

On the justification of states of exception in liberal democracies

A discourse analysis of how the Hollande Administration
fixated the discourse on the State of Emergency in France
after the 2015 Paris attacks

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FKVK02

Spring term 2016
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Abstract

On the night of November 13, 2015, after the attacks perpetrated by the so-called Islamic State against France in Paris and Saint-Denis, President François Hollande decreed the state of emergency. This state of emergency is a state of exception which restricts certain civil liberties such as the freedom of assembly, as several NGOs and UN rapporteurs denounced. Since the September 11 attacks, several liberal democracies implemented permanent exceptional measures in order to fight against global terrorism, challenging the essence of liberalism and democracy. By using Laclau and Mouffe's discourse theory, this study proposes an analysis of the way in which the Hollande administration fixates its discourse on the state of emergency, based on official speeches and parliamentary debates. By deconstructing this discourse, highlighting its chain of equivalence, the author came to the conclusion that the Hollande administration justifies a prolonged state of emergency by articulating the nodal points necessity, security, liberty and the rule of law. By studying how the antagonistic discourse struggles to give a different meaning to these floating signifiers, it appears that they use the same nodal points. The Hollande administration's discourse is hegemonical because they justify the state of emergency by invoking security in the name of liberty.

Key words: State of Emergency France, State of Exception, Discourse Theory, Liberty, Security, Rule of Law, Necessity

Characters: 71,289

Table of contents

1	Introduction.....	1
2	Method and research design.....	3
2.1	Case-selection.....	3
2.2	Material.....	3
2.3	Discursive formation.....	4
2.4	Operationalization.....	5
2.5	Methodological discussion.....	6
2.6	Limitations of the study.....	7
3	Theoretical framework.....	8
3.1	Laclau and Mouffe's theory of the social.....	8
3.2	The state of exception in liberal democracies.....	9
3.2.1	The state of exception and its implications for liberalism.....	9
3.2.2	A "permanent state of exception": a global trend since 9/11	10
3.2.3	The discourse justifying exceptionalism in liberal democracies.....	11
4	Analysis.....	13
4.1	The state of emergency in France.....	13
4.2	Antagonistic discourses on the state of emergency.....	14
4.2.1	The chain of equivalence of the Hollande administration's discourse	16
4.2.2	The challenging discourse on the state of emergency.....	19
5	Conclusions.....	21
6	References.....	23

1 Introduction

On the night of November 13, 2015, France was attacked on its national ground by the so-called Islamic State of Iraq and the Levant (ISIL), killing 130 people and injuring 351 others. This act of political violence led to the implementation of a state of exception. Indeed, during the night of November 13 to 14, President François Hollande declared a state of emergency throughout Metropolitan France. The state of emergency is a legal regime, provided by Law No. 55-385 of April 3, 1955. This is an exceptional measure that can be decreed in case of “imminent danger resulting from serious breaches of public order or in case of events having, by their nature and gravity, the character of public calamity” (Legifrance). Amongst other, the state of emergency enables to house arrest people only on a decision of the government, i.e. without the supervision of a judge; to search people's house at all times of day and night without the issue of a search warrant; to quickly dissolve any associations and to ban demonstrations (Gouvernement.fr, 2015b).

The state of emergency has been extended to July 26, 2016, bringing its duration to eight and a half months. According to the French government, the prolongation of the state of emergency had two goals: fight terrorism while ensuring the respect for civil liberties (Gouvernement 2015). However, several NGOs and UN rapporteurs warned about the abuses perpetrated by the police and the French State under the state of emergency (Amnesty International 2016; Human Rights Watch 2015; OHCHR 2016; 2016b). Amnesty International France denounced the “perpetuation of a regime with extremely serious consequences for human rights” (Amnesty International 2016). The NGO documented hundreds of house arrests without any reason, that did not yield any convincing results in the fight against terrorism but have had serious consequences for the assigned, such as a loss of employment. The opponents to the state of emergency argue that the public authorities have exceeded the framework of the fight against jihadism. Indeed, it is in the name of the state of emergency that house arrests were issued against environmental activists during the 2015 United Nations Climate Change Conference in December 2015 or against demonstrators of the movement “Nuit Debout¹” during the spring of 2016.

The violations of civil liberties and the prolongation of the state of emergency over eight and a half months seem paradoxical for a liberal democracy such as France whose core principles are liberty and the rule of law (Neal 2010). It is even more surprising that it takes place in France, who calls herself the “Homeland of Human Rights”. Indeed, the state of emergency is a state of exception that can be defined in a broad sense as a “point of imbalance between public law and political

¹“Nuit debout” is a social movement that began in Paris in March 31, 2016, protesting against a new labor reform known as the “Loi Travail” or “Loi El-Khomri”. This movement spread to other French cities and to other countries such as Spain.

fact” that restricts civil liberties and undermines the separation of powers, favoring the executive and undermining the judiciary (Agamben 2005).

Since 9/11, across the globe, states of exception have been established in the name of security and the fight against global terrorism. These ”illiberal practices” in liberal democracies have been a widely debated subject of academic literature since 9/11 (Agamben 2005; Chang 2011; De Besnoit 2007; Donohue 2008; Ebeling 2003; Fisher 2012; Gaughan 2015; Goldberg 2002; Hjorth 2014; Kirkland 2006; Neal 2010, Saint-Bonnet 2004).

The attacks of September 11, 2001 were the trigger of this 'global archipelago of the exception' as Italian philosopher Giorgio Agamben calls it (Agamben 2005). On the same vein, the French state of emergency was decreed as a consequence of the 2015 Paris Attacks. However, it takes more than specific events to sustain states of exception in the time. According to discourse analytical approaches, our access to reality is done through language and the meaning of this reality is gained through discourse (Jørgensen & Phillips 2002:9). In other words, our way of talking creates and changes the way we see the world (Ibid:1). In *Hegemony and Socialist Strategy*, first published in 1985, Ernesto Laclau and Chantal Mouffe outlined their theory of discourse known as 'discourse theory' (Laclau & Mouffe 1985). Their main point is that there are different discourses that represent different way of understanding the social world in permanent struggle. All these discourses want to be the dominant one and thereby the dominant perspective of our social world.

My aim is to use Laclau and Mouffe's discourse theory in order to study the Hollande administration's discourse regarding the prolongation of the state of emergency established after the November 2015 Paris attacks. My objective is to determine how the government justifies this state of exception. This research paper will contribute to a larger scope in the analysis of the way in which liberal democracies justify states of exception by adding the case of France, a recent case of liberal democracy prolonging illiberal practices established in the name of counterring jihadism. In this research paper, I will answer the following question:

How did the Hollande administration justify the prolongation of the state of emergency established after the 2015 Paris Attacks?

The research paper starts by presenting how the study was conducted and how I designed my research. I will explain how discourses are formed according to Laclau and Mouffe and how I operationalized their method to conduct my analysis. Thereafter, the theoretical approaches that were used in this research paper will be presented. Used as a meta-theory, Laclau and Mouffe's theory of the social will first be explained. Then, the concept of the state of exception as developed by Carl Schmitt and its implications for liberal democracies will be treated. I will then describe how other liberal democracies justified states of exception with the Andrew W. Neal, Saint-Bonnet and Alain de Besnoit . Finally, I will give analyze of how the Hollande administration fixated its discourse justifying an extended state of emergency.

2 Method and research design

2.1 Case-selection

Teorell and Svensson pointed out that case-selection should be driven by four principles: the case should be relevant, generalizable, variable and aiming at complementing extensive results (Teorell & Svensson 2007:222). The focus on France was chosen along my intention to investigate the discourse justifying a state of exception in a liberal democracy. This research paper aims at generalizing this case to all liberal democracies that witness such states of exception. It is important to note that it is not the first time that France is under a state of emergency. Indeed, since its legalization in 1955, the state of emergency has been invoked five times: in 1955, 1958 and 1961 in relation to the Algerian War, in 1984 in New Caledonia and in 2005 in the French suburbs during the French riots (Vie Publique 2016). However, the state of emergency established on November 13, 2015, is the first state of exception decreed in the name of the fight against terrorism. As aforementioned, the subject of the state of exception has been revived after 9/11 in the academic literature and focuses on the states of exception used for counterterrorism. My case is therefore a case of a liberal democracy establishing and prolonging a state of exception in the post-9/11 era.

I have chosen to conduct a case study, which can be defined as "an intensive study of a single unit for the purpose of understanding a larger class of similar units" (Gerring 2004:342). If the case study is often criticized for not being able to generalize, it is also essential to analyze deeply specific events (Golden 2005:6).

2.2 Material

Empirics are based in official speeches and parliamentary debates that are publicly accessible. The time period that will be covered in this research paper is from November 13, 2015 until May 19, 2016. The material in focus starts from the night of the attacks, when President François Hollande publicly declared the state of emergency. On May 19, 2016, the Parliament debated and voted for the third prolongation of the state of emergency, until July 26, 2016. During this time period, the state of emergency has been debated five times at the Parliament. These debates are all transcribed by the French Parliament's protocole and publicly accessible.

The reason why I focus mostly on parliamentary debates is that very different political parties and political ideas are confronting each other directly. The French parliamentary debates are long and the deputies can take the time to fully express their point of view. The parliamentary debates can be seen as political arenas where discourses are struggling. Antagonisms are inherent to the political and parliamentary debates are a privileged material for studying discursive conflicts (Jørgensen & Phillips 2002:45). In the parliamentary debates regarding the state of emergency, the Hollande administration is represented by Prime Minister Manuel Valls, Minister of the Interior Bernard Cazeneuve and Minister of Justice Christiane Taubira. Therefore, I will mainly use their speeches when analyzing the discourse of the Hollande administration.

2.3 Discursive formation

Early twentieth century pioneer of modern linguistic Ferdinand de Saussure argued that language is a system composed of signs which combine both an acoustic image (*signifiant*) and a concept (*signifié*) (Saussure 1967:99). The link between a sign's acoustic image and concept is not objective but rather arbitrary; it is the result of social conventions (Jørgensen & Phillips 2002:10). For example, the idea of an egg is not objectively linked to the sounds e – g which serves as its acoustic image; it could be represented by something completely different. As noted by Saussure, this is demonstrated by the differences between the languages and even the existence of different languages (Saussure 1967:99). Indeed, while the concept "egg" has for acoustic image e – g in English, it has ö – f (œuf) on the other side of the Channel.

In the Saussurian tradition all signs are structured in a permanent closure, i.e. their meaning is always fixed. On the other hand, according to post-structuralists Laclau and Mouffe, signs do not have a finite meaning; the latter may differ according to the context in which the signs are used (Jørgensen & Phillips 2002:11). Indeed, they argue that signs may be *polysemic*, i.e. have multiple potential meanings (Ibid:27-28). They note that the meaning of a sign is determined by the discourse through *articulation*, the practice of establishing a relation among signs (Laclau and Mouffe 1985:105). Laclau and Mouffe call *moments* all signs in a discourse and *elements* the signs whose meaning has not yet been fixed (Jørgensen & Phillips 2002:26). Therefore, the discourse "transforms elements into moments by reducing their polysemy to a fully fixed meaning" (Ibid:28).

Thus, a discourse can be understood as a reduction of the possibilities of meaning. The other possibilities, that the discourses has rejected, is what is called *the field of discursivity* (Ibid:27). This "surplus of meaning" as Jørgensen and Phillips put it, is therefore excluded from the discursive fixation.

As aforementioned, the articulation forms the discourse by linking different signs together and thereby giving them a meaning. Jørgensen and Phillips suggest us to imagine the discourse as a fishing-net, where the moments would be the

knots (Ibid:26). This articulation is called a 'chain of equivalence' in discourse theory. Laclau and Mouffe call the privileged signs around which the others are ordered *nodal points* (Laclau & Mouffe 1985:105). These nodal points organize the discourse but are like all the other signs, devoid of meaning in themselves and only acquire a particular meaning in relation to other signs (Jørgensen & Phillips 2002:28). In other words, nodal points are the important signs of the discourse that have reached a point of crystallization through the articulatory practice.

Laclau and Mouffe call *floating signifiers* the nodal points that are highly polysemic because they are the signs that different discourses quarrel to give a meaning to (Ibid.). Indeed, as we have seen, Laclau and Mouffe are post-structuralist, which means that they consider the signs of a discourse can have other meanings when articulated differently, i.e. put in a different chain of equivalence (Ibid:29). The discourse is never totally fixed and therefore it can always be challenged by the surplus of meaning that is found in the field of discursivity (Ibid:28).

Furthermore, Laclau and Mouffe developed the concept of the myth, which they define as "a space of representation which bears no relation of continuity with the dominant structural objectivity" (Laclau & Mouffe 1985:60). The myth is the nodal point which represents the social space and which puts the limits of the topic of the discourse (Jørgensen & Phillips 2002:40).

2.4 Operationalization

In *Hegemony and Socialist Strategy*, Laclau and Mouffe did not lay out a particular way of analyzing discourses. Nevertheless, their concepts exposed above enabled Jørgensen and Phillips to design a method for empirical analysis, which I will use in this research paper. It is important to keep in mind that when we analyze a discourse, we aim at spotting the way in which the signs' meaning is fixed (Jørgensen & Phillips, 1999:26). In order to do so, Jørgensen and Phillips suggest first to identify the key signifiers of the discourse, i.e. the myth and the nodal points. I will thus answer the following question:

What are the privileged signs in the Hollande administration's discourse justifying the state of emergency and which of them organizes the social space?

Then, I need to investigate how the aforementioned key signifiers are combined with other signs (Ibid:50).

What is the chain of equivalence of the Hollande administration's discourse justifying the state of emergency?

Third, the authors suggest that we can then investigate how other discourses define these same signs in alternative ways to understand what potential meanings the discourse excludes (Ibid:29-30). In order to investigate this, I will ask myself:

How did other parliamentary parties articulate the nodal points of the Hollande administration's discourse justifying the state of emergency?

Through having identified these floating signifiers and *de facto* the field of discursivity of the Hollande administration's discourse justifying the state of emergency, we will have analyzed the meaning that specific articulatory practices give to elements by positioning them in a particular relationship with one another (Ibid:29). Thereby, we will have identified how the Hollande administration fixate the discourse justifying the state of emergency.

2.5 Methodological discussion

The discourse analyst needs to deconstruct the structures that she takes for granted (Ibid:49). My aim in this research paper is to show with which elements the state of emergency has been linked in the Hollande administration's discourse for justifying its prolongation. One of the challenges of the discourse analyst is thus to take some distance from the discursive structure in which she is anchored (Ibid.). For this research, I needed to cogitate on the fact that I, as having grown up in France, am very familiar in the discourse that I want to study. Moreover, I needed to realize that many common-sense understandings in the material that I studied were part of a *discourse*, i.e. "a socially-constructed meaning-system that could have been different" (Ibid:21). Jørgensen and Phillips recommend to discourse analysts to imagine themselves as being anthropologists "exploring a foreign universe of meaning in order to find out what makes sense there" (Ibid.). This made my research even more interesting to me because I meditated extensively on the myth of the discourse of the Hollande administration and how it was possible to full it very very different meanings.

Laclau and Mouffe's discourse theory has been criticized for not dealing with this limitation which may impair its reliability (Ibid:49).. In this paper, I did my utmost to present my line of thought, in order for the reader to understand how I worked as my aim is to provide a strong intersubjectivity (Teorell & Svensson 2007:99).

Finally, since the material is in French, I needed to translate them to English. Therefore, throughout this paper, whenever I had to quote in French, I translated it into English and added: [My translation]. I am aware of the fact that this linguistic barrier may impede on the precision of the analysis, especially because it is language that is in focus in this study. I have therefore strived to translate as precisely as possible in order not to lose in translation any nuances of the language.

2.6 Limitations of the study

My aim is to understand how the Hollande administration justified the implementation and the prolongation of the state of emergency through discourse analysis. The time period that will be covered is from November 13, 2015 to May 19, 2016. I will not analyze how the discourse on counterterrorism in France changed after the 2015 Paris Attacks and will therefore not do a comparative study over time.

Furthermore, this study does not aim at criticizing the results of the state of emergency *per se*. The state of emergency has been criticized for being unuseful since its results have been relatively inconclusive in the fight against terrorism. However, I will not discuss to what extent the state of emergency can be qualified as being successful.

As mentioned in the introduction, the state of emergency challenges certain number of civil liberties which have been very well documented by several UN rapporteurs and NGOs (Amnesty International 2016; Human Rights Watch 2015; OHCHR 2016; 2016b). Also, I invite the reader to consult these reports if she wants to know more about this subject.

In this study, I focus on the discourse justifying a state of exception in a liberal democracy. Therefore, I will discuss why the state of emergency is theoretically challenging liberalism and democracy in Chapter 3. However, my aim is not to analyze whether the state of emergency can effectively be compatible with these notions. Indeed, as I am taking a discourse analysis approach, my objective is to determine *how* the Hollande administration justified the fact that this state of emergency had to be established and prolonged until July 26, 2016.

3 Theoretical framework

3.1 Laclau and Mouffe's theory of the social

As Jørgensen and Phillips pointed out, discourse analysis should not be used as a method without presenting its theoretical grounds because they are intertwined. Therefore, Laclau and Mouffe's theoretical and methodological premises should be considered as a "complete package" (Jørgensen & Phillips 2002:3). Having explained their method, I will now present Laclau and Mouffe's theory of the social, which is similar to their concept of discourse in so far as they consider that the reality which we live in is never completely fixed (Jørgensen & Phillips 2002:33). This approach is a product of a criticism of Marxist theorists who argue that there is an objective social structure that is revealed by their theory (Ibid:30). Contrariwise, Laclau and Mouffe argue that *we* build an objectivity of the social formation through the discursive practice (Ibid:33). The ontology and epistemology of these two theories of the social are therefore reversed.

In politics, struggles between discourses take place between different actors that are trying to promote a particular way of organizing society (Ibid:36). However, some discourses are so established that we forget that they are socially constructed. This phenomenon is what is called objectivity in discourse theory, defined as the "naturalization of one single perspective" (Ibid:37). This objectivity of the social formation is synonymous with the hegemonical position of one discourse among others.

This objectivity is "the outcome of political processes and struggles" (Ibid:36). Laclau and Mouffe argue that when discourses are colliding, the hegemonic intervention achieves this fixation (Ibid:48). Hegemony is therefore the success of the dominance of a discourse over all other discourses against which it was struggling. However, this dominance can, at any time, become political again, challenged and undermined by a new discourse, which would take its hegemonical status.

In other words, the reality that seem natural to us and that we take for granted is the result of discursive struggles. In France, the fact that "[m]en are born and remain free and equal in rights²" is perceived, in the twenty-first century as an evidence. However, this discourse is the outcome of long discursive struggles and political violence whose apotheosis is the French Revolution. Moreover, discourses that we consider uncontested can, at any time, become political again and even challenged by another discourse (Ibid:36). For example, the discourse on

²Article 1 of the Declaration of the Rights of Man and of the Citizen of 1789.

women's rights is still a matter of political debate. The unconditional abortion-right under fourteen weeks which was obtained in 2010 in Spain was challenged by the anti-abortion rights in the following years. As a result, since 2015, there are more conditions for having an abortion. To quote Simone de Beauvoir, we shall "[n]ever forget that all it would take is a political, economic or religious crisis for women's rights to be called into question" [My translation] (De Beauvoir 2014:10.). Simone de Beauvoir thereby argued that the discourse on women's rights will always struggle to become an objectivity.

This example helps us understand that a discourse that holds a hegemonical position and which is therefore considered to be representing an objective reality can become *political* again when challenged by antagonistic discourses. This struggle can be stopped by a hegemonic intervention which will restore objectivity.

3.2 Discourse on the state of exception in liberal democracies

3.2.1 The state of exception and its implications for liberalism

In the 1920s, German jurist Carl Schmitt was the first to attempt to construct a theory of the state of exception in *Dictatorship* (1921) and *Political Theology* (1922). He argued that "sovereign is he that decides on the exception" (Schmitt 1985:5). The sovereign decides alone of what is normal and what is exceptional. Thereby, Schmitt highlights a subordination of the law to politics.

Carl Schmitt's arguments have been widely revived when the debate on liberty/security debate and the state of exception resurfaced after 9/11, for explaining the American foreign policy in its war against terrorism (Hjorth 2014:176). However, in *Exceptionalism and the Politics of Counter-Terrorism*, Andrew W. Neal argues that the "sometime Nazi jurist" is "an especially dangerous thinker who must not always be taken at his word" (Neal 2010:2; 136). As Hjorth pointed out, his theory gives arguments for absolutism and dictatorship because there is no moral explanation for the decision of the sovereign (Hjorth 2014:172).

Indeed, Schmitt's theory of exceptionalism comes into conflict with liberalism (Hjorth 2014:172). According to Alain de Besnoit,

[l]iberalism cannot understand the nature of the exception, neither can it face the exception without betraying itself, because it adheres to a legal conception which is strictly formal or procedural, and which claims that a pre-established rule or norm can be applied to any situation (De Besnoit 2007:86).

Agamben argues that “the state of exception appears as a threshold of indeterminacy between democracy and absolutism” (Agamben 2005:2-3). In 1966, the UN legitimized the state of exception, by stating that

[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin (OHCHR 1966).

The conditions under which a state of exception is acceptable according to the United Nations are challenging to liberal democracies. Indeed, it is stated that exceptional measures are permitted “to the extent strictly required by the exigencies of the situation”. The state of emergency is always decreed by the executive power and as we have seen, as stated by Schmitt the sovereign is the one that decides on the exception. However, liberal democracies uphold the principle of popular sovereignty. For example, Article 2 and Article 3 of the French Constitution provides that “the national sovereignty belongs to the people” and the Republic is “the government of the people, from the people and by the people”. Therefore, as pointed out by Agamben, the state of exception leads to the depoliticization of the citizens because they cease to be holders of sovereignty (Agamben 2005).

3.2.2 A “permanent state of exception”: a global trend since 9/11

According to French jurist François Saint-Bonnet, in the classic or Schmittian sense, a state of exception is understood as a time during which the rules of law provided for periods of peace are broken, suspended or dismissed to face an exceptional danger (Saint-Bonnet 2007:29). On the other hand, in recent years, the second sense given to the state of exception is synonymous with the establishment of prolonged exceptional practices aiming at dealing with a durable threat, such as terrorism. Indeed, this is the thesis of Italian philosopher Giorgio Agamben who argues that after 9/11, the so-called “exceptional measures” adopted by the US foreign policy are not limited in time. This ‘institutionalization of [...] exceptional measures’ (De Besnoit 2007:90) is what Agamben calls the “permanent state of exception” (Agamben 2005). Agamben argues that “[f]aced with the unstoppable progression of what has been called a “global civil war”, the state of exception tends increasingly to appear as “the dominant paradigm of government in contemporary politics” (Agamben 2005:2-3).

As Kim Lane Schepple demonstrated, the arsenal of exceptional measures taken by the Bush administration to fight global terrorism has been extended at the international level and adopted by other liberal democracies (Schepple 2004;

De Besnoit 2007:90). Agamben called this phenomenon the 'global archipelago of the exception' (Agamben 2005), documented by the CHALLENGE project, which have analyzed which (Bigo et al. 2007; Guild et al. 2009).

The measures of exception adopted by the liberal democracies in the last fifteen years for countering global terrorism seem to support Schmitt's model of exceptionalism and therefore challenges Schmitt who argued that liberalism was not capable of adopting a state of exception (Schmitt 1985). Alain de Besnoit points out that in fact, liberal regimes are perfectly capable of taking measures of exception but that, given the invisible, durable and permanent threat of terrorism, they tend to transform the exception into a permanent norm (De Besnoit 2007:91-92).

3.2.3 The discourse justifying exceptionalism in liberal democracies

As pointed out by Ronnie Hjorth, the concept of exceptionalism is at the center of a complex relationship between legitimacy, legality, law and power (Hjorth 2014:169). The problem of the justification through discourse is thus central to the question of exceptionalism (Neal 2010:31). Andrew W. Neal argues that

[t]he problem of exceptionalism cannot be addressed through dualistic approaches that try to establish clear boundaries between liberty and security, norm and exception, legal and extra-legal. The task is not to establish clear distinctions, but to question how such distinctions are made. From where do those distinctions acquire their authority, if not from legal codes? [...]. It is through sovereign distinctions, sovereign judgements and sovereign authorizations of 'truth' that practices of exceptionalism function. The question is: *how* do these sovereign authorization work? (Neal 2010:30-31).

Neal argues thereby that the state of exception is justified by the sovereign through a discursive formation shaping a particular truth. He goes on by saying that since "exceptionalism exceeds legal codes", "practices that claim exceptionality attempt to draw upon sources of authority other than law" (Neal 2010:30). Neal therefore agrees with Agamben which states that the state of exception is "a suspension of the juridical order itself" which "defines law's threshold or limit concept" (Agamben 2005:4). Therefore, Neal and Agamben argue that the justification of the state of exception cannot be done through the invocation of the law because it is exactly the suspension of the law.

French jurist Saint-Bonnet states that the 'obvious necessity' (*évidente nécessité*) is the central concept of the justification of the state of exception. Policy-makers often invoke the concept of obvious necessity to take exceptional measures and speak of an overwhelming need, an urgent necessity, an irresistible obligation before which they lack the capacity to choose. Thus, they claim that they do not have any choice and that they only obey a situation (Saint-Bonnet 2007:30). Hence this paradox: the holders of a decisional power claim that they do not have the capacity to choose. The necessity must intervene as a last resort,

when the pressure of circumstances is so strong that the usual means available to act, especially legal means are not sufficient. When the situation is extreme, the policy-makers argue that "necessity knows no law", in the sense that the necessity overrides the law (Ibid.).

This formula is particularly subversive of any legal order because, as Saint-Bonnet puts it, "[i]f it is enough to plead the necessity in order to negate the submission to the law, legal certainty becomes an empty word" (Ibid:30). Furthermore, the adjective 'obvious' triggers the criterion of urgency or pressing need, assuming that there is no alternative between acting in one way or another and between action and inaction. The claim of obvious necessity in the speech of the policy-makers expresses the idea of a lack of decision (Ibid:31). Agamben also argues that states of exception are justified by a necessity, which he calls the "state of necessity" (Agamben 2005:30). He points out that through claiming that the state of exception is a necessity, the necessity is thought as being an objective situation. However, Agamben argues "necessity clearly entails a subjective judgment and that obviously the only circumstances that are necessary and objective are those that are declared to be so" (Agamben 2005:30).

Neal argues that, since 9/11, there are two antagonistic discourses regarding the state of exception. On the one hand, the political authority usually argues that a state of exception is necessary and that the citizens have to sacrifice some liberty to enjoy an enhanced security (Neal 2010:8). On the other hand, there are those who defend civil liberties and who argue that an enhanced security threatens liberty (Neal 2010:9). These antagonistic discourses see the binary liberty/security in relative terms, i.e. they consider it as an inversely proportional balance. Neal argues furthermore that this liberty/security binary is "empirically, historically and theoretically hierarchical" because claims of the protection of liberty is always trumped by the claim of the necessity of security because the latter is often invoked *in the name of freedom* (Neal 2010:9). Alain de Besnoit shares the same point of view and adds that claims of the necessity of "security will trump liberty as long as we live in a world where threats are omnipresent and invisible at the same time" (De Besnoit 2007:90). Therefore, the claims of enhanced security for countering terrorism will, according to Neal and De Besnoit, hold a hegemonic position within the discourse on the state of exception.

4 Analysis

4.1 The state of emergency in France

In France, the state of emergency, provided by Law No. 55-385 of April 3, 1955, is an exceptional measure that can be decided in case of “imminent danger resulting from serious breaches of public order or in case of events having, by their nature and gravity, the character of public calamity” [My translation] (Legifrance). After the terrorist attacks, President Hollande convened the Council of Ministers³ which gathered on November 14 at midnight. On the report of the Prime Minister, the Minister of Interior and Minister of Justice, a decree declaring a state of emergency was adopted and took effect immediately throughout Metropolitan France and Corsica (Gouvernement.fr 2015). On November 16, 2015, three days after the attacks, Hollande made a speech before the Congress in Versailles⁴ on the state of emergency and the reasons of its implementation (Elysée.fr 2015).

The law regarding the state of emergency provides in its Article 2 that "the extension of the state of emergency beyond twelve days must be authorized by law." [My translation] (Legifrance). Therefore, at the Council of Ministers of November 18, 2015, Prime Minister Manuel Valls and the Minister of the Interior, Bernard Cazeneuve, presented a bill regarding the state of emergency's prolongation for another three months and the modification of some provisions of the law of 1955 (Elysée.fr 2015b).

First, house arrests are extended to “to anyone giving the authorities good reason to believe that their behaviour represents a threat to public order and security” (Gouvernement.fr 2015b). Then, it may be prohibited to the person under house arrest to enter directly or indirectly in contact with people also suspected of preparing acts against public order. The bill adds a provision guaranteeing that no house searches may target journalists, lawyers or locally elected citizens. However, during such house searches, “a copy of any data stored on any computer system or electronic equipment may be made in any format” (Ibid.). Furthermore, this bill opens up the possibility to dissolve any associations or groupings involving, facilitating or inciting acts “impairing a serious breach to

³The Council of Ministers, chaired by the President of the Republic, brings together all ministers once a week at the Elysée Palace (Vie publique 2014).

⁴The Congress of Parliament brings together all deputies and senators in one of the room of the Palace of Versailles. Since the constitutional revision of July 2008, the Congress can be convened to hear a statement by the president or allow the accession of a State to the European Union (Vie Publique 2014b).

public order” [My translation] (Ibid.). Finally, the control of the press or the radio provided by the Law of 1955 but never made of use, is deleted (Ibid.).

On November 19, 2015, Manuel Valls pronounced a speech before the National Assembly presenting the aforementioned bill (Debate 1). The same day, the bill was adopted by a large majority, extending the state of emergency until February 26, 2016 (Legifrance b). On February 3, 2016, at the Council of Ministers Prime Minister Manuel Valls and the Minister of the Interior, Bernard Cazeneuve, presented another bill regarding the state of emergency's prolongation, aiming at extending it for another three months, i.e. until May 26, 2016. They argued that this bill is necessary because “the terrorist threat remains at a very high level” (Elysée.fr 2016). As a follow, on February 5, 2016, Manuel Valls exposed this bill to the deputies at the National Assembly (Debate 3) and on February 16, 2016, Bernard Cazeneuve opened the discussion which led to the vote of the bill (Debate 4). The second prolongation was adopted by the deputies by a smaller majority than the previous time (212 for, 31 against, 3 abstentions) (Legifrance.fr c).

On May 4, 2016, the Prime Minister and the Minister of the Interior presented a bill extending the application of the state of emergency for a further period limited to two months, i.e. until July 26, 2016. They stated that the state of emergency is still necessary because “in this context of unprecedented terrorist threat, the organization of the UEFA European Championship from June 10 to July 10, 2016 and the Tour de France is by nature a specific risk, given the attendance at these events and their worldwide impact” [My translation] (Gouvernement.fr 2016). On May 19, 2016, the National Assembly voted for the prolongation of the state of emergency, which will therefore be upheld until July 26, 2016 (46 for, 20 against, 2 abstentions) (Debate 5).

4.2 Antagonistic discourses on the state of emergency

In the material that I have studied, it appears clearly that there are two antagonistic discourses concerning the state of emergency. The discourse of the Hollande administration – embodied in this material by President François Hollande, Prime Minister Manuel Valls, Minister of the Interior Bernard Cazeneuve and Minister of Justice Christiane Taubira – is also the discourse of the majority of the Socialist Party and the Republicans. The challenging discourse is the one of the Greens and the Communist Party which voted against the state of emergency. In the next two sections, I will deconstruct the chain of equivalence of the discourse the proponents of the state of emergency and highlight the chain of equivalence. The quotes that I refer to are those that clearly shows the line of

thought of the holders of the discourses. First, I need to present the myth, which, as we have seen, is a floating signifier that refers to a totality (Jørgensen & Phillips 2002:39).

In the two discourses analyzed below, like in all other discourses, a myth is invoked and establishes a "horizon" to make acts meaningful (Ibid:40). This myth is 'the Republic' (*La République*). It is on this myth of the Republic that the two antagonistic discourses base their justification for or against the state of emergency. Prime Minister Manuel Valls argued that

The Republic must gather around the following principles: strength, to fight terrorism, to win this war, and justice, because it is in the name of the rule of law, democracy and our republican values that we will win this war. This is the commitment of the Government.

[My translation] (Valls, Debate 3).

Furthermore, the Minister of the Interior Bernard Cazeneuve refers to the fact that the state of emergency has been established several times in the fifth Republic⁵. He states "the exception to the common law is part of the French republican history" [My translation] (Cazeneuve, Debate 4).

On the other hand, a deputy from the Greens asks the following questions:

Should we accept [the prolongation of the state of emergency] without questioning us on what it represent as a breaking with the foundations of the Republic? What about the separation of powers, with the almost-primacy of the executive not only on the legislative, but on the judiciary?

[My translation] (Mamère, Debate 3).

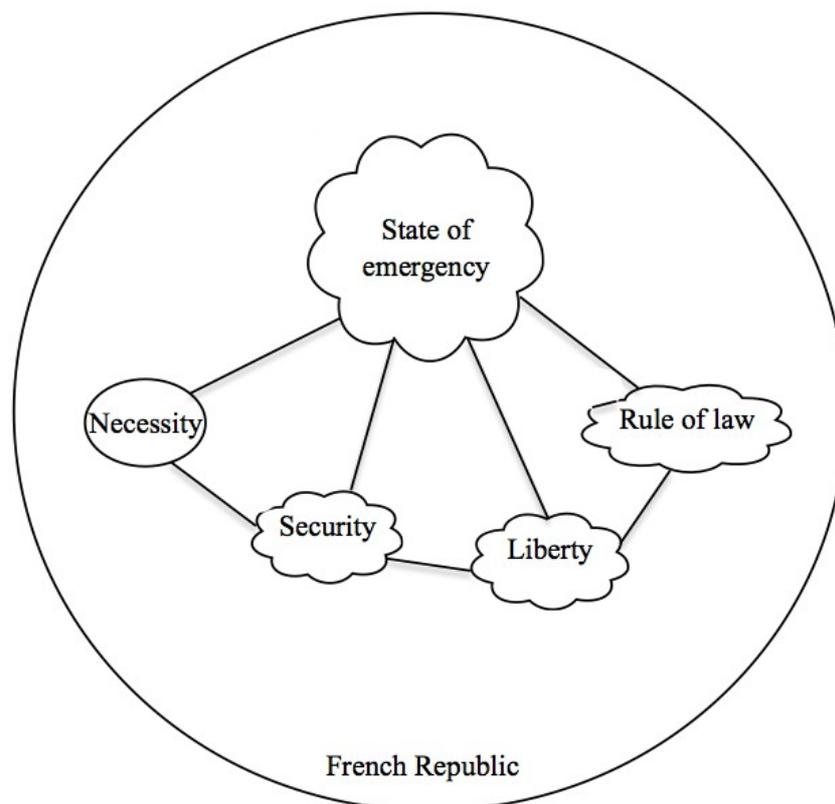
These statements are some of the many examples of how the the myth of the Republic is invoked. 'The Republic' or 'our republican values' are used very extensively by the two antagonistic discourses to give meaning to their chain of equivalence. The myth of the Republic is a very diffuse one. However, the members of the Government as well as all the deputies use it profusely. The republican values, "liberty, equality, fraternity" are highly polysemic, especially 'liberty'. Therefore, this myth is very suitable for a struggle between discourses because it is easy to fill it with different meanings.

⁵The Fifth Republic is the current republican Constitution introduced in 1958.

4.2.1 The chain of equivalence of the Hollande administration's discourse

In the material that I have examined, the Hollande administration frequently infuse its discourse with the following elements: *necessity*, *security*, *liberty*, *rule of law*. As we will see, these nodal points are highly polysemic and can all be considered as floating signifiers. I will now examine how the Hollande administration struggles to fixate its discourse by studying first how it articulates the aforementioned elements and thus create a discourse.

The construction below illustrates how the the discourse of the Hollande administration justifying the state of emergency is built. All the nodal points except from the necessity are considered as being floating signifiers because, as we will see, the other parties struggle to full them with a different meaning. I therefore represented the floating signifiers in a cloud. The discourse is encircled by the myth 'The Republic'.



Source: My construction⁶

⁶Inspired by Nadine Ghawi's bachelor thesis, where she analyzed the way the Sweden Democrats fixated the discourse on immigration in Parliamentary debates (2012).

The *necessity* of prolonging the state of emergency is an element used by the Hollande administration in all the debates, making it one of the nodal points of the discourse the state of emergency. According to the Minister of the Interior, "no one would accept that the state of emergency could be extended beyond the strictly necessary" [My translation] (Debate 4). He goes on by saying that "everyone has had the opportunity to see that the state of emergency was not synonymous with the arbitrary" [My translation] (Debate 5). The Minister of the Interior therefore claims the "obvious necessity" as developed by Saint-Bonnet. Indeed, he argues that the state of emergency is a necessity and therefore not an arbitrary choice, clearing himself of any decision. Moreover, by stating that "everyone" have seen that it was a necessity, he underlines the fact that it should be considered as an objective reality.

By arguing that the Hollande administration is "collectively willing to return to ordinary law as soon as the security of the citizens can be fully ensured by the means of ordinary law" [My translation] (Debate 4), the Minister of the Interior links the nodal point "necessity" to the one of "security". Indeed, the state of emergency therefore appears necessary for the security of the citizens. Manuel Valls even argues that "yes, the state of emergency is essential for the security of our compatriots" [My translation] (Debate 4). Ordinary law being unable to provide the security of the people, threatened by terrorism, the state of emergency is the only means to maintain security.

When justifying the first prolongation, Manuels Valls argued that "in the short term, the strengthening of our security system goes through a prolongation and a modernization of the state of emergency" [My translation] (Valls, Debate 1). Minister of the Justice Christiane Taubira argued that

[t]he security of our citizens is not negotiable. Moreover, this law is a new step, and a lot has already been done. The legislation has been considerably strengthened by human and budgetary resources, but also in a pragmatic and lucid approach against all aspects of terrorism: plan against violent radicalization and routes, strengthening law provisions on the fight against terrorism, action plan against terrorism financing, legislation on intelligence, military planning law, state of emergency.

[My translation] (Taubira, Debate 2).

Minister of Justice Christiane Taubira argues thereby that the state of emergency is law that is indispensable for the security of the people. Furthermore, the Minister of the Interior argues that "If we are determined on security, it is because we know it is the condition for the protection of our liberty and our republican values" [My translation] (Cazeneuve, Debate 5). Thereby, the government links the nodal point "security" to the one of "liberty". Indeed, 'liberty' is used extensively by the Hollande administration. The latter links the nodal point 'security' to the nodal point 'liberty' by arguing that "security is the first liberty. It is for this reason that other liberties have been or may be temporarily limited" [My translation] (Valls, Debate 1). This formula, "security is the first liberty" is widely used by the proponents of the state of emergency (Debate 1, 2, 3, 4, 5).

Thus, this discourse indicates that security is a liberty that prevails over all the others, i.e. the civil liberties.

Prime Minister Manuel Valls continues by saying that “it's up to us to ensure civil peace, by guaranteeing to each French citizen the right to not fear for his life, the right not to be afraid, the right to live in security, the right to live in liberty” [My translation] (Valls, Debate 1). Manuel Valls therefore argues that liberty is synonymous with civil peace. The state of emergency is argued to be necessary for the security of the citizens in order that they live in civil peace. A Socialist deputy supports this point of view by adding that “the first of our liberties is that of being able to come and go in complete safety on the national territory without being murdered” [My translation] (Debate 1). The Socialist Party argues that the state of emergency is necessary to “safeguard public order without which the exercise of freedom can not be assured” [My translation] (Debate 1).

Then, the nodal point “rule of law” is extensively used in the discourse justifying the state of emergency. As aforementioned, the state of emergency is provided by Law No. 55-385 of April 3, 1955. Manuel Valls states that

“We must be united, and because we are a great democracy, rely on the strength of our law. And, the strength of our law, it is the state of emergency.”

[My translation] (Valls, Debate 1).

Furthermore, the Prime Minister argues that the state of emergency is also provided by international legislation and “*especially* to human rights” [My translation and my italics] (Valls, Debate 1). Furthermore, he points out that

“Article 15 of the European Convention on Human Rights - ECHR - allows us to take derogating measure in case of - I quote - "war" or "other public emergency threatening the life of the nation.”

[My translation] (Valls Debate 1, p.4).

Even the Minister of Justice argues that all “all necessary precautions have been taken to stay within the rule of law” [My translation] (Taubira, Debate 2). Minister of the Interior Bernard Cazeneuve joins this point of view and argues that

“The reasons to have recourse to the state emergency, as well as its establishment, its prolongation and the acts and decisions adopted under it, are planned and strictly controlled by law. The state of emergency is therefore an element of the rule of law and not an obstacle, an offense to legal rules that govern the operation of our country.”

[My translation] (Cazeneuve, Debate 4).

He goes further in the employment of the rule of law to justify the state of emergency. Indeed, he states that

“The state of emergency, I say it solemnly before the national representation, is not the opposite of the rule of law. On the contrary, as soon as the situation demands, it is its shield.”

[My translation] (Cazeneuve, Debate 4).

The Minister of the Interior therefore argues that the state of emergency protects the rule of law. For that He continues by saying that it even is "a *duty* for a democratic state to provide an exceptional device that gives it the right ways to deal with a situation of extreme gravity" [My translation and my italics] (Cazeneuve, Debate 4).

4.2.2 The challenging discourse on the state of emergency

Through the articulatory practice, the Hollande administration created a chain of equivalence between the element necessity, security, liberty and rule of law. In the material that I have studied, the opponents to the state of emergency do not link the state of emergency as to necessity. However, it is clear that they challenge the discourse of the Hollande administration through articulating the elements security, liberty and rule of law in a different manner. Through a different articulatory practice, the meaning they give to the nodal points security, liberty and rule of law are different. Indeed, they argue that the state of emergency is too much of security which undermines and threatens liberty and the rule of law. A member of the Greens argues that

"The state of emergency leads to both the judge's marginalization and an increased attacks on liberty, based on the broad and fuzzy concept of public order (Mamère , Debate 4).

The opponents to the prolongation of the state of emergency challenge the discourse of the Hollande administration by linking the nodal point 'liberty' to 'civil liberties' and not to 'civil order' as the Hollande administration did. A member of the Greens therefore links *liberty* to the elements "fundamental liberties" (Chassaigne, Debate 4), i.e. "freedom of expression, freedom of movement, freedom of association" (Auroi, Debate 1). They are opposed to the meaning that the Hollande administration gives to the concept of 'liberty' and to the statement that the state of emergency protects 'liberty'. Indeed, by highlighting that the state of emergency unables the citizens to organize demonstrations, they argue that the state of emergency is liberticidal. They therefore consider the state of emergency as being "a state of exception that restricts liberty" (Chassaigne, Debate 1). Therefore, the opponents do not consider that the state of emergency protects liberty, on the contrary, they argue that "liberty is our first security" (Référence). This conversation between Éric Ciotti, a member of the Socialist Party and Noël Mamère, a member of the Greens grasps this debate:

Mr. Éric Ciotti: Anyway, how can you oppose the protection of our compatriots to the guarantee of liberty? The first of our liberties is security.

Mr. Noël Mamère: No !

Mr. Éric Ciotti: In Article 2 of the Declaration of the Rights of Man and the citizen, safety is the principle that guarantees our liberties.

Mr. Noël Mamère and Elisabeth Pochon: Safety and security, this is not the same thing!

Mr. Éric Ciotti. How can you imagine that protection, safety, security, are opposed to liberty?

[My translation] (Debate 4).

In this verbal exchange, the two camps debate on the meaning of "security". As we have seen in the section above, the Hollande administration argues that 'security is the first liberty' and draw this signification from Article 2 of the Declaration of the Rights of Man and the Citizen from 1789, namely

"The goal of any political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance against oppression".

By stating an article of the Declaration of the Rights of Man and the Citizens from 1789, the Socialist Party uses the myth of The Republic to justify his point. However, the Green deputy challenges the meaning that is given by the Socialist deputy to the nodal point "security". Indeed, he argues that "the right to "safety" refers not to the security, but is the guarantee to every citizen that his liberties will always be respected against an arbitrary arrest, imprisonment or sentence" [My translation] (Mamère, Debate 4).

Furthermore, the nodal point "rule of law that was linked to the nodal point "liberty" by the Hollande administration is challenged by a member of the Communist Party by arguing that

"strengthening a state of exception is a decision that deserves special attention, in the name of protecting our fundamental liberties and the structural balance of our rule of law and the separation of powers"

[My translation] (Chassaigne, Debate 1).

Thereby, the "rule of law" is, according to this member of the Communist Party, the respect of the separation of powers. A member of the Greens invokes the myth of "the Republic" by stating "the basis of our Republic- and we talked a lot about the rule of law in recent days – is the separation of the judiciary" (Duflot, Debate 1). Therefore, while the Hollande administration justifies the state of emergency on the basis of the rule of law which is, in this discourse, synonymous with "the laws" or the legality of particular decisions, the challenging discourse argues that the rule of law is the separation of powers.

5 Conclusions

In this study, I focused on the following question: *how did the Hollande administration justify the prolongation of the state of emergency established after the 2015 Paris Attacks?* By using Laclau and Mouffe's discourse theory, I examined the way in which the Hollande administration fixated its discourse on the prolongation of the state of emergency. We have also examined their struggle of giving meaning to certain elements by studying how other parliamentary parties articulated them. Through articulating the elements of necessity, liberty, security and rule of law, the Hollande administration created a chain of equivalence. These elements, highly polysemic, and therefore called floating signifiers, have been given a fixated meaning by the Hollande administration through a particular articulatory practice. According to this discourse, the state of emergency is a necessity, indispensable for the security of the citizens. This security will protect the liberty of the French people which is synonymous with civil peace. Furthermore, the liberty is guaranteed by the rule of law, since the state of emergency is a law provided in 1955 and legitimized by the United Nations and the European Convention on Human Rights.

The parliamentary parties opposed to the state of emergency, especially the Communist Party and the Greens challenge this discourse by giving another meaning to the floating signifiers security, liberty and rule of law. Unsurprisingly, they do not use the element 'necessity' in their discourse because they are opposed to the state of emergency. They argue that the state of emergency is an exaggerated security practice which undermines liberty because it challenges civil liberties, such as the freedom of assembly. Furthermore, the state of emergency is not considered as respecting the rule of law because it undermines the role of the judiciary in favor of the executive.

Therefore, the 'state of necessity' as Agamben calls it, or, as Saint-Bonnet did, the 'obvious need', is invoked by the Hollande administration. The nodal point 'necessity' is used in this discourse to clear the government from having made choice. Theoretically, the executive power of a liberal democracy cannot act as Schmitt's sovereign and decide on its own of the exception. Therefore, it constructs a reality where the threat is objective and the state of emergency the only choice. Therefore, it cannot do anything else than obey. Furthermore, the Hollande administration claims that the state of emergency is implemented and prolonged for the security *in the name of* liberty. By articulating these two elements in this way, as Agamben and De Besnoit stated, the Hollande administration will always trump the desire of security over the liberty. Finally, this case study has shown that the nodal point 'rule of law' is used extensively in the discourse of the

Hollande administration. It is therefore a novelty in the discourse justifying states of exception. Indeed, by invoking the rule of law, the Hollande administration's discourse is reinforced by the legality of this exceptional practice. This proves that we indeed are in an era where exceptionalism has become a "paradigm of our governments" as Agamben noted (Agamben 2005).

When I was writing this thesis, I was thinking of several questions that could lead to further research. Indeed, as the Hollande administration is a Socialist government, I was surprised that its members used the sentence "Security is the first of our liberties". Indeed, in France, this formula has been historically associated with right-wing parties. It even was the slogan on a poster of the founder of the Front National, Jean-Marie Le Pen, with his niece Marion Maréchal-Le Pen in his arms, for the regional elections in 1992. In 1981, Socialist Pierre Mauroy pronounced a sentence that is now famous: "for the right-wing parties, the first liberty is security. We reverse this proposition for us, the first security is liberty".

I think it would be interesting to study whether the differences between the caricatured left-wing defenders of civil liberties and right-wing partisans of order, property and security, fade when faced with a terrorist attack. The discourse of the Hollande administration on the state of emergency could have been the one of a right-wing party. It would be interesting to make a comparison over time on the discourse of the Socialist Party on security issues, before and after the 2015 Paris attacks. This analysis could also be broadened to other countries which have faced terrorist attacks with a Socialist government.

To conclude, I hope that this thesis will have clearly highlighted the fact the discourses struggling against the one justifying the state of emergency should invoke principles other than liberty in order to hope to take the hegemonical status. As rightly put by Neal,

[i]f the language we speak and the principles we invoke in our political contests are the same as those claimed by our adversary, then not only are we unable to offer an alternative vision, but we must consider the possibility that the terms of our discourse make us complicit in the legitimation of violence. While we may embrace the language of liberty and rights as resistant and critical, our leader claim that the violent security policies they pursue are driven by those very principles (Neal 2010:25).

I hope this thesis will be helpful for opponents of the state of emergency in France and in other states by serving as a demonstration that as long as the political authority will justify an enhanced security "in the name of liberty", this discourse will remain the hegemonical one. I hope that this research paper will therefore be used as an inspiration for constructing challenging discourses to the one that is today dominant in our world.

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