel d’Hiv¹²⁷, but still its memory cannot be considered complete. The events are no more really diminished or forgotten, as it is the case for other events evoked in this section: Vichy regime history is not denied, and its atrocities acknowledged. Nonetheless in the collective memory it still appears as a distant entity, not really connected to the country’s identity: real France was the free France, and Vichy an imposture, an error¹²⁸.

The colonization events also clash strongly with a HR champion image –however these events are generally not concealed or minimized. As school was one of the legitimizing institutions in the colonial era, it is particularly important that the topic is now addressed in schools from a

¹²² The beginning year is debated, some prefer to start the period in 1792 or 1793 with the revolutionary trials. However it makes sense to even consider it started before with the royal beheadings of 1789, cf Martin, J.C, *La Terreur: Part maudite de la Révolution*, Ed. Poche, 2010

¹²³ Martin, J.C, *La Terreur: Part maudite de la Révolution*, Ed. Poche, 2010

¹²⁴ Armistice of June 22 1940, signed in Compiègne, France

¹²⁵ From 1940 to 1944, headed by the Maréchal Philippe Pétain

¹²⁶ Gensburger, S., “Les figures du juste et du résistant et l’évolution de la mémoire historique française de l’occupation“, *Revue française de science politique*, 52(2), 291-322, 2002

¹²⁷ Chirac, J., *Speech for the 53th anniversary of the Vel d’Hiver raid* (more than 13 000 people arrested), July 16 1995

¹²⁸ McDonnell, H., “The ‘grey zone’ of Vichy France: understanding Marine Le Pen’s latest comments on the Second World War“, *LSE European Politics and Policy*, 2017

critical point of view¹²⁹. *Decolonization* processes, on the other hand, are often watered-down – in school and in society in general¹³⁰. The most striking case in this context is of course the Algerian war, starting in 1954 until the former French colony’s independence in 1962. French military methods were highly criticized, notably a common use of torture and a very harsh repression on civilians¹³¹. Notwithstanding its heavy toll, in France the war is still a taboo topic and its memory feeble: some even call it “the invisible war”¹³². Of course no colonial history is flattering, however France’s is more tragic than others and still it remains “the quaint idea that, so often expressed in France, that France was, on the whole, a generous and beneficent colonizing power”¹³³.

These elements underline collective forgetting as an integral part of the CM process¹³⁴, which is indeed defined by its selectness¹³⁵. This mechanism leads the French population to develop, and believe, in a relatively one sided version of their History. This version presents France as a synonym of liberty, rights, and justice. When historical facts contrasting with this vision are mentioned, either the events are presented as minor, or France is presented as passive/victim in the process.

3.2.OFFICIAL PRESENTATION

Official discourse

The HHR image is supported by the way French History is taught and remembered, but also by the way France presents itself daily. Officially, a country’s public representation is the State, its representatives, its institutions and its symbols. The latter will be exposed in the following part. The former consist in the image the State officials decide to give of the country; to the world,

¹²⁹ Chambarlhac, V., “Enseigner la décolonisation dans l’actualité des débats“, Stage IUFM Dijon, November 17- 18 2005

¹³⁰ Brière, E. A., “Recycler l’histoire de la décolonisation: Fiction et lieux de mémoire“, *French Colonial History*, 8, 139-154, 2007

¹³¹ Branche, R., *La torture et l’armée pendant la guerre d’Algérie*, Folio, 2016

¹³² Stora, B., *La guerre invisible: Algérie, années 90*, Presses de Sciences Po, 2001

¹³³ Rudorff, R., *supra* note 53

¹³⁴ Hirst, W., “Building a collective memory: the case for collective forgetting“, *Current Opinion in Psychology*, 23, 88–92, 2018

¹³⁵ Nikiforov, A.L., “Historical Memory- The Construction of Consciousness“, *Russian Social Science Review*, 58(4-5), 379–391, 2017

and to its citizens. These elements can be found mainly in two sources: either official discourses, or official documents –issued by ministries for example. A comprehensive analysis of those would exceed this thesis’ scope, however a short overview of several ones will give an idea of how the French State support – or not – the HHR image through this official means.

Current French President Emmanuel Macron’s speech at the ECHR last November ¹³⁶ exemplifies how this image is perpetrated through the words of the State’s personification. He emphasized, from the very beginning and throughout the speech, 1) how HR and democratic values are a core feature of France’s identity and 2) how influent and decisive France has been/is to their promotion and protection globally. These two elements rejoin the two first ones grounding the HHR evoked above. Indeed, on the one hand he underlines the unique and tight link between HR and France: “France’s commitment to [HR] is long-standing” and later “profound”, but even more, Macron declare HR as being “inseparable from [France’s] deep identity”, affirming that “For us, the French, the freedoms project is a matter of honour but also of *our very existence*”. Not only the President presents this bound as a current reality, but as an element constitutive of France’s deep identity, dating back to “the DRMC of 1789 [but] even further, to the crucible of humanism in the Renaissance, to the legacy of the ancients, to the idea of the human being that France has forged over the centuries, and with it the ideas of freedom, emancipation and education”. Where most people indeed know the Declaration and recognize its importance, the Chief of State even grounds France’s attachment to HR in its ancient and varied History. The latter is described as relying on always progressive and humanitarian notions, and lays the idea that France is substantially, intrinsically, a –if not the– country of HR. This identity is albeit not presented as only historical, as the HR were “then repeatedly reaffirmed and reinterpreted by our country”.

This specific and extraordinary bound entails “special duties on us [French]” in the President’s words, which leads to the second aspect mentioned. On the other hand, he indeed stresses the major role that France held and holds to render HR effective worldwide. To Macron, its central position is exemplified by the fact that *French territory* welcomed the UDHR adoption –Paris, and still welcomes the ECHR headquarters –Strasbourg. The last elements could be seen as random, however not for the President, who states that “it’s no accident”/ “it’s not insignificant”,

¹³⁶ Macron, E., *Speech by M. Emmanuel Macron, President of the Republic, to the European Court of Human Rights, Strasbourg, November 1st 2017*

but that it reflects France's special posture. The latter is also supported in Macron's speech by the great role of *Frenchmen* themselves: René Cassin, on the UDHR and other, and by another "Frenchman – the second judge after René Cassin", on the Convention binding nature.

This official presentation of France is also relayed in the State documents and websites: the Ministry of Europe and Foreign Affairs presents France as "always [having] had a special role in the area of human rights", stressing once again its global influence in the field by having "inspired the 1948 UDHR and continu[ing] to fight today for human rights worldwide, both through its leading role on the Human Rights Council and through its action at the Security Council"¹³⁷. It is described as "a priority for France's foreign policy"¹³⁸, and the country is presented as willing to participate to the protection worldwide not only as a random actor, but as a leader: "France wants to set an example"¹³⁹. This expression was actually also present in the above evoked Macron speech to the ECHR, a repetition that shows the clear pretention and ambition of France in this regard. An ambition that can however only be upheld if the country has very high HR standards itself: a contested reality in the terrorist threat era, as the second title will underline.

This idea that France has a greater role to fulfill, an enlightening influence to bring on to the world, is very rooted in the society under what is called France's "rayonnement" –radiation. The concept has been much used by French patriots and "feeds on historical myths"¹⁴⁰ such as the ones previously mentioned. This image of France has notably been cultivated by the Général De Gaulle, who always spread his "certain idea of France"¹⁴¹ as a leading country, ahead of its time. The HHR image can only feed on this more general aspect, to gain even more weight.

National symbols

Nations are not natural, they are constructed and cultivated¹⁴². In order to foster nation's unity around a common identity, the State must use different tools. One of them relies on the role of symbols¹⁴³. Indeed these identity and unity are abstract, and for the citizens to grasp it, it helps

¹³⁷ Ministry of Foreign Affairs website, "France and the UN", diplomatie.gouv.fr

¹³⁸ *Ibid*, "Human ights"

¹³⁹ *Ibid*

¹⁴⁰ Rudorff, R., *supra* note 53

¹⁴¹ De Gaulle, C., *Mémoires de guerre- L'Appel: 1940-1942*, Poche, 2010

¹⁴² Thiesse, A.M., *La création des identités nationales*, Seuil, 1999

¹⁴³ Kavetsos, G., "National Pride: War Minus the Shooting", *Social Indicator Resources*, 106, 173–185, 2012

that they hold on to some tangible, precise elements: “symbolising the collective is an essential element for this imagined community to become a strong and powerful reality”¹⁴⁴. National symbols therefore aim at representing the country in a way that makes citizens want to identify and claim they belong from it. They often rely on strong events of the national History, supposedly representative of its deep identity. Those symbols therefore are connecting selected past events to the present –a feature reminding the CM process¹⁴⁵– as to legitimize the nation’s existence.

It is particularly interesting to consider French national symbols in regards to the HHR image, and the elements composing it. Indeed French history is very rich and varied, and the country’s symbols could reflect numerous aspects of its achievements or cultural renowned features. Nevertheless, it appears that the national emblems¹⁴⁶ almost *all* actually refer to this image: either for the 1789 Revolution, or to the value of liberty that the latter is representing. The Revolution is indeed the transparent basis for the national holiday, *July 14th* –date of the storming of the Bastille in 1789, symbolizing the popular uprising which overthrew the monarchy. In the same vein, the national anthem *la Marseillaise* is a war song but written as revolutionary France got under attack¹⁴⁷, and they had to defend the liberty and values that was just won: it became a symbol of the fight for freedom. The *Faisceau du lecteur* is again a symbol of the Revolution during which it represented the French unity to defend their liberty¹⁴⁸. The national motto speaks for itself: *Liberté, Égalité, Fraternité*, once again born in the Revolution, it encompasses the basis of all HR even nowadays. Finally, as many countries have a human personification, France has *Marianne*. Sometimes represented as a warrior at the Napoleon era, she is however mostly the mother of civilization and liberty¹⁴⁹. She wears the Phrygian cap –or Livery cap, symbol of Roman freed slaves, and is particularly interesting regarding France HHR and all the elements that have been exposed in this part. As Raymond Rudorff analyzed it, she “illustrate the idea that France is a country with a mission which is to contribute to the spiritual and material welfare of the world”¹⁵⁰, and “the light that Marianne radiates [cf French

¹⁴⁴ Hamels, *supra* note 18

¹⁴⁵ Nikiforov, *supra* note 135

¹⁴⁶ French Republic Official website, “French Republic symbols“, elysee.fr

¹⁴⁷ Official website of the National Assembly, “La Marseillaise“, www2.assemblee-nationale.fr

¹⁴⁸ French Republic Official website, *supra* note 146

¹⁴⁹ Rudorff, R., *supra* note 53

¹⁵⁰ Rudorff, R., *supra* note 53

rayonnement] in the world has been given various definitions as culture, civilization the art of living, liberty, human dignity and rights, fraternity”¹⁵¹. Such references to these glorious values in a country's allegory could be thought common. However, as a comparison, Germany's Germania is a strong warrior¹⁵², England's John Bull a jovial farmer¹⁵³, and US' Uncle Sam represents the State and often the military¹⁵⁴, to cite a few.

All those elements and interpretations are then taught to the new generation of French citizens in history books¹⁵⁵, and perpetrate the HHR image through national official symbols.

The collective memory construction that has been exposed in the French case –through transformation or forgetting of past events on one hand, and emphasizing and glorification of flattering parts of national history on the other– is of course not specific to the country. It is a common mechanism. Nonetheless France's case is particularly interesting for two reasons. First because the memory that is cultivated fosters this identity of HHR. The latter is important to consider as 1) it is very strong and spread amongst the citizens' minds, and 2) the standards it says to uphold are very ambitious. Secondly because, when a when declaring to aspire being a HR “role-model” for others, the State's reality cannot afford to contrast with these standards – even less than another country. Yet, the current terrorist threat era led French authorities to take measures which question how well France is respecting this requirement.

¹⁵¹Rudorff, R., *supra* note 53

¹⁵² LeParisien, “Dictionnaire: Germania“, *leparisien.fr* [seen on July 2]

¹⁵³ Encyclopedia Britannica, “John Bull“, www.britannica.com

¹⁵⁴ National Museum of American History website, “Uncle Sam“, americanhistory.si.edu

¹⁵⁵Rudorff, R., *supra* note 53

PART II

A CURRENT DRIFT CATALYZED BY THE TERRORIST THREAT: REALITY MISALIGNING WITH THE COLLECTIVE MEMORY

‘The state is always looking to limit liberty,
and a terrorist emergency provides a fine opportunity’¹⁵⁶

Jeremy Waldron

Regarding this particularly strong and flattering collective memory that France upholds still nowadays, it is only relevant to question the country’s current situation. Indeed, since 2015 and the series of terrorist attacks that shocked even the global society, the government has taken securitarian measures that were denounced regularly for their liberty-threatening propensity.

For a nation praising itself as being the HHR, such a drift would prove even more problematic than it already is alone, as it claims to set an *example* on HR issues. This Part acknowledges the reality of the terrorist threat that led to a reaction (1), but wishes to challenge the content, and adequacy of the radical measures that were chosen (2). Indeed, the stake is real, as it would appear that France’s response to terrorism actually could embody another threat that the original terrorist one: the threat of counterterrorism (3).

¹⁵⁶Waldron, J., “Security and Liberty: The Image of Balance”, *The Journal of Political Philosophy*, 11(2), 191–210, 2003

CHAPTER 1

RESPONSE TO NEW CHALLENGES

It is not the first time since 1789 that France is confronted to challenges –whether it was on its soil or not– and it is each time a test for the country to prove it is, in fact, the HHR it claims to be. Challenge indeed for, factually, it is hard to deny the importance of the terrorist threat weighting on France nowadays (1). However, while this reality tends to lead hastily to a classic analysis – and response– through the liberty/security dichotomy (2), it might oversee the real nature of the threat (3), elements yet indispensable to then assess the French counterterrorism measures in the following chapters.

1.1.CONTEXTUALIZING: A “NEW“ TERRORISM ERA

In order to assess the response that are the counterterrorism measures, it is indispensable to be aware of the events they are said to be responding to: i.e. the security issues following the “new” terrorist threat. The critical assessment and nuancing of this threat will happen hereinafter, however this part will aim at providing an overview of the indeed new situation in which the debated measures occurred. Terrorism has been defined by the UN as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any ac existed for one cannot overlook the reality of the new context”¹⁵⁷. Such activities have been perpetrated for centuries, however a switch has undeniably occurred, at least in the Western world’s psyche¹⁵⁸, with the 2001 9/11 attacks on the World Trade Center in New-York, US. The enormous casualties –human and material, along

¹⁵⁷ UN Security Council, S/RES/1566, 2004

¹⁵⁸Sageman, M., *Misunderstanding terrorism*, Uni of Pennsylvania Press, 2016

with the horrific images that spread in a few hours around the world– led to what can be called a new era of terrorism: “the world ha[d] changed irrevocably”¹⁵⁹.

While France was impacted by this post 2001 global context as others, the internal switch happened years later as it has become itself since 2015 the target of terrorism, in a way it never experienced previously. On January 7th, two Islamist terrorists broke into the satirical newspaper Charlie Hebdo’s headquarters in Paris and killed 12 persons and injured 11¹⁶⁰. Two days later, another attack led to 4 deaths in a kosher supermarket¹⁶¹. The number of casualties is not the element to focus on here, but more the shock¹⁶², indignation and anxiety that the attack created among the population: it is indeed in this sense¹⁶³ that the attack marks the beginning of the new era for France¹⁶⁴. The events led to an unprecedented climate of fear and suspicion, which was however balanced by an as unprecedented moment of national union, when the whole country marched peacefully on January 11th, under the motto “Not afraid”¹⁶⁵. A situation necessarily impacting the HHR and disrupting its core values.

Nevertheless, the shift really happened¹⁶⁶ on November 13th, when another tragic event occurred with three concomitant attacks in Paris: at several cafés’ terraces in a popular area of the city, in a crowded concert hall, and next to a full stadium. The casualties this time rose up to 130 killed and 351 injured¹⁶⁷: “the bloodiest terror attack in French history”¹⁶⁸, leaving the country in a tremendous state of shock. As the French society seemed to recover slowly from the latter, it was yet undeniably confirmed less than a year later, on French national day –July 14th 2016– when a truck drove into the crowd of Nice city inhabitants gathered to celebrate: 87 killed, 434 injured¹⁶⁹.

¹⁵⁹ Smith, A.TH., “Balancing Liberty and Security: A Legal Analysis of UK Anti-terrorist Legislation“, *European Journal of Criminal Policy Resources*, 13, 73–83, 2007

¹⁶⁰ This attack was analysed to be a response to repeated caricatures of Mohammed prophet on the paper’s frontpage

¹⁶¹ Wyke, T., “Paris shootings: Hostages killed at Jewish supermarket named“, *International Business Times*, January 10 2015

¹⁶² Le Parisien, “Attentat à Charlie Hebdo : la France sous le choc“, *leparisien.fr*, January 7 2015

¹⁶³ A quantitative comparison with 9/11 casualties would indeed be of no relevance here

¹⁶⁴ Kepel, G., *Terror in France : the rise of Jihad in the west*, Princeton University Press, 2017

¹⁶⁵ BBC News, Paris attacks: Millions rally for unity in France, *bbcnews.com*, January 11 2015

¹⁶⁶ Hecker, M., Tenenbaum, E., *France vs. Jihadism: The Republic in a New Age of Terror*, IFRI, 2017

¹⁶⁷ de Pracontal, M., “La liste des victimes des attentats du 13 novembre“, *Mediapart*, November 18 2015

¹⁶⁸ Neiberg, M.S., “No More Elsewhere: France Faces the New Wave of Terrorism“, *The Washington Quarterly*, 40(1), 21-38, 2017

¹⁶⁹ Le Monde, “Le bilan de l’attentat de Nice porté à 86 morts“, *lemonde.fr*, August 19 2016

1.2. CHALLENGING THE CLASSIC LIBERTY/SECURITY BALANCE

Usual dichotomy

May it be in the US society in 2001 or the French one from 2015 on, such a brutal and frantic threat creates a feeling of insecurity that cannot be left unaddressed by the political sphere, notably the government. As so many mechanisms of our current State system and societies, this takes its root in the concept of the social contract. Still a cornerstone of modern moral and political theory, it has been theorized notably by T. Hobbes¹⁷⁰, then J. Locke¹⁷¹ and JJ. Rousseau¹⁷², later J. Rawls¹⁷³. Despite numerous differences amongst those thinkers, the main idea¹⁷⁴ stands in the legitimation of the State's authority in an original contract, by which men partially and willingly ceded their liberties for the protection of this State. Posterior thinkers came to challenge this major concept on notably feminist¹⁷⁵ or antiracist¹⁷⁶ grounds. However the basic theory remains central and appears of crucial importance when addressing terrorism issues.

While Locke justifies the contract on *liberal* grounds and Rousseau as to pursue the *general interest*¹⁷⁷, it is Hobbes' version that is the most relevant to our study. Indeed his contract aims to end a "warre (sic) of everyone against everyone"¹⁷⁸ and is therefore justified on *securitarian* grounds: the State is the guardian of its citizens' security. In the terrorist context then, when they feel this security threatened, a similar mechanism can occur than for the original contract: sacrificing some of their liberties¹⁷⁹. The balance between these two core values, both encompassing basic human rights, is an ancient issue that has been abundantly written about¹⁸⁰. How to strike a balance between national security and civil liberties has then become a central debate in terrorism studies as "the core political values of liberty and security are especially

¹⁷⁰ *Leviathan*, 1651

¹⁷¹ *Two Treatises of Government*, 1689

¹⁷² *Du Contrat social ou Principes du droit politique*, 1762

¹⁷³ *A theory of justice*, 1971

¹⁷⁴ Simplified, for the purpose of this subpart

¹⁷⁵ Pateman, C., *The Sexual Contract*, 1988

¹⁷⁶ Mills, C.W., *The Racial Contract*, 1997

¹⁷⁷ Ball, T. et al., *Handbook of Political theory*, Sage Publications, 2004

¹⁷⁸ Hobbes, *Leviathan- Chapter 14*, Cosimo Ed, 2009

¹⁷⁹ Lopach, J.J., "National Security and Civil Liberty- Striking the Balance", *The Social Studies*, 97(6), 245-248, 2006

¹⁸⁰ Koppel, S., "Book Review: Geary, M., National security and civil liberty", *Security Journal*, 2016

pertinent to an analysis of responses to terrorism”¹⁸¹. Debate however recently rose as to the sense in putting so much emphasis on the balance in this terrorist context.

Increasing criticism

While this dichotomy is profusely used to justify the supposed unavoidableness of liberties’ restriction in the terrorism response, this binary opposition is increasingly challenged by politicians and scholars. Indeed, what was so often presented as mutually exclusive notions now tend to be addressed differently. For Mark Neocleous¹⁸², this said inevitable balance is “an essentially liberal myth, a myth that in turn masks the fact that liberalism’s key category is not liberty, but security”¹⁸³. Jeremy Waldron¹⁸⁴ also questions this balance as it has “connotations of quantity and precision”¹⁸⁵, although it is impossible to assure that a given restriction on certain liberties will, for sure, effectively reduce the terrorist threat. Subsequently the author ferociously criticizes giving up liberties “for the sake of purely symbolic gains in the war against terrorism”¹⁸⁶. On other grounds, Claudia Aradau¹⁸⁷ highlights the illusion of this balance in the context of the war on terror, where not only “liberty has been largely shrouded in silence”¹⁸⁸ compared to security considerations, but where the latter also undermine equality standards –by justifying a special treatment for terrorism suspects. While the liberty/security dichotomy normally serves to ground securitarian drifts in the social contract logic –as shown above¹⁸⁹–, she deconstructs these assumptions. Indeed, for her, the social contract itself loses its meaning when “equality and freedom [...] are relegated outside the boundaries of the Leviathan”¹⁹⁰.

The literature on this issue is prolific, and questions every time more the classic justification in securitarian arguments for undermining liberties. These arguments are abundantly used by the political sphere to ground the necessity of counterterrorism measures, but they are also still deeply rooted in the citizens' psyche. This leads them to not only accept more easily such measures, but even to demand them. To get back to the French case, 84% of the population in

¹⁸¹ Lewis, C.W., “The Clash between Security and Liberty in the U.S.”, *Public Administration Review*, 65(1), 2005

¹⁸² British Professor in social and political science

¹⁸³ Neocleous, M., “Security, Liberty and the Myth of Balance”, *Contemporary Political Theory*, 6, 131-149, 2007

¹⁸⁴ New Zealand Professor in law and philosophy

¹⁸⁵ Waldron, *supra* note 156

¹⁸⁶ Waldron, *supra* note 156

¹⁸⁷ British Professor in international politics

¹⁸⁸ Aradau, C., “Forget Equality? Security and Liberty in the War on Terror”, *Alternatives*, 33, 293–314, 2008

¹⁸⁹ Cf 1.2. ... *Usual dichotomy*

¹⁹⁰ Aradau, *supra* note 188

November 2015 was in favour of “a certain restriction of their liberties to better guarantee security”¹⁹¹. This result exemplifies to what extent this liberty/security balance is enshrined in people’s mind, even though the existence of the dichotomy is broadly questioned by scholars. The government also greatly relied on this balance, hammering that “security is the first of liberties”¹⁹² –and illustrating Aradau’s point on the *unbalanced* balance at liberty’s expense.

1.3.REASSESSING THE THREAT OF TERRORISM

Threat to life

The post-2001 and more specifically post-2015 events led to a situation, in France, where the terrorist threat is undeniably real and needs to be addressed. However in order to respond efficiently to a threat, one must be aware of the *nature and impacts* of it, and terrorism is no exception. Indeed, it is very often taken for granted in counterterrorism rhetoric that 1) terrorism threatens security, and 2) in an exceptional and massive way. These elements are the ones that grounds the justifications for liberties’ restriction, as an evident product of the balanced evoked above. Regarding these consequences, it is only logical that such assumptions should be challenged and assessed. Jessica Wolfendale¹⁹³ notably brought this issue as she highlighted that, in counterterrorism rhetoric, terrorism is said to threaten “security, lives, values, freedom, democracy, and the existence of civilization itself”¹⁹⁴ however with “little clear explanation of how and why”¹⁹⁵ it is so. As it is the security argument that is mostly used as a reason for undermining liberties, it is the one that would need the most explanation. The threat to security is understood as a threat to life: indeed citizens lost theirs, randomly, unjustly, in those attacks. But this terrorism’s threat to life is presented as exceptional, as greater than those posed by war, invasion, accident, natural disasters, criminal activity¹⁹⁶. In fact, how else would the radical counterterrorism measures be defended, if not for the exceptional character of the threat it is

¹⁹¹ Ifop, *Les réactions des Français aux attentats du 13 novembre*, November 2015

¹⁹² Bardy, J.P., “Valls : «La sécurité est la première des libertés»“, *ladepeche.fr*, January 7 2016

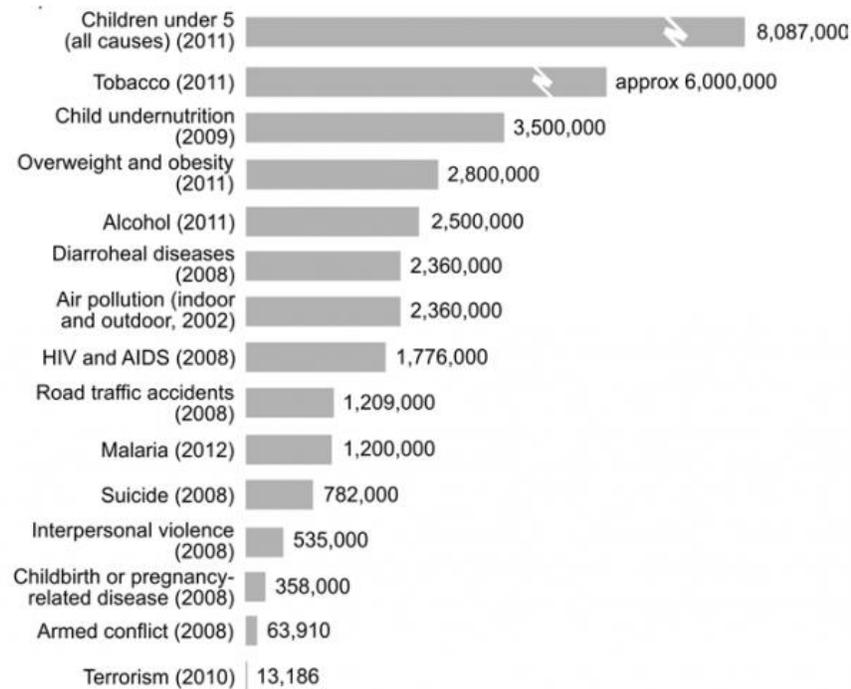
¹⁹³ This part will partly rely on her analysis in Wolfendale, J., “Terrorism, Security, and the Threat of Counterterrorism“, *Studies in Conflict & Terrorism*, 29(7), 753-770

¹⁹⁴ Wolfendale, J., “Terrorism, Security, and the Threat of Counterterrorism“, *Studies in Conflict & Terrorism*, 29(7), 753-770

¹⁹⁵ Wolfendale, *supra* note 194

¹⁹⁶ Wolfendale, *supra* note 194

responding to? Nevertheless, in spite of its brutal, random and shocking aspect, terrorism when put in a broader picture does not fit with this discourse –as this 2013 global death toll underlines:



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The actual terrorist threat to life is therefore real, but far less important than many others. Its exceptionality can then be said to lie in the future casualties it *may* cause; but here again it appears far less lethal than other future threats –e.g. pollution. Then another argument postulates that terrorism needs a specific hard response because of the potential use of mass destruction weapons. Yet this possibility is actually very low –there is for example a way higher probability that these weapons are used by a state¹⁹⁸. Despite these factual elements, in France for example the threat is still considered as extremely important. To give an idea, 68% of my survey's respondents qualified the current terrorist menace from “high” to “very high”¹⁹⁹.

Threat to psychological safety

Threat to psychological safety is the other obvious impact of terrorism, inherent to its nature as it

¹⁹⁷Oxfam, “What if we allocated aid\$ based on how much damage something does, and whether we know how to fix it?”, oxfamblogs.org/fp2p, March 7 2013

¹⁹⁸Wolfendale, *supra* note 194

¹⁹⁹ Survey Q.7

is even the linguistic roots. “Terror” originates from the Latin “terrere”: to frighten²⁰⁰. As it was underlined in the “Contextualizing” part above²⁰¹, it was not the number of victims of the first 2015 Paris attacks –i.e. the concretization of terrorism’s threat to life– that operated a switch in the French situation. Indeed, compared to other threats to life on national soil, the 12-17 deaths²⁰² appear derisory: e.g. 263 road deaths in January 2015²⁰³, 56 000 in whole 2015²⁰⁴. Compared to other terrorist attacks globally, same: compared to massively covered attacks such as on 9/11, where almost 3 000 died ; and even compared to almost ignored attacks, such as on January 30th 2015 in Pakistan where 60 people died²⁰⁵.

The first 2015 Paris attacks targeted very specific categories of persons: satirical journalists and Jewish people. The overall population not belonging to these, they most likely did not react as they did in great fear for their own lives. Above fear, it was shock and indignation that rose at the time. It is not irrelevant that the French people that gathered on the night of the attack on Charlie Hebdo’s were described as “shocked, revolted, frightened”²⁰⁶ in the media, *in this order*. The aftermath of November 13th 2015 and July 14th 2016 slightly differ from this. It was after these attacks that the complete and insidious effect of terrorism occurred to most people. Victims were *as diverse as they were random*: relaxing at terraces, partying in a concert hall, assisting a sport event, celebrating national day. Everyone had become a target. It is in this sense that terrorism can indeed be addressed as a special threat, as it creates a climate of “anxiety and fear in the target population [that] threatens [their] psychological well being”²⁰⁷. Jessica Wolfendale exposes three main reasons²⁰⁸ for this specific impact: 1) nature of the attacks: visible, shocking, random; 2) newness of the threat: usually scarier than old ones; and 3) malevolent act: desire to inflict hurt –this was said to explain the specific devastating effect of 9/11, where the attacks where perpetrated obviously as to take the maximum of lives²⁰⁹. This third element is crucial to

²⁰⁰ Alexander, D.A., “The psychological aspects of terrorism: from denial to hyperbole“, *Journal of the Royal society of Medicine*, 98(12), 557–562, 2005

²⁰¹ Part II Contextualizing ...

²⁰² 12 for Charlie hebdo, 17 with the Montrouge policewoman and the 4 kosher supermarket hostages

²⁰³ L'Express, “Sécurité routière: 12% de morts en plus en janvier“, *l'express.fr*, February 2 2015

²⁰⁴ Le Monde, “Sécurité : le nombre de morts sur les routes a augmenté de 30,4 %“, *lemonde.fr*, October 7 2016

²⁰⁵ The Guardian, “Pakistan Shia mosque bombing kills dozens“, *theguardian.com*, January 30 2015

²⁰⁶ Le Parisien, “Attentat à Charlie Hebdo : émotion et indignation“, *leparisien.fr*, January 7 2015

²⁰⁷ Wolfendale, *supra* note 194

²⁰⁸ Wolfendale, *supra* note 194

²⁰⁹ Gaddis, J.L. et al, *The age of Terror*, Talbott&Chanda Ed, 2001

understand the impact of terrorism²¹⁰, as one is more likely to be psychologically affected by harms caused by someone's active ill will than by other types of harms²¹¹. Karen Jones considers this situation as a significant disturbance of one's basal security²¹²: "the unarticulated affective sense of safety and trust through which one (sometimes unconsciously) judges and assesses risks[...] regardless of the statistical likelihood of a risked event occurring"²¹³.

The French case is no exception. The attacks' frequency and the targets' haphazardness instilled a very tense national atmosphere heavily affecting the citizens psychologically²¹⁴; and studies concluded that the attacks worsened the citizens' expectations about the future for example²¹⁵.

All these elements considered, while the threat to life is indeed inherent to terrorist attacks for they kill, the deaths/injuries are merely a mean and not the goal, as "in terrorism proper, the causing of fear and coercion through fear is *the* objective"²¹⁶. Since this fear is the one disturbing basal security –psychological safety, it is the threat to these –and not only the threat to life– that should be considered with more thorough attention. Consequently, effective counterterrorism measures should address both the threats by aiming at reducing this fear, primary goal of the terrorists.

²¹⁰ Notably compared to other threats to life

²¹¹ Jones, K., "Trust and Terror," in DesAutels, P. et al, *Moral Psychology: Feminist Ethics and Social Theory*, 3-18, 2004

²¹² *Ibid*

²¹³ Wolfendale, *supra* note 194

²¹⁴ Samaan, J-L, Jacobs, A., "Countering Jihadist Terrorism: A Comparative Analysis of French and German Experiences", *Terrorism and Political Violence*, 2018

²¹⁵ Coupe, T., "The impact of terrorism on expectations, trust and happiness: the case of the November 13 attacks in Paris, France", *Applied Economics Letters*, 2016

²¹⁶ Primoratz, I., "What is Terrorism?", *Journal of Applied Philosophy*, 7(2), 129-138, 1990

CHAPTER 2

NORMALIZATION OF EXCEPTIONAL MEASURES

Now that the stakes and nature of the threat posed by terrorism have been clarified, it is time to expose the French government measures to counter this threat since 2015. This is the part where the HHR should display its apparent special commitment to HR considerations.

Yet this chapter will demonstrate the progressive normalization of the emergency measures by the 2-year-long state of “emergency” (1), then by the latter’s partial enshrinement in a new 2017 law (2) which worryingly embedded, in French common law, several liberty-threatening measures (3).

2.1.ENDLESS STATE OF EMERGENCY

Debated concept

The state of emergency in France is provided for in the commonly called 1955 Law²¹⁷, passed to respond to the Algerian war context²¹⁸. It provides for a possibility of extended powers to the State representatives, who were facing “insufficient means of law” to deal with the situation, as is stated in the explanatory memorandum of the law²¹⁹. The first article defines two applicable cases: “imminent danger resulting from serious breaches of public order”²²⁰ and “events presenting, by their nature and gravity, the character of a public calamity”²²¹. The wording dates back to 1955. It was defended by the government back then as a response to the Algerian crisis, mentioned in the first Title²²². However its application clearly appears, in fact, way more general, as it actually creates a state of exception potentially applicable to very different cases. Several major HR instruments recognize the principle of states of exception: international with the

²¹⁷Loi n° 55-385 du 3 avril 1955 instituant un état d'urgence et en déclarant l'application en Algérie

²¹⁸ War of independence of Algeria, then French colony, from its colonists: 1954-1962

²¹⁹Thénault, S., “L'état d'urgence (1955-2005). Destin d'une loi“, *Le Mouvement Social*, 218(1), 63-78, 2007

²²⁰*Supra* note 217, Art. 1

²²¹*Ibid*

²²² Cf *Part 1, 3.1. History education*

ICCPR or European with the ECHR²²³, “in time of war or other public emergency threatening the life of the nation”²²⁴. Nonetheless, state of exception is a very debated notion. Indeed, the powers it authorizes ignore the usual guarantees provided for in common law, guarantees that have been difficulty won and thoroughly elaborated. For this reason, it has been denounced regularly as likely to threaten several basic liberties and rights²²⁵. An obvious problematic characteristic in the HHR frame.

Indeed the principle in itself is troubling, as the strong national legal structure, normally an all time minimum security, is temporary swept away for political considerations. This aspect has been developed notably by Giorgio Agamben, who defined the state of exception as “an ambiguous, uncertain, borderline fringe, at the intersection of the legal and the political”²²⁶. This uncertainty it creates is most likely the most worrying and problematic aspect of it. Indeed, law is supposed to provide a given society with safety, frame and determined guarantees: this is precisely what the rule of law is about. This basic democratic principle, recognized as a pillar for all HR institutions, ensures that the society lives by a legal framework providing predictability, certainty, stability²²⁷. The state of emergency tramples upon these rule of law guarantees, by temporarily –an essential feature yet debatable in practice, as we will see– authorizing a different legal framework, less protective of the population’s liberties. This idea contradicts the basic understanding of democracy, and the governments’ duty towards their citizens²²⁸. The sole principle of this special regime appears then strikingly clashing with the HHR image of France, presented as a champion for liberties and democracy.

Nevertheless, the situation the country faced in 2015 was indeed shocking. An exceptional reaction can therefore be considered a logical option. If we were to assume that the French State acted in good faith, we cannot then hastily blame it *only for using* this exception regime, not without first looking into *how it was used* by the State.

²²³ Morand-Deville, J., “Réflexions sur l’état d’urgence”, *Le courant juridique*, 65, 75-85, 2016

²²⁴ European Convention on Human Rights, 1950, Art 15

²²⁵ Grégoire, V., “L’état d’urgence n’est pas l’état normal de l’État de droit”, *Sens-Dessous*, 19(1), 63-74, 2017

²²⁶ Agamben, Giorgio, *State of exception*, Uni of Chicago Press, 2005

²²⁷ Maravall, J., Przeworski, A., *Democracy and the Rule of Law*, Cambridge Uni Press, 2003

²²⁸ Wahnich, S., “L’état d’urgence, l’art d’en finir avec la libre citoyenneté”, *Sens-Dessous*, 19(1), 51-61, 2017

Two-year-long emergency

In the French context, the state of emergency, as provided for in 1955, has been declared a few times since then. Twice under the Fourth Republic –1955 and 1958, and five times under the Fifth –1961, 1985, 1986, 1987, 2005²²⁹. However three of those five were applied only on a restricted part of national territory, as the ones in the late 1980s’ responded to situations in the overseas²³⁰. The others, as in 2015, applied to all the territory. The 1955 law empowers the administrative authorities to ban people or vehicles’ circulation in the places and at the times specified by decree²³¹; to ban the stay in all or part of a department of persons seeking to impede the action of public authorities²³²; to put under house arrest²³³; to temporarily close places of meeting of any kind and to ban meetings likely to cause or maintain disorder²³⁴; to make surrender firearms and ammunition legally held or acquired²³⁵; to do searches both day and night²³⁶. The article 5 2° used to provide for the establishment of protection or safety zones in which the residence of persons was regulated, but it was declared unconstitutional and abrogated in 2018²³⁷.

Now that the state of emergency’s concept and implications have been briefly evoked, we can go back to the current situation. The regime was mentioned by the government after the Charlie Hebdo killings, but declared after the second major Paris attacks, on November 14th 2015, for a period of 12 days²³⁸. However, this state of *emergency* was then renewed six times: in 2015 on November 26th for 3 months²³⁹, in 2016 on February 26th for 3 months²⁴⁰, on May 26th for 2 months²⁴¹, on July 26th for 6 months²⁴², on December 19th –fixing the end for July 15th 2017²⁴³

²²⁹ Morand-Deville, *supra* note 223

²³⁰ 1985, limited to New Caledonia ; 1986, limited to Wallis-et-Futuna ; and 1987, limited to French Polynesia

²³¹ *Supra* note 217, Art 5 1°

²³² *Ibid*, Art 5 3°

²³³ *Ibid*, Art 6

²³⁴ *Ibid*, Art 8

²³⁵ *Ibid*, Art 9

²³⁶ *Ibid*, Art 11

²³⁷ Conseil constitutionnel, *Decision n° 2017-684, QPC*, January 11 2018

²³⁸ Décret n° 2015-1475 du 14 novembre 2015 portant application de la loi n° 55-385 du 3 avril 1955

²³⁹ Loi n° 2015-1501 du 20 novembre 2015 prorogeant l’application de la loi n° 55-385 et renforçant l’efficacité de ses dispositions (1)

²⁴⁰ Loi n° 2016-162 du 19 février 2016 prorogeant l’application de la loi n° 55-385

²⁴¹ Loi n° 2016-629 du 20 mai 2016 prorogeant l’application de la loi n° 55-385

²⁴² Loi n° 2016-987 du 21 juillet 2016 prorogeant l’application de la loi n° 55-385 et portant mesures de renforcement de la lutte antiterroriste (1)

²⁴³ Loi n° 2016-1767 du 19 décembre 2016 prorogeant l’application de la loi n° 55-385

and finally in 2017 on July 11th –fixing the end for November 1st 2017²⁴⁴, as it indeed, eventually, happened. The state of exception –exception justified as responding to emergency, therefore by nature temporary– lasted in the end for a total period of two years: a relative understanding of “temporary“.

2.2.INSTITUTIONALIZATION IN COMMON LAW

After these never-ending renewals, the state of emergency was finally called off in November 2017 by Emmanuel Macron. It was indeed one of the new President’s symbolic 2017 campaign promises²⁴⁵. However, while the end of the state of emergency has been greatly emphasized and publicized, the enshrinement of some of its supposedly exceptional measures in common law which ensued has been surprisingly discreet. Indeed, the President’s rhetoric would then make no sense, as he justified the end of the state of emergency on three grounds.

First, because the exception regime was *not efficient*, as he recognized himself in a 2017 interview²⁴⁶. An element that will be further developed hereinafter. Secondly, because it was *not necessary*, as the President affirmed that “the penal Code as it is, the powers of the magistrates as they are, can, if the system is well ordered, well organized, allow us to annihilate our adversaries [i.e. terrorists]”²⁴⁷. Indeed, the French legal system already has numerous documents tackling the specific issue of terrorism. The terrorism/security legislation can actually even be qualified as very/too prolific: almost ten texts were issued from 2012 to 2016²⁴⁸ only, each time restricting liberties in a securitarian motion, already worrying²⁴⁹. They for example extended the security forces’ right to use deadly force beyond self defense, in the case of terrorist attack, while intelligence community grew 10% between 2014 and 2017²⁵⁰. However, France was considered, with its legislative arsenal, to have a successful counterterrorism strategy²⁵¹. Thirdly, because the regime was *liberty-threatening*. The President indeed declared, in his first major speech in front

²⁴⁴Loi n° 2017-1154 du 11 juillet 2017 prorogeant l'application de la loi n° 55-385

²⁴⁵ Cnews, “Un an de Macron : les promesses tenues, les promesses à tenir“, *cnews.fr*, May 7 2018

²⁴⁶ Franceinfo, Macron interview in “Fin de l'état d'urgence“, *www.francetvinfo.fr*, November 1 2017

²⁴⁷ Macron, E., *Speech by the President of the Republic to the Parliament in Congress*, Versailles, July 3 2017

²⁴⁸December 21 2012, December 18 2013, November 13 2014, July 24 2015, November 20 2015, March 23 2016, June 3 2016, July 21 2016, source: *www.legifrance.gouv.fr*

²⁴⁹ SDM, “Observations sur le texte issu de la commission des lois de l'Assemblée nationale“, September 22 2017

²⁵⁰Hecker, M., Tenenbaum, E., *supra* note 166

²⁵¹ Samaan, J-L, Jacobs, *supra* note 214

of the National Assembly in 2017, that he “will restore the French citizens’ liberties by calling the state of emergency off in autumn, for these liberties are the prerequisite of a strong democracy”²⁵². He therefore explicitly acknowledged that the measures contained in the state of emergency were useless, superfluous, and dangerous. How then would he justify their enshrinement in the common law?

Yet in fact, nourished by the fear of the French population, he defended the adoption of a new law to substitute and pursue to the state of emergency. Furthermore, the law has been pushed through the legislative process by an *accelerated procedure* initiated by the Government in June 2017²⁵³. This is broadly considered as an anti-parliamentarian –in a sense anti-democratic– procedure, in French constitutional law. The fact that the law was passed in this specific process then, is particularly relevant: it can be seen as the sign that the government felt the need to circumvent normal procedure and debate, as they knew the controversiality of their law, and expected resistance. At all events, it was promulgated the day before the end of the state of emergency, on October 30th 2017, as the “Law reinforcing the internal security and the fight against the terrorism”²⁵⁴. It was approved by 415 votes to 127²⁵⁵, unsurprisingly as the President’s party *La République en Marche* overwhelmingly won the previous legislative elections a few months before²⁵⁶. For the rest of the Parliament, numerous left and right-wing MPs opposed the text, the former because the law went too far, the latter because it did not go far enough²⁵⁷.

2.3.EXORBITANT POLICE POWERS

Existence of the law

The new 2017 law, only as a principle, appears worrying: apparently unnecessary to counter the terrorist threat, as the previous legislation is already prolific, it proposes to enshrine in common

²⁵² Macron, E., *supra* note 247

²⁵³ Official Government website, “Loi du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme: Où en est-on?”, *vie-publique.fr*, October 21 2017

²⁵⁴ Loi n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme (1)

²⁵⁵ Franceinfo, “L’Assemblée nationale adopte par 415 voix contre 127 le projet de loi antiterroriste“, *francetvinfo.fr*, October 10 2017

²⁵⁶ L’Obs, “Vers une écrasante majorité REM“, *nouvelobs.com*, June 11 2017

²⁵⁷ Les Echos, “Loi antiterroriste : comment votre député a voté“, *lesechos.fr*, October 4 2017

law some measures created to be temporary. Indeed this is the *raison-d'être* of the state of emergency: an exceptional situation commanding an exceptional reaction, for a limited period of time. These specific features are the one legitimizing –even if this legitimacy is contested– such strong and radical measures. But where is the exceptionality if those measures actually make their way into the permanent legislation? Can an emergency situation be perpetual? But even beyond this apparent paradox in the principle of the law itself, the precise measures it enshrined have been multiply denounced. Already at its draft state, criticism rose nationally and globally from various sources. The media broadly pointed at the worrying normalization of the state of emergency, at the national level: *Le Monde*²⁵⁸, *Mediapart*²⁵⁹, *l'Humanité*²⁶⁰; but also the global one: *New York Times*²⁶¹, *the Guardian*²⁶², *BBC News*²⁶³. It was also rejected even more radically and vehemently by the activist sphere and major NGOs such as Human rights watch²⁶⁴ and Amnesty International²⁶⁵. Even the United Nations experts urged France to “bring counter-terrorism law in line with international rights obligations”²⁶⁶: special rapporteur Fionnuala NíAoláin indeed warned about provisions endangering rights to liberty, security, freedom of assembly and freedom of religion²⁶⁷. The impact of France’s doing is not relevant only for internal reasons, as another UN rapporteur Michel Forst declared than France needed “to do better so it doesn’t inspire bad practice in other countries”²⁶⁸. This potential influence is not without pointing out the HHR image of France developed in the first part, but which in the present case would actually display an opposite example.

In order to understand in what way(s) the new law is dangerous and liberty-threatening, a more precise analysis of its main measures must be exposed. We will briefly go through the four problematic elements –corresponding to the four first articles of the law–, then comment on the

²⁵⁸ *Le Monde*, “Projet de loi antiterroriste: les risques de l’état d’urgence permanent“, *le Monde*, September 13 2017

²⁵⁹ Cassia, P., “Loi de sécurité intérieure: l’état d’urgence permanent en marche”, *Mediapart*, September 26 2017

²⁶⁰ Mouloud, L., “Libertés. antiterrorisme : une loi de sécurité intérieure qui rate sa cible“, *l'Humanité*, October 4 2017

²⁶¹ Rubin, A., “French Parliament advances a sweeping counterterrorism bill”, *New York Times*, October 3 2017

²⁶² Chrisafis, A., “Macron’s counter-terror bill risks France’s HR record“, *The Guardian*, September 28 2017

²⁶³ BBC news, “France approves tough new anti-terror laws“, *bbc.com*, October 4 2017

²⁶⁴ Human rights watch, “France: Flawed Security Bill Would Violate Rights”, *hrw.org*, September 12 2017

²⁶⁵ Amnesty Int, “France: MPs must reject “permanent state of emergency””, *amnesty.org*, September 25 2017

²⁶⁶ UN News, “France must bring counter-terrorism law in line with international rights obligations”, September 27 2017

²⁶⁷ Chrisafis, *supra* note 262

²⁶⁸ Cited in Chrisafis, *supra* note 262

broader/underlying issues that the latter imply. These comments will rely on the 2017 document, and on several reports issued by HR and legal institutions just evoked.

Content of the law

Regarding the instauration of *protection perimeters* (art 1²⁶⁹), the provision's existence itself is questionable, as the French criminal procedure Code already grants the power to decide some to the public Prosecutor, and to judiciary police agents²⁷⁰. Adding a new provision providing for an existing measure is already worrying, as it threatens the citizens' legal certainty²⁷¹. Now on the content, risks of abuses exist at least on two grounds. First as the wording is vague: the provision requires a "risk" of terrorist acts because of the "nature" or the "high frequentation" of the given place or event, but without requiring any specific circumstances characterizing a precise threat. Second, as the article does not precise any maximum duration for the perimeter to last.

Regarding the *closure of places of worship* (art 2²⁷²), two main problems arise. First, here also the formulation is unclear and too broad as the article authorizes closure of places where circulates "ideas and theories [provoking/praising terrorism acts etc.]". This vagueness leaves the final appreciation to the administrative authority, with a notable risk of subjectivity and arbitrariness²⁷³. Second, this broad mention of "ideas and theories" can threaten freedom of conscience and of religious worship²⁷⁴.

Regarding *house arrests* (art 3²⁷⁵), the article is the one enabling the most liberty-restricting measures, and presents three main issues. First, its measures are indeed extremely constraining – prohibition to leave a given perimeter, obligation to regularly report to the local police, etc.– and normally exclusively pronounced against individuals under investigation, i.e. against whom have already been gathered incriminating evidence. Yet the article provide for the same measures against just suspects, and suspected on the basis of "note blanche" issued by the administration itself: the same authority therefore issues the "proof" and makes a judgment on it, without the judiciary judge being involved at any point. Second, the article is applicable to "any person",

²⁶⁹ *Supra* note 254, Art 1

²⁷⁰ CCP Art 78-2-2 and Art 78-2-4, source: www.legifrance.gouv.fr

²⁷¹ Ligue des Droits de l'Homme, "Avis sur le projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme", July 2017

²⁷² *Supra* note 254, Art 2

²⁷³ Syndicat de la Magistrature, "Observations sur le texte issu de la commission des lois de l'AN", September 22 2017

²⁷⁴ Ligue des Droits de l'Homme, *supra* note 271

²⁷⁵ *Supra* note 254, Art 3

which can refer even to a minor. Regarding the problems just evoked, the fact that minors enter in the provision's scope is necessarily worrying. Third, once again the wording remains very vague and encompassing: “serious reasons to believe that...” for example, which is very vulnerable to interpretation²⁷⁶.

Finally regarding the *searches and seizure* (art 4²⁷⁷), the article provides for measures extremely invasive for privacy, notably seizure and exploitation of data contained in any computer system or terminal equipment. The same way that for the article 3, these are measures preexisting in French law, but 1) ordered by the judiciary and 2) against persons already under examination²⁷⁸. To transpose them for only suspects, and in a preventive goal, again appears really worrying. Furthermore, the provision empowers the administrative authority to decide on searches and seizure, which are normally restricted to the sole judiciary prerogative²⁷⁹.

This analysis was succinct, nevertheless many problems within the law easily strike. In order to understand them fully, it is important to underline one core feature of the French system, which is very sharply divided between its administrative –preventive– and judiciary –repressive– police. Their goals being different, their powers are different, and subsequently so are their limits and checks. The whole system is built on this particular organization, in a way to protect individuals from being subject to measures without benefiting of the attached guarantees²⁸⁰. The four measures exposed above repeatedly and substantially blur this division. By doing so, it weakens greatly the guarantees and checks that are essential to prevent civil-liberties to be undermined. The threat appears even greater as the formulation chosen in the provisions are often vague and enable an extensive application of those²⁸¹.

In the broader picture now, this law and the state of emergency it prolongs appear dangerous as they actually represent a bigger threat than the one to the specific suspects' liberties just evoked: the threat of counterterrorism.

²⁷⁶Syndicat de la Magistrature, *supra* note 273

²⁷⁷ *Supra* note 254, Art 4

²⁷⁸Ligue des Droits de l'Homme, *supra* note 271

²⁷⁹Ligue des Droits de l'Homme, *supra* note 271

²⁸⁰ Dainow, J., The Constitutional and Judicial Organization of France and Germany and Some Comparisons of the Civil Law and Common Law Systems, *Indiana Law Journal*, Vol 37(1), 1961

²⁸¹CNCDH, “Avis sur le projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme“, July 6 2017

CHAPTER 3

EMBODIMENT OF THE THREAT OF COUNTERTERRORISM

The measures described above are not problematic only for they undermine the specific civil liberties of those arrested, searched, etc. This is already a great issue, but they even need to be set in a broader picture, and questioned thoroughly. The negative implications of this securitarian drift, if extracted from the deft counterterrorism rhetoric, could represent a potential new threat – additional to the terrorist one it is said to counter (1). Indeed, while the measures struggle to demonstrate their efficiency (2) they do demonstrate their facilitating role for abuses (3) and their fostering role for division amongst society (4).

For the purpose of this part, counterterrorism measures will be addressed on a general level, and on a practical level with the French case. As the 2017 law is still very recent and its application limited for a significant analysis, the State’s reaction since 2015 –i.e first in the state of emergency’s frame– will be considered.

3.1.ADDRESSING THE THREAT OF COUNTERTERRORISM

The expression may seem provocative or overstating, as counterterrorism is precisely supposed to be the mean to fight the threat, the solution and not the problem. Yet, even if said for security purposes, they do are undermining basic and long-won liberties –as exposed above. In this regard, one should not let the emphasized exceptionality, gravity or novelty of the terrorist threat prevent him or her to address the potential danger of those measures, in turn. However this aspect is still mostly unquestioned, and even in the academic sphere there seem to remain a reluctance to criticize the potential negative consequences in a strong way. Yet, History provides various examples of how the undermining of “the right to privacy and the right to legal counsel as well as [...] the use of torture, secret trials, and even executions”²⁸² have in the past been justified in the name of fighting terrorism. In the French case, a notable –and dreadful– example is the one

²⁸²Wolfendale, J., “Terrorism, Security, and the Threat of Counterterrorism“, *Studies in Conflict & Terrorism*, 29(7), 753-770

of the Algerian war events, already evoked above²⁸³. Indeed this context has seen numerous and very grave cases of torture by the French army, broadly justified on counterterrorism grounds. As one French General²⁸⁴ of the time recalls, this justification could legitimize any measure: “respect for the rule of law and the niceties of legal procedure were irrelevant [to their minds] given the crisis situation²⁸⁵”.

Furthermore, counterterrorism rhetoric can ground broader negative consequences than the “sole” liberties infringements of the suspected terrorists, mostly three²⁸⁶. *First*, the counterterrorism measures very often imply legislative changes. The latter are justified as a response to the “exceptional situation” the country is experiencing at the time, however these changes, when they concretize in the common national law, are most likely to not be removed later: “temporary measures introduced in the late 1970s in Northern Ireland to fight the Irish Republican Army, and in Germany to combat the Red Army Faction had remained in force unchanged”²⁸⁷. Howbeit the justification does not stand anymore: if the terrorist threat fades, the measures lose their basis; and if the threat remains, then 1) the situation is not “exceptional” anymore and 2) the measures proved ineffective and need to be reassessed. The French case is particularly relevant on this aspect, as the state of emergency’s renewals led to a 2 years “emergency” situation; and now enshrined temporary-thought measures in the common law to last –and probably outlast the terrorist threat it is supposed to respond to now. *Secondly*, counterterrorism measures have a tendency to affect a very broad range of individuals, among which a very high amount of innocents: those against whom exist reasons to believe that they are terrorists –a very large and problematic appreciation, as shown above; but also their friends, family, acquaintance. And all these potential targets of counterterrorism measures will be likely to see their liberties and rights undermined. All criminal investigation might involve innocent people, however the counterterrorism frame entails very specific and lightened guarantees –justified for they aim to apply to terrorists, but that would in fact restrict liberties of a way wider spectrum²⁸⁸. *Thirdly*, counterterrorism measures are likely to endanger basic democratic values and principles. Indeed where the social contract places the State as its citizens’ protector, guarantees for the citizens

²⁸³Cf *Part I, 3.1. History education*

²⁸⁴Jacques Massu, which notably led the French troops in the Battle of Algiers in 1956-57

²⁸⁵Hoffman, B., “A nasty business” in Hoffman, B., Howard, R.D., *Terrorism and counterterrorism*, 2012

²⁸⁶Wolfendale, *supra* note 282

²⁸⁷Michaelsen, M., ”Antiterrorism Legislation in Australia”, *Studies in Conflict & Terrorism*, 28, 321–339, 2005

²⁸⁸*Ibid*

against this State's potential abuses have then become the basis of democratic regimes²⁸⁹: e.g. with the fair trial and the right to privacy. Yet, such protections are significantly eroded in the counterterrorism spectrum, respectively by the relaxing of the criminal system's rules and by mass surveillance tools' broadening/normalization. In an analysis of the US post 2001 case, authors indeed found that "conditions of security threat [in the terrorist context] activate authoritarian predispositions"²⁹⁰. In this context, it appears only natural that counterterrorism measures and its impacts, justified by the State on security grounds, should be thoroughly examined.

3.2. CONTROVERSIAL EFFICIENCY OF COUNTERTERRORISM MEASURES

Fighting the threats

The first step to examine counterterrorism measures' legitimacy is, logically, to question their effectiveness to address the threat: as stated by the OHCHR "States have a duty to take effective counterterrorism measures"²⁹¹. If not effective, they are either useless –in the best case– or harmful –as they entail restriction to liberties for no valid purpose. In fact even in the first case, as they would suppose the inutile use of public money and resources, they can be considered as harmful as well, for the latter cannot be spent on other issues in need. For the French case anyway, this study has exposed the undeniable infringement to civil liberties in the spectrum of the state of emergency and now the 2017 Law. But in spite of this high cost for liberties, and cost of public resources, there is little discussion going on the effectiveness of the measures. Yet to be able to be justified, it appears only logical that they would at least have to be proven effective to counter the threat of terrorism –keeping in mind that proven efficacy may not suffice, for the reasons exposed in the previous part²⁹², as "even what is effective in protecting the safety of [...] citizens and their property may be unwise because of its effects on the historic set of arrangements which preserved our democratic liberties"²⁹³. As established above²⁹⁴, the latter

²⁸⁹ Art, R.J., Richardson, L., *Democracy and counterterrorism: Lessons from the past*, US Institute of Peace Press, 2007

²⁹⁰ Merolla, J., *Democracy at risk: How terrorist threat affects the public*, Uni Chicago Press, 2009, p94

²⁹¹ OHCHR, *Human Rights, Terrorism and Counterterrorism*, OHCHR, Geneva, 2008

²⁹² Cf Part II, 3.1. Addressing the threat of counterterrorism

²⁹³ Heymann, P.B., *Terrorism, Freedom and security: Winning without a war*, MIT Press, p87, 2003

²⁹⁴ Cf Part II, 1.3. Reassessing the threat of terrorism

threat encompasses 1) a threat to life and 2) a threat to basal safety. The counterterrorism measures therefore have a *twofold objective*: reducing the likelihood of deaths/injured people by terrorist attacks on the one hand, and reducing the climate of fear and anxiety created by these attacks on the other. Assessing this efficiency is unanimously considered a very complex and challenging task²⁹⁵, however some elements can be gathered in order to have an overview of how well the measures are fulfilling their goals. Regarding the first objective –*threat to life*, quantitative data would be of little relevance. Indeed as stated above, whether a terrorist attack kills 10 or 1000 people, it can still represent an exceptional threat. The counterterrorism measures’ goal to address the threat to life is then not to reduce the actual number of victims, but to improve the efficiency in combating the terrorists’ networks and neutralizing potential future terrorists. Nevertheless the efficiency of usual counterterrorism measures in this regard have been greatly contested –mostly based on the American situation²⁹⁶.

To get back to the French one, studies do not display a brighter success²⁹⁷ –still bearing in mind that data is hard to collect and analyze, and the evaluation period still limited as the starting event occurred three years ago. At all events, efficacy assessment of the security measures until now reveals quite a negative outcome. The overall inefficiency of the state of emergency has been underlined by many actors²⁹⁸, and even admitted by the government itself in June 2017: “[the SOE] does not enable to effectively fight terrorism”. More specifically in October 2017, “according to the latest figures from the Ministry of the Interior, more than 4 600 administrative searches have been conducted in two years: they led to nearly 1 000 judicial inquiries. However [...] only 23 procedures were opened by the antiterrorist section of the public prosecutor's office of Paris”²⁹⁹. House arrests’ efficiency has likewise been broadly questioned³⁰⁰. Regarding other issues, as the increased deployment of French armed forces on national soil, the conclusion is similar: while the military was undeniably burdened, again “the deterrent effect was not evident”³⁰¹. Now considering the effectiveness of the measures on the terrorist threat to the citizens’ *psychological safety*, the outcome may seem better. Indeed, regardless of the actual –

²⁹⁵Van Um, E., “Dealing with uncertainty: the illusion of knowledge in the study of counterterrorism effectiveness”, *Critical Studies on Terrorism*, 8(2), 2015

²⁹⁶Lum, C. et al., “Are counter-terrorism strategies effective?” *Journal of Experimental Criminology*, 2006

²⁹⁷Hecker, M., Tenenbaum, E., *France vs. Jihadism: The Republic in a New Age of Terror*, IFRI, 2017

²⁹⁸Cassia, P., “L’inefficacité de l’état d’urgence est officiellement reconnue!”, *Mediapart*, June 14 2017

²⁹⁹Seelow, “Etat d’urgence : une efficacité difficile à mesurer”, *LeMonde.fr*, October 31 2017

³⁰⁰Medium, “De l’efficacité des mesures anti-terroristes”, *medium.com*, July 20 2016

³⁰¹Samaan, J-L, Jacobs, A., *supra* note 214

overall– inefficiency to fight terrorism, the only fact that the government is taking measures can satisfy the population³⁰². Seeing the armed police/military in the streets, hearing about new measures increasing the security and the terrorists hunt, all this participates to them feel that something is being done and that the situation will necessarily be better handled from now on³⁰³.

Increasing the threats

Beyond this first practical assessment, the measures taken by the State in the counterterrorism spectrum can even be questioned further. Indeed, while the securitarian climate can have a reducing impact on the population's fear –therefore effectively address the threat to *psychological safety*– they can also have the total opposite effect. France has not experienced a new major attack since Nice's in July 2016 two years ago. Nonetheless military have become a daily and omnipresent sight in all cities –10 000 soldiers were mobilized since 2015³⁰⁴, as have searches and security precautions when going to a mall, concert hall, ordinary event, etc. Reminders of the terrorist threat –and of its gravity, exceptionality– are everywhere, at all times, imposed on the citizens. Withal, the political discourse itself is considerably cultivating the climate of fear and anxiety, as in the media: “how a population perceives the threat of terrorism is largely a product of how the media and the state choose to represent the threat”³⁰⁵. The media is indeed constantly addressing the issue to respond to –or maintain– the public demand, their incessant coverage and use of alarming terms incontestably contribute to the overall tense climate. Some media cover differently, in a more informative and critical way, albeit all pursue a commercial objective. However the State normally should have no such aim –that could be converted in electoral strategies' dynamics³⁰⁶– but has a duty to address the threat of terrorism: therefore to aim at reducing the fear it generates.

Yet state actors are also talking of the issue in alarming and belligerent terms, emphasizing the threat's dangerousness and using extensively the lexical field of fear. This trend is exemplified in the French former President Hollande's speech³⁰⁷ after the November 13th attacks³⁰⁸: “horror”,

³⁰² Bordenet, C., “Une majorité de Français soutiennent l'état d'urgence“, *LeMonde.fr*, January 26 2016

³⁰³ Zarachowicz, W., “Etat d'urgence : pourquoi nous souhaitons être surveillés“, *telerama.fr*, February 20 2016

³⁰⁴ le Cain, B., “Avec l'opération Sentinelle, 7000 militaires sont mobilisés en France“, *lefigaro.fr*, March 18 2017

³⁰⁵ Wolfendale, *supra* note 282

³⁰⁶ i.e what is done to gain/keep clients for the media can be done to gain/keep voters by the government

³⁰⁷ Hollande, F., Transcript of the president televised address, *reuters.com*, November 14 2015

³⁰⁸ Chouzenoux, M., From the exception to the rule, EIUC (Master thesis), 2016

“terrible”, “terror”, “scare”, “dread” (3), “afraid”³⁰⁹, etc. This is a classic feature of the counterterrorism rhetoric: the State’s “deliberate creation of fear and anxiety”³¹⁰. The situation appears then quite surreal when summing up previous elements exposed in this thesis: 1) the terrorist threat is largely one to the citizens’ psychological safety, 2) the latter is endangered by the fear and anxiety generated by terrorism, 3) the State’s role is to protect its citizens, which it claims to do through counterterrorism measures, 4) counterterrorism measures and rhetoric actually foster a climate of fear and anxiety amongst the citizens. This last element has been denounced by scholars and media, in the American context for example³¹¹. In the end, it indeed appears that where counterterrorism is justified to fight terrorism, it ends up having a similar harmful impact on the population.

Considering the other threat, the *threat to life*, the counterterrorism measures –which efficiency to fight the threat has already been underlined– can also have a reverse effect. When undermining civil liberties with extensive police powers and lightened procedural guarantees, all citizens are not equally potential targets. Indeed if they are in theory, in practice an overwhelming affected category is the Muslim community: “the majority of the people put under house arrest or whose homes were searched are Muslims and persons of North African descent”³¹². As it will be further exposed hereinafter³¹³, this situation foster national contempt and suspicion towards the alienated community, and a sense of injustice and rejection from the Muslims themselves. Yet such feelings and climate can only foster, in turn, radicalization and terrorist risks on national soil, nourished by this hate and unfairness³¹⁴. On a longer term then, counterterrorism measures addressing the threat actually participate to enhance it. Again, this was also noticed for the US case where “first, many of these interventions did not have a statistically discernible effect on reducing terrorism across time and, in some cases, led to increases terrorism”³¹⁵. The French case unfortunately appears to align as well.

³⁰⁹ On a speech of less than 400 words

³¹⁰ Wolfendale, *supra* note 282

³¹¹ Cabral, L.R., “Counter-terrorism is supposed to let us live without fear. Instead, it's creating more of it”, *theguardian.com*, January 26 2015

³¹² Human Rights Watch, “France: Abuses Under State of Emergency”, February 2016

³¹³ Cf *Part II, 3.4. Muslim alienation, populist discourses*

³¹⁴ Human Rights Watch, *supra* note 312

³¹⁵ Lum, C. et al, *supra* note 296

To close this overview of counterterrorism (in)efficiency, it is interesting to go back to the liberty/security balance justification of those measures for a parenthesis. The two previous parts highlighted 1) the overall debatable efficacy of counterterrorism to fight the threats entails by terrorism and 2) the actual fostering impact of the measures on these threats. Therefore not only counterterrorism can be addressed as a liberty problem –by undermining civil liberties, as shown in the previous part³¹⁶– but also as a security problem –by not addressing the threat properly or even increasing it. The latter security problem furthermore leads, in turn, to endanger more the citizens’ liberties.

3.3.ABUSES IN NON TERRORISM-RELATED CASES

The increased powers confided in the police forces’ hands –by the SOE and now the 2017 Law– are not problematic only because they theoretically misalign with basic democratic principles and guarantees; they are because they lead, in practice, to facilitated abuses in the counterterrorism measures spectrum. These abuses are a major concern when addressing counterterrorism issues, and balancing HR considerations with counterterrorism measures is as difficult³¹⁷ that it is necessary³¹⁸. Indeed, even if justified on security grounds, therefore to protect the citizens, they lighten limitations and barriers cautiously erected *precisely* to protect those citizens from State potential abuses. The danger lies in the second element being cloaked by the first one: i.e. the danger of overlooking the unchanged threat of possible State’s abuses, because of the emphasis put on the novelty/exceptionality/gravity of the terrorist threat. Yet it is not because a new threat rises that previous threats disappear: the fact that terrorism is real does not make it less likely that the State might overstep and abuse its powers. When lightening the guarantees such as in the SOE’s frame, this still present possibility (of abuses) was temporarily relegated to a back tier: and in the 2017 Law’s frame, not just temporarily anymore. In general/global reflection and critical assessment of counterterrorism, the extent of these abuses can reach extremely grave cases: “abuses of human rights are considered an important negative impact of such strategy [counterterrorism]. In many cases, tortures, intimidation and so are used to not only collect information about terrorism organization but also to punish terrorists [...]

³¹⁶Cf *Part II, 2.3. Exorbitant police powers*

³¹⁷CREDOF, *Table ronde: La place des libertés face à la lutte contre le terrorisme*, June 18 2015

³¹⁸OHCHR, *supra* note 291

human rights abuses have mounted in such forms such as forced interrogation, unlawful killings and arbitrary detention”³¹⁹. Such clear abuses have indeed historically been legitimated on the terrorism fight basis, as stated above³²⁰.

Regarding France’s case however, the abuses do not belong to these obvious violations of HR – such as unlawful killings or torture cases– but concretize in borderline interventions, in less striking and more insidious drifts. Since the 2015 first SOE declaration, such abuses have occurred and been regularly denounced by HR institutions. The specificity of counterterrorism measures are justified on the specificity of the terrorist threat. Nonetheless in various cases, French authorities actually used the delicate measures to address totally independent matters, therefore losing any valid legal ground to justify their actions. HRW published in 2016 a scathing report highlighting such cases: it exposed multiple cases of non-terrorism related individuals “subjected to abusive searches or placed under house arrest, as well as human rights activists and lawyers working in affected areas”³²¹. Their conclusion is adamant, stating that “the police have used their new emergency powers in abusive, discriminatory, and unjustified ways”³²². Amnesty International also underlined these abuses, clearly encroaching liberties such as the right to freedom of movement, employment and access to health³²³. Beyond the particular –and grave– infringements to the concerned individuals’ liberties, these abuses also considerably jeopardize democratic values. Indeed several cases brought to the public attention displayed the use of counterterrorism measures to impeach demonstrations and activists, seriously threatening the basic right to assembly: “hundreds of decrees were issued under the emergency laws, banning public assemblies or individuals from protests”³²⁴. One of the most striking event happened around the Paris climate summit –COP 21– in 2015, where 24 climate activists were put under house arrest under the emergency laws³²⁵. Rights to protest and assembly can of course be restricted –and they should be– in order to protect public order, however this should be

³¹⁹ Istiqomah, M., “In the name of counter-terrorism: HR abuses in Indonesia“, *APCAR*, 2015

³²⁰ Cf *Part II, 3.1. Addressing the threat of counterterrorism*

³²¹ Human rights watch, *supra* note 312

³²² *Ibid*

³²³ Amnesty International France, “Des vies bouleversées: l’impact disproportionné de l’Etat d’urgence en France“, AI Publications, 2018

³²⁴ Amnesty International, “Disproportionate restrictions on demonstrations under the state of emergency in France“, AI Publications, 2017

³²⁵ Nelsen, A., “Paris climate activists put under house arrest using emergency laws“, *theguardian.com*, November 27 2015

“necessary and proportionate to the purported aim”³²⁶, which does not appear to be the case with the French authorities’ actions³²⁷. This drift exemplify this –albeit quite radical– thought that security is “a concept so ideologically loaded in favour of the state that any real political thought other than the authoritarian and reactionary should be pressed to give it up”³²⁸.

3.4. MUSLIM ALIENATION, POPULIST DISCOURSES

Alienation of the Muslim community

As evoked above, one of the main negative sides of counterterrorism measures and rhetoric are their discriminatory impact on the Muslim community –in the case of nowadays Jihadist terrorism. Amnesty France concluded in 2016 that “some emergency measures amount to discrimination against specific groups, especially Muslims, based on their religion or beliefs”³²⁹. And in fact the great majority of the measures have had Muslims as targets³³⁰. It is true that these given religion and community do not constitute an irrelevant element in the current fight against terrorism. Regarding the main attacks France suffered since 2015, all terrorists were indeed Muslims and claimed to fight “in the name of Allah”. The religious element therefore has to be taken into account, nevertheless not blindly and excessively broadly. In fact, more than Muslims, the criminals were radicalized: “the Kouachi brothers who attacked the *Charlie Hebdo* staff had been trained in Yemen by the local Al Qaeda branch, while Abdelhamid Abaaoud who was behind the 2015 November attack had travelled to Syria to fight with the “Islamic State” (IS)”³³¹. Ferociously attached to its particular *laïcité* principle, France was shaken as “the attacks fueled the increasingly heated debate about the public display of religious symbols inside the country”³³².

Overall, the society’s suspicion and hate towards the Muslim community was undeniably impacted: in 2015, 2536 incitements and 905 Islamophobic acts were registered, 18.5% more

³²⁶ Amnesty International, *supra* note 324

³²⁷ Amnesty International, *supra* note 324

³²⁸ Neocleous, M., “Security, Liberty and the Myth of Balance“, *Contemporary Political Theory*, 6, 131-149, 2007

³²⁹ Amnesty International France, *supra* note 323

³³⁰ Alonso, P., “Etat d'urgence: La grande majorité des mesures prises ont touché des musulmans“, *liberation.fr*, February 4 2016

³³¹ Samaan, J-L, Jacobs, A., “Countering Jihadist Terrorism: A Comparative Analysis of French and German Experiences“, *Terrorism and Political Violence*, 2018

³³² *Ibid*

than in 2014³³³. The state of emergency's impact has been striking, as stated –and documented– by the French Collective against Islamophobia: “abuses of the state of emergency manifested themselves from the first week of its establishment [by December 2015, the collective was handling 225 SOE-related cases]. Weakening of justice at the benefit of the police has led to arbitrary decisions”³³⁴. As a result of the counterterrorism measures –albeit not only as will be shown hereinafter– the French Muslim community, which was already experiencing previously delicate situations and discriminations, feels treated like the public enemy³³⁵. And indeed, HRW 2016 report states that “all the measures that HRW documented [for SOE abuses] targeted Muslims, Muslim establishments, or halal restaurants”³³⁶. Islamism tends now to be at subjective risk, in the absence of objective crime³³⁷. Not only are these cases problematic because of their arbitrary and discriminatory tendency, but also because they are counterproductive to address the terrorist threat. Indeed, while the Muslim community seems to be excluded from the society and main subject to counterterrorism measures and abuses, they could actually be a strong asset to combat the terrorist threat in helping with identifying local terrorism threats based on radical Islam³³⁸. Once again then, counterterrorism measures tend to fail to address the threat in an efficient way³³⁹.

Populist discourses

Above the practical and individual discrimination experienced by Muslim community, the situation is fostering further threats at a national scale. The climate of terror, initiated by the attacks and emphasized by the State and its counterterrorism rhetoric –plus the media coverage, tend to foment political discourses based on hate, division and exclusion. All political parties feed on current situations, experienced by the country, to ground their propositions and gain or ensure their electorate. However –and strikingly in the 2017 Presidential election context– the terrorist threat and the focus on the Muslim community was a real anchor point for the populist extreme right party Front National and its current leader Marine Le Pen. She was although not

³³³ French Collective against Islamophobia, *Report 2016*, CCIF, 2017

³³⁴ *Ibid*

³³⁵ Acosta, D., “French Police Make 2,700 Raids in Month, Raising Tension With Muslims”, *The New York Times*, 23 December 2015

³³⁶ Human rights watch, *supra* note 312

³³⁷ French Collective against Islamophobia, *Report 2017*, CCIF, 2018

³³⁸ Human rights watch, *supra* note 312

³³⁹ Cf *Part II*, 3.2. *Controversial efficiency of counterterrorism measures*

the only one, as the right wing party Les Républicains, led by Francois Fillon, notably drifted towards the securitarian and reactionaries positions likewise³⁴⁰. At all events, the situation was emphasized and became the breeding ground of populist and racist positions, a general tendency underlined by the UN in 2017: “counter-terrorism measures are fuelling racism”³⁴¹ in a “renewed platform for right-wing populist rhetoric”³⁴². Le Pen indeed used intensively 1) the terrorist attacks to promote fear and suspicion and 2) the fear and suspicion to justify her implacable immigration and security policies: her presidential programme 2nd point –out of 7– is “A safe France”³⁴³. Only 5 out of 144 propositions are explicitly addressing terrorism issues, however the latter clearly tinged her whole campaign, notably on immigration³⁴⁴: “revoking the nationality by birth principle”, “reducing legal immigration” –notably through family reunification, etc. She restlessly focused her discourse on immigration, terrorism and security, as an intrinsically tied triangle, and accumulated false/distorted truth to support her (non) logic³⁴⁵.

The threat that France faces since 2015 Charlie Hebdo is real, and need to be dealt with. However this overview and succinct analysis of the current counterterrorism measures taken by the French authorities expose, if not only but substantially, their overall inefficiency and dangerousness. While enshrining provisional measures into the common French Law –an already problematic point– the extended powers given to the police undeniably threaten long acquired liberties and their usual protection. Moreover, the measures' impact appears even broader than those specific consequences, by influencing the French system more globally: embodying the threat of counterterrorism.

³⁴⁰Billard, S., “Fillon et le 'racisme anti-Français’”, *nouvelobs.com*, March 17 2017

³⁴¹OHCHR, “Counter-terrorism measures are fuelling racism”, *ohchr.org*, June 20 2017

³⁴² UNHRC, Report of the UN Special Rapporteur on contemporary forms of racism, UNGA, May 9 2017

³⁴³Le Pen, M., Official presidential programme 2017, *rassemblementnational.fr*, 2017

³⁴⁴ *Ibid*

³⁴⁵Delrue, M., “Immigration et terrorisme : Marine Le Pen multiplie les intox”, *lemonade.fr*, April 18 2017

PART III

AN INADEQUATE RESPONSE CLOAKED BY FRANCE'S IMAGE? RETHINKING THE COLLECTIVE MEMORY PROCESS

The two first parts of this thesis established on the one hand a cultivated collective memory, rooted in the citizens' mind, presenting France as the HHR; on the other hand a current securitarian drift with the counterterrorism measures chosen by the governments since 2015, and threatening numerous liberties and values supposedly constitutive of the HHR image. At this stage, two elements have then been underlined. First, the overall inadequacy and dangerousness of current French counterterrorism measures, second, the contrast between the latter and the HHR image that France upholds still today, therefore its hypocrisy.

Now this last part will aim at assessing the possibility that these two elements not only are in *contrast*, but also *interact*. In other words, it inquires the possibility that they impact each other mutually, in different ways. While a full scale quantitative empirical research was not possible within the scope of this study, the following theoretical and empirical arguments point into this direction. They will be exposed in awareness that further research is needed to fully confirm this established likelihood, and will be nuanced by the consideration of other influent parameters.

CHAPTER 1

REACTING TO TERRORISM IN THE HOMELAND OF HUMAN RIGHTS

The contrast between France HHR and the State's reaction to the terrorist attacks has been underlined. However the two elements actually appear to not only oppose, but impact each other. Indeed while the attacks, and their politization by the government, reignited the image for the French society (1), this image represents a standard that could either lead the citizens to be critical, or to be blind, about the current counterterrorism measures and their dangerousness (2).

1.1.IMPACT ON THE IMAGE

Popular reaction

As it was mentioned above³⁴⁶, the successive attacks on France gave rise to a major reaction from both the society and the government. The former (society) was embodied in enormous popular gatherings, such as the January 11th peaceful march in 2015, or the ones that followed the November 13th attacks all over the country, along with thousands of online and other reactions from the citizens. The latter (government) took the shape of political discourses, and of the counterterrorism measures that followed. When analyzing these reactions, it is interesting to see how France's HHR image was actually often at the heart of the debate. This is closely linked to the targets chosen by the terrorists, for indeed "most of the attacks in France were [...] attacking symbols of French identity and lifestyle"³⁴⁷. The Charlie Hebdo's attacks aimed at satirist, irreverent, free journalists and caricaturists –and their staff. They were killed not as random targets, but most likely to be punished for what they publicly wrote and how they represented the prophet Muhammad³⁴⁸. The terrorist attack was therefore not shocking so much for the deaths it caused, but for the message it gave: the freedom of expression it trampled. That was notably the most striking aspect in the January march. It is not irrelevant that the gathering

³⁴⁶Cf *Part II, 1.1. Contextualizing*

³⁴⁷Samaan, J-L, Jacobs, A., "Countering Jihadist Terrorism: A Comparative Analysis of French and German Experiences", *Terrorism and Political Violence*, 2018

³⁴⁸L'Express, "Charlie hebdo caricature Mahomet", *l'express.fr*, 2015

occurred under the name of “Republican march”³⁴⁹. The French population indeed instantly rose as one, of course in protest of those lives unjustly taken, but most of all to defend their basic values: the keyword being *‘liberté’*. The mobilization was colossal: with 4 million people, it constituted by far the greatest national gathering ever identified in the history of France – compare with the 1 million at the liberation of Paris in 1944, or with the 1,5 millions when France won the football world cup in 1998³⁵⁰. It was undeniably a moment of national unity, in Paris and in the provinces, with no distinction of ages, political views, professional backgrounds, religions, etc³⁵¹. National identity was asserted permanently, through flags, signs –such as “Marianne is Charlie”, songs –*la Marseillaise* in the first place, locations –people first gathered at the *place de la République*, around the statue personifying the French nation, etc.³⁵² All the core official elements symbolizing the nation were exposed and claimed. As one French mayor declared: “C'est la France qui est là”³⁵³ –that could be translated by “This is France, who is there”.

This unity occurred as people gathered around what is common to them and what they felt was under attack: all the usual internal diversity and frictions faded to celebrate France’s most core HR values. France’s HHR was everywhere. The starting point was the freedom of expression, precisely flouted by the journalists’ killings, and that was defended on hundreds of signs³⁵⁴ and symbols –bleeding pens, etc. Others were exposing the basic features of France HHR, as developed in the first Part³⁵⁵, with an omnipresent “liberty”, and marchers praising their “just and fraternal society”³⁵⁶, saying “we have to defend our liberty”³⁵⁷, brandishing a huge luminous *solidarité* sign³⁵⁸. Some others referred to historical bases of the HRR image, showing how present these elements still are in the society’s collective memory, and how connected they are to the image and France’s identity. Notably, some signs proudly named the marchers “the new

³⁴⁹Clavel, G., “Marche républicaine: une marche du siècle pour Charlie Hebdo, pour la liberté et pour l'histoire”, *huffigtonpost.fr*, Januray 11 2015

³⁵⁰ Le Monde, “Contre le terrorisme, la plus grande manifestation jamais recensée en France”, *lemonde.fr*, Januray 11 2015

³⁵¹INA, “La marche républicaine du 11 janvier 2015 contre le terrorisme”, *fresqueina.fr*, January 11 2015

³⁵² Le JDD, “Charlie Hebdo : trois ans après, le JDD a refait la marche”, *lejdd.fr*, January 11 2018

³⁵³Orléans Mayor S. Grouard, quoted in Liberation, “Marche républicaine à Paris”, *libration.fr*, January 11 2015

³⁵⁴Liberation, “Marche républicaine à Paris”, *libration.fr*, January 11 2015

³⁵⁵Cf *Part I*

³⁵⁶*Supra* note 354

³⁵⁷ Marcher, quoted in Liberation, *supra* note 354

³⁵⁸ Topito, “Top 70+ des plus belles photos de la marche républicaine”, *topito.com*, January 11 2015

resistance”³⁵⁹, while at various occasions, *le Chant des partisans*, a notorious resistance song, rose from the crowd³⁶⁰. Regarding the post November 13 attacks now, the reaction was analogous, albeit less unique as Charlie’s march already happened. The victims this time were carelessly drinking with friends, partying, celebrating, and in sum enjoying the freedom provided by their French culture and laws. It is at least in this sense that the attacks were understood, as aiming at these values of liberty. People rose to defend them once again: “we will stand up to defend our values of freedom, equality, fraternity and solidarity”³⁶¹. On the July 14 attack, people were also celebrating, but on a very specific occasion: national day. What was considered under attack was then the freedom always, but also France in itself, with again all it represents.

Political discourse

The idea that the attacks aimed at France because of its HHR values was, however, not –at least not only– initiated by the population, but also very much stressed upon and encouraged by the political discourse³⁶². The latter indeed emphasized the idea that the terrorists aimed at our core values; republicanism, democracy, liberties, etc.: elements constitutive of the HHR image. Hollande’s speech on November 13th³⁶³ strongly emphasizes this link between the attacks and French HR identity, already in one of its first sentence: “It was because they were *France* that they were shot. It's because they were the *freedom* that they were massacred”. The formulation’s parallelism presents the two entities as one, interchangeable, synonymous. The exact same mechanism occurs a bit after: “the youth of *France*, the youth of a *free* people”. Hollande later again reaffirms the country's "determination to defend liberty". The latter is however not the only HHR value evoked, several others are mentioned across the speech: "humanity", “dignity”, “fraternity”, “solidarity”, “tolerance”, etc. The President then underlines the role of the State itself for upholding these values: “our duty is more than ever to make these values live”, and reaffirming the rule of law as French essence: “with our forces, those of the Republic, with our arms, those of democracy, with our institutions, with the Law”. Hollande gives a comprehensive

³⁵⁹Le Monde, “Les meilleurs slogans des manifestations en hommage à 'Charlie Hebdo'”, *lemonade.fr*, January 11 2015

³⁶⁰ Videos of the Charlie Hebdo marches: <https://www.youtube.com/watch?v=XkK4WssYikA> ; <https://www.youtube.com/watch?v=rCjr09L9FuI>

³⁶¹ Huffington Post, “Vendredi 20 novembre : Paris, France, Monde, debout!”, *huffigtonpost.fr*, December 7 2017

³⁶² Understood as the discourses and speeches of politicians

³⁶³Hollande, F., *Discours d'hommage aux victimes du 13 Novembre 2015*, Hotel des Invalides, November 27 2015 / The following speech quotations are all retrieved form the same source

presentation of France as the HHR, also mentioning its enlightening and influent status for the outside: “a great country, proud of its history, its way of life, its culture, its *rayonnement*, its universal ideal”. All the core elements of the HHR image are here, and stressed upon. Three days later, the President went on, summing up this position, affirming that “Daesh [...] is fighting us because France is a country of freedom, because we are the birthplace of human rights”³⁶⁴. As exposed in the first part, the cultivation of this collective memory aims at strengthening the national unity. This objective is an all-time one for the State, but even more in troubling times, and is also visible in Hollande's speech when he hammers: “we are one and unified Nation, driven by the same values”. As developed in the first part, again, these elements tend to foster a greatest national pride, and indeed the French case is no exception: one third of the French population said to feel prouder of their country after the January 2015 attacks and the national reaction that followed³⁶⁵.

This HHR image was greatly vivified by the French attacks, cultivated by the government and felt strongly by the population. And the image was used by the former not only to react to the attacks themselves, but also to introduce/justify the upcoming counterterrorism measures that were to be taken. As a conclusion of his speech, which praised France's HR values and urging at their defense, Hollande indeed announced the “logical” next step: “we can count on the Parliament to adopt all the required measures to defend the interests of the country, in a spirit of national harmony and *respect for fundamental freedoms*”. A respect that was quite relative in the end, as it was established in the second Part.

1.2.IMPACT OF THE IMAGE

Dual function

Now regarding the possible impact of the HHR image on the French situation, two main avenues need to be exposed. First, the image can play a *critical role*. The idealized image in this case stands like a high standard, to which every situation, decision, action, is compared. Indeed the fact that France presents itself –and upholds this image in the national collective memory– with

³⁶⁴ Hollande, F., Speech by the President before a joint session of the Parliament, Versailles, November 16 2015

³⁶⁵ L'Express, “La fierté d'être Français gagne du terrain depuis les attentats et la marche”, *l'express.fr*, February 2 2015

such important HR standards entails that its actions are examined in a very demanding way. This is notably how the media uses the HHR image indeed. The expression is broadly employed in this context, 76% of my survey's respondents already read or heard it from a media source³⁶⁶. While the phrase is used to praise France in most school or official discourse content, the media often brings it up in order to confront it to a contrasting reality: i.e. to denounce France's situation. Journalists and commentators indeed use the expression by questioning it "France, HHR: reality or scam?"³⁶⁷, or to underline a worrying drift: "The 'HHR' thinking of getting itself a Guantánamo"³⁶⁸. The mechanism is also used by scholars or others: "HHR, really?"³⁶⁹, etc. The image could have the same impact for the citizens, who would require their country to live up to its well-known image and therefore be more critical about its actions. As mentioned in the first Part, history education, along with the use of symbols etc. fosters a strong national collective identity³⁷⁰. But history education also purposefully promotes and implements democratic values, civic behaviour, HR standards amongst the citizens³⁷¹. Indeed, by raising awareness about one's rights and liberties, and the role they played in the past, history education gives pupils a sense of how important these rights are: i.e. why they should be defended³⁷². This education then associated with the HHR image should provide the citizens with a particularly critical mind when assessing their government's actions in this light.

Nevertheless the HHR image can also have a *legitimizing/blinding role*. The citizens are brought up with, and then surrounded by, references to the alleged historical and current high HR standards upheld by their country. In consequence, it is difficult for them to really consider the potentiality of a –significant– infringement of those by the State: that State that precisely bases its core identity on these values, and on the historical events that enshrined them in the French society. Of course, France is a country of contestation –as will be further exposed hereinafter– and the civil society is very critical of their government³⁷³. As exposed in the first Part already, the French are known to be often discontent, and to show it: they regularly go out in the street to

³⁶⁶ Survey Q.2

³⁶⁷ Mediapart, "La France, patrie des droits de l'homme : une réalité ou une arnaque?", *mediapart.fr*, February 18 2018

³⁶⁸ Courrier International, "France. La "patrie des droits de l'homme" envisage de se doter d'un Guantánamo", *courrierinternational.com*, December 10 2015

³⁶⁹ Goulard, S., "La patrie des droits de l'Homme, vraiment?", *sylviegoulard.eu*, May 19 2017

³⁷⁰ Cf *Part I*

³⁷¹ Hamels, P-J, The use of history in democratization processes, EIUC (Master thesis), 2012

³⁷² Tosh, J., *Why History Matters*, New York, Palgrave Macmillan, 2008

³⁷³ Vráblíková, K., *What Kind of Democracy?: Participation, Inclusiveness and Contestation*, Routledge, 2017

protest about many issues, as if it was a ritual³⁷⁴. However these are very much about social issues: changes affecting labor condition, retirement policies, education system, etc³⁷⁵. It however appears that, while citizens do demand high standards regarding these issues, they would not actually feel their core and basic HR threatened by the State. Because it is so enshrined in the collective memory, they would not consider a serious breach to these rights by *the HHR itself*.

Controversy on the content of the image

There is an element worth mentioning at this point. The HHR image has been considered in this thesis as the presentation of France as promoting, protecting, and respecting HR. This implies, at first sight, the “HR” *as we understand them in 2018*, in most modern –European and international– texts, which have enhanced their protection through the years. However, the French expression might have flaws in itself. That is, for the image originated more than 200 years ago, and still is justified broadly on these historical grounds, its content may not be as comprehensive and progressive as the understanding of HR usually is today. As it was exposed in the first Part, the HR regime that was installed in 1789 received several criticisms– notably racist and sexist– and was immediately trampled upon by the Terror³⁷⁶. Still, it is this version that is taught on, and omnipresent in the republican symbols –Revolution, DRMC. In the end then, there is a possibility that the image may not always advocate for HR for everybody, but only for white privileged Christian French for example. The implication would be quite different indeed. This is however –for reasons explained hereinafter, not the position that the thesis is upholding.

³⁷⁴ Wilson, F.L., "Political Demonstrations in France: Protest Politics Or Politics of Ritual?", *French Politics and Society*, 12(2/3), 23-40, 1994

³⁷⁵ Gauchemip, "Les grandes manifestations en France", *gauchemip.org*, May 23 2018

³⁷⁶ Cf Title I, 3.1. *History education*

CHAPTER 2

A COLLECTIVE MEMORY NORMALIZING THE INADEQUATE RESPONSE?

Now that the potential mutual impacts of the HHR and the French reaction to the recent terrorist attacks have been exposed, the practical facts need to be analyzed more thoroughly. Indeed these facts show a very low criticism from the citizens towards the counterterrorism measures (1). This is surprising in the light of the traditional protest culture of the population, and demands explanations: a plausible one is precisely the HHR image, as a core part of CM and national identity, along with others (2). This element allows us to reconsider the way this CM is shaped and cultivated, in order to foster the society's immune system towards threats such as the actual one of counterterrorism (3).

2.1.CIVIL SOCIETY'S (NON)REACTION

Protests in France

As it was exposed above³⁷⁷, the criticism from the French HR organizations/institutions was unanimous, whether for the state of emergency or for the 2017 security law: for the latter, very critical reports were notably issued for instance by the French League of HR³⁷⁸, the French Defender of rights³⁷⁹, the National Consultative Commission on Human Rights³⁸⁰, and the Syndicate of Magistrature³⁸¹. A great part of the media –although mostly from the left of the political spectrum– also rose to alert about the securitarian drift³⁸². However, these actors have something in common: they are experts or at least interested in the topic, and must be informed and have an opinion on it. The majority of civil society, i.e. ordinary citizens, on the other hand, do not have these obligations, if their profession is not related to these fields. Yet, the fact that French citizens are not experts on a given issue do not usually prevent them from regularly and

³⁷⁷ Cf *Part II, Chap 2 and 3*

³⁷⁸ LDH, *supra* note 271

³⁷⁹ Le Parisien, "Projet de loi anti-terroriste: 'une pilule empoisonnée'", *leparisien.fr*, June 23 2017

³⁸⁰ CNCDH, *supra* note 281

³⁸¹ Syndicat de la Magistrature, *supra* note 273

³⁸² Le Monde, "Le pouvoir judiciaire devient le parent pauvre de l'antiterrorisme", *lemonde.fr*, October 3 2017

significantly get involved in socio-political matters, by standing up against State's actions or positions. This is indeed obvious through their *culture protest*, mentioned above: sometimes referred to as the “champion of strikes”³⁸³, France is indeed the country with the most numerous strike days globally³⁸⁴. The country regularly stands out as having the most important and visible protests among developed countries³⁸⁵, a peculiar national feature underlined by numerous scholars. Some even identify this contestational civil society as part of the country's collective memory, taking its roots –once again– in the 1789 Revolution³⁸⁶. Furthermore, such popular mobilizations are not only symbolic, as they often manage to disrupt the regime and lead to concrete legislative or policy changes³⁸⁷.

Protests in 2017

The state of emergency, then the 2017 Law were unanimously denounced as liberty-threatening by the HR institutions, and warned about in multiple media sources. In the context of highly developed protest culture and active citizenry that has just been described, one would then logically expect from the citizens to rise in force to oppose –or at least question– these major legal changes. Indeed, the law is threatening *liberties* and undermining the course of justice³⁸⁸. The same liberties that are the core of the HHR, that we established as so enshrined in the collective memory: “liberty” in France appears 13 times as a justification for the HHR image in the OS, “justice” four times³⁸⁹. In order to give an example of the usual national mobilization on different issues, two major waves of protest that occurred in France in 2017-2018 can be evoked. Both also reacted to the announcement of legal reform. First, protests against the “Labour Law” or “El Khomri Law”³⁹⁰ –from the Minister that carried it– which changed the Labour code and backtracked on several social achievements. At the least –from police figures, not the organisers!– 223 000 protestors gathered on September 12, 132 000 on September 21, and almost 6 000 on October 19³⁹¹ when the movement already weakened. And these are only the

³⁸³ McPartland, B., “So why are the French always on strike?”, *thelocal.fr*, March 31 2016

³⁸⁴ Statista, “La France, championne du monde de la grève”, *statista.com*, July 6 2018

³⁸⁵ Boezec, J., “Selon Vox, voici pourquoi les Français manifestent autant”, *frenchmorning.com*, July 8 2015

³⁸⁶ Vráblíková, K., *supra* note 373

³⁸⁷ Wilson, F.L., *supra* note 374

³⁸⁸ Cf *Part II, Chap 2 and 3*

³⁸⁹ Survey Q.6

³⁹⁰ Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels

³⁹¹ Bouanchaud, C., “Mobilisation contre la loi travail”, *lemonde.fr*, October 19 2017

most important of numerous others protests and movements on this issue. Then we can evoke the mobilization to support the migrants, notably in the context of the upcoming “Immigration and Asylum Law” –still debated, and contested notably by the left wing, for facilitating expulsion of migrants³⁹². Several actions have been organized in reaction by the French civil society: protests in Paris gathered a thousand people –again according to (usually conservative) police estimates– at the announcement of the law on April 16th 2018³⁹³, more than one thousand on June 2nd ³⁹⁴, and several thousand people in Paris on June 17th³⁹⁵.

In this context, when going back to the 2017 counterterrorism law and regarding the sharply criticized measures it contains, we tend to expect intensive and sustained protest. Yet, surprisingly, only two significant protests were organized to oppose this drift. The first one occurred on July 1st 2017, gathering only “several hundreds of people”³⁹⁶. The second one, on September 10th 2017, was even worse, as it went almost unnoticed³⁹⁷ –even sources proving it actually took place are scarce. One of my survey’s respondent indeed deplored the feeble civil mobilization to contest the measures³⁹⁸. Citizens' overall passivity towards the counterterrorism measures also has been broadly noticed in the media, which observed that “the restriction of civil liberties raises little debate among the population”³⁹⁹. Moreover, the law was even supported by a significant proportion of the citizens, 57% in September 2017⁴⁰⁰.

2.2. IS THE IMAGE OF “HHR” AGGRAVATING THE THREAT?

HHR image and counterterrorism

On the one hand, the threat of counterterrorism exposed in Part II entails that the fear created by terrorism is used and emphasized by the State, in order to have the citizens put more easily their

³⁹²Rescan, M., “Loi asile-immigration : ce que contient le texte”, *lemonde.fr*, April 16 2018

³⁹³ Le Figaro, “Paris: nouvelle manifestation contre la loi immigration”, *lefigaro.fr*, April 15 2018

³⁹⁴ Sputniknews, “Plus d’un millier de personnes manifestent à Paris contre la loi asile-immigration”, *sputniknews.com*, June 2 2018

³⁹⁵ BFMTV, “Une manifestation en soutien aux migrants à Paris”, *bfmtv.com*, June 17 2018

³⁹⁶ Europe1, “Manifestation à Paris contre le projet de loi antiterroriste”, *europel.fr*, July 1 2017

³⁹⁷ Paris-Luttes, “Tou-te-s à l’Assemblée contre l’état d’urgence permanent lundi 25”, *paris-lutte.info*, September 21 2017

³⁹⁸ Survey Q.11

³⁹⁹ Zarachowicz, W., *supra* note 303

⁴⁰⁰ Cornevin, C., “57 % des Français sont favorables au projet de loi antiterroriste”, *lefigaro.fr*, September 29 2017

confidence in the government hands. Hollande indeed ended his November 16th 2015 speech asking for the “public’s trust in solving the crisis”⁴⁰¹. This fear and confidence then enable the State either to act unnoticeably –for citizens are too preoccupied, either to justify more easily some liberty-threatening counterterrorism measures– on the still enshrined liberty/security dichotomy. On the other hand, the HHR image has contributed to building a strong collective memory which fosters national pride. As the latter is based on HR standards and values, it fosters a rarely questioned confidence of the citizens in the State, on the protection of these core values.

Regarding the very low protest activity to contest the yet strongly criticized 2017 law, it strikingly contrasts with the usual French effervescence. An explanation to this passivity could then lie in the HHR image itself. When going back to the two potential roles of the latter⁴⁰², the first one (critical) has obviously concretized in the media and the reactions of HR organizations. However, regarding the society's overall acceptance, it could then be the result of the second role the HHR image plays (legitimizing/ /blinding). This possibility cannot be quantitatively assessed within the scope of this thesis, nonetheless it appears particularly consistent regarding previous historical reactions, and the special nature of terrorism and counterterrorism. Indeed, HHR image feeds on historical and cultural elements to foster pride and confidence in the State, while counterterrorism rhetoric feeds on terrorist attacks' fear *and* the HHR image to increase the same elements. Therefore the image facilitates the justification for counterterrorism: it is indeed no coincidence that official discourses ‘post-attacks’ emphasized the image of HHR so strongly. This part of French collective memory appears in fact a useful tool in the counterterrorism spectrum. It is in this sense that France's idealized collective memory through the HHR image might actually *increase* the threat of counterterrorism.

In order to give a more comprehensive view on this claim, a comparative stance is always useful. Some scholars for example compared French and German response to terrorism, and noted that the latter refrained from adopting measures as radical and borderline as the former⁴⁰³. And a major reason for it, to them, was the heavy legacy of two dictatorships because of which “the German security apparatus remained much more cautious not to encroach on the individual

⁴⁰¹ Hollande, F., Speech by the President in front of the Parliament, Versailles, November 16 2015

⁴⁰² Cf *Part III, 1.2. Impact of the image, Dual function*

⁴⁰³ Samaan, J-L, Jacobs, A., *supra* note 346

liberties of its citizens”⁴⁰⁴. In this case, the idea of France's history given by its idealized collective memory⁴⁰⁵ is likely to have the opposite effect: backed by its glorious HHR image, France is actually freer to adopt contrasting measures, without raising significant doubts.

In the same vein, the HHR image appears to facilitate other threats such as the one of populism, notably with the rise of far right Marine le Pen. The 2017 presidential candidate indeed also used fear caused by terrorist attacks on one side, and elements of the HHR image –notably a glorified *resistance* that she identifies with⁴⁰⁶– to reach her goals. These are obviously different than the one aimed at by counterterrorism rhetoric, however the principle is the same. It highlights the potentially dangerous instrumentalization of the HHR image, for purposes actually squarely opposite to its apparent content.

Other factors

The HHR image therefore appears like a facilitating factor for the realization of the threat of counterterrorism, and for the passivity of the French citizens towards this new law. The latter yet broadly threatens the liberties that constitute the image's core. Nevertheless, while this element appears to have an impact, it would certainly be simplistic to consider that it is the only one doing so. Two other main elements are worth mentioning. *First*, the securitisation initiated by the government, and emphasized by the media. The term refers to the presentation of an issue as an existential threat, justifying emergency measures and the suspension of normal politics⁴⁰⁷. For this existential feature to justify the radical reaction, the securitizing actor –i.e. the State in most cases– must stress and emphasize the fear originally created by the threat. It is that fear, internalized by the citizens, that will make them more willing to accept, or even make them require emergency measures. And indeed, this process has been largely used in the French case since 2015, where the focus of security issues, linked to terrorism, is obvious. It has become the main topic of interest in the 2017 presidential campaign⁴⁰⁸. Furthermore, the words used to describe the events were alarming⁴⁰⁹ –yet we established in the second Part the relativity of

⁴⁰⁴ *Ibid*

⁴⁰⁵ As opposed to its actual history, itself no exempt of dictatorship, racism and else, e.g. with the Vichy regime

⁴⁰⁶ Sopo, D., “Marine Le Pen, les musulmans et la résistance”, *laregledujeu.org*, December 15 2010

⁴⁰⁷ Buzan, B., Wæver, O., de Wilde, J., *Security: A New Framework for Analysis*, Lynne Rienner Publishers, 1998, p. 24

⁴⁰⁸ Francetvinfo, “Présidentielle : la sécurité et la lutte contre le terrorisme, deux thèmes centraux de la campagne”, *francetvinfo.fr*, April 28 2017

⁴⁰⁹ Chouzenoux, M., *From the exception to the rule*, EIUC (Master thesis), 2016

terrorism's threat to life in reality⁴¹⁰. All these elements contribute to make the population accept the measures in the first place, and then to normalize them. Their legitimacy has been so internalized, because of securitization and political discourses, that it comes to not be questioned anymore: in France, it has now indeed been more than three years since the first major attacks⁴¹¹.

Secondly, because the population's majority actually does not feel that their own rights will suffer from these measures, as they have nothing to hide: the terrorist is the other⁴¹². This aspect actually reminds of a global feature of criminal law: as long as it does not affect daily and common actions, which could target potentially anyone –e.g. driving offenses– the overall population tends to be indifferent⁴¹³. The indifference could actually become even support from a part of the population. Indeed, we established above⁴¹⁴ that even the HHR image may actually not advocate for HR for everybody, but only for white privileged Christian French: the opposite of the potential target of the counterterrorism measures, mostly Muslim, non-white, immigrant, outcast. This argument however does not stand strongly at the national scale, as we evoked for example the significant mobilization to support the refugees and immigrants currently coming to French soil, or earlier mobilizations in support of *sans-papiers*. Furthermore, the attacks even had a reverse effect on islamophobic acts: they decreased by 36% from 2015 to 2016⁴¹⁵. The first two arguments –securitization/normalization and indifference– therefore seem to be the most plausible ones in explaining French passivity towards the liberty-threatening law, along with the HHR image.

2.3. BUILDING A MORE RESILIENT COLLECTIVE MEMORY

Considering that the HHR image indeed has this negative impact, it would appear as weakening the society's immune system to face threats such as the one of counterterrorism. It is then fundamental to think about how to correct this feature of French collective memory, in order for the latter to become fighter, more resilient. When going back to how this CM is shaped and cultivated at the national scale, the most obvious solution would be to nuance this HHR image.

⁴¹⁰Cf *Part II, 1.3. Reassessing the threat of terrorism*

⁴¹¹Bigo, Didier, « Security, Exception, Ban and Surveillance » in *Theorizing Surveillance*, 2006, p.47

⁴¹²Zarachowicz, W., *supra* note 303

⁴¹³Interview with Jérôme Karsenti, Criminal lawyer and activist, June 21 2018

⁴¹⁴Cf *Part III, 1.2. Impact of the image, Controversy ...*

⁴¹⁵French Collective against Islamophobia, *Report 2017*, CCIF, 2018

Indeed, if the idealized and flawless CM can harm the society's ability to resist such threats, then the way to reverse this trend would be to recognize the flaws in the country's history as well. That is on one hand, highlighting the glorious part of the French past, that make sense of the HHR expression –and that can foster the citizens' democratic values⁴¹⁶. However on the other hand, also recalling the less flattering parts, and stressing the dangerous paths that French history followed, even not so long ago. This more balanced history education should also be supported by a thorough historiographical work: studying how the French past is transmitted. This work is fundamental to deconstruct, and reconstruct, French CM is a stronger way⁴¹⁷: a necessity already spotted by several scholars, notably Pierre Nora with his colossal series *Les lieux de mémoire*⁴¹⁸.

By raising a comprehensive awareness about the collective past, the population would become aware both of its strengths *and* weaknesses. An element indispensable to know the necessary limits when facing a new national threat –as Germany's traumatic past is a major parameter to assess the country's reaction to one event or the other, a reminder of what could go wrong⁴¹⁹. France could benefit from an analogous process. Recognizing its history as a whole would be beneficial of course for the truth-value, and to avoid committing the same crimes again, *but also* in order to have a more immune collective memory and national identity, more able to resist against threats, such as the one of counterterrorism.

⁴¹⁶ Hamels, P-J, *supra* note 371

⁴¹⁷ Nora, P., « Entre mémoire et histoire », in Nora, P., *Les lieux de mémoire-Tome I, La République*, 1984

⁴¹⁸ Nora, P., *Les lieux de mémoire*, 1984-1992

⁴¹⁹ Samaan, J-L, Jacobs, A., *supra* note 346

CONCLUSION

This study initiated from two main observations: first, the current and broadly denounced counterterrorism measures taken by France since 2015 Charlie Hebdo's attack; secondly, the apparent gap between these and the persistent –though rarely questioned– image of the country as the “Homeland of human rights”. From this starting point, the thesis aimed at challenging this image; at evaluating the reality of the counterterrorism threat; and in a less certain albeit more novel strive, at assessing the interaction between the former and the latter. In a global context where this type of radical measures tends to normalize in the fight against terrorism, such a questioning is necessarily relevant, and even more when put in parallel with the role and impact of the given country's collective memory. Indeed the latter is broadly addressed scholarly, however not so much in consolidated democracies' context. Yet the case of France, praising itself with having this special, pioneer and high standards in HR protection and promotion, although parallelly following a worrying securitarian drift, obviously appears worth to study.

The first part unraveled the process of collective memory's construction in the French case, leading to this enshrined Homeland of Human rights image –mainly through transformation or forgetting of past events on one hand, and emphasizing and glorification of flattering parts of national history on the other. Such an ambitious self-presentation, sometimes even as a global Human rights “role-model”, should pressure the State to then upholds these standards. Yet the second part underlined, without appeal, the dangerousness of the current counterterrorism measures and rhetoric put in place by the French government, multiply threatening rights and liberties yet said to constitute the core of this Homeland of Human rights image.

The third and final part went further than exposing this already striking *contrast*, by addressing the potential *interaction* between the reaction to this terrorist menace and France idealized collective memory. This part, albeit limited in its conclusion for a full scale quantitative empirical research was not possible, established several strong elements supporting this interaction. One element was the undeniable impact of the terrorist events and counterterrorism rhetoric in bolstering France's Homeland of Human rights image. The second element –the impact of the image on the reaction to the attacks and the counterterrorism measures taken– was more nuanced: further research would be needed to fully confirm the findings. Nevertheless, the

demonstration supported an analogy between a recognized aspect of collective memory process, i.e. erasing problematic past elements⁴²⁰ –when contrasting with France HHR image in our case; and a more novel one. Indeed, the actual situation in France surprises by its citizens' passivity towards this securitarian drift, while they are usually known for their vivid protest culture. Elements gathered in the thesis then render likely that collective memory process does not only *erase problematic past* events, but is also likely to also *normalize/diminish current* problematic ones –in our case again contrasting with France HHR image: in practice, the dangerous current counterterrorism measures.

A more honest and comprehensive education, and representation, of national history could then for instance be considered a tangible way to remedy to this risky aspect of collective memory, that appears to numb the French society's ability to react and defend properly against new threats –although the HHR image is not considered the sole aspect impacting this ability. By acknowledging its errors as well as its successes, France would necessarily damage its idealized Homeland of Human rights *image*. However, such a choice could at the same time strengthen its society's immune system, and therefore make it more capable to defend an *actual* Homeland of Human rights. Nevertheless, this thesis has underlined the major role of the State in this process: it is the main actor instrumentalizing and beneficiating from this idealized image. The overall civil society's acceptance/indifference, towards the counterterrorism measures currently being enacted, actually provides a rather comfortable position for the French State. It keeps it from existentially justifying and refraining its securitarian drift. The collective memory process then appears to beneficiate to the State, and be controlled by it: a feature which proves damaging for the protection of the society's rights and liberties even in a consolidated democracy such as France, “Homeland of Human rights”.

⁴²⁰ As established in the first Part

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ANNEXE

SURVEY (ORIGINAL IN FRENCH)

Part I

1. Have you ever heard of France as "Homeland of Human Rights"? * or country, cradle, champion, defender, etc. specify in "other"*

Yes

No

Other

2. If yes, where did you hear / read it?

Media

School / college / high school

University

Speeches / Official Documents (Government)

Research articles (and NGO reports)

Professional background

Other

3. In what way was the expression used?

Positively

Negatively (to criticize the actions of France)

Both

Neutral way

Other

4. Have you ever wondered about the purpose of this expression?

Yes

No

5. Does this image seem justified to you?

(Not at all) 1 --- 6 (Totally)

6. *For what reasons? (If no opinion: X)*

Open question

Part II

7. *The current terrorist threat in France seems to you ...*

(Of minor importance) 1 --- 6 (Of extremely importance)

8. *What do you think of the state of emergency? (need, efficiency, possible drifts, etc.) If no opinion: X*

Open question

9. *It ended on November 1st, did you know?*

Yes

No

10. *Are you aware of the new law of October 2017, "Strengthening Internal Security and the Fight Against Terrorism", which included some of the state of emergency's components in French permanent legislation?*

Yes

No

11. *If yes, what do you think? (If no opinion: X)*

Open question

12. *Do the topics in this survey matter to you?*

(Indifferent) 1 --- 6 (Yes, very interested)

13. *Please specify your age, occupation and place of residence*