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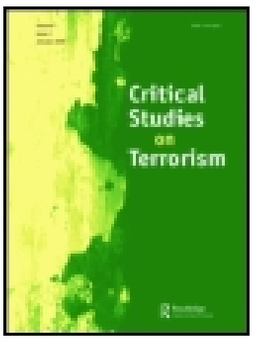

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# Marianne's liberty in jeopardy? A French analysis on recent counterterrorism legal developments

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**ABSTRACT**

This article analyses two recent French counterterrorist legislations (Law No. 2016–386 – hereafter OCT&F law and the Law No 2017–1510 – hereafter the OCT&Flaw) through the lens of distinct yet complementary theoretical frameworks. Combining the *State of Exception* thesis of Giorgio Agamben, the *Enemy Penology* as framed by Günther Jakobs as well as the more recent scholarship contributions on *Pre-Crime*, the article seeks to contribute to the scholarly debate on the use and the consequences of the use of criminal and administrative law in the fight against terrorism. In view of the numerous terrorist attacks that France has faced in recent years, the article aims to provide deeper knowledge of the French case by drawing substantially from the unfamiliar French scholarship. The article argues that the measures recently adopted seem to deepen the exceptional and pre-emptive logic in which potentially dangerous subjects have to be identified as "the enemy" as soon as possible in order to then be contained and dealt with.

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## Introduction

Since January 2015, France has been the theatre of multiple terrorist attacks committed in the name of the so-called *Islamic State*. No less than 14 terrorist attacks have taken place on French soil in the last 3 years (Seelow, Dahyot, and Baruch 2018). The deadliest and most mediatized ones are the following: *Charlie Hebdo* (7 January 2015), *Bataclan* and *Stade de France* (Paris and Saint-Dennis 13 November 2015), Nice (14 July 2016), Marseilles (1 October 2017) and more recently the attacks in Carcassonne and in Trèbes (23 March 2018) and the Strasbourg Christmas market attacks (11 December 2018). As a response to the *Bataclan* and *Stade de France* attacks in 2015, the French government declared the state of emergency on the entire territory. The state of emergency is an exceptional legal mechanism that reinforces the power of civil authorities and suspends certain civil liberties for a determined period of time. Due to the so-called necessity of protecting the citizens from further attacks, the state of emergency makes the executive the most powerful actor and relegates the judiciary power to the background. The measure is decided by the Council of Ministers in the case of imminent peril resulting from serious breaches of public order or in the case of a public calamity (Law N° 55–385).

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The parliament modified the content of the State of Emergency Law and prorogued its application six times until the first of November 2017.

Conscious of the fact that a permanent state of emergency would result in an oxymoron and facing a delicate political position where the terrorist threat is still high, and the population is still afraid (Ifop 2016, 2017), the French government initiated two important legislative reforms in order to reinforce the fight against terrorism. The first reform is the adoption of the "Law reinforcing the fight against organised crime, terrorism and its financing" by Hollande's government (Law n° 2016–386 of 3 June 2016 hereafter the OCT&F Law following the French acronym[1]). This law modified substantially among others the *code pénal* and the *code de procédure pénale* (Criminal Code and the Code of Criminal Procedure) and the *code de la sécurité intérieure* (Internal Security Code). In a note to the Council of State, the Government explained that the OCT&F Law was there to "reinforce *permanently* the tools and means at the disposal of the authorities outside the temporary legal framework of the state of emergency" (Jacquin 2016). The second reform, initiated by Macron's government, is the "Law reinforcing internal security and the fight against terrorism" (Law n° 2017–1510 of 31 October 2017 hereafter the SILT law following the French acronym[2]). The latter solely modifies the Internal Security Code and does not *a priori* concern criminal law. The aim of the government was to stop the derogatory regime of the state of emergency by integrating some of its measures with additional conditions in ordinary law (Vie Publique 2017b). As a consequence, infamous state of emergency measures such as the installation of security and protection zones (renamed "perimeter of protection"), the administrative closure of places of worship, the administrative search (renamed "house visit") and the house arrest (renamed "individual measure of control and surveillance") made their entry into ordinary law with additional judicial guarantees (2017; Government 2017). Both reforms elicited debates among French scholars (e.g. Cahn 2016 ; Poncela 2016a; Delmas-Marty 2017), legal practitioners (Union of the French Attorneys (SAF 2016, 2017) and the Union of the Magistrates (*Union Syndicale des Magistrats* 2016, 2017), deputies and senators, the National Institute of Human Rights Protection (hereafter the CNCDH 2016, 2017) and members of civil society (e.g. FIDH 2016; Ligue des droits de l'Homme 2017; Défenseur des droits 2017; La quadrature du Net 2017; Amnesty International, 2017). It is relevant to highlight that the French fight against terrorism is coupled most of the time with the fight against organized crime. One should recall that the definitions of both terrorism and organized crime are extremely broad, which can therefore indirectly lead to an expansion of the use of exceptional and derogative legal instruments. The concerns of the actors mentioned above on the new legislation more or less boil down to seeing the development of an increasingly expanding criminal justice apparatus that seems to operate on a rationale of perceived "dangerousness" and thus othering. With the aforementioned attacks in France being driven by extremist religious motives, there are legitimate fears that the country's Muslim population will be increasingly bearing the brunt of the exceptional becoming the "new normal". It is interesting to reflect on how France's response to terrorism can be seen in the light of what Marianne, the symbol of the French Republic, aims to stand for: Freedom, Equality and Fraternity for the French population as a whole. Yet, when we look at the underpinnings and rationales of these laws, as well as the way in which they seem to have incorporated language that seeks to sort between those who are seen as an enemy of the republic and those who are not, Marianne doesn't seem to be as inclusive anymore. By

closely analysing legislative documents, the French legal reforms will be assessed in light of three theoretical frameworks that are commonly used in counterterrorism scholarship: The State of Exception as reframed by the philosopher Giorgio Agamben, the Enemy Penology as formulated by Günther Jakobs which will be directly combined with the more recent Pre-Crime literature. These frameworks will be used as sensitizing concepts that, contrary to definitive concepts that formulate instructions to what is there to observe, only propose directions or general compass into what to look at (Padgett 2004).

In so doing, the goal of this article is twofold. First, the article aims to contribute to the debates among scholars, predominantly (socio) legal scholars, on the use and the consequences of the use of criminal and administrative law in the fight against counterterrorism (e.g. Zedner 2007, 2016; Boukalas 2017; Hodgson 2013). This will be accomplished by analysing the changes in French substantive and procedural criminal law as well as administrative law with counterterrorist legal provisions taken as an illustration. Second, this article will share insights from the French scholarship on these matters, which often remain unknown to international audiences due to the language barrier.

## State of exception, enemy penology and pre-crime incorporated

The State of Exception, the Enemy Penology and Pre-Crime are well-established theoretical frameworks in the literature and have been subject to many insightful and sometimes critical contributions by the secondary scholarship. The task to do justice to all of these rich contributions within the lines of this article would be Dantean. Hence, the goal of this section is to identify essential characteristics of each theory and bring them together to highlight their resonance with recent French counterterrorist developments.

### *The state of exception*

The legal-philosophical theory of the *State of Exception* which was initially developed by the controversial German lawyer Carl Schmitt and subsequently reframed by the Italian philosopher Giorgio Agamben found a particular resonance since 9/11 in the field of counterterrorism. In its purest form, the concept refers to a political decision that allows the juridical order to be suspended by the executive, "the Sovereign", during times of war or emergency in order to preserve the State from serious threats. Agamben wrote in a rather radical and provocative manner that the *State of Exception* is, since World War I, gradually becoming "the dominant paradigm of government" in contemporary states, including Western democracies (Agamben 2005, 2). What is most relevant for this article is to use Agamben's reflection on liberal democracy and the use of the permanent *State of Exception* by the executive as a mechanism facilitating the development of an enemy penology and a pre-emptive criminal justice apparatus. Hence, the goal is not *per se* to contribute to the already existing rich scholarship on the sophist question of whether or not the *State of Exception* is "external/internal of the judicial order" or as Agamben phrased it, to distance himself from Schmitt and Benjamin, a "threshold or a zone of indifference where law and facts coincide" (Agamben 2005, 23, 26).

Much has been written on Agamben's theory; a fragment of the rightful criticism from the secondary scholarship has to be shortly acknowledged here. Among others, the lack of empirical evidence brought by Agamben to support his claims (e.g. Humphreys 2006),

the premature declaration of the end of democracy and the disregard for the control and power of the courts and civil society organizations (Bigo 2007; Humphreys 2006), the involvement of the legislature in the "legalization" of exceptional measures (Boukalas 2014), and the naivety of Agamben's argument with regards to the permanence of the *State of Exception* as a misconception by the philosopher of the nature of law and its relationship with violence in liberal democracy (Neocleous 2006). Despite these relevant reflections, the exception thesis still offers an interesting perspective on how pervasive modern state power can easily be unleashed in response to anxiety inducing world risks such as terrorism (Beck 2002; Bigo 2007).

Two features of Agamben's theory are crucial to understanding the French phenomenon, namely: the politicisation of the law and the permanent character of the *State of Exception*. Regarding the politicisation of the law, it is important to define its meaning as the law is a social construct and political in nature. Even if Boukalas (2014) strongly questions the relevance of Agamben's thesis to gain a better understanding of contemporary politics and exposes its theoretical limitations, he does acknowledge how Agamben can offer an interesting viewpoint by "potentially affirming the primacy of politics over law and acknowledging the political as law creating" (6). The latter serves as a reminder that law is not neutral and has a political character which can lead to arbitrariness (*op. cit*.). For the purpose of this article, the concept "politicisation of the law" is used by referring to Agamben's (2005) observation on the "provisional abolition of the distinction among legislative, executive, and judicial powers showing a tendency to become a lasting practice of government" (7). The focus is then placed on the intrusion and expansion of the executive within the legislature and the judiciary, regardless of the democratic principle of separation of power. The domination of the Sovereign over the legislature and the judiciary and the use of his coercive power can to a certain extent be seen as a facilitator allowing for the materialisation of the preemptive turn in criminal law. The word legislature is understood broadly and includes the legislation *strico sensu* and the law-making process preceding it. As van der Woude (2012) previously observed in the context of Dutch counterterrorism law-making, in times of so-called crisis, when the executive is the most powerful actor, some voices, namely the voices calling for the necessity of the adoption of harsh security measures, are "accepted as true" while others might be easily dismissed (67). The political pressure put on members of parliament following the necessity argument is too strong and dismissing or even questioning the latter would result in a political suicide *vis à vis* the feeling of insecurity of the citizens. This is particularly true in the tense and post terrorist attack French context as will be illustrated below. Regarding the second feature, Agamben (2005) sees the *State of Exception* paradoxically evolving into a permanent state, due to an unending and metaphorical status of the "war". The "war on drugs" or on "terror" are perfect illustrations of this observation. Bogain (2017) illustrated how belligerent rhetoric was used by members of the former French executive to legitimise the recourse to the state of emergency. As Humphreys (2006) stated, the *State of Exception* "assumes a fictitious or political character where a vocabulary of war is maintained metaphorically to recourse to extensive government powers" (679).

Agamben's analysis is enlightening to understand the strategy facilitating the executive to the most powerful actor via the processes of politicisation of law and the

recourse to unending metaphorical and belligerent vocabulary. This allows for the existence of the so-called "permanent" *State of Exception* in which each and every one and not solely the "enemy of the state" (see below) are reduced to *bare life*. *Bare life* can be understood as "life exposed to death" particularly as a reduction to life vulnerable to unregulated sovereign violence (Agamben 1998, 88). Reduced to *bare life*, we are becoming passive depoliticised citizens, subject to state surveillance and violence. The French scholar Codaccioni (quoted in Bordenet 2017) rightfully expressed how reluctant she was to use the term "permanent State of Exception" because it refers to "the image of a leak cloak covering the entire population whereas the essence of the state of exception is to be discriminatory". Because the two analysed counterterrorist laws transpose into ordinary law measures that are directly inspired by the State of Emergency Law, it is interesting to observe if these measures could disproportionately affect certain groups in society that are profiled as dangerous or suspicious. Therefore, the "enemy penology" framework formulated initially by Jakobs which describes parallel but distinct criminal law systems for "citizens" and "enemies" is insightful to combine with Agamben's framework.

## *Enemy penology and pre-crime*

In the mid 80s, Jakobs formulated and then controversially legitimised and defended the theory of the enemy penology, also known as the *Feindstrafrecht* (Dreuille 2012). Similar to Schmitt's and Agamben's reflections, the enemy penology theory, even if initially solely centred on criminal law, focuses on similar themes of changing liberal democracies and the use of state power. Both theories seek to answer the paradoxical question of the potential lawfulness of the exception. French (socio) legal scholars, most notably Cahn (2015, 2016), Dreuille (2012) and Corroyer (2015) used this framework to find traces of enemy penology in French law. They applied it *inter alia* to counterterrorist legal provisions. Besides, the use of the enemy penology framework is not uncommon in the international and socio-legal scholarship to grasp the dynamics behind counterterrorism law (e.g. Boukalas 2017).

The core of Jakobs's theory is the neutralization of the enemy requiring the repression of the *iter criminis*, the path leading to the commission of the crime itself (Corroyer 2015). Enemy Penology is anticipatory in nature as the aim is to identify the enemy. The latter has to be neutralised, excluded instead of being punished (Krasmann 2007). Similarly, this anticipatory movement resonates strongly with the well-established pre-crime logic of security that, predates 9/11, has been strongly reinforced by the multiple terrorist attacks around the globe (McCulloch and Pickering 2009). As Zedner (2007) explained, "the possibility of forestalling risks competes with and often takes precedence of responding to wrong done" in a security society (261). In this sense, the shift from post to pre-crime is at odds with traditional criminal law because it is conceived in a preventive and not in a reactive manner (Zedner 2007; Corroyer 2015). The rationale behind the combination of pre-crime and enemy penology lays on the fact that pre-crime does not limit itself to the analysis of criminal law measures. Following (Wilson and McCulloch 2015), "under pre-crime frames, the boundaries between civil, administrative and criminal spheres are increasingly porous" (5). Additionally, the pre-crime framework is more precise in distinguishing preventive and pre-emptive measures

(Weber and McCulloch 2018). Both are future and security oriented but pre-crimes lay down on the precautionary principle and have to be distinguished from both traditional criminal law focused on crime already committed and risk-based crime prevention focused on the past criminal history and aiming at the prevention of recidivism (Wilson and McCulloch 2015).

Cahn (2015, 2016) and Delmas-Marty, Slama, and Cahn (2017) highlighted three distinctive features of the enemy penology. They will be combined with characteristics of the Pre-crime framework resonating strongly with enemy penology, making their dissociation superficial and unnecessary in this context. **First**, contrary to the principle of legality as well as the presumption of innocence, the enemy penology rests on a perceived notion of dangerousness instead of an individual's guilt (Delmas Marty 2017). This pre-emptive logic involves counterterrorist measures based on suspicion and on risk management which does not necessarily require the traditional use of charging or prosecuting the individual (Van Munster 2004; Feeley and Simon 1992). This anticipation implies the criminalisation of behaviours that do not infringe yet on any legally protected interests (Cahn 2016). This is done notably via the "expansion of the remit of criminal law to include activities or association that are deemed to precede the actual substantive offence targeted for prevention" (van der Woude 2012, 65). Pre-crime includes measures necessarily conferring extended powers to the police, judges or intelligence services in order to tackle activities/associations seen as precursors to terrorist attacks (Hodgson 2013). **Second**, the enemy penology implies a distinct set of criminal procedures and (police) powers, often allowing for serious infringements on the due process rights of suspects (e.g. intrusive investigative techniques). The focus on pre-emption is at odds with the principle of legal certainty as the *actus reus* (substantive act) will often be so broadly and ill-defined, preventing individuals from adapting their behaviours accordingly (Boukalas 2017; Cahn 2016). Detecting risky or criminal behaviour at the earliest stage possible can result in the violation of individual rights (van der Woude 2012). This is particularly true with administrative measures as the "legal hybrids expand the penal relation and brings due process under duress" (Boukalas 2017, 371). This violation might occur for all individuals due to mass surveillance or for certain members of the community sharing racial, ethnic or religious characteristics, because profiling unavoidably accompanies risk anticipation (McCulloch and Pickering 2009; Parmar 2011; Mythen, Walklate and Kahn 2013). Bringing the enemy penology and the pre-crime thesis together, Delmas-Mathy (2017) observes how the increased focus on pre-emption replaces the responsibility of the individual due to their dangerousness. Not only does this disregard the presumption of innocence, it also feeds a broader process of dehumanization where suspicious individuals are withdrawn from the human community as if they were hazardous products. **Third**, the enemy penology involves drastic punishments that are at odds with the principle of proportionality. When the punishment is applied after the commission of the crime (*post delictum*), the goal is the neutralisation of the dangerous enemy. When the punishment happens before the crime has been committed (*ante delictum*), the goal is to prevent the presumed dangerousness behaviour to materialise itself in the future. A clear example of this kind of punishment is administrative house arrest.

Could we then conclude, as Agamben would imply, that we all citizens would be reduced to an exceptional coercive state power taking the form of pre-crimes, or that these measures will only apply to the "enemies", as some French scholars suggest? The

enemy penology rests on the mechanism of de-personification creating a dichotomy between two types of criminals, the "non-person" and the citizen, to whom distinct criminal laws will be applied. The de-personification implies that there is no trust between the individual and the State, as the individual, based on his so-called "proved" dangerousness, will unlikely respect his obligations in the future (Dreuille 2012; Wilson and McCulloch 2015). This absence of trust justifies a distinct and exceptional criminal treatment in order to protect society and preserve the rule of law. Because the enemy represents an unbearable threat to society, their neutralisation is required before the materialisation of their actions (Boukalas 2017). The link between the expansion of executive power in time of so-called crisis, at the expense of civil liberties, and the enemy penology/pre-crime becomes clear. Van der Woude (2016) sees the development of pre-crime as a governmental method to expand substantially its power in order to detect early on any risky (criminal) behaviour at the expense of civil liberties. The combination of these two frameworks resonates with the analysis of Zedner (2016) explaining how this need for safety and security at all costs is creating new challenges for (traditional) criminal law.

## Analysis of the OCT&F and the SILT laws

In comparison to other European countries such as the Netherlands, France did not wait until 9/11 to build its counterterrorism apparatus. More than 20 counterterrorist laws were adopted between 1986 and 2018. It is crucial to stress that the preventive, pre-emptive and the pre-crime logic that will be highlighted in the recent legal reforms are not new to French counterterrorism. The proliferation of counterterrorist legislations created what French scholars depict as a "permanent repressive derogatory device" integrated into criminal law (Poncela 2016, Hodgson 2013; Cahn 2016; Codaccioni 2016). In a nutshell, the derogatory logic started in 1963 with the creation of the specialised State Security Court, considered the "birth certificate" of French counter-terrorism (Codaccioni 2016). The Court was initially created after the Algerian War to deal with radical supporters of French Algeria (the Secret Organisation Army) and their methods of targeting civilians. The Court was dismantled in 1986 but was subtly and indirectly replaced via the judicial specialisation principle. Ever since, all the terrorist related cases are centralised within the Trial Court of Paris that uses derogatory procedural rules to facilitate investigations (Bonelli 2008). Between 1985 and 1986, France suffered from repetitive terrorist attacks claimed by the *Committee for Solidarity with Middle Eastern Political Prisoners*, a Shiite organisation closed to the Lebanese Hezbollah. As a consequence, the terrorist offence made its entrance into French Criminal Law in 1986 (article art. 421–1-1 Crim. Code). In 1996, following a wave of terrorist attacks on French soil perpetrated by a cell of the *Islamic Armed Group*, the cornerstone of French counterterrorism, the broad and autonomous "association of wrongdoers" offence (art. 421–2-1 Crim. Code) was created (Molins 2016). The latter pre-inchoate offence was followed by the adoption of many other preventive offences such as the financing of terrorism (art. 421–2-2 Crim. Code) and the provocation of terrorism and the apology of terrorist acts (art. 421–2-4 Crim. Code). French scholars were already critical about the autonomous criminalisation of all behaviours having (diffused) links with the terrorist act *per se* because of the substantive constitutive element of the offence is imprecise in

nature while the sanctions attached to it are extremely severe (e.g. Cahn 2016). The security logic is present as the behaviour *per se* is not causing any damages but is still incriminated and punished because it might constitute a premise of a more serious behaviour.

Emblematic legal provisions of both counterterrorist reforms will be analysed in this section through the different theoretical lenses introduced in the previous section. The measures selected are illustrative and were chosen for the strong controversies they triggered within civil society, (French) scholarship and international organizations such as the Special Rapporteur for Human Rights Protection (Ní Aoláin 2018). First, several notable developments in the law-making process of the OCT&F and SILT Laws will be addressed. Subsequently, following a structure previously developed by Cahn (2016), the three main features of the enemy penology combined with the pre-crime scholarship will serve as the backbone for the analysis.

## *Lawmaking: the sovereign in the spotlight*

The OCT&F Law was adopted to "permanently reinforce the tools and means at the disposal of the administrative and judiciary authorities outside the temporary legal framework of the state of emergency" (Jaquin 2016). The law aimed to give judges and prosecutors new investigative powers, including techniques previously reserved exclusively for intelligence services. It aimed to enlarge the preventive framework and to enforce punitive action (Ministry of the Interior 2016). The strong resemblance between several measures of the OCT&F law and State of Emergency's measures were highlighted both by scholars and civil society actors (Thierry 2016; SAF 2016, e.g. administrative house arrests, specific administrative identity checks). In the same vein, the SILT law aimed at organizing a "controlled" way out of the state of emergency that lasted despite the adoption of the OCT&F law. As a result, the Internal Security Code was modified, and four emblematic measures of the State of Emergency were implemented with additional guarantees. The SILT law is considered to be the equilibrium between an efficient fight against terrorism and the respect of individual liberties (Senate 2017).

As highlighted in the theoretical framework, a core argument of Agamben's exceptional thesis is the politicisation of the law. From the circumstances of the adoption of both laws, there are two clear indications that the legislature was being "politicised". First, the government initiated the accelerated procedure via article 45 of the Constitution to adopt the law due to the claimed "urgency" of the matter. This procedure limits the lecture of the law to one lecture in each assembly. In consequence, this procedure prevents a thorough analysis of the text, and diminishes the time of reflection necessary to have an informed democratic debate (e.g. CNCDH 2016a; UM 2017). It must be highlighted that the parliament in 2017 was composed of newly elected individuals, not acquainted with the exercise of law-making.

Second, the OCT&F and the SILT law were adopted by a resounding majority in both assemblies.[3] The CNCDH (2016a) explains how consensus substantially hinders the quality of the debate, therefore making the accelerated procedure even more problematic in this case. When sensitive and emotional subjects such as terrorism are brought up, the mere evocation of better ways to fight terrorism "justifies directly the adoption without discussion about the detrimental effects of the measures on fundamental

rights" (CNCDH 2016a, 6). Van der Woude (2012) highlighted the same issue in the Netherlands regarding the reduction of the debate due to questions of necessity. She also noted that it would be a political suicide to not take a strong position on the prevention of terrorism even when it infringes individual rights. The predominance of the political rationality aimed at trying to win over the electorate and the argument of counterterrorism legislation being "just necessary" within both assemblies appeared clearly in the debates. As it was rightfully highlighted by a communist deputy, the adoption of the SILT law which reinforces substantially the power of the executive was not preceded by an evaluation of the newly adopted OCT&F law containing derogatory and exceptional measures that denatured traditional criminal law (Wulfranc in Assemblée Nationale 2017). The predominance of the political rationality can be better understood with a look at the opinion polls. The latter allows to understand both the need for the government to adopt these two laws and for the members of parliament to display minor or non-existent resistance to their adoption. As Humphreys (2006) recalled, in times of so-called crisis, members of parliament tend to bow too easily to the demands of the executive. This is especially true after shocking terrorist attacks on French soil. In 2015, just after the shocking *Charlie Hebdo* attacks, 59% of the individuals polled expected "exceptional measures" from the government to answer to the French so-called "State of War" (Ifop 2017). In 2015, 48% of the individuals polled were in favour of reinforcing the State of Emergency and 38% were in favour of maintaining it as it was (Ifop 2016). In 2017 and despite the adoption of the OCT&F law, 92% of the polled individuals felt insecurity *vis à vis* terrorism and 81% were against leaving the State of Emergency (Ifop 2017). The then presidential candidate Macron stated in 2016 that there were sufficient French counterterrorism measures to answer to terrorist threats and that it was necessary to abort the State of Emergency while "detoxifying ourselves from the permanent resort to the law and the relentless modification of our criminal law" (Macron 2016, 185). The adoption of the SILT law demonstrates the political trap of leaving the State of Emergency with a legislative *status quo* while the terrorist threat remains similar. This is even more problematic as the alarm calls from important factions of civil society (9 organisations) and from scholars (300 scholars) that were made in the media were dismissed by the executive and the majority of the legislature.[4] A recent report made by the liberal think tank Terra Nova (2018) reported the weakness of the parliamentary debates and shed light on the reluctance of the legislature to discuss technical and complex questions related to terrorism. To conclude, the adoption of both legal reforms triggered by the necessity to fight terrorism with so-called more "effective tools" by the executive with resounding majorities demonstrates how exceptional measures adopted in the context of the state of emergency can indeed become permanent (Agamben 2005). The executive, by demanding more power to the legislature, creates legal provisions that could fall within the enemy penology and pre-crime frameworks. Nonetheless, four measures of the SILT law that are inspired by the State of Emergency are, in theory, supposed to be reviewed with the possibility to be revoked in 2020. Due to their exceptional nature, the measures will be subjected to parliamentary control (Vie Publique 2017b). As the UM (2017) recalled, an observation of the history of the counterterrorist legislation demonstrates how seemingly temporary nature tends to become permanent.

## The sooner the repression the safer: moving upstream on the iter criminis

In this section, the willingness of the government and the legislature to adopt a pre-emptive framework to fight terrorism will be illustrated by analysing several legal provisions from the OCT&F Law and the SILT Law. These two omnibus legislations do not limit themselves to these measures and many more could be subject to analysis.[5] This is particularly true for the complex topic of intelligence or its "judicialization" thereof that could be detrimental for individual rights. The new intelligence techniques inserted in the SILT law (art.15) deserve a joint and autonomous analysis with the recent French legislation on Intelligence of 2015 (Law n° 2015–912) and the OCT&F law with regards to the alignment between the powers of the judiciary police and the power of the intelligence services and its consequences for criminal law (see Hodgson 2013; Cahn 2016). The pre-emptive trend going in line with the reinforcement of executive powers that are strongly guided by Intelligence will be partially discussed in the procedural section.

The OCT&F Law created a new offence to prevent online jihadist propaganda (Senators Bas and Troendlé in Senate 2016). The provision criminalised the habitual consultation of online communication service which makes available messages, images or presentations which directly provoke the commission of acts of terrorism which consists of voluntary homicide (art. 421–2-5–2 Crim. Code). Scholars analysed this offence as a "derivative" offence of advocating terrorism because the incrimination does not directly target the authors of advocacy or provocation of terrorism but those who have consulted the online content (Thierry 2016). This new incrimination was declared unconstitutional by the French Constitutional Council due to the absence of characterised intent in relation to the terrorist undertaking (Decision 2016–611). The Constitutional Council highlighted the existing broad powers granted to the authorities to cope with terrorist threats and considered that this offence "jeopardised the freedom of communication in a way that is not necessary, adapted and proportionate" (§16). Without this intervention, the measure could have been seen as creating a genuine pre-crime incrimination of "a preparatory act of a preparatory act" or a conduct that is loosely connected with the terrorist act itself (Wilson and McCulloch 2015). The decision from the Constitutional Council demonstrates what Bigo (2007) and Humphreys (2006) criticized about Agamben's theory, namely the underestimation of "the judicial brakes on the state's proclivity to expansionary legalism" (684). This decision is often used by the CNCDH (2017) and civil society organizations (e.g. UM 2017) to prove that France is already well equipped to act proactively to the commission of a harmful act. Besides, the willingness to criminalise any act that could potentially intervene at the earliest stage of the terrorist *iter criminis* without creating terror in itself is symptomatic of the enemy penology.

In the following section, three additional administrative provisions will be discussed in order to demonstrate the eagerness of the executive to detect and prevent any potentially risky behaviour at the earliest stage possible. The merger of administrative and criminal law can be problematic with regards to the principle of separation of power and for the individual rights of the person concerned (see procedural section).

### Administrative control upon return to national soil (art. art. L-225-1 intern.sec. code)

This administrative measure adopted by the OCT&F law establishes an administrative control "for the individuals that have left national soil and to which *there are serious reasons to believe* that they travelled abroad in order to join terrorist operations in conditions that may infringe

*public security* when the individuals return on French soil" (art. L-225–1 Internal Security Code). The administrative control can include diverse obligations and interdictions, going from the house arrest of the individual (maximum 8 hours out of 24 hours) to the obligation to appear periodically at the police department. The Minister of the Interior and the people under its authority, the Prefects, are competent to decide the measure. There are two main reasons to question the administrative nature of this control. First, the violation of the measure is criminalised and can result in three years imprisonment and 45, 000 euro fine (art. L-225–7 Intern. Sec. Code). Second, the Paris Prosecutor of the specialised counterterrorist section (member of the judiciary) is directly informed of the measure. The concerns regarding the intrusion of the executive by circumventing the judiciary power will be discussed in the following section. The drastic administrative control is a concrete example of the precautionary principle guiding the fight against terrorism. It is understandable that the Government would like to avoid cases of "returnees" vanishing into anonymity once they are back on national soil, which could indeed pose a threat to the population (Impact Study 2016). The aim is to "raise doubt over the terrorist activities undertaken or contrariwise to have a confirmation of these activities" (Impact Study 2016, 75). The confirmation could potentially give the authorities substantive elements to open a preliminary investigation (*Ibidem*). It is relevant to note that there is no information on the effectiveness of this measure. The Government stated that the "judicialization" of this administrative control was impossible because the sole return of the individuals on national soil could hardly give the judicial authorities sufficient substantive elements required for their intervention (Impact Study 2016).[6] The dynamic "better be safe than sorry" is clear and the legislature chose to use the vague wording of "*serious reason to believe*" and "*public security*", leaving substantial discretionary power to the executive. Cahn (2016) highlighted how the imprecise description of substantive elements of the offence (e.g. the broad threat to public security) combined with severe sanctions could be indicative of the enemy penology. Furthermore, this disposition is also largely inspired by a state of emergency measure (art. 6, Law n°55–385) and the Commission Nationale Consultative des Droits de l'Homme (2016a) views with a jaundiced eye this transposition into ordinary law, which can lead to the normalisation of the exception, reinforcing therefore Agamben's argument about the permanence of the *State of Exception.*

### *Individual measure of administrative control and surveillance (hereafter MICAS art. L228-1 to L228-7 intern. sec. code)*

The MICAS adopted by the SILT law can be seen as an aggravated extension of the administrative control discussed above and does not require the intervention of a judge. For the sole purpose of preventing an act of terrorism "any individual for whom there *are serious reasons to believe* that his/her *behavior* constitutes a particularly serious threat to public security and public order *and* who *either* habitually enters into relations with individuals or organizations inciting, facilitating or participating in acts of terrorism, *or* who supports, disseminate (…) or adheres to *thesis* inciting the commission of acts of terrorism or advocating such acts" may be prescribed distinct obligations and interdictions by the Minister of the Interior. The obligations and interdictions can include orders such as leaving a predetermined territory (e.g. the municipality or the department if the individual consents to electronic monitoring), reporting periodically to the police/gendarmerie units, not appearing in specific places, or not being in contact with certain individuals (art. L 228–4 Intern. Sec. Code). The violation to these obligations is

criminalized and punished with 3 years imprisonment and a fine of 45 000 euros (art. L228-7 Intern. Sec. Code). Following the Impact Study (2017) of the SILT law issued by the government, the goal of the MICAS is to restrain the liberty of circulation of the individual in order to facilitate their surveillance while no judiciary procedure is open against them.

This measure that could be labelled as typically pre-crime is a broader "house arrest" and is enshrined in the precautionary principle as the latter further distend the link between the terrorist act in itself and the criminalised actions described above. Following the combined comments of the SAF (2017), the Ligue des droits de l'Homme (2017), the Commission Nationale Consultative des Droits de l'Homme (2017) and the UM (2017), the criteria used to trigger the measure are fairly broad and imprecise, which leaves substantial room for subjective interpretation by the administrative authorities and jeopardises the principle of legality. Indeed, instead of having concrete substantive elements that could trigger this coercive state action, the "*serious reasons to believe*" formula was chosen. It is the general behaviour and not the concrete action of the individual that is targeted and the "*particularly serious threat to public order*" is not clearly defined. With regards to the other conditions that could trigger the measures, the notion of "*habitual relation*" was considered problematic as there was no indication of how it would be interpreted, and it could disproportionately impact the acquaintances of the individual. In addition, only "habitual relation" is required, without evidence of any concrete participation or the facilitation of an act of terrorism (even a preparatory act). Furthermore, the link between the targeted acts and the terrorist action is increasingly distant as the support or the adhesion to a so-called terrorist "thesis" can be based on an individual's opinions or beliefs. Additionally, they can be voiced within the private sphere and not the public one (Impact Study 2017) which raises doubts in terms of how the administrative judge will be able to control them. The absence of judiciary control attached to these broad and imprecise administrative measures that restrain the freedom of an individual could have a hidden purpose if the conditions and obligations are violated. As Poncela (2016a) explained, the heavy criminal sanctions imposed in the case of violation of the administrative obligations sanctions . This is true as some of the MICAS might be hard to comply with to for the individuals. Therefore, the aim of the measure could be for the authorities to "bet" on the future violation of the conditions leading to the incarceration and therefore the exclusion of the enemy that is deemed unable to be rehabilitated by society due to his disruptive indiscipline (Cahn 2016).

### *The administrative visits and seizures (art. L229-1 intern.sec.code)*

The conditions of application of the visits and seizures are fairly identical to the MICAS and triggered similar criticism. A common remark being that both measures are clearly inspired by the precautionary principle which is in complete breach of the fundamental principles of criminal law, notably the principle of legality. The choice of terms such as "*serious reasons to believe*" instead of concrete substantive elements prevent individuals from adjusting their conduct vis a vis the law as they are unable to precisely identify the targeted behaviours (Défenseur des droits 2017). Nevertheless, and contrariwise to the MICAS that are decided under the sole information of the Public Prosecutor of the Republic and the competent district Prosecutor, the visits and seizures have to be authorized a priori by the judge of liberty and detention (sitting judge within the Paris

Regional Court). As will be explained below, this additional guarantee is not immune from numerous criticisms.

## *A derogatory (criminal) procedure for the enemy?*

In this section, the specific and alternative procedure that "the enemy" will face if the aforementioned measures are taken against them will be highlighted. This illustrates, to a certain extent, Agamben's theory on the intrusion of the Sovereign within the judiciary power and how it serves as a mechanism to install an enemy penology that is pre-emptive in nature. This section will reflect more broadly on the democratic principle of the separation of power, the consequence of its violation for individual rights as well as the potentially discriminatory effects of the measures on those perceived as the "enemy" by the French administration. In the French context, it is difficult to produce statistics on the potentially discriminatory nature of these measures and their impact on specific communities. Indeed, there is a prohibition against the collection of national statistics on minorities or on particular religious groups. The numbers on the measures concern solely the amount of measures decided for a period of time. As an illustration, in October 2018, the Commission of Law was charged with the oversight of the implementation of the SILT law, and at this time they observed that 70 MICAS were adopted and among them, 68 were renewed (Decoeur and Sulzer 2018). Many of the adopted MICAS concerned individuals who were previously subject to a house arrest under the State of Emergency law. Following her visit to France, the UN special rapporteur stated that it was clear to her that the French Arabic and/or Muslim communities were the ones particularly targeted by these measures, both under the State of Emergency law and under the SILT Law (Ni Aolain 2018). On the potential discriminatory impact of the measures, the reader is invited to read the interventions of the collective against Islamophobia in France (CCIF 2017) as well as the Action for Muslim's Rights Organisation (ADM 2017).[7]

The circumvention of the judiciary by the executive in the OCT&F and the SILT laws is visible in different manners. First, regarding the legal hybrids discussed above, most of the measure are decided by the administrative authorities and solely require the information of the Public Prosecutor of the Republic and for the MICAS the competent district prosecutor. More generally, the OCT&F Law substantially reinforced the investigative powers of the public prosecutor and aligned these powers with those of the instructive judge (e.g. placement of ISMI catcher and the night home raids, CNCDH 2016). This triggered remarks as the choice of the prosecutor at the expense of the instructive judge will have consequences in terms of individual rights.[8] The rights of the individual during the preliminary investigation (prosecutor) and during the instruction (instructive judge) are not the same.[9] In addition, while the French Public Prosecutor is a magistrate and is therefore member of the judiciary, he is not considered as an impartial and independent authority. As the European Court of Human Rights stated on a previous French case, "the guarantee of independence of the executive power and the interested parties excludes that the prosecutor can act at a later stage against the accused in the criminal process" (Moulin v. France 2010, §124). Following the French governmental website Vie Publique (2012), the status of the prosecutor is in contradiction with the principle of independence of the judiciary power for two reasons: due to the specific way of

nominating the prosecutor and their status which makes them report directly to the Ministry of Justice, and the fact that he can receive instruction about the prosecution from the Minister of Justice. Cahn (2016) explained that in matters as political and sensitive as terrorism and due to the extremely invasive means of investigation, "the intervention of a magistrate, independent of the executive, is a primordial guarantee for individual rights" (104). In theory and following symbolic modifications of the prosecutor's obligation inserted by the OCT&F Law, the prosecutor has to control the legality of the means used in the investigation as well the proportionality of the investigative acts with regards to the gravity of the facts (Impact Study 2016). However, the prosecutor's office is known to be overworked, therefore with regards to their new missions, it is legitimate to question their ability to control all the acts conducted by the police officers under their authority (Paye 2016). According to Beaume (2014), "the more the prosecutor's office will embrace an investigative role, the less it will be possible to give him monitoring powers" that should then be given to sitting judges (29).

Second, the circumvention of the judiciary was accomplished by adopting administrative measures instead of criminal ones, which would have required intervention from the sitting judges, apart from the visits and seizure decided by the judge of liberty and detention. This has serious consequences as the administrative procedure is distinct and less protective than the criminal one. To begin with, the competent judge is the administrative one and, unlike the judiciary judge, only controls the measure *a posteriori*. Besides, his control is not systematic as the individual has to seize the administrative judge. The eviction of control from the judiciary for an extremely coercive measure is troublesome and unjustified, notably for the administrative control and the MICAS. These measures are decided by the administration and *eventually* controlled by the administrative judge who is not supposed to be the one who decides on individual liberties. According to a common interpretation of the article 66 of the French Constitution, the guardian of the individual liberties is the judicial authority. Nevertheless, in two controverted opinions, the Constitutional Council created a dichotomy between situations that are "privative" of liberty, requiring the intervention of the judiciary judge, and situations that are only "restrictive" of liberty.[10] Both the administrative control and the MICAS in this case were only considered "restrictive" and not "privative" of liberty. Regarding the administrative control, the first President of the Court of Cassation Louvel (2016) denounced the dangerous circumvention of the judiciary power which was controversially authorised by the Constitutional Council. Practitioners' organisations also identified that the authorities had disposed of the necessary means in criminal law to reach their goal. Indeed, for the administrative visits and seizures, the criminal procedure already allowed visits and seizure, including night home raids in terrorism matters (SAF 2017). Regarding the MICAS, French law already criminalised the provocation and the advocacy of terrorism (art. 421–2-5 Crim. Code) and the reproduction or transmission of data making the advocacy or provoking acts of terrorism (art. 421–2-5–1 Crim. Code) (UM 2017). As highlighted by the Constitutional Council (2017), the authorities already have at their disposal substantial legal provisions which allow them to act preventively. Lastly, the Commission of Law of the National Assembly (2016) produced a report on the ineffectiveness of the state of emergency measures in the long run.

Third, the administrative regime, unlike the criminal procedure, reverses the burden of proof on the accused as they have to contest the elements brought before them by

the administration (SAF 2017). In addition, the measures are adopted mostly (and at times solely) on the basis of white papers coming from the intelligence services proving the so-called threat posed by an individual (Journal du Droit Administratif 2016). These factual observations are unsigned and undated and there are no indications about their provenance or their accuracy due to the national security argument (*ibidem*). Despite constant criticism, the Council of State (2015) authorised their use as evidence if they are submitted to adversarial debates and are not seriously contested by the defendant.[11] As the Commission Nationale Consultative des Droits de l'Homme (2017) recalled, the white papers should only be considered if they are submitted to the adversarial debate, if they are sufficiently circumstantial and precise and backed up by extrinsic complementary elements. Yet, in practice, judges have severe difficulties to evaluate their evidentiary value due to the presence of gaps, subjective elements and their imprecision. Besides, defence lawyers expressed their concerns in adducing evidence to the contrary (Commission Nationale Consultative des Droits de l'Homme 2017, 10). Amnesty International (2017) was able to consult the white papers issued by the Ministry of the Interior for the cases of the 28 individuals subjected to such measures. The content of the white papers justifying the MICAS and the house arrests during the state of emergency confirmed the concerns highlighted by the UN Special rapporteur. The religious practice or behaviour of the targeted individuals perceived by the administrative authorities as linked with jihadism or radical Islam were among the justification underlying the adoption of the measures. The religious practices were illustrated as follow: possession of CDs of songs and koranic recitations, the vocalization of the desire to live in a Muslim country, the clothing style of an individual, the link with another individual that "practice Islam rigorously", etc. As explained earlier, the individuals against whom MICAS have been decided will only receive a copy of the white paper if, and only if they contest the decision in front of the administrative judge in a period of two months following the notification of the decision (Amnesty International 2018).

Fourth, even when the authorisation of the judge of liberty and detention is required, the same remarks can be made vis-a-vis the use of the white papers. The judge will not have any instructive power to request additional elements to back up the proofs brought to him by the administration (Defenseur des Droits 2017). Interestingly, Dreuille (2012) stated that when the judiciary was to intervene in the procedure, one could not conclude in the existence of an "enemy penology". Nevertheless, as Cahn (2015) recalled, one should look at the quality of the control of the judge, that could in practice be purely formal. In this case, the control of the judge of liberty and detention seems illusory. Because the preventive logic prevails in the investigation and the material elements of the offences are tenuous, it can be very problematic for the control of the judge, both administrative and judiciary (Cahn 2016). The SAF (2016) also expressed that an effective control is almost impossible due to the size of the file and the rapidity to which the judge has to make its decision. As Ortiz (2018) specified, the capacity of the judiciary in these cases is severely limited. There are only 11 judges of liberty and detention in the Paris Regional Court and they already have 384 cases involving 1200 individuals on whom to adjudicate. Therefore, the control of the legality and proportionality of the investigative acts can only be formal. This was confirmed by the weak rejection rate (12.5%) of the visits and seizure authorized between the 30 October 2017 to 18 May 2018 (Decoeur and Sulzer 2018).

Combined together, it becomes clear that by making the executive (here the administration) the key actor in the process, the enemy will face a distinct and less protective (administrative) procedure due to his specific untrustworthy status.

## *Neutralization as the key to security*

In her critique of Jakobs, Krasmann (2007) recalled that the enemy has to be neutralised, excluded and even extinguished. The clearest illustration of this neutralization and exclusion is the creation of the "real perpetuity" sentence for terrorist crimes adopted by OCT&F Law (art. 421–7 Crim. Code and 720–5 Crim. Proc. Code). It consists of a sentence of life imprisonment coupled with an unlimited period preventing any arraignment of the sentence. This unlimited period was reduced to thirty years by the European Court of Human Rights, after which, the case should be examined by a Sentence Enforcement Court in order to give the individual a "glimmer of hope" (see ECtHR, *Bodein v. France*, 2014). While the "real perpetuity" already exists for two particular cases, the OCT&F Law added an important twist for terrorist crimes punished with life imprisonment. The minimum period of thirty years is now coupled with a constraining mechanism that can be compared to an unprecedented obstacle course limiting substantially the French Sentence Enforcement Court in its possibility of arraignment of the sentence (art. 720–5 Crim. Proc. Code). The obstacle course is only of application in terrorist cases. First, the reduction/termination of the minimum period is only possible if the individual has been incarcerated for at least 30 years. Then, the French Sentence Enforcement Court should seek the opinion of a special commission composed by 5 magistrates of the Court of Cassation that has to evaluate the eventual termination of the decision of the *Assise Court*. In addition, the individual should manifest serious guarantees of social rehabilitation. The reduction/termination should not be prone to disturb public order and the opinion of the victims have to be collected *a priori*. Finally, a college of three medical experts has to evaluate the dangerousness of the condemned individual.

The initial goal of this disposition was to abolish the faculty of arraignment of the sentence in terrorist cases, plain and simple, leading to a real-life imprisonment. Deputies and Senators believed that the precautionary principle should be privileged due to the destructive logic of the convicted individuals (Deputies Ciotti and Popelin in Assemblée nationale 2016). However, France would have been in an untenable situation with regards to its constitutional and international obligations, hence the creative making of the obstacle course. Scholars, several senators and deputies denounced the development of a criminal law of dangerousness, further from the rehabilitative principle of the French criminal justice system (Deputy Gontier-Maurin and Benbassa in Sénat 2016; Salas 2016). It possible to see a trace of enemy penology in French law as the incapacitation of the individual in order to make safety, and the protection of society the absolute priority by eliminating the individual from the society (Krasmann 2007; Cahn 2016). The several and sometimes confusing obstacles demonstrate this preemptive logic. The medical evaluation of the dangerousness of the individual is disturbing because terrorism was never considered as a disease, the guarantees of rehabilitation that the individual must demonstrate seem unreachable due to the fact that the individual was imprisoned for 30 years (Thierry 2016; Poncela 2016b). Lastly, the possibility of disturbance of the public order is highly subjective and based on prediction (Cahn 2016). In short, the probability for the individuals to have their minimum period

reduced or terminated is just an illusion. With this real perpetuity sentence, France embraces an equilibrist role with regards to its international human rights obligations notably with regards the European Court of Human Rights jurisprudence and the "glimmer of hope" that has to exist for detainees.

## Conclusion

In this article we aimed to illustrate the strong pre-emptive, exceptional and exclusionary nature of French counterterrorism legislation by analysing recently introduced measures through a combined theoretical lens. In so doing, we aim not only to contribute to a deeper knowledge of the French case, which is extremely interesting in the light of the high number of attacks the country has faced in recent years. Nevertheless, by looking at the French case and by drawing extensively on the French scholarship, our analysis has shown that under the pressure of new terrorist attacks and the fear that previous attacks have installed upon the population, the French counterterrorism apparatus has branched out even more. This inflation of counterterrorist legislations strongly inspired by State of Emergency's measures suggests, as Hennette-Vauchez and Slama 2017) pinpointed, that the French administration machine has become accustomed to its excessive powers. The scholars argued that the administration would become unable to act without these powers, despite their questionable effectiveness in fighting terrorism. Due to a disbalance between the various branches of state power – in particular the limited role of the judiciary compared to the strong role of the executive – these recent measures seem to deepen the exceptional and pre-emptive logic in which potentially dangerous subjects have to be identified as "the enemy" as soon as possible in order to then be contained and dealt with.

Would all these troublesome legal developments suggest that France is developing into a "security State" as Agamben previously suggested (2015)? Cassia (2017) noted that it would be erroneous to conclude that France would not respect the rule of law as there are still checks and balances in place allowing for the judiciary or the administrative judges to perform their tasks in terms of protection of individual liberties. In that sense, he joins Bigo (2007) and Humphreys (2006) who recalled that the important mechanism of judicial oversight should not be overlooked and dismissed directly as Agamben tends to do. However, Cassia (2017) fears a gradual decline of the rule of law in France, where the protection of the public order will take precedence over the protection of civil liberties to the pace of the adoption and the staking of counterterrorist legislations. Besides, as Cahn (2016) and Ortiz (2018) recalled, one should look at the quality of the control performed by the judges, especially when facing capacity constraints and sensitive terrorist cases.

As stated earlier, it is impossible, regarding the absence of systematic and in-depth empirical research on the concrete impact of the SILT law and the OCT&F Law on the French population to conclude in an automatic discriminatory treatment on behalf of the French administrative authorities. However, based on the preliminary information highlighted above, it is safe to assume that the French population will not be submitted to these measures equally. Marianne seems therefore to have lost of her inclusivity. The French values of liberty, fraternity and equality that she embodies appear to be in jeopardy. Only those, regarding notably but not solely their religious practice and the individuals they are in contact with, will be deemed dangerous by the administrative

authorities. This assessment on dangerousness transform them as "potential" enemies for whom surveillance and neutralization without the need for a concrete prosecution accompanied by the necessary procedural guarantees is justified. Based on these alarming concerns, a call for more empirical research on the "law in action", namely on how these laws are concretely being implemented and their impact on a fringe of the French population has to be made. The question of whether Marianne with a Phrygian cap could be treated differently than Marianne with a headscarf has to be seriously examined.

## Notes

1. Loi n° 2016–731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale.
2. Loi n° 2017–1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme.
3. OCT&F Law: 474 votes in favour, 32 against and 32 abstention in the National Assembly. In the Senate: 299 in favour, 29 against, 18 abstention. SILT law: National Assembly: 415 in favour, 127 against, 19 abstention. Senate: 244 in favour, 22 against, 73 abstention.
4. See Mediapart (2017) for the 9 civil society organizations and Liberation (2017) for the call from the scholarship on the banalization of the state of emergency.
5. Among others, the ISMI-Catcher and the administrative detention of 4 hours following an identity check (OCT&F Law), two other state of emergency inspired measures namely the perimeter of protection decided by the prefects, the closing of places of worship (SILT Law). Additional measures requiring future analysis: the identity checks in border zones and the intelligence techniques.
6. According to the Government, the judicial authorities could only intervene on the basis of the criminal association of a terrorist nature or the individual terrorist undertaking (art. 421–2-1 and 421–2-6 Crim. Code). Both dispositions require the use of sufficient material elements (e.g., obtain firearms), which they do not dispose with the simple return of an individual from a "theatre of terrorist operation" (Impact Study 2016).
7. On the potential discriminatory impact of the measures, the reader is invited to read the interventions of the collective against Islamophobia in France (Collectif contre l'islamophobie en France 2017) as well as the Action for Muslim's Rights Organisation (Action droit des musulmans (ADM) 2017).
8. The reader is invited to consult the recent work of Hodgson and Soubise (2017) and Spencer (2016) on the important points of divergence and convergence between the inquisitorial (France) and accusatorial system (Anglo-Saxon) regarding the distinct roles of the judge and the public prosecutor.
9. See the European Justice document on individual rights during the instruction and the preliminary investigation available in https://e-justice.europa.eu/content_rights_of_defendants_in_criminal_proceedings_-169-FR-maximizeMS-en.do?clang=fr&idSubpage=2.
10. See decision n°2015–713 DC on the Law of Intelligence and the decision n°2015–527 QCP on the house arrests pronounced during the state of emergency. Available on the Constitutional Council website: http://www.conseil-constitutionnel.fr/.
11. See the 7 decisions of the Council of State on the matter http://www.conseil-etat.fr/Actualites/Communiques/Assignations-a-residence-prononcees-a-l-occasion-de-la-COP-21-dans-le-cadre-de-l-etat-d-urgence from 11 September 2015.

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## References

Action droit des musulmans (ADM). 2017. "Avis Sur Le Projet De Loi RenforçAnt La Sécurité Intérieure Et La Lutte Contre Le Terrorisme." *ADM*, September 28. http://adm1.d.a.f.unblog.fr/files/2017/09/adm-avis-pjl-securite-septembre-2017-pf-177-ff.pdf

Agamben, G. 1998. *Homo Sacer: Sovereign Power and Bare Life*. trans D. Heller-Roazen. Stanford: Stanford University Press.

Agamben, G. 2005. *State of Exception*, trans K. Attell. Chicago: University of Chicago Press.

Agamben, G. 2015. "De l'Etat De Droit À l'Etat De Sécurité." *Le Monde*, December 23. http://www.lemonde.fr/idees/article/2015/12/23/de-l-etat-de-droit-a-l-etat-de-securite_4836816_3232.html

Amnesty International. 2017. "Europe: Dangerously Disproportionate: The Ever-Expanding National Security State in Europe." *Amnesty International*. https://www.amnesty.org/en/latest/campaigns/2017/01/dangerously-disproportionate/

Amnesty International. 2018. "Punitions sans Procès: L'utilisation De Mesures De Contrôle Administratif Dans Le Contexte De La Lutte Contre Le Terrorisme En France." *Amnesty International*. https://amnestyfr.cdn.prismic.io/amnestyfr%2Ffd506598-cf55-412d-814c-4b07d8f63269_punished+without+trial+-+final+french+version+-+21112018b.pdf

Beaume, J. 2014. "Rapport Sur La Procedure Penale." Retrieved from http://www.justice.gouv.fr/publication/rap-beaume-2014.pdf

Beck, U. 2002. "The Terrorist Threat: World Risk Society Revisited." *Theory, Culture & Society* 19 (4): 39–55. doi:10.1177/0263276402019004003.

Bigo, D. 2007. "Exception Et Ban: À Propos De L' « État D'exception ." *Erytheis, Revue Éléctronique D'études En Sciences De L'homme Et De La Société*, 2: 115–145.

Bogain, A. 2017. "Security in the Name of Human Rights: The Discursive Legitimation Strategies of the War on Terror in France." *Critical Studies on Terrorism* 10 (3): 476–500. doi:10.1080/17539153.2017.1311093.

Bonelli, L. 2008. "Les Caractéristiques De L'antiterrorisme Français: « Parer Les Coups Plutôt Que Panser Les Plaies." In *Au Nom Du 11 Septembre. Les Démocraties Occidentales À L'épreuve De L'antiterrorisme*, edited by D. Bigo, L. Bonelli, and T. Deltombe, 168–187. Paris: La Découverte.

Bordenet, C. 2017. "Le Pouvoir Judiciaire Devient Le Parent Pauvre De L'antiterrorisme." *Le Monde*, March 10. http://www.lemonde.fr/police-justice/article/2017/10/03/projet-de-loi-antiterroriste

-l-etat-d-urgence-n-a-pas-d-efficacite-propre-contre-les-attentats-aujourd-hui_5195634_1653578.html
Boukalas, C. 2014. "No Exceptions: Authoritarian Statism. Agamben, Poulantzas and Homeland Security." *Critical Studies on Terrorism* 7 (1): 112–130. doi:10.1080/17539153.2013.877667.
Boukalas, C. 2017. "UK Counterterrorism Law, Pre-Emption, and Politics: Toward "Authoritarian Legality"?" *New Criminal Law Review. International and Interdisciplinary Journal* 20 (3): 355–390. doi:10.1525/nclr.2017.20.3.355.
Cahn, O. 2015. "Droit Pénal De L'ennemi – Pour Prolonger La Discussion.." In Droit Pénal Et Politique De L'ennemi." *Jurisprudence. Revue Critique* 105–130.
Cahn, O. 2016. "'Cet Ennemi Intérieur, Nous Devons Le Combattre'. Le Dispositif Antiterroriste Français, Une Manifestation Du Droit Pénal De L'ennemi."." *Archives De Politique Criminelle* 38 (1): 89–121.
Cassia, P. 2017. "Sortie De L'état D'urgence Temporaire, Entrée Dans L'état D'urgence Permanent." *Le Blog Mediapart*, October 31. https://blogs.mediapart.fr/paul-cassia/blog/311017/sortie-de-l-etat-d-urgence-temporaire-entree-dans-l-etat-d-urgence-permanent
Codaccioni, V. 2016. "Au Cœur De La Généalogie De L'antiterrorisme, Une Juridiction D'exception: La Cour De Sûreté De l'Etat." *Archives De Politique Criminelle* 38 (1): 47–58.
Collectif contre l'islamophobie en France. 2017. "Quand L'urgence Devient La Règle." *CCIF*, November 2. https://www.islamophobie.net/articles/2017/11/02/quand-lurgence-devient-la-regle/
Commission Nationale Consultative des Droits de l'Homme. 2016a. "Avis Sur Le Projet De Loi Renforçant La Lutte Contre Le Crime Organisé, Le Terrorisme Et Leur Financement, Et Améliorant L'efficacité Et Les Garanties De La Procédure Pénale." *CNCDH*. http://www.cncdh.fr/fr/publications/avis-sur-le-projet-de-loi-de-lutte-contre-le-crime-organise-et-le-terrorisme
Commission Nationale Consultative des Droits de l'Homme. 2016b. "Avis Contre L'état D'urgence Permanent." *CNCDH*. http://www.cncdh.fr/fr/publications/contre-letat-durgence-permanent
Commission Nationale Consultative des Droits de l'Homme. 2017. "Avis Sur Le Projet De Loi Renforçant La Sécurité Intérieure Et La Lutte Contre Le Terrorisme." *CNCDH*. https://www.cncdh.fr/fr/actualite/avis-sur-le-projet-de-loi-renforcant-la-securite-interieure-et-la-lutte-contre-le
Corroyer, J. 2015. ""Droit Pénal De L'ennemi Et Anticipation" in Droit Pénal Et Politique De L'ennemi." In *Jurisprudence. Revue Critique*, 131–144.
Decoeur, H., and J. Sulzer. 2018. "Loi Renforçant La Sécurité Intérieure Et La Lutte Contre Le Terrorisme. Analyse Juridique Critique - Mise En Œuvre - Suivi Du Contentieux Constitutionnel". *Antiterrorisme, droits et libertés* https://antiterrorisme-droits-libertes.org/spip.php?article53
Défenseur des droits. 2017. "Avis Relatif Au Projet De Loi N° 587 RenforçAnt La Sécurité Intérieure Et La Lutte Contre Le Terrorisme." *DDD*, July 7. https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=16676
Delmas-Marty, M. 2017. "De L'état D'urgence Au Despotisme Doux." *Libération*, July 16. https://www.liberation.fr/debats/2017/07/16/de-l-etat-d-urgence-au-despotisme-doux_1584185
Delmas-Marty, M., S. Slama, and O. Cahn. 2017. "Ce Que Des Juristes Reprochent Au Projet De Loi De Sortie De L'état D'urgence." *Le Monde*, July 18. https://www.lemonde.fr/police-justice/article/2017/07/18/des-juristes-vent-debout-contre-le-projet-de-loi-de-sortie-de-l-etat-d-urgence_5161786_1653578.html
Dreuille, J.-F. 2012. "Le Droit Pénal De L'ennemi: Éléments Pour Une Discussion." *Jurisprudence. Revue Critique*, 3: 149–164.
Fédération Internationale des Droits de l'Homme. 2016. "Mesures Antiterroristes Contraires Aux Droits Humains. Quand L'exception Devient La Règle." *FIDH*. https://www.fidh.org/fr/regions/europe-asie-centrale/france/mesures-antiterroristes-contraires-aux-droits-humains-quand-l
Feeley, M., and J. Simon. 1992. "The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications." *Criminology* 30 (4): 449–474. doi:10.1111/crim.1992.30.issue-4.
Hennette-Vauchez, S., and S. Slama. 2017. June 9. "Le Jour sans Fin De L'état D'urgence". *Dalloz Actualité*, https://www.dalloz-actualite.fr/chronique/jour-sans-fin-de-l-etat-d-urgence
Hodgson, J. 2013. "Legitimacy and State Responses to Terrorism: The UK and France." In *Legitimacy and Criminal Justice: An International Exploration*, edited by J. Tankebe and A. Liebling, 178–205. Oxford: Oxford University Press.

Hodgson, J., and L. Soubise. 2017. "Prosecution in France" In *Oxford Handbooks Online*. New York: Oxford University Press. Available at SSRN https://ssrn.com/abstract=2980309
Humphreys, S. 2006. "Legalizing Lawlessness: On Giorgio Agamben's State of Exception." *European Journal of International Law* 17 (3): 677–687. doi:10.1093/ejil/chl020.
Ifop. 2016. "Les Enjeux Prioritaires Aux Yeux Des Français". www.ifop.fr/media/poll/3576-1-study_file.pdf
Ifop. 2017. "Sortir De L'état D'urgence: Un Risque D'opinion Majeur." http://www.ifop.com/media/pressdocument/991-1-document_file.pdf
Jakobs, G. 2007. "Aux Limites De L'orientation Par Le Droit: Le Droit Pénal De L'ennemi." Revue De Science Criminelle Et De Droit Pénal Comparé, 1: 7–18
Jaquin, J. B. 2016. "Antiterrorisme: Le Gouvernement Veut Étendre Les Pouvoirs De La Police." *Le Monde*, January 5. http://www.lemonde.fr/police-justice/article/2016/01/05/antiterrorisme-le-gouvernement-veut-etendre-les-pouvoirs-de-la-police_4841803_1653578.html
Journal du Droit Administratif. 2016. "Les Moyens De Preuve De La Nécessité Des Mesures De Police Durant L'état D'urgence". *JDA* (Dossier 1). http://www.journal-du-droit-administratif.fr/?p=231
Krasmann, S. 2007. "The Enemy on the Border: Critique of a Programme in Favour of a Preventive State." *Punishment & Society* 9 (3): 301–318. doi:10.1177/1462474507077496.
La quadrature du Net. 2017. "L'état D'urgence En Marche Pour Toujours." September 12. https://www.laquadrature.net/2017/09/12/urgence_en_marche_pour_toujours/
Ligue des droits de l'Homme. 2017. "Avis Sur Le Projet De Loi RenforçAnt La Sécurité Intérieure Et La Lutte Contre Le Terrorisme". *LDH*, July. https://www.ldh-france.org/wp-content/uploads/2017/10/avis-détaillé-sur-le-projet-loi-sécurité-intérieure-et-lutte-contre-terrorisme-juillet-2017-envoyé-aux-députés-et-sénateurs.pdf
Louvel, B. 2016. "L'autorité Judiciaire, Gardienne De La Liberté Individuelle Ou Des Libertés Individuelles?" *Cour de Cassation*, January 14. https://www.courdecassation.fr/IMG///L_autorité%20judiciaire,%20gardienne%20de%20la%20liberté%20individuelle%20ou%20des%20libertés%20individuelles%20-%20par%20B.%20Louvel.pdf
Macron, E. 2016. *Révolution*. Paris: Poche.
McCulloch, J., and S. Pickering. 2009. "Pre-Crime and Counter-Terrorism Imagining Future Crime in the 'War on Terror'." *British Journal of Criminology* 49 (5): 628–645. doi:10.1093/bjc/azp023.
Mediapart. 2017. "Conférence De Presse Conjointe, Neuf Associations Demandent Le Retrait Du Projet De Loi Antiterroriste." *Mediapart*, June 11. https://www.mediapart.fr/journal/france/110617/neuf-associations-demandent-le-retrait-du-projet-de-loi-antiterroriste?onglet=full
Molins, F. 2016. "L'action De La Section Antiterroriste Du Parquet De Paris." *Défense & Sécurité Internationale Special Ed* 47: 74–78.
Monde, L. 2017."Projet De Loi Antiterroriste: Les Risques De L'état D'urgence Permanent."*Le Monde* September 13. http://www.lemonde.fr/idees/article/2017/09/13/les-risques-de-l-etat-d-urgence-permanent_5184887_3232.html
Mythen, G., S. Walklate and F. Khan, F. 2013. "'Why should we have to prove we're alright?': Counter-terrorism, risk and partial securities". Sociology 47(2), 383–398.
Neocleous, M. 2006. "The Problem with Normality: Taking Exception to "Permanent Emergency"." *Alternatives* 31 (2): 191–213. doi:10.1177/030437540603100204.
Ni Aolain, F. 2018. "Preliminary Conclusion following the French Visit of the Special Rapporteur on the Protection of Human Rights in the Context of Countering Terrorism."*OHCHR* May 23. https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=23130&LangID=E
Nova, T. 2018. "État D'urgence, Terrorisme Et Sécurité Intérieure Comment Trouver La Sortie ?". *Terra Nova*, March 29. http://tnova.fr/rapports/etat-d-urgence-terrorisme-et-securite-interieure-comment-trouver-la-sortie
Ortiz, L. 2018. "La Sécurité a Absorbé Toutes Les Libertés."*Revue Ballast* January 8. https://www.revue-ballast.fr/laure-ortiz-securite-a-absorbe-toutes-libertes/
Padgett, D. 2004. *The Qualitative Research Experience*. Belmont, CA: Wadsworth/Thomson Learning.
Parmar, A. 2011. "Stop and Search in London: Counter-Terrorist or Counterproductive?" *Policing and Society* 21 (4): 369–382. doi:10.1080/10439463.2011.617984.

Paye, J. C. 2016. "Procédure D'exception sans État D'urgence." Accessed http://www.voltairenet.org/article190918.html
Poncela, P. 2016a. "Les Naufragés Du Droit Pénal." *Archives De Politique Criminelle* 39 (1): 7–26.
Poncela, P. 2016b. "Peine De Prison: La Régression." *RSC*. https://www.laurent-mucchielli.org/public/Article_Poncela_RSC_2016.pdf
Salas, D. 2016. "L'état D'urgence: Poison Ou Remède Au Terrorisme?" *Archives De Politique Criminelle* 38 (1): 75–87.
Seelow, S., A. Dahyot, and J. Baruch. 2018. "De 2013 À 2018, La France Au Rythme Des Attentats."*Le Monde* March 30. http://www.lemonde.fr/societe/article/2018/03/30/de-2013-a-2018-la-france-au-rythme-des-attentats_5278453_3224.html
Spencer, J. R. 2016. "Adversarial Vs Inquisitorial Systems: Is There Still Such a Difference?" *The International Journal of Human Rights* 20 (5): 601–616. doi:10.1080/13642987.2016.1162408.
Syndicat des avocats de France. 2016. "Projet De Loi Renforçant La Lutte Contre Le Crime Organisé, Le Terrorisme Et Leur Financement, Et Améliorant L'efficacité Et Les Garanties De La Procédure Pénale. Analyse Et Contre-Propositions. Du Droit Commun À Un Droit D'exception". *SAF*. https://lesaf.org/wp-content/uploads/2016/05/Analyse-et-contre-propositions_PJL-crime-organise.pdf
Syndicat des avocats de France. 2017. "Projet De Loi RenforçAnt La Sécurité Intérieure Et La Lutte Contre Le Terrorisme: De L'exception À La Création Définitive D'une Police Spéciale Du Comportement Et De La Pensée." *SAF*. http://lesaf.org/wp-content/uploads/2017/07/170727-SAF-Analyse-PJL-Securite.pdf
Thierry, J.-B. 2016. "Actualité Du Droit Criminel- Loi Du 3 Juin 2016". *Sine Lege*. http://sinelege.hypotheses.org/3287
Union Syndicale des Magistrats. 2016. "Observations De l'USM Sur Le Projet De Loi RenforçAnt La Lutte Contre Le Crime Organisé, Le Terrorisme Et Leur Financement, Et Améliorant L'efficacité Et Les Garanties De La Procédure Pénale." *USM*. https://www.union-syndicale-magistrats.org/web2/themes/fr/userfiles/fichier/reserves/rapports/2016/reforme_penale10fev16.pdf
Union Syndicale des Magistrats. 2017. "Projet De Loi RenforçAnt La Sécurité Intérieure Et La Lutte Contre Le Terrorisme." *USM*. http://www.syndicat-magistrature.org/IMG/pdf/observations_pjl_antiterro_220917_-2.pdf
van der Woude, M. A. H. 2012. "Dutch Counterterrorism: An Exceptional Body of Legislation or Just an Inevitable Product of the Culture of Control?" In *The State of Exception in a Time of Terror*, edited by G. Molier and A. Ellian, 57–78. Dordrecht: Republic of Letters Publishing.
Van Munster, R. 2004. "The War on Terrorism: When the Exception Becomes the Rule." *International Journal for the Semiotics of Law* 17 (2): 141–153. doi:10.1023/B:SELA.0000033618.13410.02.
Weber, L., and J. McCulloch. 2018. "Penal Power and Border Control: Which Thesis? Sovereignty, Governmentality, or the Pre-Emptive State?" *Punishment & Society*. 1–19. doi:10.1177/1462474518797293.
Wilson, D., and J. McCulloch. 2015. Pre-crime: Pre-emption, precaution and the future. London: Routledge.
Zedner, L. 2007. "Pre-Crime and Post-Criminology?" *Theoretical Criminology* 11 (2): 261–281. doi:10.1177/1362480607075851.
Zedner, L. 2016. "Criminal Justice in the Service of Security." In *Changing Contours of Criminal Justice*, edited by M. Bosworth, C. Hoyle, and L. Zedner, 152–165. Oxford: Oxford University Press.

## Jurisprudence

*Bodein v. "France*, (App No 40014/10)." ECtHR, 13 November 2014.
*Moulin v. France*. "(App No 37104/06)." ECtHR 23 November 2010.
Constitutional Council. 2017. "Decision 2016-611 QPC." *Conseil Constitutionnel*, February 10. http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date

/decisions-depuis-1959/2017/2016-611-qpc/decision-n-2016-611-qpc-du-10-fevrier-2017.148614.html

## Governmental documentation

Assemblée Nationale. 2016. "Compte Rendu Intégral Des Débats Du 3 Et 6 Mars 2016." http://www.assemblee-nationale.fr/14/cri/2015-2016/20160140.asp

Assemblée Nationale. 2017. "Compte Rendu Intégral Des Débats Du 3 Et 11 Octobre 2017." http://www.assemblee-nationale.fr/15/cri/2017-2018/20180001.asp#P1030644

Impact Study. 2016. "Etude D'impact Du Projet De Loi Renforçant La Lutte Contre Le Crime Organisé, Le Terrorisme Et Leur Financement, Et Améliorant L'efficacité Et Les Garanties De La Procédure Pénale." http://www.assemblee-nationale.fr/14/projets/pl3473-ei.asp

Impact Study. 2017. "Etude D'impact Du Projet De Loi Renforçant La Sécurité Intérieure Et La Lutte Contre Le Terrorisme." http://www.senat.fr/leg/etudes-impact/pjl16-587-ei/pjl16-587-ei.html

Ministry of the Interior. 2016. "Lutte Contre Le Terrorisme: Les Avancées Grâce À La Loi Du 3 Juin 2016." July 17. http://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/Lutte-contre-le-terrorisme-les-avancees-grace-a-la-loi-du-3-juin-2016

Sénat. 2016. "Compte Rendu Intégral Des Débats En Séance Publique Du 29, 30, 31 Mars Et Du 5 Avril 2016." March 29,30,31 and April 5. http://www.senat.fr/interventions/crisom_pjl15-445_1.html

Sénat. 2017. "Compte Rendu Intégral Des Débats En Séance Publique Du 18 Juillet 2018." July. http://www.senat.fr/seances/s201707/s20170718/st20170718000.html#par_80

Vie Publique. 2012. "Quels Magistrats Pour Diriger Les Enquêtes? La Question Du Juge D'instruction Et Du Statut Des Procureurs ." *Vie Publique*. http://www.vie-publique.fr/decouverte-institutions/justice/approfondissements/quels-magistrats-pour-diriger-enquetes-question-du-juge-instruction-du-statut-procureurs.html

Vie Publique. 2016a. "30 Ans De Législation Antiterroriste." *Vie Publique*. http://www.vie-publique.fr/chronologie/chronos-thematiques/trente-ans-legislation-antiterroriste.html

Vie Publique.2016b. "Loi Du 3 Juin 2016 Renforçant La Lutte Contre Le Crime Organisé, Le Terrorisme Et Leur Financement, Et Améliorant L'efficacité Et Les Garanties De La Procédure Pénale." *Vie Publique*. http://www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-renforcant-lutte-contre-crime-organise-terrorisme-leur-financement-ameliorant-efficacite-garanties-procedure-penale.html

Vie Publique. 2017a. "De L'état D'urgence a La Loi Renforçant La Sécurité Intérieure Et La Lutte Contre Le Terrorisme ." *Vie Publique*. http://www.vie-publique.fr/focus/etat-urgence-loi-renforcant-securite-interieure-lutte-contre-terrorisme.html

Vie Publique. 2017b. "Loi Du 30 Octobre 2017 Renforçant La Sécurité Intérieure Et La Lutte Contre Le Terrorisme ." *Vie Publique*. https://www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-renforcant-securite-interieure-lutte-contre-terrorisme.html