“SÉCURITÉ, ÉGALITÉ, FRATERNITÉ”
FRANCE’S RESPONSE TO TERRORIST THREAT

A discourse analysis of the French executive’s narrative
during the state of emergency from 2015 until 2017

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Abstract

Terrorism is a global phenomenon, and one that has become increasingly present and more complex to respond, especially for democratic states. The strategy of terrorism has evolved in such a way that democracies struggle to find the balance between establishing security measures and maintaining their (beloved) liberties. In November 2015, France declared the state of emergency as a response to the terrorist attacks. This thesis aims to understand how the executive justified this extension of the state of emergency, despite a certain level of violation of the civil liberties. At the hand of politicization and securitization theory and on the basis of the review of the use of the measures allowed during the state of emergency, this paper provides an assessment of the narrative convincing the French Parliament to extend the state of emergency six times. It identifies that terrorist threat is a sufficient justification to violate certain civil liberties in exceptional times. The justification of the extension of state of emergency from the executive perspective relies also on the utility of the state of emergency to fight terrorism. The specific justification of the respect of civil liberties and the rule of law.

Key words: Terrorist threat, state of emergency, response to terrorism, securitization, politicization, civil liberties, democracy, legitimization, normalization.
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1 Introduction

“What the terrorists want is to scare us and fill us with dread. There is indeed reason to be afraid. There is dread, but in the face of this dread, there is a nation that knows how to defend itself, that knows how to mobilize its forces. And, once again, will defeat the terrorists”

Declaration of Francois Hollande after the 13th November 2015 (AFP, 2015)\(^1\).

1.1 Defining the problem

From 2014 to 2017 the European Union suffered from an increased terrorist attacks (failed, completed or foiled). According to European Union Agency for Law Enforcement Cooperation (EUROPOL), 62 people died and 819 were injured in jihadist attacks in Europe in 2017.\(^2\) One of the most affected countries was France (Europol, 2018). The number of terrorist attacks evolved, in 2014 one jihadist attack and in 2015 17 attacks. Among the 17 attacks of 2015, 15 took place in France. In 2016, the number of attacks decreased to 13 to double in 2017 to 33 (Europol, 2018; Europol, 2016). In Europe, each sovereign state has established a unique legal system to deal with an immediate threat. The catalysts for declaring an emergency ranges from severe economic crisis to terrorist attacks, armed aggression of a foreign state, and coup d’état (ibid). The response is then called the state of emergency. In this research, the emergency response of interest relates to terrorist attacks. A terrorist attack is a "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them” (UN, 1994). In Europe, states react to emergencies with three different degrees of codification: low or minimal, medium, and extensive. Carl Schmitt’s theory advocates a low degree of codification. He argued for a state of emergency free of the constraints of constitution, while anti-Schmidtian theories insisted on the importance of a state of emergency firmly delimited within the constitution. Schmitt maintained that the government

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\(^1\) Original text : «Ce que les terroristes veulent, c'est nous faire peur, nous saisir d'effroi. Il y a effectivement de quoi avoir peur, il y a l'effroi, mais il y a face à l'effroi une Nation qui sait se défendre, qui sait mobiliser ses forces, et qui une fois encore saura vaincre les terroristes ». Translated by the author.

\(^2\) In this research, terrorist attacks are the jihadist attacks. The distinction made by scholars between separatist, jihadist, left-wing, right-wing terrorism is not applied in this research.
ought to deal with emergencies outside of the laws set in the constitution, such as in Switzerland (Khake, 2009). His ideas still have a considerable influence today. The state of emergency is outside of the law and ordinary political morality is not applicable. According to Schmitt, when a state is under threat, and the state of emergency needs to be declared, the law should be overridden, and the executive power is redirected. It is an open question whether this line of thought is still applicable to the start of the 21st century. In general, is a terrorist threat considered as imminent of a threat, as the executive portrays it? (Ackermann, 2006). The extensive degree of codification of the state of emergency is supported by the anti-Schmidtian school and maintains that emergency situations should be restrained and minimizes the gradual or permanent undermining of fundamental civil liberties. Some states chose for the middle ground and enforce a medium degree of codification, which have a certain degree of codification is cases of emergency, yet allows the government to modify the legislation when necessary. The more extensive the threat is a that a state faces, the more difficult it is for the executive to formulate additional measures.

The night of November 13th, 2015, President Francois Hollande decreed the state of emergency, after the terrorist attacks in Paris (Bataclan) and Saint Denis. This attack caused 130 casualties and wounded 413 people. In France, the state of emergency is a state of exception the President gains exceptional power and civil liberties are restricted. This state is declared in two exceptional circumstances: imminent danger to the public order or in relation to events which amount to a public disaster (Thénault, 2007). It is intended to protect the population and ensures that the government functions in this brief period (Foreign Policy, 2016). A state of threat was certainly present in 2015. Prior to the declaration of the state of emergency, consecutive terrorist attacks occurred: first in the office of Charlie Hebdo in Paris3 then in Isère (a department in France), which was followed by multiple foiled attacks such as in the Thalys (on a high-speed train en route from Amsterdam to Paris). The night of the terrorist attacks at the Bataclan was the catalyst for establishing the state of emergency. The smaller scale attacks still have an impact on maintaining the perception of a high terrorist threat. The three main terrorist attacks were: Charlie Hebdo, the Bataclan, and the Nice attack (in Annex 1, each attack is described), each of which changed the political landscape of France. Each terrorist attack received a great deal of attention from the executive and the media, and s created a general

3 Charlie Hebdo is a French satirical magazine.
climate of insecurity in France. The timeline of the events and (see Figure 1) provides a visual perspective on the repetition of the attacks and the response of the executive.

Figure 1 illustrated the terrorist threat in France from 2015 to 2017, and the additional context events such as the legislative and executive elections. The executive requested the extension of
the state of emergency six times. The aim of this thesis is to understand how the executive justified these six extensions to the Parliament. The state of emergency ended with the enforcement of the counter-terrorism law that replaced the common law of the state of emergency. The counter-terrorism law (see section 4.8) improved/reinforced legal measures comparable to the state of emergency and terminates the state of emergency after 719 days. Since November 1st, 2017, France has returned to normal politics due to the enforcement of this counter-terrorism law.

The declaration of the emergency in France was related to terrorist attacks. In this research, terrorism is defined as follows:

“terrorism is not (just) about how many people are killed, but how effective the attack is in instilling doubts in the minds of people regarding the legitimacy or utility of the existing political values, norms, and practices, then it seems reasonable to assume that components of the terrorist acts that are associated with, or symbolize, values and norms that directly challenge the existing sociopolitical order will elevate the symbolic power of the act, and will lead to an escalation in the state’s response” (Perliger, 2012:507).

In a democracy, the rule of law and the respect of human rights govern the state. The rule of law in its international legal understanding means that all authorities, persons and other entities within the state and the state itself are subject to and act only on the basis of law” (Zwitter, 2012:105). In times of emergency and crisis, temporary suspension of the rule of law is acceptable to quickly manage the threat. However, terrorism is not a threat that can be easily or quickly expunged. Thus, a permanent state of emergency is not a desirable solution either given the absence in principle of the rule of law. The government responded to this dilemma by extending the state of emergency six times. The multiple extensions of the state of emergency issued by the government were authorized by the National Assembly and the Senate (Sénat, 2016). The extensions are intrinsically opposed to the notion of the state of emergency, which ideally is brief to restore the rule of law as soon as possible in order to minimize the infraction of civil liberties. The state of emergency in France for 719 days created tensions between security measures, democratic values, and civil liberties. The principle of democracy is commonly translated as government by the people (Kelsen, 1955; Zwitter, 2012):
“If a state, whose political identity is claimed to be democratic, does not do all in its power to reestablish democratic normality (as soon as possible but at latest at the end of a crisis) then it ceases to be a de facto democracy, moves away from resembling the ideal liberal democracy, and moves close to becoming an ‘authoritarian democracy’” (Zwitter, 2012:105).

The principle of democracy is derogable (minimized) but only until the end of the crisis.

1.2 Problem and research question

The state of emergency is not compatible with democracy and the rule of law if applied for an extended period because they are no longer separated. This is because the state of emergency by nature interferes with the separation of powers. In the case of France, according to Bourdon and Brengarth the state of emergency is drifting away from its primary purpose. Bourdon in his book Les dérives de l’état d’urgence (in English: The drifting away of the state of emergency) critically evaluates how the government enforces each administrative measure of the state of emergency. Bourdon concludes that the normalization of these measures represents a danger for the counterbalance in legislative power (Bourdon, 2017) (see section 2.2). Within the theoretical frames, theories related to the state of emergency revolve around the notion of exceptionalism and a dichotomy between norms and exception (Lazar, 2009). Lazar notes that:

"Emergency is one manifestation of tensions between order and justice, and between constraint and enablement of power, and it demonstrates vividly the dangers of an innocent engagement with politics" (Lazar, 2009:162).

The discourse of exceptionalism and the state of emergency are opposed to with normalized legislation. Security replaces the freedom of citizens (Neal, 2012). While aiming to protecting its citizens from a permanent terrorist threat, the state of emergency infringes upon their’ civil liberties.

Using the narrative of the state of exception, the French executive, enabled by the Parliament, has traded the freedom of its citizens for security. As a consequence of the trade-off between liberty and security during the 2015-2017 state of emergency in France, this research seeks to answer:
How do democratic states justify the restriction of civil liberties to protect their population against a terrorist threat?

And in the specific case of the state of emergency in France, this thesis researches the narrative of the executive;

How did the French executive justify the enforcement of the state of emergency for 719 days to the Parliament from 2015-2017?

The narrative of the executive for justifying the six extensions of the state of emergency is the core focus of this thesis. At the hand of politicization and securitization theory, I will explore the executive’s narrative and argumentation in its discourse to the Parliament.

The social construction behind the acts perpetrated by the multiple terrorist attacks is powerful. The symbolic power can instill a specific perception of the political and social reality in the actors, being in the political arena or the citizens (Perliger, 2012). Bourdieu defined symbolic power as “the power to make people see and believe a certain vision of the world rather than others” (Bourdieu, 1981 in Perlinger, 2012:506). This symbolic power is salient in discourses and argumentation, which is a valuable insight for this research on narrative:

“In a political framework, it [the symbolic power] is a tool (usually used by political actors or state institutions) for imposing specific legitimate vision of the social and political reality regarding core issues such as the boundaries of the national or ethnic collective, power relations between groups within society as well as acceptable political and social values and practices” (Bourdieu in Perliger, 2012:506).

Symbolic power is one of the essential tools used to legitimize an action and create an accepted norm. In this context, there is a need to understand the specific narrative provided by the executive to legitimize and justify the six extensions of the state of emergency in France. According to IFOP pool, 84% of the French declared being in favor of the state of emergency in November 2015 (IFOP, 2015). Because of the numerous terrorist attacks, security became central to public interest. This in turn led politicians to direct their rhetoric to the needs and
emotions of the French citizens, that consisted primarily of anger, resentment, terror, and bitterness (Ipsos, 2016). In addition to the citizens, the National Assembly and Senate supported the extensions of the state of emergency with a vast majority for each extension (though decreasing over time). This research addresses the justification and argumentation of the executive for declaring and extending the state of emergency in France. The research question will be examined from the perspective of politicization and securitization theory with discourse analysis. The choice for the theories and method are explained in the next paragraph.

1.3 Theoretical framework: politicization and securitization

As established previously, France has declared the state of emergency due to exceptional circumstances surrounding repeated terrorist attacks. To understand the narrative of the executive, the theoretical framework must account for this logic of exception. To grasp the executive reasoning and trace the evolution of the narrative, I employ politicization and securitization theories. Politicization and securitization theories can adequately explain how a measure becomes an emergency measure and how it returns to non-politicized issues. Politicization and securitization are strongly intertwined and allow the process of consecutive extensions to be traced. Within securitization theory, Buzan makes an essential distinction between the meaning of securitized, politicized, and non-politicized: “public issues are first politicized and then securitized” (Hama, 2017:6). The verb “politicize” entails that a matter requires a certain level of state and public policy involvement (Buzan et al., 1998:23-24). Non-politicized is a matter not related to the state agenda. A politicized issue become securitized in emergency and/or extreme circumstances (Buzan et al., 1998:23-24). In the end, securitization is an extension of politicization. Politicization and securitization theory are connected to each other because securitization follows after politicization. Figures 2 illustrates Buzan’s perspective on politicization and securitization and the link between both theories. It is notable that the two theories differ in status and action. Politicization theory follows normal political measures and results in a political solution. Securitization theory pertains to emergency measures and the intention to eliminate a threat. The securitization theory is moves from the status of politicized to securitized through the securitization and the desecuritization process. The desecuritization process leads to politicization and the securitization process to securitization. Desecuritization is also a matter of deciding. In this particular case study of France, the President decided on the implementation and revocation of the state of emergency, which does not require an approval of the National Assembly and the Senate. As Floyd argues,
this decision implies responsibility as well. The decision to extend the state of emergency six times was the responsibility of the French executive (first Hollande’s administration and followed by Macron’s administration).

Philippe Bourbeau connected these two theories in his article *Politisation et sécurisation des migrations internationales: une relation à définir.* Bourbeau creates a conversation between politicization and securitization through three points: social construction, subjective action, and co-existence. First, both theories (politicization and securitization) are socially constructed. Based on the concept of social constructivism, the normative dimension is the foundation of the two theories. Second, scholars do not consider politicization or securitization of an issue as an objective action (Bourbeau, 2013). Politicization and securitization are complementary and mutually influential. Rather, “politicization and securitization are certainly two distinct processes but neither mutually exclusive nor necessarily in competition with each other” (Bourbeau, 2013:143). This research focuses on the interaction between the status of a topic

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4 Within the international relations theories, social constructivism revolves around ongoing social practices and interactions capable of changing the norms and values, indirectly influencing the functioning of the international arena (Wendt, 1999).

5 Original text: “Politicisation et sécurisation sont certes deux processus distincts mais pas mutuellement exclusif ni nécessairement en concurrence l'un avec l'autre.” Translated by author.
evolving between non-politicized, politicized and securitized. Due to this interaction, the understanding of politicization theory is necessary to comprehend the interaction.

Before curbing a threat, policymakers first politicize an issue by framing the danger as a security issue for citizens (if the issue is not intrinsically a political matter). In the case of the French state of emergency, the matter at hand, security, is political by nature. The next process in securitization. When an exceptional event such as a terrorist attack occurs, policymakers want to address the crisis efficiently. To do so, they distance themselves from ordinary politics by establishing exceptional measures such as a state of emergency. These exceptional measures are susceptible to infringement upon civil liberties. Securitization represents that process (Balzacq and Guzzini, 2015). Consequently, the two distinct theories are the foundation of this research: politicization and securitization; the latter was pioneered by the Copenhagen School. In chapter 2, the core concepts of securitization theory and specificities of the Copenhagen School are explained.

1.4 Methodology

The research methodology is a qualitative case study design applying discourse analysis: “Discourse is a practice not just of representing the world, but of signifying the world, constituting and constructing the world in meaning” (Fairclough, 1992:64). Through discourse, actors depict a situation from their understanding. Discourse analysis is strongly inductive as the social reality shapes the theory. To tie in the selected theories (politicization and securitization), the research method is a case study with discourse analysis. A key aspect of discourse analysis is intertextuality, in which researchers examine the bridges between texts and the discursive change (Reisigl, 2011). The discursive change occurs through discursive processes, which are processes by which actors make their reality into another reality. This is addressed further in section 2.1.1. Discourse analysis allows the researcher to theorize the social construction presented by the executive and symbolic power applied to convince the Parliament of the necessity of the state of emergency extensions.

The timeframe of this research is November, 13th 2015 until October, 31st 2017, the duration of the state of emergency. Due to the limited time allocated for this thesis, the analysis is restricted to the narrative of the explanatory statements in the draft bills that the executive presented to Parliament. Explanatory statements are a part of the draft bill which indicate in a simple and concise manner why the law is proposed. The mindset, objectives, and modification
to the existing law are also stated in this section of the bill. In the thesis, the discourse of leadership represents the executive narrative towards Parliament. The explanatory statement needs to be particularly convincing because Parliament needs to approve the extension of the emergency in France. The executive requested six extensions, and therefore six explanatory statements were analyzed. The sources of this research are all primary sources in French. The author of this thesis is a French native speaker, and read the draft bills in the original language.

The aim of this research is to understand how a democratic state as France has justified the restriction of civil liberties through the state of emergency to protect its citizens from the terrorist threat. This justification and argumentation are effectuated through discourses and explanatory statements pronounced in front of the National Assembly and/or Senate. The draft bills present the new law requesting the extension of the amended Act of April 3\textsuperscript{rd}, 1995. The focal dates of the discourse relate to the declaration of the state of emergency and its six extensions. The discourses convincing the Parliament were prior to the extensions dates which occurred on November 26\textsuperscript{th}, 2015, February 26\textsuperscript{th}, May 26\textsuperscript{th}, July 26\textsuperscript{th}, and December 15\textsuperscript{th} 2016, and July 15\textsuperscript{th}, 2017, and their abrogation on October 30\textsuperscript{th}, 2017. The citations used in this research were translated by the author.

Two French administrations had to cope with the state of emergency during the presidential and legislative elections in May 2017: the Hollande administration from November 2015 to May 2017 and the Macron administration from May 2017 until October 30\textsuperscript{th}, 2017. The Hollande administration is represented by discourses of the President, Francois Hollande, Prime Minister Manuel Valls, and Minister of the Interior Bernard Cazeneuve. From December 2016 until May 2017, Bruno Le Roux was Minister of the Interior and Bernard Cazeneuve became Prime Minister. The Macron administration is represented by the President, Emmanuelle Macron; by Prime Minister Edouard Philippe, and Minister of the Interior Gerard Collomb (until October 3\textsuperscript{rd}, 2018) and Christophe Castaner (since October 16\textsuperscript{th}, 2018).

In this thesis, the weaknesses of the methodology are multiple. The problem of bias is the most present limitation. The potential bias of the researcher to confirm the hypothesis is the most significant problem to be avoided. Biases originating from the sources could also be more varied, including all the discourses effectuated by the executive explaining the extension of the state of emergency. Throughout the analysis and the research, it was to attempted to mitigate this bias.
1.5 Societal and Scientific Relevance

The societal and scientific relevance of this research is based on three aspects. First, understanding the argumentation of the executive is relevant as it will improve the understanding of the executive’s reasoning. In the case of a new state of emergency, the narrative and social construction created by the executive will be known. Second, the research on the executive narrative is complementary to research effectuated (on the case study of the French state of emergency). Researcher delved into the Parliamentarian debate, on the French identity (Bogain, 2019). Yet none addressed the executive justification to the Parliament. Therefore, this research aims at filling in the blanks of the current research available.

On the theoretical level, scholars have put forward studies on securitization and politicization theory individually (Bourdeau, 2013; Balzacq, 2016), thus far the combination of politicization and securitization theory to explain a phenomenon of securitization has not occurred in the literature. Buzan established the link between politicization and securitization (see Figure 2). As politicization occurs prior to securitization, the ties between both theories are worth exploring further. By using the case of France during the state of emergency, the boundaries of this link are explored too.

1.6 Structure of the thesis

This research is divided into five chapters. Chapter two presents the theoretical framework. It is based on different theoretical concepts of two school of thought, namely politicization theory and securitization theory. Chapter three dives into the case at hand, the state of emergency in France, and, presents the legal framework and the application of the state of emergency in order to comprehend the argumentation made by the executive. Chapter four operationalizes the discourse analysis to the discourse of the executive and the explanatory statements of the executive and depicts the narrative, based on the concepts presented in the theoretical framework. Chapter five, finally, summarizes and reviews the central research question and presents this research’s limitations, generalization and recommendations for further research.
2 Politicization and securitization theory

The decision and justification for remaining outside normal politics to fight the terrorist threat require specific theories to analyze and understand the chain of events. The chapter outlines the core concepts of politicization and securitization to provide an interpretation of how a democratic state justified its response to a terrorism threat. These theories are used as tools to understand the puzzle of this research.

2.1 Politicization Theory

Politicization theory attempts to explain how political issues emerge and disappear. In this research the political issues relate to the terrorist threat and the state of emergency. Politicization theory focuses on the discursive dimension of politics and the dialogue between the disciplines of sociology, politics, and discourse analysis (Rioufreyt, 2017). The discursive dimension analyzes the production of meaning of actors (verbal, non-verbal) and reflects on the meaning it creates for the audience. This research seeks to discover which meaning the executive produces during their discourses to the Parliament. The meaning created by the audience (in this case the French Parliament) led to the six extensions of the state of emergency where the executive was apparently convincing given the achievement of their goal: maintain the state of emergency. Discourse analysis will, therefore, provide an answer to the argumentation of the executive. Typically, politics reflects the voices of their representatives, though politicians also have a certain agenda. Politicization theory allows for tracing an aspect of the process and eventually understanding how an issue has remained in the political realm. In this thesis, politicization theory provides the basis for how French executive justified and framed the application and extension of the state of emergency. Politicization does not entail securitization. Bourdeau argues that the aim of politicization is not to indicate whether an actor politicized a stake or individual, but rather to shed light on the social mechanisms leading to the process of politicization (Bourdeau, 2013:130).

Based on Buzan’s concept of securitization (see section 1.4), politicization theory explores the first step leading to the securitization theory. Before addressing how the politicization theory operates (through different processes), I would like to deepen the conception of politicization
theory through Jacques Lagroye’s diverse research on the politicization of European integration. Politicization is a socially constructed phenomenon, and politics are at the center of this theory (Bourdeau, 2013). In this regard, politicization is the inclusion of a theme or topic into the political world. Jacques Lagroye provides the most useful definition of the politicization process as “either as the process of political requalification of social activities or as the practical transgression of established borders between political and non-political activities” (Lagroye, 2003:360). The definition of politicization involves concepts such as polarization and cleavages, conflictualization, and deliberation (De Wilde, 2011; Zurn, 2016; Hooghe & Mark, 2011; Aid-Aoudi et al., 2011). European integration research conceptualizes politicization theory precisely. Hooghe and Marks emphasize the increasing diligence of decision-making in the approach to the politicization process while Zurn highlights the transfer of an issue "into the sphere of collectively binding decision-making" (Zurn, 2016:167). Factors that activate the political process are political cleavages, societal concerns. In addition to those factors, discursive processes operationalize the politicization theory. These processes are applied to analyze how the French executive justified the declaration and extensions of the state of emergency (see chapter 4).

2.1.1 Discursive processes

As explained in the introduction, discursive processes are the processes applied by an actor to ensure that its reality becomes the reality of the audience. In politicization theory, the politicians’ discourse causes the audience (often citizens or the legislative branch) to perceive a specific practice or norm as belonging to the political realm and eventually accept it (Aid-Aoudia et al., 2011).

A politicization process begins through two different approaches, termed top-down or bottom-up. Local disputes, daily events, or social practices instigate a bottom-up approach, leading to an awareness of the situation by the politicians. The decision to declare the state of emergency was a top-down decision because local disputes within the country did not bring about the extension of the state of emergency. The six extensions were executive propositions supported

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6 Jacques Lagroye is a major French Political Scientist, who gave importance to the field of political science in France, which used to be overshadowed by the jurist (Le Gendre, 2009).

7 Polarisation entails the division of a group into two entities with a different set of opinions or beliefs. A cleavage is a division of the population in dual categories (owners/workers, urban/rural, center/periphery, church/state, left/right). These categories trigger conflict within the population (Lipset & Rokkan, 1967). Conflictualisation and deliberation are intertwined with polarization and cleavages. Deliberation is a technique trying to discuss and solve a diverging point of view while conflictualisation ignites existing diverging point.
by the Parliament and imposed on the citizens. It was imposed on the citizens because they did not directly have an influence on the decision of the declaration (or extensions) of the state emergency. However, the parliament is elected by the citizens, and therefore the public had some influence. Fortunately for the Hollande administration, most French citizens view the initial extension favorably (IFOP, 2017). In section 3.2, I elaborate further on the role of the Parliament and the separation of powers during the state of emergency.

Three distinct discursive processes make an issue salient in politicization theory: legitimization, differentiation, and generalization. The first process is legitimization. “Legitimization refers to the process by which speakers accredit or license a type of social behavior. […] The process of legitimization is enacted by argumentation, that is, by providing arguments that explain our social actions, ideas, thoughts, declarations, etc” (Reyes, 2011:782). Legitimization is not sufficient to speak of politicization; differentiation and generalization are necessary as well (Rioufreyt, 2013). The second process of politicization is differentiation, which has been expounded by Rioufreyt. Rioufreyt understands differentiation to be the affirmation of differences within the society, with different degrees of disagreement (controversial, concurrency, competition), differences of opinion, and values conflict (contentions). Two primary modes of politicization by differentiation are namely deliberation and conflictualization. Deliberation is the discussion of the different perspectives and searching for a compromise between them or an optimal solution for all actors present. In France, deliberation occurs in the Parliament and the Senate, which is particularly important because the extension of the state of emergency has to be accepted by the Parliament and the Senate. Confictualization is slightly more complicated than deliberation. The discourse revolves around friction between opposed parties and one or more cleavages. A conflictual character of discourse appears in content and style of argumentation and directly targets a specific person or entity. Discourse analysis allows researchers to detect whether the speaker is searching for a consensus by extending or narrowing a conflict. The final process of politicization is generalization, which is subdivided into normative and performative generalization. Normative generalization refers to the general principles governing society, making the situation occurring commonly in society. Performative generalization is the operation by which the political realm constructs groups, communities, and the public. Political discourse aims to making another person act, think, and believe in a specific way (Ghiglione, 1989). If applied in a discourse, each of these three discursive processes (legitimization, differentiation, and
generalization) allows the speaker to develop a (un)conscious norm with hidden statements/affirmation.

2.1.2 Actors in the politicization process

The actors in a top-down approach are political actors, media, decision-makers, civil society, and interest groups (the latter are more efficient in issues not connected with the cleavages dividing society) (Hooghe & Marks, 2012). In the field of security, the elite enforces politicization process (Hama, 2017), which is top-down (see section 2.1.1). The politicization process influences the audience and legitimizes governmental decisions initiated political leaders’ incentives. The central actors for this research are the political leaders, the audience, and the legislative branch. Political leaders are the first to foment and shape the politicization process. In France, the President, Prime Minister, and the Minister of the Interior are the central political actors during the state of emergency in 2015-2017. The audience and the legislative branch legitimize politicization and possibly reshape politicization to their will. The declaration and extension of the state of emergency are solely political decisions, and thus citizens have little direct influence on this political decision. To understand how an actor politicized a subject or individual, the next section addresses the variables which initiate politicization.

2.1.3 Variables influencing politicization

The actors and the context define which variables influence the emergence and evolution of the politicization process. With the focus of this research on how democratic states justify their response to terrorist threat, the central actor is the executive. Therefore, the approach is top-down and the bottom-up perspective and its distinct variables are excluded. From the top-down approach, two types of variables can be distinguished: those which influence political leaders to politicize a topic, and those that are context dependent (Hooghe & Marks, 2012). The politicization of a topic requires the presence of multiple variables in which salience, polarization (or contestation), actors’ expansion, and audience engagement come into play (Zurn, 2016:169; Hooghe & Marks, 2012). In this research, I only address the variables relative
to the executive. Hooghe and Marks establish four causes of politicization: 1) the electoral process, 2) a political party’s strategy on an issue, 3) issues dividing a political party and 4) public response to an issue. In an electoral process, a prevalent issue within the audience pressures political parties to tailor their response to their audiences’ central issues, with risks of competition. In 2016, the French presidential election took place, making the state of emergency a prevalent and sensitive issue of the electoral campaign. Related to the first variable, a party can position itself strategically for or against the state of emergency to maintain the popularity of the presidency or its legacy as a president. In that case, the third variable come into play of when the president strategically positions itself. Leaders will typically not raise an issue that divides their own party in times of crisis. In the context of the state of emergency, the state of emergency made security a central issue. The improvement of security has the particularity to be a factor binding citizens, so security and the state of emergency is likely to be central during elections. The fourth variable, the public response or lack thereof on issues pressures the political leaders to justify and legitimize their actions more than usual. The political context influences these four reasons. Depending on the nature of an issue, the politicization process is influenced by its salience, structure, and political competition (Hooghe & Marks, 2012).

As explained previously, politicization is the first level leading to securitization. Therefore, politicization is not sufficient in itself (Zurn, 2015). Politicization provides the first process where a topic moves from the non-political to the political realm. The combination of politicization theory with securitization theory complements the analysis and will improve the understanding of the relation between politicization and securitization, by providing a case-study attempting to related both theories. Besides complementing the theoretical gap between politicization and securitization theory, the combination helps to explain and trace the response of the executive to terrorist threats through the analysis of their discourse. Before delving into the comparison of both theories, I must first explain what securitization entails in terms of the research question and the link between both theories.

2.2 Securitization theory

Securitization theory aims to understand how the government enforces security measures and the mechanisms leading to those policy measures and their justification. In the past 30 years, the expansion of the streams within securitization theory has been tremendous. The theory
seduced researchers by its capacity to truly address security and environmental threats, but also threats related to migration and global pandemic threats (Balzacq, 2018). Evolving from a traditional approach on security to broader subjects, securitization theory engages the military, the state-centric, and the individual approaches to security and the response to a threat. Securitization theory comprises different streams, such as the Paris School, the Welsh School, and the Critical Security Studies. Given the approach of this research centers on the executive, security threat (represented by the terrorist threat) and discourse analysis, the Copenhagen School is the most relevant for three reasons. First, the Copenhagen School was selected based on its most defining feature: security is a speech act. Additionally, its focus on the dangers of security and what security can do is particularly pertinent from the approach of rule of law and civil liberties. This school provides a novel angle for understanding the six extensions of the state of emergency in France.

In the last thirty years, securitization theory has evolved considerably. Conceived at first as an approach or an analytical framework, securitization has grown into a theory with strengths and weaknesses (Balzacq, 2018). Given that this thesis aims to understand how a democratic state justifies the response against a terrorist threat, securitization theory is a perfect fit. With the case study on the state of emergency in France and the executive justification of its six extensions, the securitization theory provides important tools to understand this process. This is firstly because securitization occurs outside of the sphere of ordinary politics, in the state of the politics of exception. Secondly, this is because the focus is of this research is on discourse and social construction. The methodology used in the theory and in this thesis therefore correspond with each other. These similarities will uncover the justification of the French executive. Finally, securitization of an issue is a choice. The executive chose to react to the terrorist the Bataclan terrorist attacks by declaring the state of emergency. Alternatives such as directly establishing a counter-terrorism law were also possible. This choice is justified within the framework of a certain narrative that this research aims to comprehend. Therefore, I first expose its core concepts and the most appropriate stream of securitization theory, the Copenhagen School, to analyze the justification of the executive to extend the state of emergency.

2.2.1 Security studies and its core concepts

Before delving into the core concepts of securitization, the definition of securitization from Balzacq is indispensable to place it subsequently within the state of emergency:
“an articulated assemblage of practices whereby heuristic artefacts (metaphors, policy tools, image repertoires, analogies, stereotypes, emotions, etc.) are contextually mobilized by a securitizing actor, who works to prompt an audience to build a coherent network of implications (feelings, sensations, thoughts, and intuitions), about the critical vulnerability of a referent object, that concurs with the securitizing actor’s reasons for choices and actions, by investing the referent subject with such an aura of unprecedented threatening complexion that a customized policy must be undertaken immediately to block its development” (Balzacq, 2010:3).

Securitization theory is a powerful social construction where actors have the authority (and the legitimacy) to declare an issue a security issue. From then, this issue will belong to the security realm. According to Balzacq, Léonard, and Ruzicka, securitization answers the following questions: “What makes something a security issue? What kind of responses does this call for? What are the specific consequences of agreeing that something is a threat?” (Balzacq, et al., 2016: 496). To answer these questions, scholars created a vocabulary: securitizing actors, securitizing move, referent subject, and object. A securitizing actor is the actor presenting an issue as a threat through a securitizing move, which is in this case study is the executive, the Parliament, and the Senate (Balzacq, et al., 2016). The securitizing move (in this case the discourses of the executive to the Parliament and Senate) is an actor convincing the audience of the legitimate need to have extraordinary measures beyond the regular rules and regulations in place (Floyd, 2007). The referent subject is the threatening entity (in the case of the state of emergency in France, it is the terrorist threat) and the referent object is the threatened entity (the democratic values, Western values). The audience is central because their agreement of the perception of threat confers an intersubjective status to the threat. In this case, the audience is the legislative branch. The context (presented in chapter 3) is salient as well as the adoption of distinctive polities (exceptional or not) (Balzacq, et al., 2016).

In addition to the terms enumerated here above, Balzacq, Léonard, and Ruzicka present four keys concepts: the audience, the power relations, the context, and the practices and instruments.

Audience

The audience is central due to the significance of speech act in the securitization theory, yet is the least developed in the initial theory. The audience has to be on the side of the securitizing
move to be enforceable in the policy. However, the multiplicity of the audience and settings of
the speech act (distinguishing, the popular, elite, technocratic, and scientific settings) adds one
difficulty: who is affected by this discourse? In the case of the state of emergency, the National
Assembly and the Senate are the audience. However, the citizens are the indirectly the audience
given their electoral power over the Parliament. The readiness of the audience to be convinced
and their ability to accept or deny a draft bill on the extension of the state of emergency
constitute the most important concept (see section 2.2.2) (Balzacq, 2005). The need to convince
the audience in order to implement the securitizing move establishes the importance of the
audience in the securitization theory and in this specific research.

Power Relations

The power relations in securitization theory are similar to the concepts employed in
international relations theories. The shape of the securitizing move is determined by the
capacity of actors to make valid claims about threats adhered to by all the present and influential
actors. The securitizing move may, however, disturb a vital power balance. A securitizing move
risks manipulation by the elite to foster or maintain its own power, which orients the
securitization process towards a new path intentionally or unintentionally. Only in the politics
of the extraordinary does securitization occur. However, this process is difficult to trace and
recognize. In France, the power relations between the executive and the legislative powers rely
on an established pattern, namely the approval of the legislative branch which puts the
executive in a demanding position. The separation of powers is the separation between the
executive, judiciary, and legislative powers. The executive power is responsible for
implementing public policy supported by the legislative power. The legislative power enacts
the laws of the state. The judicial power is responsible for interpreting the (correct application
of the) laws and the constitution. It is the responsibility of the National Assembly and the
Senate, the legislative powers, to represent the French citizens. In the context of the state of
emergency, it was their responsibility to accept (or reject) each extension of the state of
emergency requested by the executive. In exceptional times established by the state of
emergency, the separation of powers shifts because the executive is not as dependent on the
judicial institution.

Context
The context is subdivided into various entities (ontological and epistemological) and attempts to answer the following questions: what constitutes the context (ontologically)? Does the context influence the securitizing moves (epistemologically)? By exploring these two aspects, chapter 3 aims at providing an answer to both questions. The explanatory role of the context relies on its constraining and enabling effects, which is the epistemological underpinning (Balzacq, et al., 2016). The influence of the context on the application of the state of emergency will be researched in chapter 3 and mostly in the analysis (in chapter 4). At the ontological level, the context is composed of various layers. The context in the sense of the understanding of security on a local level has its importance. On an epistemological level, the context constitutes a challenge, influencing the securitizing move. Balzacq refines the view on the context with an internalist and externalist shape. An internalist view grants the context an independent status, influencing security in a distinctive manner. Conversely, from an externalist perspective, security is shaped by the context. In the next chapter I expose the context of the research. Between 2015 and 2017, security issues were central in France, shaping the relationship between the executive and the Parliament in those extraordinary times.

Practices and Instruments

Inspired by Foucault and Bourdieu, the final concepts are the practices and instruments. Most importantly, the practices and instruments overcome the challenges of conceptualizing securitization solely as a rhetorical performance. The key insight is to trace “what security practices ‘express’, rather than what they ‘represent’” (Balzacq et al., 2016:506). The focus is then on the instruments/tools, which express a specific security relation and stand for “the mindset of security agents and organize the interaction among members of the field of (in)security” (Balzacq et al., 2016:506). The instruments may lead to the routinization and normalization of practices. The application of the expression of security practices will support to uncover how the executive justified those practices during the state of emergency.

Securitization theory from Buzan’s perspective is the capacity to label an issue as a security issue in a legitimate manner. The boundaries of politics and security are not fixed, and scholars are broadening it to different fields, calling into question some foundational notion of this theory (Balzacq, 2019). I will now address the specific perspective offered by the Copenhagen School.
2.2.2 The Copenhagen School’s perspective on securitization theory

Securitization theory has evolved considerably since its inception and multiple schools and currents of theory have emerged in the process. Using the concepts enumerated above, I will present the Copenhagen School perspective pioneered by Buzan and Wæver. The Copenhagen School focuses on the social construction of security by linking it with the speech act. The risk of security is central, and the answer to “what can security do” is even more central. From the Copenhagen School’s perspective, securitization occurs solely when normal politics are not sufficient. Therefore, this thesis focuses on the justification of the state of emergency by the executive between 2015 and 2017. The latter makes the executive, the Parliament, and the Senate central actors.

The Copenhagen School bases its ontological framework on the interpretation of reality as a social construction. The notion of social constructivism is essential because the speech act is the foundation of this research. The idea of a threat appears through a discourse used by politicians, framing an event as a security issue: “Treating something as a security threat, is always a matter of choice, a political choice” (Wæver, 2000:251). The audience (hearing the discourse) has to accept the presentation of an event as a security threat, otherwise the securitizing move does not apply. In the case of France, the audience (being the parliamentarians and the senators) was generally in favor of the motion (given their approval). Multiple NGOs pointed to the transgression of civil liberties during the state of emergency (Amnesty International, 2018a; HRW, 2016). In principle, within a democratic regime, the measures of the state of emergency cannot be imposed without the audience’s approval. The Parliament provided the citizen’s approved given their representation of the French citizens. The Parliament did approve all six extensions (Legifrance, 2017). Most importantly, the Copenhagen School urges caution concerning the idealization of security, given that the increase of security measures may lead to excesses of power used by the executive. Even though traditional and alternative critical scholars view securitization as desirable and positive in certain conditions, when conceptualizing securitization from the global epidemic point of view, securitization is possible, such as in the case of preventing the spread of AIDS/HIV or the Ebola epidemic. The Copenhagen School delves into the risks of security measures and highlight the potential for security becoming a danger to society.

Even though the Copenhagen School fits within the case study of the state of emergency in France, several scholars have highlighted the limitations of the Copenhagen School (Balzacq,
The relevant limitations for this research question relate to the standard methods (which discourse analysis has become) and the separation of politics and security. First, the Copenhagen School’s methodology is the discourse analysis and considers the speech act an act of securitizing. However, other methods are available and add on the findings from the discourse analysis. This limitation, however true, is not applicable for this research is unraveling what the narrative from the French executive. Second, the Copenhagen School conceives of the securitizing act as when a securitizing actor uses existential threat rhetoric and frames it outside of the realm of normal politics (Buzan et al., 1998). Scholars have criticized this perception because if the cases are only related to exceptional politics, securitization works in a restricted area: the state of exception. However, securitization can occur outside of the state of exception (for example, a global epidemic). The limitation is true yet the scope of this research focuses on the state of exception in France, brought about by the repetitive terrorist attacks. The limitations of the Copenhagen School do not hinder the research of this thesis. Therefore, the limitations of the Copenhagen School are in this specific case, its strength.

2.3 Concluding remarks

Politicization and securitization theories explore how the discourse around the state of emergency and its extension has occurred on various levels. Combining both politicization with securitization theories provides a deeper understanding of the justification and legitimization process. Politicization theory is the first step to securitization. The mechanism applied to politicize an issue is also deployed to securitize an issue afterwards. Securitization theory adds to politicization theory by determining the effects of security measures outside of normal politics are. The combination of politicization and securitization provide a different perspective on the research question and the link between both theories (Bourbeau, 2013). The three points to start the conversation between both theories are: social construction, subjective action, and co-existence. Multiple concepts and processes explained above overlap, such as the normative and performative generalization, return to the normalization, and routinization in the practice and instrument of the securitization theory. The context of both theories and the shared methodology (discourse analysis) offers strong foundations to build on a larger understanding of the politicization and securitization processes. The relationship between politicization and securitization is undeniable, and the boundaries between both theories are permeable.
Before analyzing how the French executive justified the six extensions of the state of emergency, legal and practical enforcement of the state of emergency will be presented, which includes the legal restriction protecting the rule of law. The application of the state of emergency delves into the administration measures and the reality of the separation of powers in France. Chapter 3 describes the context of the state of emergency.
3 The state of emergency in France: Laws, rules, and practices from 2015-2017

Democracies do not usually choose to use exceptional measures to fight terrorism. President Hollande, however, elected after the four attacks to implement the state of emergency within six months. The pressure that democracies have to remain within the legal framework and to ensure political and public legitimacy is strong (Perliger, 2012). This legal framework varies from one country to another. Each democracy responds differently towards terrorist threats. Before I present the legal limitations and enforcement of the state of emergency, I will briefly exemplify different types of response the French executive has.

3.1 France’s type of state of exception, a response to terrorist threat

French legislation specifies three types of state of exception. The founders of the constitution, de Gaulle and Debré, created distinctions to understand how to deal with a situation of emergency according to the type of emergency (Khake, 2009). In the French constitution, the degree of codification is intermediate. During the establishment of the Fifth Constitution in 1958, De Gaulle and Debré were in favor of an “in-between” path. This constitution includes extra-constitutionality powers and a vast transfer of power to the executive in case of emergency. The detailed emergency regulations provide virtually unlimited power in the form of exceptional presidential powers (pouvoir exceptionnels) (Khake, 2009). France’s vast legislative arsenal protects the country against immediate threats. Simultaneously, this precedent jeopardizes France’s separation of powers in a declared state of emergency. However, the French legislation also provides room for maneuvering for establishing further laws against an imminent threat. Formulating an adequate response against terrorism is challenging due to the intangibility of this threat, its unpredictability, and its high societal impact. Historically, the French state of emergency was created to deal with the crisis that followed an earthquake in 1955. In 1955, De Gaulle also applied it during the insurrection in Algeria, a former French colony (Thénault, 2007). According to Thénault, the application of the state of emergency originally raised questions and controversy in 1955, when the legitimacy and the respect for human rights of French troops in Algeria was called into question. After

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9 De Gaulle and Debré were the founders of the Fifth Constitution in France. Michel Debré was the first Prime Minister of the Fifth Republic. He continues to be a strong figure for the Gaullism years.
Algeria, the state of emergency was pronounced only in rare instances. The most recent application of the law was in 2005/2006 with the riots in Parisian suburbs from November 18th, 2005 until January 4th, 2006 (Le Monde, 2015). These riots were the product of social dissatisfaction (Thénault, 2007). In 2015, the declaration of the state of emergency occurred during the Bataclan attacks, yet multiple terrorist attacks occurred in France in 2014 and 2015 (see Figure 1).

The types of state of emergency in democracies varies widely. France has an intermediate level of codification which provides room to maneuver to fight the terrorist threat. The French government has enacted three provisions to establish a state of emergency. Two of them are within the French Constitution of 1958 and one in a statute of 1955: 1) Article 16 of the Constitution ensures exceptional powers to the President in case of immediate crisis; 2) Article 36 of the Constitution is applicable in the case of a state of siege; and 3) the Act of April 3rd, 1955 enables the declaration of the state of emergency by the President (without declaring a state of siege).

3.1.1 Article 16 of the Constitution

Article 16 of the Constitution grants special powers to the executive. The President can declare it in the case of “immediate and serious threat to the French institutions, independence, territorial integrity, or the fulfillment of France’s international commitments, and its constitutional governmental authorities are no longer able to function normally” (Khake, 2009:23). The President needs to consult the Prime Minister, the presidents of the Assemblies, and the Constitutional Council. The President alone can impose the state of exception for 12 days in the French system with the exceptional powers (Khake, 2009). These exceptional powers give the President carte blanche regarding the legislative and executive powers (Khake, 2009; FIDH, 2016). However, during the state of emergency, the President cannot dissolve the National Assembly. In the French Constitution, “paragraph 16 does not require a total collapse of the normal structure of government: the President can seize exceptional powers even if parliament, for example, is functional” (Khake, 2009:24).

3.1.2 Article 36 of the Constitution, the state of siege

Article 36 of the same Constitution is the declaration of the state of siege, which relates to a foreign or an armed insurrection (not applicable to the French situation in 2015). However, the
following two characteristics are important to note: first, the declaration of the state of siege transfers power to the military; second, the state of siege restricts fundamental liberties (Vie Publique, 2018).

3.1.3 Act of April, 3rd, 1955

The Act of April 3rd, 1955 originates from the model of the state of siege, yet is constructed in such a way that the military cannot assume power (Khake, 2009). Created to deal with the Algerian crisis in 1955, then President De Gaulle proclaimed exceptional powers without infringing on human rights and avoided handing over his authority to the military. No powers are automatically transferred to the military authorities during the state of siege (Thenault, 2007). This Act also states that the state of emergency can last a maximum of 12 days. The extensions necessitate a law passed through the parliament. The Act of April 3rd allocates more power to the President, the parliament, the prefects, and the Minister of the Interior than in a time of normal politics (see annex 2) (Khake, 2009). In November 2015, the Act of April 3rd, 1955 established the state of emergency, but with significant amendments and was enforced until November 2017 (Khake, 2009; FIDH, 2016). The Act of April 3rd, 1955 is the foundation for the amended Act of November 20th, 2015. The enforcement of the state of emergency impacts the regular checks and balances of government. In this amended act, the executive has more power than the original and can act without judicial verification, with the possibility of:

“placing anyone suspected of posing a threat to security and public order under house arrest, in a place determined by the prefect; regulating the right to stay and freedom of movement of people and vehicles; and disbanding associations that could compromise public order. The administration also has the power to: ‘order the temporary closure of entertainment venues, drinking establishments and meeting places’; forbid processions and shows; search bags and vehicles; and order the handing over of weapons” (Auriel et al., 2018:214).

3.2 The legal boundaries of the 2015-2017 French state of emergency

The legal framework is the core foundation for the French executive to justify its action. The rule of law restricts explicitly the power of the executive by (in theory) enforcing respect for human rights and the separation of powers. The distinction between legal boundaries and the practices of those boundaries will be explored here.
3.2.1  The separation of powers according to the French Constitution

The separation of powers between the executive and the legislative branches differs during the state of emergency because the power of the executive increases and the power of the legislative diminishes.

3.2.1.1  The executive branch

During the state of emergency, the central actors are the President (initiating the state of emergency), the Minister of the Interior, and the prefect. The prefect and the Minister of the Interior are allowed to execute the articles in the amended Act of April 3rd, 1955. In this regard, the Minister of the Interior and the prefect divide their responsibilities. These divisions mirror the distinction between quick responses and general decisions. The Minister addresses general decisions, and the prefect handles the decisions limited in space or individual. The Minister of the Interior becomes the unique authority of the police (Fardet, 2016). The Act of April 3rd, 1955, and its adaptation of November 20th, 2015, aimed at strengthening the power of the administrative police and the power of the authorities of the central police. The police enforce most of the administrative measures established during the state of emergency. The Minister of the Interior is at the center of all undertaken actions. Fardet, summarizing the power of the executive, states that “this means that under the state of emergency, the decision has only one face, that of the executive; the decision has only one hand, that of the Minister of the Interior, in the center and aware of everything” (Fardet, 2016:161).10

3.2.1.2  The legislative branch

In France, the National Assembly and the Senate constitute the legislative branch. The parliamentarian oversight is intended to provide the government the necessary means to protect public order and maintain the Parliament as guardians of liberties (Guérin-Bargues, 2018). The traditional vision of the legislative power is to keep in check and restrict the inclination of the executive brand for repression. According to Guérin-Bargues, the Parliament traditionally assures the separation of powers and the protection of liberties. During a state of emergency, this tradition has essentially been ignored. In the context of the state of emergency, the Law of November 20th, 2015 requires the executive to inform the National Assembly and the Senate

10Original text: « C’est dire que dans le cadre de l’état d’urgence, la décision n’a qu’un visage, celui de l’exécutif; la décision n’a qu’une main, celle du ministre de l’intérieur, au centre et au courant de tout. » (Fardet, 2016 :161). Translated by the author.
of “the measures taken by the government during the state of emergency” (FIDH, 2016:10). During the state of emergency of 2015-2017, the National Assembly established a monitoring system comparable to an investigatory commission. These special procedures did not impose restrictions or sanctions.

3.2.1.3 The judicial branch

The judicial branch is essential to ensure the protection of human rights and the constitutionality of the new law. The judges and the laws protect the human right. The constitutionality of the law is protected by the Constitutional Council, which is tasked to verify whether each new bill proposed is in line with the Constitution of 1958 and the respect of right and liberties (in general). France has two types of constitutionality controls: a priori control and a posteriori control (Guérin-Bargues, 2018).

A posteriri controls

The implementation of the state of emergency between 2015 and 2017 excluded ordinary court judges from the judicial procedure by creating a posteriori controls. The ordinary court judges were stripped their ability to exercise control of the measures enforced by the executive power with a posteriori controls. The administrative judges received their “letter de noblesse” during the state of emergency (Fardet, 2016). For instance, during house searches, the authorities were allowed to establish a posteriori controls, which entailed that the administrative court judges exercise their controlling power after the administrative measure is enforced (FIDH, 2016). The specific absence of control over the actions of the executive is dangerous for the rule of law. Without judicial control, individual liberties are less protected. The absence of judicial oversight clashes not only with Article 66 of the French Constitution, but also with European and international law, such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). These conventions protect human rights and enumerate several non-derogable human rights that cannot be suspended even during a state of emergency or in wartime (Khake, 2009). Both conventions state that for the application of measures such as the sidelining of ordinary judges, “the existence of a public emergency threatening the life of a nation” (FIDH, 2016:12) is necessary. Furthermore, derogation measures ought to be proportionate to the situation. The jurisprudence of the administrative courts and their highest chambers was restricted during the state of emergency. In this regard, the Minister of the Interior and/or the prefect make decisions on houses arrest
and searches with so-called “white notes.” A white note is “a document produced by the intelligence services for the Interior Ministry, which itself oversees these services” (FIDH, 2016:13). A white note contains a person’s photograph, personal information from the public record, and information gathered by intelligence services (radical practices, travels to conflict zones, connections with radicalized individuals, etc.) (FIDH, 2016). These white notes are not available to the person undergoing one of the administrative measures. It is essential to understand that a person can be under house arrest without knowing why he/she is under house arrest but certain recourses are possible (Bourdon, 2017). Attempted recourses have different results. For instance, the Interior Ministry can rescind the relevant orders before the hearing or add complementary information (usually divulgating an additional white note or rescinding of the order) (FIDH, 2016). These decisions make the decision of house arrest even more partial and in some cases unjustified.

*A priori control*

Before the enactment of a law, a priori control can be carried out while non-mandatory. It applies to all constitutional norms, substantive, relative to rights and freedom. A posteriori control verifies the legislative provisions already in effect that were introduced in 2010. According to Guérin-Bargues, it appears that the executive made all possible efforts to avoid a priori referral to the Constitutional Council. A prior referral to the Constitutional Council would involve the possibility of this Council to rule the unconstitutionality of the draft bill or the Article. This would then also entail the impossibility of applying this Article to fight terrorism. The Constitutional Council is officially the highest constitutional authority which ensures that constitutional principles and rules are upheld by the French Constitution written in 1958. In the case of France, the Constitutional Council can remind the executive of the obligation to follow the Constitution. However, this function only under request.

During the state of emergency, a delicate balance takes place between the protection of the rule of law and the separation of powers. The amended Act of April 3rd, 1955 in 2015 has vigorous elements providing the executive with more restrictive measures. The power split between the executive, the legislative, and the judiciary branches is unevenly distributed, with substantial consequences on its enforcement, possible abuses — use of administrative measures without a (direct) link to terrorism — and human rights violations. The executive may violate civil liberties with the claim that the need to protect public order and security justified those violations.
3.3 The application of the state of emergency in France

Legally, as discussed in section 3.2, the state of emergency offers the government and law enforcement more power to fight terrorism. However, its application diverts at times from its original intention (Crusoé, 2018). Politicization and securitization theory draw a large amount of their explanatory power from the context. Therefore, before analyzing the discourse of the executive to understand how their response against a terrorist threat is justified, an understanding of the context is salient. The application of the state of emergency is here presented with a focus on the administrative measures, the separation of powers, and the role of the parliament during the extensions.

3.3.1 The reality of the administrative measures

Within the Act of April 3rd and its amended versions created after the attacks of the Bataclan, the administrative forces (primarily the police and administrative judges) enforced these administrative measures. The exceptional nature and the power they conveyed are justified by the hand of the figures provided by the state of emergency. The administrative measures are house searches, house arrests, demonstration bans and closing of worship places, and the dissolution of association.

House searches

The houses searches were the most vigorously applied in the first part of the state of emergency. On January 12th, 2016, 3,021 police and 381 administrative summonses occurred. One-third of the police searches occurred in the seven days after the Bataclan and 68% of them were conducted at night-time (Assemblée Nationale, 2017). House searches by day and night require being stated in the bill itself: “Specific mention should in fact be made of Article 11, subparagraph 1, of the law of April 3, 1955, in the decree declaring the state of emergency, or in the law that extends its enforcement, to authorize the carrying out of searches by day as well as by night” (Guérin-Bargues, 2018:214). House searches are one of the administrative measures that infringe the most upon on Constitutional liberties (authorized from November 14th, to May 26th, 2016 and from July, 21st, 2016 and maintained from December 19th, 2016).
As represented in Figure 3, the house searches have decreased over time. This graphic combines the house searches by day and by night. At the start of the state of emergency, the house searches mostly occurred at night-time. According to the figures provided by the National Assembly, since December 22nd, 2016, of the 160 houses searches, only 17 were conducted at night (between 9:00 PM and 6:00 AM), which represents 10.6% of the searches during this timeframe. While between November 14th and 20th, 2015 there was a ratio of 68% to 44%, between November 21st, 2015 and May 25th, 2016 and finally 18% between July 21st and November 24th, 2016.

![Figure 3 House searches ordered during the state of emergency from 2015-2017 (Assemblée Nationale, 2017).](image)

The longer the executive extended the state of emergency, the fewer night time and day-time house searches occurred. The administrative searches ‘form a blind spot in the control process’ (Guérin-Bargues, 2018:224), and house searches are highly unlikely to be obstructed or contested given the a posteriori controls. The judges have no power to stop the house searches before their occurrences. Furthermore, the house searches infringe on many fundamental rights:
1) the right to privacy; 2) the right to be presumed innocent; 3) the right to lead a normal family life; and 4) the right to the protection of personal data.

**House arrests**

The executive power employed during house arrest in the first period of the state of emergency was extensive (see Figure 4). In the presented figure, five periods (P1, P2, P3, P4, and P5) are pointed out corresponding to the . The first period are equivalent to the dates of the extensions of the state of emergency. On June 30th, 2017, 62 persons were placed under house arrest. The average number of days under house arrest was 266 days, and thirteen persons were under house arrest for 365 days. At the end of the first period, the administrative judges renewed only 69 house arrests, and 199 were not (Bourdon, 2017).

![Figure 4 Evolution of the number of house arrest (per period). (Source: Assemblée Nationale, 2017)](image)

In addition to these figures, non-governmental organizations (NGOs) and human rights organizations highlighted how the administrative measure enforced in France during the 2015-2017 state of emergency were discriminatory and oppressive. The testimonials collected attest

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11 P1 is the period from November, 14th, 2015 until February, 25th, 2016.
P2 is the period from February, 26th, 2016 until May, 25th, 2016.
P3 is the period from May, 26th, 2016 until July 21st, 2016.
P4 is the period from July, 22nd, 2016 until December 21st, 2016.
P5 is the period from December 22nd, 2016 until July, 15th, 2017.
that those human rights abuses and persecution (Amnesty International, 2017; HRW, 2016; ICCL, 2018). The house arrests actively impeded on the respect for human rights, especially the freedom of movement (Bourdon, 2017). Bourdon describes house arrests as “a measure of display” (Bourdon, 2017:84). The numbers of house arrests increased after the Nice attack on July, 14th 2016. Bourdon argues that this attack should have called into question the extension of the state of emergency. On a legal dimension, the State Council set a presumption of emergency situation regarding the house arrests within the context of the state of emergency. It is for the administration to apply “particular circumstances” to break the presumption (Fardet, 2016:163). This is the only way, according to Fardet, to guarantee fundamental liberties in the short term in the context of house arrests. Nevertheless, house arrests have consequences for the freedom of movement and are highly intrusive to the individuals’ under house arrest.

**Demonstration ban and closing of places of worship**

For two weeks after the attacks on the Bataclan, the demonstration bans were initially applied in the Paris Prefect of Police, and were effective until November 28th, 2015 (Amnesty international, 2017). In the amended Act of April 3rd, 1955, it is stated that the administrative prohibition of ‘street processions, parades and gatherings’, are possible if and when ‘the administrative authorities can substantiate that they are not in a material position to ensure their security’ (Vauchez, 2018: 704). However, from November 28th to November 30th, 2015, the Minister of the Interior instructed the prefects to ban all demonstrations in France. During that weekend, civil society organizations planned dozens of public assemblies for a common goal: a far-reaching agreement on climate change at the United Nations Conference of Parties (COP 21) (Amnesty International, 2017). The protests had no link with terrorist attacks, and the gatherings were in the name of climate change. The pretext of the executive was that security for all could not be ensured. Following this line of reasoning, all French citizens were instructed to remain at home until terrorism threats had been eliminated. In 2016, the same deviation of the state of emergency occurred when the Hollande administration introduced a new labor law.  

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12 Original text: « Une mesure d’affichage ». Translated by the author.
13 Original text: “Les conditions de l’attentat de Nice impliquaient une remise en cause qui n’a pas eu lieu” (Bourdon, 2017:86). Translated by the author.
14 The labour law was presented in February 2016 received strong resistance from unions and students (Pouchard & Breteau, 2016). This labour law initially enables individual companies to have more lee-way on decisions concerning their employees (firing, pay and working hours) in line with the economic situations. The companies would not be bound to collective bargain procedures. This procedure is perceived by unions such as CGT and
which encountered strong resistance from the student’s network and union groups (Amnesty International, 2017). Acts of violence accompanied the protestors’ resistance. The response from the executive was to scale up the use of administrative measures allowed during the state of emergency, which included the restriction of the freedom of peaceful assembly. The executive (ab) used these powers to prevent public assemblies from November 14th, 2015 to May 5th, 2017. Most of the protests occurred in the context of opposition to the reform of labor law. The necessity and effectivity of these measures have not been proven. The authorities instrumentalized the demonstration ban nominally to “protect public order.”

“Protecting public order is a legitimate reason for restricting the right to freedom of peaceful assembly. However, under international human rights law such restrictions should be necessary and proportionate to the purported aim” (Amnesty International, 2017:6).

Amnesty International strongly suggested applying the administrative measures solely for the purpose declared in the amended Act of April 3rd, 1995. However, individuals with no link to terrorist acts were subjected to the demonstration ban. Their right to freedom of assembly was stripped away without links to acts of terrorism. Moreover, as Amnesty International rightfully claims, the state of emergency and the terrorist threat do not remove the state’s obligation to safeguard the following principle: “any restriction on the right to peaceful assembly is strictly proportionate and necessary to achieve a legitimate aim under international law” (Amnesty International, 2017:6).

The closing of the places of worship is addressed in Article 8 of the Act of April 3rd, 1955. It is possible to close the places “in which utterances constitute provocation to hatred or violence or provocation to the commission of acts of terrorism or apologizing for such acts” (Bourdon, 2017:230-231).15

students as an attempt of the executive to undermine union power and perceive this law as a pro-business law (Henley & Inman, 2016).

15 Original text : “au sein desquels sont tenus des propos constituent une provocation à la haine ou à la violence ou une provocation à la commission d’actes de terrorisme ou faisant l’apologie de tels actes” (Bourdon, 2017 :230-231). Translated by the author.
Dissolution of associations

During the state of emergency, Article 6-1 has rarely been applied as a permanent administrative measure. The dissolution of associations was already possible under Article L 212-1 of the code for internal security (Bourdon, 2017). Why introduce it in the amended Act of April 3rd, 1955? I argue that by including it in the amended version of the Act of April 3rd, 1955, it is possible that the linkage between actions of the state and the dissolution of association has to be made clear to the audience. The executive needs to make tangible actions for the public and its security. In this regard, three cultural associations who animated the mosque in Lagny-sur-Marne were dissolved in January 2016 by the Council of Ministers (Le Monde, 2016a). The former imam was suspected of indoctrinating young civilians to travel to Syria (Bourdon, 2017; Le Monde, 2016a). In 2017, the Ministry of the Interior initiated a procedure of dissolution against Association Sanabil, an association helping Muslim detainees (Bourdon, 2017; Vincent, 2016). This association was on the Ministry’s radar due to their Salafist sympathies and the fact that many former pillars of Sanabil have left to fight in Iraq and Syria (Vincent, 2016). As Jean-Yves Camus said: “the state cannot dissolve a group because their ideology displeases them or by political opportunity. It is the field of public freedom, freedom of demonstration and freedom of opinion” (Bourdon, 2017:228). The execution should, therefore, only apply the dissolution in exceptional situations.

All of these administrative measures have been enforced and at times overused, which calls into question their proportionality and legitimate use. The longer the state of emergency was enforced, the less these measures actually applied. In such a condition, the legitimacy and usefulness of the administrative measures enforced during the state of emergency may be called into question when the separation of powers is dangerously imbalanced. The enforcement of all the exposed administrative measures accompanied the state of emergency. The most common justification of the executive was to ensure the safety of civilians. These measures restricted the civil liberties of French citizens, whether a citizen was suspected of an act terrorist (in the case of house arrests and house searches) or not (demonstration ban). Despite the

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16 Article 6-1 of the Act of April 3, 1955 authorizes the permanent dissolution of associations or grouping deems to bring serious degrees to the public order or to which the activities facilitate this commission or advice (Bourdon, 2017:227)

17 Original text: “L’état ne peut dissoudre un groupe parce que son idéologie lui déplait ou par opportunité politique. On est dans le domaine de la liberté publique, de la liberté de manifestation et de la liberté d’opinion.” (Bourdon, 2017 :228). Translated by the author.
restriction of civil liberties, the executive maneuvers within their legal boundaries and tested the limits of these boundaries.

3.3.2 The separation of powers during the French state of emergency

During the state of emergency, the separation of powers was disrupted, and political power was distributed unevenly among the executive, legislative, and judiciary branches. The executive branch accumulates extensive powers during a state of emergency. The freedom of interpretation between the different amendments provides the space for potential deviation from the original intent of the law. As established above, the application of administrative measures during the state of emergency was used for other operations not always linked with anti-terrorism operations by, for example, cracking down environmental campaigners or drug dealers with the assumption that it finances terrorism (Vauchez, 2018; Bourdon, 2017). Additionally, the administrative measures enforced impose restrictions on three political rights: 1) the right to freedom of movement (travel bans and areas restriction); 2) the right to liberty (the assignation to residence – a de facto prison without bars); and 3) the right to privacy and family life (virtually every administrative measure) (Vauchez, 2018). Furthermore, international organizations and NGOs reported on the discriminatory attitude of the police during the application of administrative measures (CNDHD, 2016).

Legislative power should have increased during the state of emergency. The aim of the amended Act of April 3, 1955, in 2015 is to provide the government the necessary means to protect public order and maintain the Parliament as guardians of liberties (Guérin-Bargues, 2018). Though the traditional conception of legislative power is to restrict the executive’s repressive inclinations, many rights were restricted by the administrative measures in the name of public security. The legislative power surely provided the means necessary to protect public order to the executive power by passing the six extensions of the state of emergency (Vauchez, 2018; Guérin-Bargues, 2018). Based on the minutes of the parliamentary debates, the quality of the legislative process (including information and data received) for deciding on the extensions of the state of emergency is questionable (Vauchez, 2018). The intrinsic definition of the state of emergency was not called into question by the National Assembly. Vauchez argues that all the propositions made by the government had no noticeable method of review by the National Assembly. The parliamentarians relied as usual on the Council of State.
Furthermore, some parliamentarians tended to suggest stricter application than the original text of the executive, often using measures more restrictive of civil liberties (Guérin-Bargues, 2018). In fact, the Parliament and Senate appear to be restricting the laws more than what the executive initially requested. For instance, the executive drafted a law proposition on a house arrest for eight hours, but the National Assembly proposed to increase it to twelve hours (Boutin, 2016; Vauchez, 2018). Fortunately, these discourses were countered by international law: “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law” (OHCHR, n.d:20/21).

Meanwhile, the judiciary power was prevented from balancing of the executive and legislative branches due to the recurrent use of white notes and the application of a posteriori controls. The constitutional control of executive actions is certainly reluctant and most likely calls its relevance into question. In this regard, the declaration of the Prime Minister in November 2015 during the parliamentary debate clearly stated the unwillingness to be contradicted and follow the separation of powers established under the rule of law: “He was ‘extremely hesitant about a referral to the Constitutional Council’, inasmuch as ‘it is always risky to call upon the Constitutional Council’” (Guérin-Bargues, 2018:221). According to Guérin-Bargues,

> “it is a glaring contradiction of an address geared at bringing the state of emergency under the rule of law. How can the executive branch so implicitly proclaim its desire to have free rein, while at the same time referring to the notion of the rule of law, which necessarily implies subjecting executive power to a system of surveillance and increased monitoring?” (Guérin-Bargues, 2018:221).

The justification proclaimed by the executive will be further researched in the next chapter. As Guérin-Bargues argues, the rule of law and democratic values are in contradiction with the executive desire to have free reign. The use of the established administrative measures and especially their deviations raises serious concerns for the protection of human rights and the rule of law.

### 3.3.3 The six extensions of the state of emergency in 2015-2017

The Act of April 3\textsuperscript{rd}, 1955 serves as a legal basis for the state of emergency. Only the President can activate the state of emergency. In a provision of this Act, it is stated that the Parliament is the only institution empowered to decide whether the state of emergency needs to be extended.
(Vauchez, 2018). This ability is a strong counterbalance to executive power. As Vauchez rightly underscores, the instauration of the state of emergency “reveals a particular institutional context in which the Parliament rarely operates as a check or balance on governmental action” (Vauchez, 2018: 713). However, this power was never applied, and the National Assembly went along with the executive and made no use of their countervailing influence (Vauchez, 2018).

At times, the Parliament even contributed to the tough stances of the executive. For instance, every extension was accepted without negotiation of its length (Vauchez, 2018).

As stated in the introduction, the state of emergency has been extended six times with the approval of the National Assembly and the Senate. The extensions varied between 2 months to 7 months in duration. The extensions were occasionally expanded with amendments of the law—an overview of the prorogation and the votes is provided in Annex 7.4. The presence of the parliamentarians and the senators fluctuated over the different periods. The presence of the parliamentarians during the prorogation vote was certainly less than in the Senate. On average, the percentage of presence at the National Assembly has been 23.1% since 2012 (Enault, 2016). 65% of the 1,225 votes occurred with less than 100 deputies present out of the 577. The presence of the senators is stable. Because of financial penalties, the presence of the senators during the hearings has improved. Since 2017, a new law passed forbidding parliamentarians and senators to assume multiple jobs, making their presence more reliable (Valadi, 2017).

The National Assembly and the Senate have a significant role in the state of emergency to protect human rights and be guardians of the separation of powers. Thus, the discourses of the executive found a listening ear. The acceptance of the executive discourses led to six approved extensions of the state of emergency. In turn, the extended state of emergency led to violations of human rights and a lasting disturbed separation of power.

### 3.4 Conclusion

The executive applied the state of emergency within a delimited constitutional and legal framework. With France’s intermediate degree of codification, the application of the state of emergency was executed to the utmost of their capacity and, at times, beyond. The executive used the administrative measures as protective measures for the citizens against the terrorist threat. The vigorous application of administration measures, particularly the house arrests and house searches in the first period, has been established. The violation of certain civil liberties and drifting away from legal normalcy during this application of the state of emergency
problematize the legitimacy of its enforcement. Administrative measures were justifiable as a matter of policy to protect civilians. However, they imposed disproportionate restrictions on liberties which resulted in a violation of human rights. The UN reminds its member states that:

“The balancing framework of international human rights violations is critical: interference with a person’s rights must be legitimate, necessary, and proportionate. The failure of states to respect those rights and to apply the rule of law is one of the factors contributing to increased radicalization” (UN, 2015).

The dangers of the state of emergency (especially concerning the power balance and the respect of civil rights) also surfaced during this period. Ackermann argues that exceptional regimes are inadequate to the terrorist threats of the 21st century, and presciently warned about the danger of the declaration of war against terrorism. Ackermann defines terrorism as “a technique, an intentional attack against civilians.” He continues by stating that “if states declare war against a technique, it will be a slippery slope that allows the government to respond violently to vague threats without having to define them” (Ackermann, 2006:152). The French state has suffered through many terrorist attacks, and the executive’s response may have foiled attacks and simultaneously increased the power of the executive to fight terrorism. This increase in power jeopardizes the separation of powers, leading to a weaker democracy. In order to determine how the French executive justified the six extensions of the state of emergency, the next section analyzes the discursive strategies implemented by the Hollande and Macron administration to assert their authority and to fight the terrorist threat to protect French citizens.
4 The executive’s narrative on the state of emergency

After having presented the theoretical framework (in chapter 2) and the context (in chapter 3), the analysis of the executive narrative on the extension of the state of emergency will be presented. Based on one discourse and six explanatory statements of the draft bills, I have analyzed the narrative of the executive to the Parliament by employing the concepts and processes described in politicization and securitization theory. These explanatory statements reveal how the executive considered the extension of the state of emergency necessary. Each draft bill drew an overview of the events from the perspective of the state of emergency and changes during the period of the state of emergency. This narrative was one element that convinced the Parliament to agree on the extension of the state of emergency, to respond to the terrorist threat.

From the beginning of the state of emergency, the exceptional nature of the state of emergency (see chapter 3) is repeated with the setting of the first discourse. After the attacks on November 13th, 2015, the President exceptionally addressed the Congress of the French Parliament. Since the creation of the Fifth Republic in 1958, only three Presidents have taken the floor before the Parliament convened in Congress (Nicolas Sarkozy in 2009, Francois Hollande in 2015, and Emmanuel Macron in 2017), which proves the exceptional nature of the situation. Of these addresses varies constitutional too, The purposes of the address of Francois Hollande on November 16th 2015, and was to start a debate on a particular topic was terrorist threat. The debate on the response to the terrorist threat was central within the argumentation. The argued for argument of the executive is addressed through the proposed to justifications. imminent terrorist threat, the utility of the emergency declaration, the legitimacy of the state of emergency, and the respect for civil liberties during the state of emergency were among these justifications.

4.1 The terrorist threats, the maintenance of securitization

Since 2015, the executive thus made security a political priority. President Hollande opened his discourse to the Parliament gathered in Congress with: “France is at war”18 and restated it

18 Original text : « La France est en guerre » (Hollande, 2015 :1). Translated by the author.
throughout his discourse. was, with ISIS/Daesh being portrayed as the enemies. Daesh is a terrorist and military as political organization. The opposition “us versus them” dominated the discourse, with “us” representing the French state, its symbols, and the democratic state. Therefore, “them” are in the eyes of the French executive the terrorists, portrayed as “cowardly murderers” and “despicable killers” (Hollande, 2015:2-3)\textsuperscript{19}. The executive throughout the state of emergency described the terrorists’ threat in France as a threat present at all times, in all states which targets innocent citizens. The enumeration of the recent (foiled) terrorist attacks reaffirmed this perspective. The support of allied countries legitimized actions undertaken to combat terrorism. Also, the executive highlighted how these despicable acts reinforced the strength and unity of France/the French population to fight together against the common enemy, terrorism.

In the first extension request, the necessity of the extension is central and the executive built on three elements: the permanent threat on French territory, the gravity of the attacks and simultaneous occurrence of terrorist attacks. Cazeneuve used the word “necessity” (”être nécessaire” in French) 18 times throughout the text. In the next five explanatory statements, the word appears only once or twice. In the second explanatory statement (in February 2016), the executive still represented terrorist threat as an imminent and permanent danger. By listing the number of foiled attacks in France and internationally, the executive portrayed a highly insecure environment. The executive clearly states who the enemy was, Daesh. The influence of Daesh in France is increasing, especially given the number of French citizens planning to go to Syria and the call of Daesh to Daesh for organize terrorist attacks in France rather than leaving the country to join Daesh forces. Starting in February 2016, the territorial control of Daesh significantly decreased in Syria and this call to perpetrate attacks in France is taken very seriously. All these evolutions in the context justify a new extension until May 2016. The context presented in May 2016 (with the succession of attacks in Western Africa, Europe, and the Middle East) maintained the perception of permanent terrorist threat. The latest terrorist attacks in Brussels on March 22\textsuperscript{nd}, 2016, and the death of 32 civilians and 300 injured, increased the level of insecurity by a spreading effect. The focus shifts however more to the protection of civilians. Indeed, the executive highlight that the targets of terrorist acts remained in places where civilians gather and where terrorists can have an impact. The EURO 2016 and the Tour

\textsuperscript{19} Original text : « Lâches assassins » ; " « méprisables tueurs ». Translated by the author.
de France are two of these significant events, ideal for terrorist attacks. Cazeneuve highlighted the symbolic power that terrorists seek to target. The targets are the police force (representing French authority), the cultural symbol of France (represent blasphemous culture by Islamist). The Tour de France is a renowned French symbol and the EURO 2016 on top of taking place in a stadium (as in November 13th, 2015), represents an aspect of Western culture considered to be blasphemous. The social construction in the explanatory statement is apparent. This symbolic power is one of the tools used to reinforce security (within the concepts of practices and instruments). This powerful tool resonated with Parliament. The measures taken allowed the executive to protect the

Five days after the attack of July 14th, 2016 that took 86 lives, Cazeneuve presented a new draft bill to the National Assembly for the fourth extension. He addressed how the attack in Nice demonstrated the permanent terrorist threat, which required reinforced administrative measures. Cazeneuve exposed the most recent (foiled) terrorist attacks and highlighted the changing strategy of Daesh due to Daesh’s weakening grip in Syria/Iraq. Their weakening in the Middle East only “reinforces the intensity of the threat in our territory” (Cazeneuve, 2016c:4). The increased threats on French soil justified the extension of the state of emergency from the executive perspective. Every time France changes its strategy to fight terrorism, terrorism will adapt too.

The fifth and last extension of the Hollande Administration pertained more to the decreased its focus on terrorist threat. The emphasis laid rather on the evolution of the terrorist strategies which in their eyes increased the permanent and imminent terrorist threat. As stated previously, Daesh called for terrorists living in France or Europe to perpetrate attacks in France. The In this explanatory statement, Cazeneuve presents a competitor of Daech and new perpetrators of terrorist attacks. First, Al Qaida appears suddenly as an addition terrorist group and was presented as in competition with Daesh. Second, the executive drew the attention to the presence in Syria and Iraq of women and children and their capacity to take on violent acts in Europe. The international fight of the Levant Coalition in 2015-2016 was successful in the Syria/Iraq region. Based on the executive’s narrative, Daesh was potentially losing ground but

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20 The EURO 2016 is a football tournament for all the European teams. In 2016, France hosted the tournament, and is largely visited. The Tour de France is a man cycling competition in France and occasionally in neighbouring countries. Established since 1903, the Tour de France attracts a large number of citizens to cheer the cyclist.

maintained its influence abroad by spreading messages to stimulate taking action. Leroux provided 14 examples of attacks foiled in France. Internationally, the threat was increasing with three attacks and one prevented in Germany. Belgium also experienced three attacks since the last extension. The number of attacks created the perception of an imminent danger in France.

The executive pulled of their response to terrorist threat: the state of emergency. The level and/or perception of danger and threat was clearly state in the explanatory statement. the The influence of Daesh is still predominant in Europe despite the decrease of territorial control and financial means available to Daesh. InDaech. Since December 2016In Europe, attacks have occurred in Germany, the United Kingdom, and Sweden. The terrorist profile is in the understanding of the executive twofold: the organized groups and the isolated cases with a “primary operation mode” (e.g., weapons available to any citizen, to name a few, knife, and gas bottle).

In all of the analyzed discourses, the executive underscored how the terrorist attacks represented an existential threat. The listing of the (foiled) terrorist attacks in France and internationally established an impression of continual and permanent threat. In section 2.2.1, I highlight that securitization theory attempts to answer three questions: “What makes something a security issue? What kind of response does this call for? What are the specific consequences of agreeing that something is a threat?” (Balzacq, et al., 2016:496). Based on the analysis of the explanatory statement, the executive does not question the securitarian nature of the terrorist threat and appear to be certain that the state of emergency is the right response. The France executive justify the maintenance of the state of emergency for 719 day, based on this permanent threat. The increase of the threat justifies the necessity of the state of emergency and highlight the securitization of the terrorist threat. The national and international context is described as highly dangerous. This perception of fear and danger is necessary to keep the state of emergency extended. In the next two sections, I addressed the utility and legitimacy of the state of emergency to fight terrorism, establishing another dimension of the French executive argumentation.
4.2 Utility of the state of emergency to fight terrorism

The terrorist threat requires certain tools to protect French citizens. The executive demonstrated the utility of the state of emergency to fight terrorism in the explanatory statements.

In the first explanatory statement, the explanation of how the state of emergency will be enforced is emphasize. Two administrative measures added to the amended Act of April 3rd, 1955 receive the most attention: the house arrests and house searches. In this revised version, the executive added two administrative measures, house searches and house arrests. The house searches and house arrests are “useful tools to prevent new terrorist acts” (Hollande, 2015:5)22. The house arrests have a broader scope, with less restrictions for the executive (which returns to the point of Vauchez, in section 4.2.1 who argues that the administrative measures of the amended Act of 3rd April enforces more vigorous measures). According to the executive, house arrests were intended to protect the population from dangerous individuals by restricting their contact with their network which makes them valuable from a security point of view. However, in section 4.3.1.2, I highlight how some enforcements of the house arrest have no link with the terrorist acts, such as for instance the environmental activist who were in house arrests. Therefore, an explanation of this absence of link to terrorists could be from a vague characterization of a person representing a threat by the executive: “for any person to whom exist serious reasons to think that his/her behavior constitutes a threat to security and public order” (Cazeneuve, 2015:5).23 By not including a phrase linking directly to terrorist purposes, the executive can apply the house arrests legally to environmental activists without a direct link to the terrorism. Within the framework of COP 21, the example of the environmental activist could have indeed disturbed public order. However, the initial argument to declare the state of emergency was the imminent and permanent terrorist threat reigning in France.

The second administrative measure received substantial attention as well. In the words of the executive, the permanent terrorist threat in France justified the house searches. The executive specifically states the authorization to access to personal information (found during the house

22 Original text : « Ces deux mesures offres des moyens utiles pour prévenir la commission de nouveaux actes terroristes » (Hollande, 2015 :5). Translated by the author.

23 Original text : «[de toute personne] à l’égard de laquelle il existe des raisons sérieuses de penser que son comportement constitue une menace pour la sécurité et l’ordre publics » (Cazeneuve, 2015 :5). Translated by the author.
searches in computer systems) and to effectuate night-time searches. However, these two additional details are disturbing for civil liberties and the protection of the right for private life. Yet, no further justifications are provided. Taken the text literally, any citizen who constitutes a threat to security and public order, can undergo a house search, yet without link to terrorism.

From the second extension (in February 2016), the executive praised the benefits of the state of emergency. From the declaration of the state of emergency on November 13th, 2015 until the end of the first prorogation on February 26th, 2016, the number of house searches in the early two periods were consequent. The executive made the argument that the results were an indication of the terrorist threat. However, from the 3,289 house searches, a limited number of infractions were directly linked with terrorism (5 proceedings on terrorism, 23 proceedings on terrorism apology or provocation, and 389 subjects apprehended), which represents 0.8%. The house searches also contained cases linked to arms- and drugs traffic. The problem could be linked with the judicial capacity to deal with the procedure on terrorism apology. Therefore, the chosen proceeding label was transformed to ‘detention of arms’ or ‘drug trafficking’ instead of ‘terrorism’. The executive reasoning was the following: the revenue from arms and drug trafficking financed terrorist acts. The rational of including arms and drugs trafficking house searches was justified by appealing to the stopping of financial support to terrorism. However, not all arms and drug traffickers are linked to terrorism. By expanding its room to maneuver to drugs and arm trafficking, this expansion by the executive may lead to a slippery slope where the Parliament accepts a number of measures linked to terrorism. ) and provide more powers to the executive Besides, the usefulness of house searches is not, but contested, rather the blurred area where the executive uses the terrorist threat justification and the Parliament approves is questioned. House searches were effectuated with a posteriori judicial verification (see 3.2.2). For the government, these administrative measures were a means to profile and categorize the degree of threats of identified individuals.24 The executive applied similar reasoning to extend the state of emergency: in February 2016, the terrorist threat was high, and the context did not allow the executive to lower the level of security. No abrogation of the state of emergency was yet possible. From the securitization perspective, the concepts of routinization and normalization (within the practice and instruments) support the understanding of

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securitization. Indeed, the executive is creating a rhythm where the state of emergency and its request for extension are considered as normal.

The third explanatory statement of Cazeneuve again underscored the achievement of the state of emergency (only the house arrests were maintained during the EURO 2016 and Tour de France). This time the executive emphasized how measured the enforcement of the administrative measures were applied. The amounts of house searches diminished and identified dangerous individuals more efficiently. The executive only enforced the closure of places of faith and maintained the house arrests. The number of persons under house arrest decreased from 268 to 70 individuals, keeping “the most dangerous” suspects. In terms of the house arrests, 83% of the individuals were suspected of radicalization. 52% of the house searches were at the houses of known radicalized persons. The most important question to ask is: if the executive applied less the administrative measures characterizing the state of emergency in the second extension, why not revoke the state of emergency? How did normal laws not provide sufficient tools to tackle terrorism in a rule of law?

The executive emphasized the efficiency of the state of emergency by gathering information on the individuals willing to leave France to combat areas or planning an attack. Based on these administrative measures, the executive completed their understanding of Daesh’s functioning (describing three types of terrorists and the modus operandi). The reasoning of the executive was as follow: The knowledge of Daesh’s functioning was paramount to prevent attacks, and therefore the state of emergency needed to be maintained. The executive will not abrogate the state of emergency if the executive understands Daesh incompletely. However, as Ackermann warned, terrorism is a technique, and all of the possible securitizing and administrative measures will not be able to stop terrorism. The government risks heading towards a slippery slope of violent response (see section 3.4). New mechanisms need to be put in place without giving away any part of the rule of law and civil liberties. If a state takes freedom away for some in exchange for security for a longer time, then terrorism succeeds in its mission. The last two explanatory statements (in July and December 2016) did not go into the justification of the state of emergency is specificity. Because in July the justification was linked to the Attacks on 14th July and in December 2016 due to the election. Here again, routinization of the justification come to the fore with the practice and instruments of securitization theory.

The new administration underscored the efficiency and utility of the state of emergency regarding two aspects. First, the state of emergency supported the prevention of attacks based
on the application of administrative measures (such as the house searches and house arrests). The emphasis was on the “utility of the house searches […], it has to be appreciated in relating, on one side, the number of lives potentially saved by their [the house arrests’] contributions of the foiling of violent action, potentially deadly, and on the other side, the relativity of the interference with civil liberties” (Collomb, 2017:11).25 These administrative measures allowed multiple terrorist attacks to be foiled on French soil.

The administrative measures of the state of emergency allowed the executive to foil multiple terrorist attacks and to improve its understanding of terrorist organizations in France. The house arrests and house searches were certainly useful, but were decreasingly so and less over time. However, the impact on civil liberties remained the same. The danger presented by securitization is here clear. The Copenhagen School asks the question: “what can security do?” The establishment of security through administrative measures as house searches and house arrests may drift away from the rule of law. This is why, in each explanatory statement, the executive substantiates the claim that the state of emergency is legitimate and respects the rule of law.

4.3 Respect of the rule of law during the state of emergency

President Hollande justified in depth why the current state of emergency was declared. Within the French legislative arsenal, he argued that the state of emergency was the only alternative to fight the ongoing threat. The state of siege and Article 16 of the Constitution were not adapted to this situation (see section 3.2). Interestingly, the president took for granted the acceptation of the French Parliament to extend the state of emergency. While the Prime Minister did not yet present the draft bill, Hollande stated: “As we have extended, you will extend the state of emergency beyond the 12 days for three months, but after the state of emergency, we need to be fully in the rule of law to fight against terrorism” (Hollande, 2015:5).26

25 Original text: « L’utilité des perquisitions administratives est donc très réelle ; elle doit s’apprécier en mettant en rapport, d’une part, le nombre de vies potentiellement épargnées par leur contribution à la mise en échec d’actions violentes, potentiellement meurtrières, et d’autre part, le caractère relatif de l’atteinte aux libertés publiques (137 mesures de perquisitions en 5 mois)» (Collomb, 2017 :11). Translated by the author.

26 Original text: « Car nous avons prolongé, vous allez prolonger l’état d’urgence au-delà des 12 jours pour trois mois mais après l’état d’urgence, nous devons être pleinement dans un état de droit pour lutter contre le terrorisme» (Hollande, 2015 :5). Translated by the author.
The possibility of the President and Prime Minister to end the state of emergency before the requested end date attested to the maintenance of the executive control and power over this exceptional situation. The executive reiterated the expectation that the Parliament extend the state of emergency: “The measures permitted by those dispositions [the amended act of the state of emergency] have been applied immediately by the administrative authorities and are eligible to be continued” (Cazeneuve, 2015:3).

Along with the terrorist threat and benefits of the state of emergency, the executive underscored the respect for the rule of law. The parliamentarian control ensures all information concerning the actions of the executive on topics related to the state of emergency. With the parliamentarian control, the executive is less likely to overstep their rights. The legitimacy of the executive action on the state of emergency was further strengthened by the decision of the Constitutional Council to support the constitutionality of the house arrest. The argumentation of Cazeneuve was certainly in relation with the terrorist threat and highlighted the benefit that the state of emergency had by that time proven.

The parliamentary control and the response of the Constitutional Council added legitimacy to the state of emergency. The response of the Constitutional Council (decision of 2015-527 QPC on December 22nd, 2015) established that the house arrests were constitutional and respected the law. The government maintained their argumentation as in previous explanatory statement to prove the legitimacy of the state of emergency.

To fight the renewed threat, the executive suggested stronger administrative measures, particularly for the house searches. The draft bill presented on July 21st contained stronger measures than previously proposed. The house searches (prohibited in the third extension) were reinforced, with legal specifications. In this regard, the house searches received more restriction, especially on the use of data. This draft bill included the possibility of seizing and exploiting data on informatics systems on the location of the house searches only with a judge order. Cazeneuve explained that “this disposition was necessary given the decision by the Constitutional Council n 2016-536 QPC on February 2016, which censored the ability of the authorities to copy any computerized database during the house search” (Cazeneuve,

27 Original text : « Les mesures permises par ces dispositions ont été utilisées immédiatement par les autorités administratives et ont vocation à être poursuivies » (Cazeneuve, 2015 :3). Translated by the author.
This article allowed the exploitation of data during house searches by providing a specific framework in which the administrative forces can apply it. In addition to the “usual” administrative measures, the executive strengthened the disposition in the common law aimed at fighting terrorism.

The new administration emphasized the judicial control over the administrative measures. The judicial control entails here the respect of the rule of law and civil liberties. With each extension, the state of emergency evolved to be more aligned with democratic values. The multiple QPCs also demonstrate the attachment of the executive to the rule of law.

Throughout the two years, the amended Act of April 3rd, 1955 evolved to improve the delimitation of the framework of this regime. It evolved into a more predictable system and added important guarantees of efficiency and protections of the rights. To respond to the evolution of terrorism strategies, the French government thus adapted its response. A parliamentarian control was enacted, and the house searches and house arrests were put under increased supervision. During the fourth extension, the executive enacted a procedure in front of the administrative judge to exploit data gathered during the house searches. Additionally, individuals under house arrest could now at any moment go to court to be released. In the fifth extension draft bill, the executive limited the duration of the state of emergency to twelve months maximum. An addition extension could be requested under serious circumstances and be no longer than three months. The professional and familial constrains are taken into account within the definition of the house arrests, and the final alteration of the state of emergency regarded the obligation to favor the house searches during day time, with the exception operational necessity (Collomb, 2017). This summary of the changes of the state of emergency demonstrate the initial limitation of the state of emergency to respect civil liberties and the rule of law.

28 Original text (partially quoted): « cette disposition est rendu nécessaire par la décision du Conseil constitutionnel n 2016-536 QPC du 19 février 2016 qui a censuré la possibilité qui était ouverte à l’autorité administrative de copier toutes les données informatiques auxquelles il était possible d’accéder qu cours de la perquisition, faute de garanties légales propres à assurer une conciliation équilibrée entre la sauvegarde de l’ordre publique et le droit au respect de la vie privée. » (Cazeneuve, 2016c :6). Translated by the author.
4.4 Respects of civil liberties during the state of emergency

With the terrorist threat France is undergoing, the establishment of the state of emergency was temporarily acceptable and within the boundaries of the rule of law. President Hollande clearly warned the Parliament:

“You are the representatives of a free people who was invincible when it is united and gathered, it is our most precious possession and we should avoid overbid and abuses, it is also our republican duty,” (Hollande, 2015:4).

Hollande reminds the Parliament to be united and to protect the civil liberties of their citizens. The fight against terrorism required new measures and these new measures should not put at risk the power balance and the protection of civil liberties (as mentioned in section 3.3.3).

In December 2016, the executive returned emphasized the utility of the state of emergency and allies it with the respect of the rule of law. The house searches supported the identification of the level of threat of individuals and complemented information on suspected individuals. The house arrests prohibited the liberty of the most dangerous individuals (according to the executive). Since the fourth extension (the attacks in Nice), the executive intensified the application of the administrative measures, legitimized by the renewed terrorist attacks, making the terrorist threat more tangible. The house arrests remained on the same level, and the change of number decreased “most of the time” based on the detention of the person due to non-respect of the house arrest rules. From the 543 house searches, 91 led to interrogation, and 64 individuals were placed in custody. In these searches, 35 arms and 21 long guns were found (of which 2 were weapons of war). The law enforcement seized and copied 140 data contained in informatics systems. According to the executive, the majority of the authorizations of the seizure of data in informatics systems revealed concerning elements, with possibilities of acting. The executive framed judicial procedures as efficient. For instance, Le Roux revealed that 10% of the referrals to the anti-terrorism prosecutors were directly linked to the findings during house searches, and 16% of the house searches led to a legal proceeding. However, if 16% of the house searches led to a legal proceeding, it follows that 84% did not provide sufficient proof to prosecute a suspected individual. From this analysis, it is clear that the

29 Original text : «Vous êtes les représentants d'un peuple libre qui est invincible quand il est uni et rassemblé. C'est notre bien le plus précieux et nous devons éviter surenchères et dérives, c'est aussi notre devoir de républicain.» (Hollande, 2015 :4). Translated by the author.
executive makes an important effort to respect the rule of law even in exception circumstances. The legitimacy of the measures are predominant in the explanatory statements.

4.5 Desecuritization moves during the state of emergency

During the declaration of the state of emergency, Francois Hollande urged the parliamentarians to “go beyond the emergency”\(^{30}\) and suggested several solutions which were vividly discussed in the Parliament the following month: the deprivation of nationality, the increasing number of police, and the constitutionalizing of specific measures. During the first three extensions, the executive notion of going beyond the emergency and looking for solutions other than the state of emergency disappeared from the explanatory statements.

On July 14\(^{th}\), 2016, a French national holiday, Francois Hollande addressed the French citizens by announcing that: “we cannot extend the state of emergency forever. This [the indefinite extension of the state of emergency] would make no sense; it would mean that we would not be in a Republic with a right that could be applied in any circumstances” (Hollande, 2016:2).\(^{31}\) According to him, the promulgation of a law on criminal proceedings should allow preventing the terrorist threat with efficiency. After the attacks in Nice on July 14\(^{th}\), the executive did a dramatic flip-flop and proposed the fourth extension of the state of emergency. This new attack justified the extension of the state of emergency and illustrated the permanent threat in France. This sudden opinion change of the government begs the question: Is the state of emergency a suitable tool to fight the current terrorism threat in France if attacks keep occurring?

The new government of Emmanuelle Macron as the president requested the extension of the state of emergency one last time. The new government returned to the application of the state of emergency by appealing to its efficiency and usefulness. This last extension aimed to provide enough time to present a new draft bill on the anti-terrorist law, which allows the executive to stop the state emergency permanently. The justification of the executive was the following: the current state of the common law does not let the French executive stop the state of emergency, given the high terrorist threat. The executive could abrogate the state of emergency under the essential condition that in addition to the anti-terrorist laws in place, the executive was able to provide additional measures enabling the police to prevent and detect efficiently terrorist

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\(^{30}\) Original text: “Nous devons aller au-delà de l’urgence » (Hollande, 2015 :5). Translated by the author.

\(^{31}\) Original text : “On ne peut pas prolonger l'état d'urgence éternellement. Ça n'aurait aucun sens, ça voudrait dire que nous ne serions plus une République avec un droit qui pourrait s'appliquer en toutes circonstances” (Hollande, 2016 :2). Translated by the author.
attacks. The end of the state of emergency is the priority to the Macron administration, as the new anti-terrorism law is the first draft bill presented to the parliament on July 6th, 2017. Collomb clearly maintains the impossibility to extend the state of emergency indefinitely. Anti-terrorism laws within the common law must be able to prevent future attacks while respecting the power balance and civil rights.

Collomb proposed a counter-terrorism law to succeed the state of emergency (Le Parisien, 2017, July 3). Debates in France and amongst the international community ensued. The law involved the following four measures. First, the prefect may provide a protection perimeter at events or sports/cultural events. Second, the prefect may close temporarily a place of worship endorsing or inciting terrorism or discriminatory behavior (for a maximum of six months). Then, the Minister of the Interior may decide to take surveillance and monitoring measures against any person whose behavior constitutes a particularly serious threat for national security and public order. This measure is less restrictive than house arrest during the state of emergency. Finally, the prefects are allowed to order the entry and search of any place with a judge’s authorization before the search (Government action, 2017). The Council of Minister, the Parliament, and the Senate accepted this law. Therefore, this counter-terrorism law substituted the state of emergency declaration beginning on November 1st, 2017. Additional measures to this counter-terrorism are enforced such as “the ability to carry out administrative investigations for civil servants in positions of authority and who pose a risk of radicalization, and where necessary, to take appropriate action, either by transferring, suspending or removing the person(s) concerned” (Gouvernement Action, 2017). It also includes “the ability to carry out identity checks in border areas or within a 10km radius of airports and international stations” (ibid). This provision will grant the ability, when the risk is known to be real and imminent, to arrest individuals who are likely to commit attacks on French soil, according to Gérard Collomb during a press conference on October 30th, 2017 (ibid). The last measure introduced was a new legal system for surveillance of wireless communications and a new legal regime for monitoring wireless communications (ibid).

Interior Minister Gerard Collomb justified the legislation as “a lasting response for a lasting threat.” Therefore, this measure reassures the public that the state is vigilante and protecting the citizens (Rubin & Peltier, 2017). Critics have questioned whether increasing intrusiveness of the security services can improve the government’s ability to detect attacks. Jacques Toubon, a human rights advocate, argues that having this counter-terrorism law
enforced erodes national cohesion by stigmatizing a part of the population based on their religion (Toubon, 2017). The anti-terrorism law was eventually adopted, putting an official end to the state of emergency on November 1, 2017, while making the state of emergency permanent within the common law.

4.6 Concluding remarks

In this chapter, I analyzed the executive discourse justifying the request of the extension. From the discourse analyze, the terrorist threat was the main reason for the maintenance of the state of emergency in France. The executive justified the extension of the state of emergency based on its efficient ability to detect and prevent terrorist attacks on French soil. This efficiency established the utility of the six extensions. The international context as depicted by the executive also played a major role in justifying the measures. In 2016, the protection of keys events as EURO 2016 and the Tour de France further justified the extension. New terrorist attacks (e.g., July 14th in Nice) established another reason for extension. The presidential and legislative elections were another reason to extend the state of emergency. The primary operation mode of the attacks in 2016 led to the impression that a terrorist attack could occur at any time and be perpetrated by anyone. Eventually, the state of emergency was abrogated and some measures were included in the common law through the anti-terrorism legislation of October, 31st, 2017.
5 Discussion notes and conclusion

This chapter summarizes the key issues addressed in this thesis and returns to the research question: *How do democratic states justify the restriction of civil liberties to protect population against a terrorist threat?* and its sub-question: *How did the French executive justify the enforcement of the state of emergency for 719 days to the Parliament from 2015-2017?* The chapter starts with a summary of this thesis. The next sections will answer this research question in two parts: the results related to the case study and its reflection. The section thereafter discusses the reflections of this research in terms of its limitations. Finally, this chapter will provide several suggestions for further research.

5.1 Summary

Terrorist threat in Europe has been increasing. The response of democracies to terrorist threat aims to protecting their citizens. However, this response constraints the civil liberties of citizens. The specific case-study of France’s response to the repetitive terrorist attacks and the catalyst attack of the Bataclan, which trigger the enforcement of the state of emergency is researched. Indeed, the French executive declared the state of emergency on November, 13th, 2015 and revoked it on October 31st, 2017. The six consecutives extensions were accepted by Parliament: which raised the question what narrative convinced Parliament of the state of emergency?

This thesis approaches the research question in three ways. First, this thesis provides a comprehensive theoretical framework to trace the response from normal politics (politicization theory) and from exceptional measures (securitization theory). The combination of politicization and securitization is novel and enriches the conception of the interplay between the two theories. Secondly, based on the case study of France, the legal practice/application of the state of emergency is distinguished from the actual application of counter-terrorism legislation in common law. This distinction between the legislative aspect and the enforcement of the state of emergency, through the amended Act of April 3rd, 1955, paints a picture of a specific context. The analysis of the explanatory statements of the French executive can be linked to chapter 3. The French context demonstrates positive results of the administrative measures allowed by the state of emergency. On the other hand, administrative measures have at times deviated from their primary purpose and required adaptation of the law, as explained
in chapter 3 and 4. This adaptation of the law stems from QPC ordered by the Constitutional Council. These QPCs demonstrate a disrespect of the civil liberties. The executive followed the request of the QPC and specified in the concerned draft-bill, the limitation of the enforcement of the amended Act of April, 3rd, 1955. Third, the discourse analysis uncovered four arguments of the executive to justify the extension of the state of emergency. The terrorist threat and the utility of the state of emergency were the focal arguments. In addition to the arguments in favor of the extension of the state of emergency, legitimacy was provided by its respect of the rule of law and the civil liberties. These arguments will be further discussed in next section, where the findings are discussed and reflected upon.

5.2 Reflection of the results, a justification of the state’s response to terrorist threat

The analysis of this thesis resulted in several findings that presented again below. First, the securitization of the terrorist threat provides a justification for the French executive to uphold the measures of the state of emergency. Second, the emphasis on the utility and efficiency provides an additional argument for these measures as they support the fight against terrorism. The normalization of these measures is the most salient explanation. Third, with the exceptional state, drifting away from the rule of law is tolerated for a restricted time. Yet, the discourse and explanatory statement of the executive emphasize its respect for the distorted rule of law during the state of emergency, which provides further legitimization. Fourth, the executive justifies the trade-off of liberty for security as legitimate and necessary, given the exceptional times. Yet the final phase of the state of emergency, the desecuritization of the terrorist threat and the necessity to return to a normal political climate maintains the politicization of terrorist threat, without requiring exceptional measures.

These results provide a novel case study of the response of democracies to terrorist threats, namely: the French state of emergency. The novel aspect here is not how politicization occurs, but rather how terrorist threat was securitized to justify the state of emergency and returned to the politicization process. With a new attack, the securitization procedure is initiated and the emergency measures remained in place. The securitization process is the most convenient way for the executive to fight terrorism, but also represents strong limitations on the protection and respect of civil liberties. The results of the discourse analysis do not only provide an answer for the narrative created by the executive to justify the extension of the state
of emergency in France; from a broader perspective, the French response to the terrorist threat is an alternative for the responses of democracies to terrorist threats. As stated/proclaimed by the Hollande administration, terrorist organizations are changing their strategy, and democracies need to adapt as well. Respecting the rule of law and framing the threat as permanent and imminent is difficult for the executive to reconcile. Ackermann’s argumentation is still relevant in this respect: terrorism is a technique, and a technique is impossible to defeat. The response of the executive is necessary to demonstrate to the Parliament and the citizens that action has been taken.

5.3 Contribution and implications of this research

This thesis contributes insights to the pol and sec theories that have been applied. Generally speaking, this research contributes to an understanding of how democracies bypass civil liberties to ensure security of its citizens. The response to terrorist threat within a democratic country is limited by the rule of law. The rule of law restricts the room to maneuver of the executive. Within the case study of France, analyzing the narrative of the executive provides valuable knowledge on two levels. First, it demonstrates how an executive can be caught in its own narrative, leading to the continuation of the state of exception and the securitization norm, despite the availability of other solutions. The second level approaches the narrative from the point of view of the executive and the normalization of the state of emergency. As noted in the analysis, the normalization and routinization of practices were important tools. Using these practices and instruments securitize the issues at hand.

The theoretical implications of this research are ambivalent. The application of politicization and securitization theory enabled the conceptualization of how the executive justified the extensions of the state of emergency (e.g., by maintaining the narrative that terrorist threat was permanently present). The narrative of the French executive during the state of emergency indicates a constant degree of securitization, with three exceptions (declaration of the state of emergency, 14th July and the last draft bill of Collomb). These three exceptions represent the desecuritization process initiating the return to the politicized statues of an issue. However, the issue remains within the political realm. Therefore, the limitations of politicization theory come clearly to the fore. The combination of politicization and securitization theory would be/could be theoretically more relevant and interesting when the subject matter is politicized and then securitized in a regular process. Referring to the figure 2
on the links between securitization and politicization theory, I do not foresee a de-politicization of the terrorist threat in the coming years. Other topics related to securitization, such as environment, medical emergencies, the combination of politicization and securitization theory are relevant. In this research, the politicization process is certainly a complementary addition, but is not sufficient to respond to the research question. The timeframe of the research should be longer to trace this process in which politicization and securitization theory are combined.

5.4 Limitations, recommendations, and suggestions for further research

The final section of this thesis addresses the limitations related to the methodology, theory, and findings of this thesis. Then, the recommendations for further research are suggested.

Limitations

First, the methodological limitations must be identified. The first limiting factor is the relatively small data set used. Analysing a narrative from the executive on one discourse and six explanatory statements could be considered incomplete. In this research, it was difficult to find additional sources, which were not arbitrary and which contained the official narrative of the executive towards the Parliament, except for the Parliamentarian discussions. Given the limited time allocated to this research, those discourses could not be included and analyzed adequately. The second possible limitation pertains to (see section 1.4) the researcher’s bias. The researcher has attempted to be as objective as possible in the analysis of the documents, without seeking to confirm or infer the hypothesis she may have had. The third possible limitation concerns the methodology applied, a combination of discourse analysis and single case study. The research design could have been refined by including evidence from interviews with parliamentarians. The third possible limitation regards the focus on the executive. Even though the focus is justified, the researcher may have left out influence from the exchange between Parliament and the executive. The executive needs the approval of the Parliament, and thus will listen to their voices as well.

Suggestions for further research

As for the suggestions for further research, perspective multiple research recommendations are possible. In each of the draft bills presented by the executive, reports of special committees within the Parliament and reports from the State Council and the Constitutional Council were
handed over to the government. Further research could explore whether these reports brought about changes within the draft bills and were considered by the executive during this time. The second suggestion relates to the anti-terrorism law applied since October 31st, 2017 in France from a legal perspective. Given the large societal discussions present in France today, two recommendations for further research are proposed. The first relates to the analysis of the societal discussions and the impact it may have on the final version of the controversial anti-terrorism law. The second relates to the actual application and utility of this law post-state of emergency. The executive presents this new law as a necessary step to move away of the state of emergency. However, critics have argued that this law amounts to the normalization of the state of emergency, placing part of the executive power during the state of emergency in the common law. Framed in this way, the state of emergency is normalized and embedded in the law, making exceptional power normal.
6 Bibliography

6.1 Scientific books and articles


Wagner, W., Herranz-Surrallés, A., Kaarbo, J., Ostermann, F. (2017). Politicization, party Hopolitics and military missions deployment votes in France, Germany, Spain, and the
6.2 Primary material


Loi n° 55-385 du 3 avril 1955 relative à l’état d’urgence.


Loi n° 2016-162 du 19 février 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence.

Loi n° 2016-1767 du 19 décembre 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence.

Loi n° 2016-629 du 20 mai 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence.


### 6.3 Newspapers


6.4 Non-governmental organizations and Research Institute reports and publications


6.5 Other sources


6.6 Governmental sources


7 Annexes

7.1 Additional information on the timeline of the events leading up and during the state of emergency

Charlie Hebdo

Since 2015, France has undergone a series of events that threatens its territory and its population putting security issues in the forefront. On 7th January 2015, the head office of Charlie Hebdo, a satirical newspaper located in Paris, was attacked, killing 17 people and injuring six others.

Thalys attacks

In August 2015, a terrorist attack in the Thalys train was stopped by three American military men on holiday in France (Le Parisien, 2015 August 23). The attacker entered the international train heading to Paris in Brussels. He came out of the bathroom with a Kalashnikov when the train was entering France. The attacker shot at the first man attempting to disarm him. When the three Americans heard that a gunshot, they decided to intervene and managed to control the aggressor, luckily no passenger died, and the wounded numbered three thanks to the heroic actions of the three young American and British. Without them, a massacre would have been inevitable.

November 13th, 2015 – Bataclan & Saint Denis

The fourth event was more significant, sparking a stronger response from the French government. Indeed, on Friday, November 13, 2015, a series of coordinated terrorist attacks occurred in Paris and Saint-Denis (a commune in the northern suburb of Paris). The attackers killed 130 people in total, 89 of which in the Bataclan, a Paris concert hall. In response to these attacks, claimed by the Islamic State of Iraq and the Levant (ISIL), the then French President Francois Hollande declared a state of emergency for initially twelve days. It was extended six times and eventually included (partially) into the common law.

Nice Attacks
On July 14, 2016 (the French national day) a truck drove into the crowd in Nice (a city in the South of France), on the Promenade des Anglais, a favorite place to watch the fireworks. The truck killed 86 people and injured 458 others (AFP, 2017, July).
### 7.2 Legal comparison of the 1955 Initial Act

**Legal comparison of the 1955 Initial Act and the Amended version in 2015**

<table>
<thead>
<tr>
<th>Type of measures</th>
<th>1955 initial Act</th>
<th>1955 Act in its 2015-2017 amended version</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration of the state of emergency</td>
<td>Needs to be established by an act of Parliament. Can arguably be extended only once.</td>
<td>Indeterminate. With the exception of the technically unclear third activation of the 1955 Act in 1961-62, the 2015-17 episode will have been the longest application of the state of emergency in French history. It is also the only time that Parliament has passed six extension Bills.</td>
</tr>
<tr>
<td>House arrest (assignation à résidence)</td>
<td>Possible for individuals ‘whose activities turn out to constitute a threat to public order and security’</td>
<td>Possible for individuals ‘towards whom there exist serious reasons to believe that their behavior constitutes a threat to public order and security’</td>
</tr>
<tr>
<td>House arrest + daily obligation to check in with the police / appear at a police station</td>
<td>No</td>
<td>Law explicitly allows house arrest for up to 12 hours daily. Law explicitly allows requiring an individual to check in with the police / appear at a police station up to three times daily</td>
</tr>
<tr>
<td>House arrest + wearing an ankle monitor</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>House arrest + prohibition against contacting designated persons</td>
<td>No</td>
<td>Yes, and the prohibition against contacting designated persons can outlast the expiration of a house arrest measure</td>
</tr>
<tr>
<td>Administrative House searches</td>
<td>Yes</td>
<td>Yes + repeat searches (if a search reveals that another location might be of interest, police may immediately conduct a search at that other location without need of a formal, written search warrant – a technicality that the amended Act explicitly indicates is subject to posterior regularisation)</td>
</tr>
<tr>
<td>Administrative house search + seizure of electronic data</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>----</td>
<td>-----</td>
</tr>
<tr>
<td>The Act also allows the interruption of internet connections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative house search + administrative detention</td>
<td>No</td>
<td>Yes up to 4 hours</td>
</tr>
<tr>
<td>Other measures</td>
<td>- Administrative closure of bars, theatres and concert halls</td>
<td>Provisions retained, with two important additions:</td>
</tr>
<tr>
<td></td>
<td>- Administrative prohibition of meetings and assemblies that could provoke or sustain disorder</td>
<td>- Administrative closure of ‘places of worship within which speech constitutive of provocation to hatred or violence or provocation to the commission of terrorist acts or apologetic of such acts’</td>
</tr>
<tr>
<td></td>
<td>- Administrative prohibition of ‘street processions, parades and gatherings’, if and when ‘the administrative authorities can substantiate that they are not in a material position to ensure their security’</td>
<td></td>
</tr>
<tr>
<td>Dissolution of Association</td>
<td>No</td>
<td>Yes, for associations ‘that participate in the commission of acts that constitute a grave threat to the public order or whose activities facilitate or encourage the commission of such acts’</td>
</tr>
<tr>
<td>Geographical ban</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: (Vauchez, 2018: 704).

Four articles deserve more attention: Article 6 on house arrest, Article 11 on the searches and seizures of computer files, Article 8 on the public demonstration and the closing of worship places, Article 6-1 on the dissolution of associations and assemblies (Vauchez, 2018; FIDH, 2016). These administrative measures put in place in a counter-terrorism context are by their phrasing more vigorous and less restrictive for the executive power, which in turn impact the power balance and the respect of human rights.

32 Despite disagreement amongst scholars on the definition of administrative measures, in this thesis, the following definition is followed in a counter-terrorism context: “Administrative measures are restrictive measures aimed at preventing terrorism within the territory of a state, decided upon and ordered by the executive (or with its close involvement), and subject to limited judicial review” (Boutin, 2016:131).
Article 6 establishes the conditions under which house arrest can be applied, which are “serious reasons to believe that their behavior represents a threat to public safety and order.” In the law of 1955, the behavior was replaced by activity, which is much more concrete (FIDH, 2016). The house arrest is defined as an individual to be “confined to a place of residence determined by the Minister of the Interior, for a while, determined by the Minister, of up to 12 hours per period of 24 hours.” The house arrests also required individuals to present themselves up to three times a day to the police of the Gendarmerie (FIDH, 2016).

Article 11 relates to the searches and seizure of computer files which are allowed at day and night. The seizure of computer files accessed during the searches may be copied on any device (FIDH, 2016).

Article 8 authorizes the ban on public demonstrations which may sustain disorder. Prohibition on the whole territory must be taken by the Minister of the Interior and for a specific county, by the Prefect responsible for the county (FIDH, 2016). The ban can be applied based on presumption, and the authorities are not required to prove the existence of a particular and specific threat to public order. So the clarity of the link between the declaration of the state of emergency (terrorist threat) and the presumed threat is not necessary. FIDH underscores the absence of any real test of proportionality of the prohibition. Article 8 on the closing of workshop places allows the ministry of the Interior to order the closing of workshop place, where remarks advocating or triggering hate, violence or terrorist acts. (Champeils, Desplats, 2017).

Article 6-1 allows the Council of the Ministers to dissolve assemblies and association by a decree which can seriously disturb public order or its activities facilitating the disturbance of public order.
### Timeline of the prorogations of the State of emergency 2015-2017

<table>
<thead>
<tr>
<th>Prorogations</th>
<th>Date</th>
<th>Time allocated</th>
<th>Vote National Assembly (out of 577)</th>
<th>Vote Senate (out of 348)</th>
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<td></td>
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<td>Votes (favour, against, absention)</td>
<td>% present</td>
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<td>% present</td>
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<tr>
<td>1st prorogation</td>
<td>26 November 2015</td>
<td>3 months</td>
<td>551 6 1</td>
<td>96.7%</td>
</tr>
<tr>
<td></td>
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<td>Unanimous</td>
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<tr>
<td>2nd prorogation</td>
<td>26 February 2016</td>
<td>3 months</td>
<td>212 31 3</td>
<td>42.63%</td>
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<tr>
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<td>315/28</td>
<td>98.56%</td>
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<tr>
<td>3rd prorogation</td>
<td>26 May 2016</td>
<td>2 months</td>
<td>46 20 3</td>
<td>11.95%</td>
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<td>309/30</td>
<td>97.41%</td>
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<tr>
<td>4th prorogation</td>
<td>26 July 2016</td>
<td>5 months</td>
<td>489 26 4</td>
<td>89.94%</td>
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<td>315/26</td>
<td>97.99%</td>
</tr>
<tr>
<td>5th prorogation</td>
<td>15 December 2016</td>
<td>7 months</td>
<td>288 32 5</td>
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<td>306/28/7</td>
<td>97.99%</td>
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<tr>
<td>6th prorogation</td>
<td>15 July 2017</td>
<td>3 months</td>
<td>137 13 0</td>
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<td>312/22</td>
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