

Normalizing the Exception in the Counterterrorism Response: The Case of France

*Normalizar la excepción en la respuesta antiterrorista:
el caso de Francia*

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Key words

- Counterterrorism
- State of Emergency
 - Exceptionality
 - Normalization
 - Preventivism
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Palabras clave

- Antiterrorismo
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 - Terrorismo

Abstract

Following the 2015 attacks in France, the country's government decreed a state of emergency for two years, which was subsequently repealed in favor of a new counterterrorism law in October 2017. When analyzing the counterterrorism law, the implementation of certain measures taken from the state of emergency can be observed in the period of social and political normality. The objective of this paper is to determine which measures have been transferred from one period to the other. According to the analysis, new French counterterrorism legislation has been confirmed since the normalization of the 2015 state of emergency.

Resumen

Después de los atentados en Francia en noviembre de 2015, el Gobierno decretó el estado de excepción durante dos años, para ser derogado en octubre de 2017 en favor de una nueva ley antiterrorista. Al analizar la ley antiterrorista, se observa la traslación de algunas de las medidas del estado de excepción al periodo de normalidad. El objetivo de este artículo es señalar qué medidas concretas han pasado de un periodo a otro. Con base en el análisis, puede afirmarse que la nueva legislación antiterrorista francesa es, en suma, una normalización del estado de excepción decretado en noviembre de 2015.

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INTRODUCTION

Since the onset of the campaign of terrorism attacks in France in 2015, all European countries have readapted their anti-terrorism strategies to the new situation, converting them into integral strategies that are integrated into their set of public policies. In November of 2015, the French government decreed a state of emergency¹ as a preventive measure and as a means of fighting against terrorism. In October of 2017, the state of emergency was repealed, being replaced by a new counterterrorism law.

In Europe's fight against Jihadist terrorism, exceptional measures have been adopted as a means of countering the threat. This article attempts to consider the specific case of France, by analyzing the transfer of measures declared in the country's state of emergency, declared in November of 2015, to the new counterterrorism law decreed in October of 2017, signaling which of these measures, and in what terms, have been transferred from the exceptional period to form part of the new French anti-terrorism approach.

THE CONCEPT OF EXCEPTIONALITY

When considering terrorism, most scientific works have focused on the issues of *why, how and when* the terrorist is created (Corte, 2006; Jordán, 2008; Cano, 2010; Moyano and Trujillo, 2013). Clearly, the study of the terrorist phenomena is an essential component to determine how to adjust the country's response. Analysis of governmental counterterrorism actions is not as common (Recasens i Brunet, 2007;

Mongardini, 2007; Fernández, 2008; Jordán, Pozo and Baqués, 2011). Therefore, the analysis of current approaches created to fight against terrorism is essential.

In Europe, counterterrorism actions have traditionally been framed within each country's social and political normality, from which operations to surveil and neutralize terrorist organizations are developed. In France however, since the 2015 attacks, and especially since November of the same year, the explicit state of exceptionality has been used as a tool. This suggests that the French case is paradigmatic, given that it has led to a change in logic regarding which events may motivate the onset of an *emergency* period in democratic countries.

When analyzing *Teología política* (Schmitt, 2009) in the context of the "state of emergency" conference, Agamben and Borràs (2003) suggests the difficulty of defining the so-called *state of emergency*, given that it falls "within the limits of the law and politics" (Agamben and Borràs, 2003: 57). Although it is assumed that a state of emergency is a suspension of the normal rule of law, Schmitt (2009) says that it "falls outside of the normally enforced legal order, without ceasing to be a part of the same" (Schmitt, 2009: 14). Therefore, the issue is whether or not this new order, the *exceptional* one, is in fact a part of the legal system. This issue is based on the law, since if it extended beyond the law, it would become a political question (Agamben and Borràs, 2003; Pontoriero, 2015). Thus, the question at hand is: what is this new order and what is it based on?

The main objective of this exceptional order is to establish a framework, distinct from the normal one, that permits the state to neutralize a social or political situation that may pose a risk to legal and social order. Therefore, the state of emergency is understood to be an extreme mechanism "by virtue of the law of preservation [of the

¹ Although in France, the term used translates as "state of urgency", the implications are equivalent to Spain's so-called *state of emergency*. Therefore, in this article, "state of emergency" is used as a synonym for "state of urgency" (see Cerdá, 2017).

state]" (Schmitt, 2009: 18). In other words, in this situation, the government may resort to methods that extend beyond the normal legal system, in order to ensure the existence of said order, its own survival and current social and political order.

This paradox, in acting against the laws in order to ensure the same, requires certain determinants in order to justify the action. Thus, in order to declare a state of emergency, Agamben (2010) suggests *need* as a necessary condition in order to adopt this type of framework. This need may be justified by a "specific violation" (Agamben, 2010: 41), in accordance with the Latin proverb *necessitas legem non habet* (*necessity has no law*) (Agamben, 2010: 40).

Without a specific need or condition, the creation of the alternative framework to guarantee legal and social order would be unfeasible. Therefore, it may be considered that *normality* is a state in which there are no specific conditions placing legal and social order at risk, preventing the existence of frameworks that vary from those of the Constitution.

The conditions required in order to declare a state of emergency may vary, but there are situations which, in all cases, would activate the same. Regardless of the geographic area (Ochoa, 2004; Pontoriero, 2015), war, serious internal disorder and threats against the territory or sovereignty, overtaking the country's normal enforcement capacity (see Fix-Zamudio, 2004 on the state of emergency in distinct Latin American countries) are sufficient cases for the declaration of an exceptional period. Some authors have even argued that this exceptional state may arise, not only from critical periods of democratic states, but also in other cases (Zamora, 2005; Durand, 2010; Lucas, 2011).

In the regulatory law of these exceptional states, it is foreseen that these laws

shall remain in force until the threat causing their approval has disappeared. But not all of these threats have a clear end point. What happens in these cases?

The use of the exceptional state as a tool to neutralize a threat having a diffused ending, suggests that this exceptional period may extend indefinitely. In the case of France, terrorism was the conditioning factor for the activation of the 2015 state of emergency, and it remained in effect until October of 2017 when it was formally overturned. However, parts of this emergency decree have been introduced into the country's common law. If the state of emergency was an issue falling outside of the legal order, this order has absorbed part of that which falls outside of the same. If, on the other hand, the state of emergency is an extreme version of the legal order but remains a part of the same, the so-called *state of emergency* is rendered meaningless.

THE STATE OF EMERGENCY (2015-2017)

In France, the state of emergency arose during the Algerian War of Independence (1954-1962), with the drafting of Law No. 55-385 (*Loi n.º 55-385*, 1955). Since then, it has been declared in this country on five distinct occasions: The Algerian War (1955), the military revolt of Algerian generals against the Parisian government (1958), the *Putsch de Argel* (1961), the New Caledonia uprisings (1984) and the youth riots of 2005 against the police in Parisian and other suburbs (*banlieus*). In November of 2015, François Hollande, ex-President of France, declared a state of emergency, ordering the closure of borders and deploying the military across the country to support the gendarme (France's national police force) and distinct local police, in their operations.

After its entry into effect, the first draft of the decree of the state of emergency (*Loi n.° 55-385, 1955*) was modified to increase the effectiveness of some of its measures. Thus, the text from 14 November (*Décret n.° 2015-1475, 2015*) implemented Article 11.1 from the 1955 law to permit the registration of households and private installations without the need for a prior judicial order (*Loi n.° 55-385, 1955*), making these interventions administrative issues. This would be the cornerstone of the French anti-terrorism strategy during the years of the state of emergency. The decree from the following day (*Décret n.° 2015-1476, 2015*) modified other related issues, such as the seizure of weapons or the creation of areas of exclusion, prohibiting the transit of individuals.

These measures were complemented on 20 November (*Loi n.° 2015-1501, 2015*), increasing the capabilities in the fight against terrorism. Here, the Ministry of the Interior

was granted the ability to order house arrests for those identified nominally. Individuals could not leave their residences unless so decided by the ministry, and under specific circumstances, as indicated in the order. Eventually, it would be possible to demand daily visits to a police station for identification controls and the removal of documents permitting exit from the country.

During the initial months of the state of emergency (November 2015-July 2016), governmental activity was devoted to the modification and re-adaptation of the law, in accordance with the new terrorism phenomena, implementing an unprecedented campaign of administrative checks. According to the statistics bulletin on the state of emergency, published by the National Assembly (*Assemblée Nationale, 2017*), a few months before the repeal of the state of emergency, the number of checks organized by phases followed the distribution indicated in Table 1.

TABLE 1. Number of administrative checks during the period of enforcement of the state of emergency (2015-2017)

Phase I/II	Phase IV	Phase V	Total checks
3,594	612	130	4,336

The checks were carried out with a tendency similar to that of house arrests, carried out massively on the dates in which the terrorist attacks took place. During Phase I, 350 arrests were ordered, a number that progressively decreased until July of 2016 (Phase IV), when, following the Nice terrorist attacks, there was a notable increase in the implementation of these orders (*Assemblée Nationale, 2017*).

Generally speaking, all of the laws and decrees that the state of emergency has extended until October of 2017 (*Décret n.° 2015-1475, 2015; Décret n.° 2015-1476, 2015; Décret n.° 2015-1478, 2015; Loi n.° 2015-1501, 2015; Loi n.° 2016-*

162, 2016; Loi n.° 2016-987, 2016; Loi n.° 2016-1767, 2016; Loi n.° 2017-1154, 2017), will serve as the basis of the checks and house arrests, except for one specific period. From May to July of 2016, the checks were not authorized, given that the Constitutional Council considered that some of the clauses approved regarding agents' seizure capacity during these checks were contrary to the Constitution (Decision no. 2016-536 QPC du 19 février 2016, 2016). In light of the end of the period of enforcement of the state of emergency, the extension was approved, without the inclusion of house checks in the text.

Administrative checks and house arrests are just some of the fundamental points. Of special relevance is the capacity to close certain spaces that are considered risks to public safety. While this may not initially appear to be noteworthy, when considering that in the extension of the law of May of 2016, Article 8 of the 1955 law (*Loi n.º 55-385, 1955, Art.8*) was reformulated to refer to houses of worship as sites of special relevance, susceptible to closure for safety concerns. Thus, the ability to close “houses of worship, especially those in which a call to hate or violence is made, or where there may be the provocation to commit acts of terrorism or those that glorify these acts” is evidenced (*Loi n.º 2016-987, 2016, Art. 3*).

There is one clear objective of the introduction of houses of worship within the category of spaces of concentration of individuals who may be enclosed for security reasons: to prevent multitudes in spaces where there is the risk of radicalization processes. According to data from the statistical bulletin of the National Assembly (2017), a total of 19 houses of worship were closed during the state of emergency period, as well as 3 unidentified meeting sites. Far from being a central element of the order, the closure of the houses of worship was proposed as a complement to the two fundamental points indicated above: administrative checks and house arrests.

THE COUNTERTERRORISM LAW (2017-PRESENT)

The impact assessment (INTX1716370L/Bleue-1, 2017) of the 2017 counterterrorism law (*Loi n.º 2017-1510, 2017*), details the measures included within the body of the counterterrorism regulation that repealed the state of emergency. With the approval of this law, the following became normality: the establishment of perimeters of protection, the closing of houses of worship, the ordering of individual surveillance measures and ad-

ministrative checks, the surveillance of radio communication, border control and data treatment of passengers by air (through application of Directive 2016/681, 2016), and by sea (through *Loi n.º 2017-1510, 2017*).

The counterterrorism law has absorbed the measures that were previously applied during the enforcement of the state of emergency. The difference lies in the fact that the requirements for its application have been extended, offering increased guarantees and mitigating the transparency existing during the prior period.

As for administrative checks, a certain level of judicial control was recovered, although the nature of these checks, within the scope of counterterrorism law, remains mainly preventive. The objective is to normalize the use of said checks, introducing their regular use into police investigations, as preventive resources, with the sole condition that their implementation respond to the requirement of offering increased prevention of damage to public order.

Therefore, the differentiation between administrative checks and judicial inspections is established. In the case of the latter, which are intended to detain individuals on the grounds of having committed a crime, the process is the same and legal authorization is required in order to carry out said check. Regarding the former, violation of the control prior to the intervention is permitted, assuming that this violation is duly justified. Therefore, various requirements are indicated in order to offer certain guarantees to the intervention when a check is carried out.

First, there is the duty to inform the state’s public attorney as soon as possible. Second, the presence of a legal police official who will act as a controlling authority is required. Third, there is the drafting of a report that places the responsibility of the intervention on the agent entrusted to lead the operation. Finally, all of the seized data will be the responsibility of the depart-

ment head when carrying out the intervention, prohibiting access to the same until so authorized by the corresponding judge. Despite the fact that this remains an administrative procedure, participation by the judicial authority, even once the checks have been completed, prevents the a priori implementation of arbitrary household checks.

In addition to the cited requirements, three unique situations are also cited, in which an administrative check may take place: 1) when the behavior of the individual constitutes a serious threat to security, 2) when regular relations are maintained with individuals who incite the committing of crimes or who glorify the same and 3) when the measure is only used to prevent acts of terrorism.

During the enforcement period of the state of emergency, the specific situations in which an administrative check could be performed were responsibility of the corresponding administrative authority. Therefore, in the case of the persecution of other types of crimes, including organized crime, law enforcement could also carry out administrative checks. With the situations indicated in the new law, interventions pursuing this type of crimes once again became judicial in nature, that is, they required prior judicial authorization.

House arrest is another very relevant measure from the state of emergency that was transferred to the period of normality. There are multiple objectives of this measure: to geographically concentrate the threat in the face of potential judicial investigations, to facilitate the surveillance of individuals, to reinforce the effectiveness of the IST files² and to counteract the lack of

measures for control of foreigners in France (NTX1716370L/Bleue-1, 2017).

As in the case of the administrative interventions, preventive house arrests are strictly limited to the prevention of terrorism crimes, and cannot be carried out as such against an individual for distinct causes, even when the individual potentially poses a threat to public order.

To order a preventive house arrest, the individual's behavior must suggest a serious threat based on two criteria. First, there is the criteria that "they maintain regular contacts with individuals who incite, facilitate or participate in acts of terrorism" (NTX1716370L/Bleue-1, 2017: 41) and, second, that "they support or adhere to the idea that they incite the committing of acts of terrorism in France or abroad or glorify these acts" (NTX1716370L/Bleue-1, 2017: 41).

The order for a preventive house arrest must include the actions to be performed by the individuals to be subject to said order. In addition, mandatory measures are established regarding residence and appearance before the authorities. First, the residence measure implies the obligation to remain in a specific location within the country, whose size is not smaller than a township, where the individual may carry out his/her everyday life in an ordinary manner (NTX1716370L/Bleue-1, 2017: 41). Second, it orders that, a maximum of once a day, "the individual should appear in person at the police or gendarme station" (NTX1716370L/Bleue-1, 2017: 41) closest to his/her residence, to appear before the authorities.

In addition to the mandatory measures, the preventive order issued by the authority may include additional measures such as the obligation to "declare the technical numbers and identifiers of all electronic communication media available, as well as any changes in these numbers"

² Acronym for "*Interdiction de sortie du territoire*" (Prohibition of exit from the territory, in English). One of the types of individual classification files of French security and intelligence. It identifies individuals who are susceptible to joining terrorist organizations abroad and, therefore revokes the possibility of their leaving French territory.

(NTX1716370L/Bleue-1, 2017: 41). As a second measure, the individual may be obliged to cease to maintain direct or indirect relations with certain individuals, who may be individually designated, in the case of existing suspicions of terrorist activity or relations with terrorism.

The residence and appearance may be extended to a period of at least three months. The declaration of technical identifiers and the prohibition of relations with suspicious individuals may be extended to a six-month period. However, in the case in which new justifying circumstances arise, the time of both additional measures may be extended.

The four measures, both the mandatory and complementary ones, have two distinct objectives. First, they force the individual to maintain ongoing contact with the security forces in order to avoid their potential flight and to enable early detection if this flight should take place. Second, it attempts to separate the individual from those social circles in which they may have interactions resulting in their radicalization or possibly leading them to carry out a terrorist attack.

Both groups of measures are attempts to assume physical control over individuals who may be a potential threat to public order. However, the law proposes two alternatives to these physical control measures. The first alternative refers to the obligation of appearing daily in the police station for identification. Alternately, the individual may request the placement of an electronic surveillance device to permit verification of his/her position within the geographic area, as ordered by the prefecture or ministry.

Although this is a highly invasive measure, given that it permits localization of the individuals (but not real time monitoring of them), those who agree to it will benefit from a considerably larger geographic area that they are permitted to access: from the township to the police station.

The second alternative refers to cases in which the order does not include the obligation of remaining in a specific geographic area. Here, the individual may be obliged to 1) declare his/her domicile and all changes of domicile that they wish to make and 2) declare any displacements that they make (NTX1716370L/Bleue-1, 2017: 42).

The other measures transposed from the state of emergency, such as the closure of houses of worship, etc., maintain this same dynamic of tightening the requirements needed for application of the measures, thereby increasing the guarantees.

TERRORISM AS A CONDITIONING FACTOR FOR STATES OF EMERGENCY

In the section devoted to the state of emergency concept, in which the thesis of Agamben (2010) and Schmitt (2009) is presented, *need* (Agamben, 2010) is described as being the conditioning factor required for the decree and application of this emergency state. Two types of determinants are discussed, which are typical in most countries, and which would serve for the declaration of this emergency state: war, internal unrest and threats against the country's territory or sovereignty. The French case, however lacks either of these conditioning factors, since terrorism was the trigger for its state of emergency.

Terrorism has become ever more diffuse, given its nature, and our current times, in which traditional organizational structures are broken and do not operate based on hierarchical ordering. Destabilizing and neutralizing a terrorist organization does not ensure the end of this group's activity, and it is possible that future actions will not be committed by members of the organization, but rather, by individuals who inspired by the group's postulates, as occurs with the so-called *lone wolves*.

What are the implications of this on the governmental response? If the threat is diffuse, the means of confronting it must be adjusted to this indetermination. On the one hand, the period of enforcement of the response should be indefinite and, on the other hand, it should be as effective as possible within a legal system, without breaking with the same.

As for the indefinite time duration, the reasons for this are evident. If the threat does not have a clear end, having a determined end to the response to the same will be quite risky. As for efficiency, if the terrorist profiles are even more diffuse (and many of them do not even belong to an organization) they must be pursued outside of the organizations, in a population of millions. These two issues are critical in understanding the response of the French government.

France enacted and implemented the state of emergency as an appropriate counterterrorism method. Currently, the emergency state forms a part of normality, and thus, it may be affirmed that the previously mentioned undetermined time period of this emergency state has remained in place while the legal order has been expanded, permitting its increased efficiency. Therefore, the barrier has disappeared between the times that are considered exceptional and those that are not.

The reasons why the exceptional state has come to form a part of normality are not fully clear. The relationship between the phenomenology of terrorism today, especially terrorist profiles and how radicalization occurs, as well as France's demographics, may offer information to help understand this dynamic.

Moyano and Trujillo (2013) offer an extensive review of the distinct approaches to the radicalization phenomenon from a variety of levels of analysis (socio-structural, individual and group). Based on the evidence, it is clear that "there are various personal profiles, ed-

ucational levels and socioeconomic patterns [with regard to radicalization]. Therefore, it is difficult to defend the existence of a 'causal root' or a unique and consistent profile that identifies who may be vulnerable to radicalization, considering only sociodemographic, economic, geographic, educational or occupational data" (Moyano and Trujillo, 2013: 67-68). Reinares, García-Calvo and Vicente (2019), analyzing the profiles of Jihadists in Spain, as well as Kepel (2016), examining the history of Jihad in France, reached a similar conclusion as Moyano and Trujillo (2013), although with some distinctions. According to the respective texts, it is found that, while characteristics with predictive capacity do not exist, there are certain common issues appearing in the majority of the recent Jihadists, in both France and Spain. For example, these individuals tend to be a part of the so-called second generation of immigrants and therefore, they have grown up within the European social and political systems.

Another common characteristic is the use of religion as justification for the terrorism act. According to Moyano and Trujillo (2013) indicated, faith as the determinant in the terrorism act is questionable, since an appropriate religious education should serve to protect against radicalization (Moyano and Trujillo, 2013). But clearly, both terrorist acts and the operatives carrying them out have relied on this faith, even if their education was partial and biased or if their behavior has not effectively adjusted to their religious doctrine (see the review by Kepel (2016), analyzing the distinct French terrorist profiles of recent decades).

In the pyramid model (McCauley and Moskalenko, 2008) radicalization is proposed as the result of an individual's passage through distinct echelons of a pyramid. At the lowest level, there are the sympathizers, followed, in rising order, by the followers, activists and radicals, and with the terrorists situated at the peak (McCauley and Moskalenko, 2008; Moyano

and Trujillo, 2013). In this model, availing of the conveyor belt metaphor (Moskalenko and McCauley, 2009; Moyano and Trujillo, 2013), individuals pass from base to peak, from sympathizers to terrorists, as they rise from one pyramid echelon to the next. However, the same authors (Moskalenko and McCauley, 2009) argue the possibility of another distinct process in which radicalization would not be the result of passing through all of these levels, but rather, would be the consequence of an extreme diagnosis of the social reality and of the methods available to change the same.

The potential existence of two parallel processes is problematic, since it decreases the predictive capacity for identifying processes and radicalization patterns, to which we must add the multiplicity of ways that (and places where) individuals may be radicalized, even independently. This implies that potentially dangerous individuals may be those who share the previously mentioned characteristics: second-generation immigrants with religious affiliation.

Religion, as well as France's demographic situation appear to play determinant roles in the counterterrorism law of 2017 (*Loi n.º 2017-1510*, 2017), and therefore, in the normalization of the exceptional state. This is clear when observing that, even during a period of normality, counterterrorism law has maintained control and surveillance over Muslim places of worship, as was the case during the state of emergency. This presents a clear risk of bias when implementing these policies, even more so when considering data from the Pew Research Center (2017), according to which, the number of Muslims in France in 2016 was approximately 5,720,000, 8.8% of the country's total population.

The transfer of exceptional measures to times of normalcy and therefore, the normalization of the exceptional state, ap-

pears to be more of a response to a future risk, mediated by the demographics, as opposed to an explicit exception being made in the present day.

Governmental use of maximum powers to counter the threat of terrorism may in fact pose a risk to democracy. Recurring to the exceptional state to confront a vague threat counters the logic that an imminent and timely threat exists, which requires an equally forceful response for its neutralization.

OTHER POINTS REGARDING THE NORMALIZATION OF THE EXCEPTIONAL STATE: ONSET AND REINFORCEMENT OF PREVENTIVISM

Another issue related to the normalization of the exceptional state is the evolution of counterterrorist policies. Even prior to the campaign of terrorist attacks of 2015-2016, these policies had experienced changes that had made them part of an integral and integrated policy within the overall set of public policies. The understanding of the terrorist phenomena as an issue extending beyond violence, having roots in the country's very social fabric at distinct levels, has permitted the creation of global responses to address the threat.

Based on this idea, distinct prevention strategies have been created across Europe³, such as the National Counterterrorism Plan (SGDSN, 2018) in France or the National Strategic Plan to Fight against Violent Radicalization (CITCO, 2015) and the Strategy against Terrorism (National Security Council, 2019) in Spain. The United Kingdom pioneered this type of strategies.

³ The terrorism prevention strategies of each of the countries of the European Union may be viewed at the following European Commission link: https://ec.europa.eu/home-affairs/what-we-do/networks/radicalisation_awareness_network/ran-and-member-states/repository_en

This ex-member of the European Union had already presented its initial strategy, *Prevent*, in 2007. It was devoted exclusively to the prevention of radicalization, complemented by subsequent versions until its redrafting as CONTEST (HM Government, 2018).

These strategies are based on four main principles: prevention, protection, persecution and preparation of the response (National Security Council, 2019: 34-35; SGDSN, 2018). By observing these, it is evident that in the counterterrorist response, both prevention of radicalization as well as preparation of society to confront the consequences of an attack, are considered at the same level as police and intelligence capacities to prevent terrorist attacks or, when relevant, to neutralize them as quickly as possible.

However, the emphasis on prevention is not exclusive to terrorism prevention strategies. This preventive spirit is also apparent in the successive reforms of the respective criminal codes which have emerged over the past decade. For example, in the case of Spain, special relevance should be given to Organic Law 2/2015 (Organic Law 2/2015, 2015), reforming the Criminal Code in the area of terrorism crimes and Organic Law 13/2015 (Organic Law 13/2015, 2015), modifying the Criminal Procedure Act, to strengthen procedural guarantees and to regulate technological research measures. In France, the counterterrorism law of October 2017 (*Loi n.º 2017-1510*, 2017) is an example of this. The objective of the criminal reforms and the refining of the available research methods is to offer a larger quantity of measures that permit the minimizing of the risk of an imminent terrorist attack. The objective of the prevention strategies is to minimize the risk of an attack over the long term, leaving terrorist organizations without potential operatives. The combination of both types of reform offers a notable reduc-

tion in uncertainty. When detecting a risk, it should first be neutralized.

Despite the benefits offered by anticipation of terrorist acts, it is necessary to analyze precisely what the shift towards *preventivism* may mean to European democratic systems. This is a key issue for future research in this area.

The ability to anticipate is limited. It requires information and signals that permit the projection of future risks. Otherwise, it would be mere fortune telling. And access to this information may only take place by reactivating the classic debate between freedom and safety. This article does not attempt to consider this issue. The current context has already determined who is favored by this confrontation. The problem is not whether currently, an increased ability to anticipate suggests a limitation of individual freedoms, but whether or not the benefits resulting from restrictions of the past years has placed us, as a society, on a one-way path.

CONCLUSIONS

As a result of the terrorist attacks of November of 2015 in France, a state of emergency was imposed across the country. Although various European countries have also taken steps in this direction, the French case is paradigmatic. With the entry into effect of the counterterrorism law of October of 2017 (*Loi n.º 2017-1510*, 2017) the period of emergency in France came to an end. However, this did not mean the end of the exceptional state. The subsequent law resulted in a transposition of the measures from the state of emergency decree and its respective extensions, applied since November of 2015, to the state of normality.

Far from being a return to the normality of the pre-2015 attacks, the scenario resulting from the counterterrorism law of October 2017 is in line with more than one *neo-*

exceptional situation. Officially, the state of emergency has been repealed, but on a practical level, it continues to exist. The phenomenology of the new terrorist threat and France's demographic make-up have been key factors behind this issue. However, the French neo-exception creates problems related to the concept of *the exceptional*.

Schmitt (2009), Agamben and Borràs (2003) and Agamben (2010) proposed the issue of *need* as being the precursor to the exceptional state. In France, terrorism has been a sufficient conditioning factor to initiate an exceptional period. The threat of terrorism, although previously diffuse and now even more so, requires an equally diffuse response, both in terms of methods as well as duration. Without a doubt, exceptional methods are needed to address this threat. This logic underlies the actions of the French government in its response to terrorism. However, using the same powers of state to confront the threat of terrorism may blur the line of events that are exceptional and those that are not.

In the first article of the law of creation of the state of emergency decree of 1955 (*Loi n.º 55-385, 1955*), the conditioning factor to declare the state of emergency is a serious attempt against public order. The November 2015 attacks comply with this requirement. The question does not lie within this declaration, but rather, in the decision, translated into law, to implement the measures foreseen to counter a serious attack against public order in a non-exceptional scenario.

In addition to this question, there is also the issue of the development of prevention strategies against radicalization and the organization of a combined country response. This betrays a change regarding the concept of terrorism. Terrorist threats are not only a threat against security, but rather, in the current situation, their characteristics make them appear to be a social movement, with groups of vulnerable populations that are susceptible to radicalization, with

a structured discourse and a clear final objective. This situation forces governments to increase their predictive capacity and to refine their methods of risk detection, introducing these methods in a distinct combat plan, in which the counterterrorist actions also include narrative control, to alienate those who are susceptible to radicalization from the message of the terrorist organization, steering them away from these organizations. Thus, these governments should include a preventive action dynamic, the so-called *preventivism*.

Understanding terrorism as an integral threat implies the development of an overall strategy, but the terms of agreement for this response and the methods used may create increased pressure on the democratic systems. This turns these into distinct systems, created not from consensus, but rather, from urgency. This may undermine both exceptional periods and normal ones, blurring the distinctions between them and creating a new era lying somewhere between the exceptional and the normal.

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