Terrorism and Criminal Law

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Crime represents a grave challenge to society-- all the more so in the cases of crimes against society and crimes against the nation. Terrorism, with its traditional entourage of violence and intimidation, is the most direct threat to the fundamental interests of democratic nations. The way in which it is perpetrated, and the ability it has to immediately capture the attention of the media, enable terrorism to impact heavily on public perception making it a formidable instrument of propaganda and blackmail. At the turn of the nineteenth and twentieth centuries, terrorism was essentially anarchistic or nihilistic. The relatively marginal violence of that time was followed, immediately after the war, by a wave of armed struggle connected with decolonization. Since then, the driving forces behind terrorist activity have been varied and belong in essence to several categories that may intersect in certain circumstances. Some groups are part of regionalist, separatist movements (ETA in Spain, the IRA in the United Kingdom, the FLNC in France, the PKK in Turkey, and so forth). Others represent a revolutionary current (the Red Brigades in Italy, the Baader–Meinhof Gang and the Red Army Faction in Germany, the KLV in Kosovo, and the Japanese Red Army in Japan, among others).

Since the mid-1980s, we have seen unstable, autonomous, uncontrollable fundamentalist groups, such as the Armed Islamic Group (GIA), Lebanese Hezbollah, the Salafist Group for Preaching and Combat (GSPC) in Algeria, the Moroccan Islamic Combatant Group (GICM), Boko Haram, al-Shabaab, and groups connected to the Al-Qaeda network. They are driven by a culture of martyrdom and hatred for the West; they are sometimes in ideological competition with each other. (Evidence of this can be seen in the rivalry that exists between the "offshoots" of Al-Qaeda in the Islamic Maghreb (AQIM) and the "franchises" of the Islamic State (IS) in Syria, Iraq, Egypt, Libya, Algeria, Saudi Arabia, and Yemen.) These groups have carried out waves of attacks linked to the Israeli-Palestinian conflict and to the never-ending confrontations in Afghanistan and Iraq: this was notably the case in France (1986 and 1995), in the United States (September 2011, 2,978 dead), in Indonesia (October 2002, 202 dead), in Spain (March 2004, 191 dead), and in London (July 2005, 56 dead).

France is not more threatened by the famous "clash of civilizations" than other Western democracies, but it is a potential target because its values (freedom, tolerance, respect for women, secularism, human rights, and so forth) are radically opposed to those of the fundamentalism of the new world disorder.

After the collapse of the Soviet bloc in 1989 and the end of the bipolar world order whereby the West faced (confronted although I like the play on words rendered by "faced")the

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East, a large number of terrorist movements lost some of their logistical bases and financial support; for some of them this also meant the loss of their ideological orientation. However, the shift from political struggle to mere criminal activity (gangsterism, mafias, and cartels) does not mean that they are less dangerous. From Bali to Mogadishu, from the sandstorms of In Amenas to the suburbs of Bamako, and from Nairobi to the rue Nicholas Appert, home to the headquarters of the satirical magazine, *Charlie Hebdo*, battle-hardened and fanatical criminals, guerrillas, partisans, bandits, and jihadists intermingle in the grey areas of the planet--those places abandoned to their fate by the fall of authoritarian regimes. Whether they are out-of-control ex-guerrillas, "gangster-terrorists," or the "crazed lone wolves of Allah," terrorists today are a dramatic reality as well as an ever-present danger for democratic countries. We have seen this in the spectacular attacks against the World Trade Center's Twin Towers (2001) or more recently with the shootings and hostage taking (January 2015) that have left France in a state of shock and their tricolor flag at half-mast.

Faced with this modern form of warfare, an energetic response is required, especially when we consider that the enemy—a many-headed, yet faceless hydra that launches attacks across a moving front—aims to undermine the very foundations of Western societies. Before examining the substance of this response (II), noticeably strengthened by a number of recent laws (March 9, 2004, January 23, 2006, December 21, 2012, and November 13, 2014), we need to examine what exactly is included within the notion of a terrorist offense (I), a subject addressed by Albert Camus in *Les justes* [*The Just*] in 1949.

I - The Notion of a Terrorist Offense

Before we examine the content of the notion of a terrorist offense (B), we need to first present an accurate outline of it (A) in as much as, in the absence of a really universal, shared definition, the boundaries of terrorism are unclear; there are probably more than 200 definitions of terrorism in existence around the world.

A. Defining the scope of the term

In view of the legal ramifications pertaining to criminal classification (see below), it is essential to distinguish terrorism from similar yet distinct notions with which it is sometimes entangled. As a common law offense, we must first of all differentiate terrorism from political offenses which at certain times in French history (the *Ancien régime*, the French Revolution, the Third Republic, the Second World War, and subsequent wars of independence) have been subject to a rigorous legal regime, considerably softened since the current influence of benevolent, protective rules.

To the extent that terrorism can include, under certain, sometimes desperate armed struggle against social, economic, religious, or imperialist oppression, it is somewhat related to t the concept of resistance. How often are we told that one person's terrorist is another person's freedom fighter? (Jean-François Revel, *Terrorisme contre la démocratie*.) The relationship between terrorist acts ("the weapon of the weak") and political offenses is an incestuous one. The essential difference is its particular mode of action: the use of terror and intimidation. Furthermore, how do we distinguish a political offense from a common law offense? Firstly, it is sometimes the case—and this is the simplest explanation—that legislators

expressly define offenses as political in terms of the special rules to be applied to them. Thus, in terms of imprisonment, only a restricted number of specified offenses (essentially press and publishing offenses, and attacks against fundamental national interests) are accompanied by a special detention regime. In certain cases, in the absence of further legal clarification, a political offense can be recognized by the sentence it incurs. In criminal matters, there is a scale of punishments associated with political offenses. If the sentence is one of imprisonment (*détention criminelle*) for life, or for a fixed term, the offense is necessarily a political crime. Notably included in this category are attacks against fundamental national interests, such as treason, espionage, violent attacks against political targets, conspiracy, and participation in an insurrection. Using the sentence incurred as a criterion is easy, but insufficient, since it has no validity beyond the context of criminal activity. Other means of distinguishing terrorism have been suggested in the developing legal doctrine.

According to one approach, referred to as subjective, a political offense is one that is inspired by political motives, whatever its result might be. In applying the subjective criterion, any offense could thus be described as political if its author acted for reasons of ideology (a complex offense). An abduction would then be a common law offense if it is financially motivated and aimed at extracting a ransom, but political on those occasions where it is carried out in the name of political protest. In addition to the fact that it ignores the traditional principle that the motive should not matter, the subjective approach implies the need to conduct delicate psychological investigations. Legal opinion has also proposed a second criterion by which to identify a political offense, an objective criterion. Centered on the target or outcome of the offense committed, the objective approach treats as political those offenses directed against the existence, organization, and functions of the state and public authorities. If it involves a conspiracy against national security, electoral fraud, or damaging public freedoms, the offense is by nature political, regardless of the motive that drove the offender.

On the whole, criminal jurisprudence has come down more in favor of the objective approach, as demonstrated by the famous Gorguloff case (Criminal case, August 20, 1932, Criminal Law, 1932, 1, p. 121 concl. Matter). In his trial for the assassination of President Doumer, Gorguloff was sentenced to death—a punishment excluded in political cases at the time—on the grounds that the murder was a common law felony, even though the perpetrator had acted for political reasons. Maxime Brunerie, who made an assassination attempt against President Chirac during the July 14 parade in 2002, was sent before the circuit court (*Cour d'assises*) in Paris to answer a common law felony charge. More generally, the objective approach logically leads to all complex offenses being seen as common law cases. Unless the law provides otherwise, this solution also holds for "related offenses" (*infractions connexes*), despite a degree of hesitation in some of the jurisprudence.

We must also, and with particular care, distinguish terrorism from other forms of criminal activity and organized crime. There are two arguments for making this distinction. Firstly, terrorism is fundamentally an ideological crime, whereas organized crime is motivated principally by the desire for profit. Secondly, while the majority of offenses related to organized crime are categorized as such because they are committed by an organized group of people (murder, torture and acts of brutality, abduction and unlawful detention, theft, fraud, destruction, defacement or damage to property, hijacking of aircraft, ships, or other forms of transport, and so on), terrorism is of itself an intrinsically organized form

of criminality. However, it matters little whether an act of terror is, in practice, the result of collective or individual endeavor (even if acting alone is not necessarily the same thing as acting in isolation). The actions of often radicalized "lone wolves" (an expression that came to the fore at the time of the attacks carried out by Mohamed Merah in Toulouse, in March 2012, and which was revived to describe Mehdi Nemmouche after the killings that took place at the Jewish Museum in Brussels) are as much an example of organized criminality as those orchestrated by large, clearly identified terrorist networks such as Al-Qaeda, AQIM, and others. The French approach to organized crime has some clearly original features in this regard, compared with the view adopted by the United Nations Convention against Transnational Organized Crime (also known as the Palermo Convention of December 2000): the most important international instrument addressing this question. In its words of, the description of an "organized criminal group" must be reserved for "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious [...] in order to obtain, directly or indirectly, a financial or other material benefit."

B. The content of the term

While now simultaneously covered by the new category of "organized crime," created by the aforementioned Perben II Act of March 9, 2004, terrorism offenses are still different, inasmuch as they include a certain number of common law felonies and misdemeanors committed for a particular purpose. Activities likely to be described as terrorism—and there are many—are listed in art. 421-1 to 421-6 of the Penal Code. Here we find most importantly willful attacks on the life and physical integrity of the person, including abduction and unlawful detention, but also the hijacking of means of transportation, associating with criminals (with notable distinctions depending on the degree of involvement of the individual terrorist: did they lead the action, or did they simply participate?), theft, extortion, causing destruction, defacement, or damage, along with a range of offenses related to information technology, membership in paramilitary groups and officially dissolved movements, possession of weapons, explosive substances, and nuclear materials, money laundering, handling stolen goods, and criminal association. To this list, which might be described as traditional, contemporary legislators have added several newly coined, yet not totally distinct offenses. Let us take "ecological terrorism" (Penal Code, art. 421-2) as a first illustration: this criminal act consists of the introduction into the atmosphere, on the ground, in the soil, in foodstuff or its ingredients, or in waters, including territorial waters, of any substance liable to imperil human or animal health or the natural environment. A second example: "financial terrorism" targets the flows of money from legitimate sources toward illegitimate ends (Penal Code, art. 421-2-2). Thirdly, arising from Law No. 2012-1432, dated December 21, 2012, is to some extent a terrorist version of "subornation:" it is punishable by 10 years' imprisonment and a fine of €150,000 to make offers or promises, offer donations, gifts, or any other kind of advantage, or to threaten or exert pressure on an official in order to make him/her commit an act of terrorism (Penal Code, art. 421-2-4). This separate measure against instigation must not be confused with the misdemeanor of "defending terrorism"—pursuant to the provisions of the 1881 law on the freedom of the press, in force until modified by the law of November 13, 2014—or with direct incitement to commit terrorist acts (Penal Code, art. 421-2-5).

Finally, to better deal with a situation in which terrorists act in isolation, or in "micro-cells," the aforementioned law of November 13, 2014, introduced a new article (art. 421-2-6) into the Penal Code which criminalizes terrorist activity carried out by an individual at a much earlier stage, before the feared criminal offense is committed, sometimes even at the stage of "preparations for the preparation" of the offense. Demonstration of this new misdemeanor requires a range of elements, both material and moral, to be meticulously handled so as to avoid any censure on constitutional grounds. The terrorist activity has to consist of the seeking, possession, acquisition, or fabrication of objects or substances liable to create a danger to others. In addition to this material element, a second, more elastic one is necessarily added: the gathering of information on places or persons such as to allow the carrying out of an action in such places, or the causing of harm to such persons, or conducting surveillance of those places or persons; undertaking training or study in the maintenance of weapons or in any other kind of combat; the production or use of explosive substances, incendiary devices, nuclear, biological, or chemical materials; the piloting of aircraft, or the navigation of ships; habitually consulting one or more online public communication services, or holding documents that directly incite acts of terrorism or defend such acts; spending time abroad in the operational theater of a terrorist group. This preparation must finally be related to the most serious forms of terrorism (willful attacks on life, willful attacks on the physical integrity of persons, abduction and unlawful detention, hijacking of aircraft, ships or any other means of transport, causing destruction, defacement, or damage intended to harm the physical integrity of the person, or ecological terrorism).

In any case, whatever form it takes—traditional or modern—the offense is not considered a terrorist act unless committed for a particular purpose: the offense must in fact be an action "the purpose of which is seriously to disturb public order through intimidation or terror." Through the indiscriminate use of violence, terrorist activities aim to gain concessions from the established government by creating a collective sense of fear among the population. Looking beyond the direct threats that hang over the population, this represents a threat to the very stability of public institutions, as André Malraux so brilliantly demonstrated in his 1933 novel *La condition humaine* [*Man's Fate*]. It is thus understandable that terrorism should be subject to a regime of control that derogates from, or even bypasses, common law.

II - The Legal Regime Relating to Terrorist Offenses

Since the law enacted on September 9, 1986, and modified on several occasions even before the recent laws of April 14, 2011, December 21, 2012, and November 13, 2014, terrorist offenses have had distinctive features in terms of both criminal law and criminal procedure. Without renouncing the values of respect for democracy and human rights, the measures put in place to fight terrorism in France have conspicuously been exceptional, specially adapted to address the myriad dangers that hang over our fellow citizens. The regime established to deal with terrorist offenses is notably ambivalent (A), and is now showing signs of administrative overlap (B).

A. A regime tinged with ambivalence

Although widely seen as synonymous with rigor, the legal framework surrounding terrorist offenses leaves room in certain circumstances for hints of leniency. Therein lies its ambivalence.

In terms of the formal structures, the rigor with which terrorist offenses are dealt with begins at the enquiry phase, and continues through to the relevant limitation periods. At the investigation and prosecution stage, the conduct of proceedings is made easier by the ability to centralize all processes in Paris (Code of Criminal Procedure, art. 706-16), with the main police services in charge of the fight against terrorism (the DGSI [General Directorate for Internal Security] and the SDAT [Anti-Terrorism Sub-Directorate]) now gathered together on a single site in Paris, at Levallois-Perret. In order to facilitate the pursuit of terrorist offenses that are often clandestine, investigators—who can remain anonymous—are empowered to carry out identity checks, conduct surveillance and infiltration operations, as well as implement wire taps. They can use pseudonyms to participate in electronic communications for the purposes of extracting, acquiring, or preserving through such means evidence against persons likely to be involved in terrorist activity (Code of Criminal Procedure, art. 706-87-1, in the version modified by the Law of November 13, 2014). With a written requisition from the *Procureur de la République* [Public Prosecutor], investigators can inspect vehicles traveling, stopped or parked on the public highway or in premises open to the public (Code of Criminal Procedure, art. 78-2-2). In the same spirit, numerous specific provisions are directed toward the prevention of any damage to the security of vulnerable places such as ports and airports through the authorization of the *police judiciaire* [judicial police, approximately comparable with the FBI] and customs officials to carry out searches of persons, baggage, or vehicles found in the areas concerned.

Once the inquiry is open and the first suspects have been arrested, the latter may, with prior judicial authorization, be held under arrest for 96 hours, twice the period normally allowed in common law cases, with the possibility, in exceptional circumstances, of two further days being added before they regain their freedom (Code of Criminal Procedure, art. 706-88). In cases where there is a serious risk of imminent terrorist action, or for overriding needs of international cooperation, the "liberty and custody" judge can in effect prolong the period of detention of a person suspected of participating in terrorist activity for a period of 24 hours, renewable once, thus potentially leading to a total of 144 hours of detention. Another exceptional rule, applicable depending on how urgent the circumstances of the particular case are, is that the intervention of the detainee's attorney—when necessary, one designated from a list of qualified persons by the President of the Bar Association (*bâtonnier*)—can be delayed for a maximum of 72 hours (Code of Criminal Procedure, art. 706-88). In the case of an extension of custody beyond four days, the suspect may again consult with an attorney after 96 and 120 hours. At the beginning of each extension of custody, the suspect is required to undergo a medical examination in order to determine the fitness of the person to be held further in custody.

The procedure with regard to terrorism also diverges from common law when it comes to search and seizure, which may be preceded, in specified circumstances, by the recording of sound or images (Code of Criminal Procedure, art. 706-96). Under the authority of the "liberty and detention" judge, such recordings can be made in the course of a preliminary

investigation, without the consent of the occupant. In addition, searches and seizures can, with judicial authorization, be performed outside the legal times i.e. between 9 pm and 6 am. Such nocturnal operations are possible as part of a police or judicial inquiry, with some limitations applying in the case of inhabited dwellings (Code of Criminal Procedure, art. 706-89). When these actions concern digital data, searches can now be carried out remotely using the investigators' own computers, rather than a computer belonging to the person under investigation (Code of Criminal Procedure, art. 57-1, as revised by the Law of November 13, 2014).

When the case comes to court, the derogated rules introduced by the Law of September 9, 1986 remain in force. The appropriate jurisdiction in which to judge accused adults, those facing charges of felony terrorism, is therefore a *cour d'assises* (criminal trial court), which is composed, uniquely for these cases, of seven professional magistrates, with nine magistrates at appeal (Code of Criminal Procedure, art. 698-6 and 706-25). This professionalization also applies to accused minors from age 16, with the stipulation that two of the members of the judging panel must be appointed from among the juvenile judges of the Court of Appeal (Code of Criminal Procedure, art. 706-25). At the discretion of the First President of the Court of Appeal, terrorist trials can, for security reasons, be held at locations other than the Palais de Justice in Paris, with the proviso that the hearing be held in some place within the jurisdictional area of the Court of Appeal (Code of Criminal Procedure, art. 706-17-1). Lastly, the rules regarding the application of sentence prescriptions are also subject to a special regime.

It should be recalled that the statute of limitations on legal action operates when a certain period of time has passed after the commission of an offense. In principle, a felony cannot be prosecuted after more than 10 years, a misdemeanor after three years. For terror offenses, these periods were extended by the Law of February 8, 1995, introducing a limit of 30 years in the case of a terrorism-related felony, and 20 years in the case of a terrorism-related misdemeanor (Code of Criminal Procedure, art. 706-25-1).

As for the limitations on the enactment of the punishment—the period during which the sentence pronounced can be enforced—the periods in question are likewise longer than those in common law: instead of 20 years for felonies and five for misdemeanors, the limitation periods are 30 and 20 years, respectively, starting from the date the sentence became final (Code of Criminal Procedure, art. 706-25-1).

Turning to the substantive rules, terror offenses are once again subject to rules that derogate from common law. Upon close inspection, these rules are both harsh and lenient.

The harshness can be seen, first of all, in a certain imperial tone in French law in terms of its geographical application. In order to ensure the exercise of effective control over terrorist activity wherever it is committed, French law combines various differing systems (universality, the passive personality principle, and the active personality principle in a widened form that addresses the situation of persons habitually residing on French territory), which offer useful tools in addition to the territorially based criminal law. Similarly, for obvious reasons of opportunity, the application of the *non bis idem* (double jeopardy) rule does not extend to terrorist felonies and misdemeanors committed abroad by a French person or by a person habitually residing in France (Penal Code, art. 113-13, as per the revisions of Law No. 2012-1432 of December 21, 2012, relating to security and the fight against terrorism).

A degree of harshness is also present in the general increase in the punishments incurred. When committed in connection with terrorist activity, a felony renders its perpetrator liable to a harsher punishment. For example, where a sentence would "normally" be 30 years of imprisonment, a life sentence is awarded. A 10-year sentence becomes, in principle, 15 years. In short, for the same offense, the sanction applicable to the terrorist is greater than that incurred by an ordinary criminal (Penal Code, art. 421-3), with the added observation that punishments incurred for "association with wrongdoers" range from 10 to 30 years of imprisonment depending on the actual role of the defendant and the nature of the intended offense (Penal Code, art. 421-5 and 421-6). What is true for the main penalties is also true for the additional ones. Thus, the forfeiture of civic, civil, and family rights, which in principle cannot exceed 10 years, can be raised to 15 years in terrorist cases. The same applies to area banishment (Penal Code, art. 422-3), and even more so to banishment from French territory (Penal Code, art. 422-4). The final sign of rigor is that persons found guilty of acts of terrorism incur the additional penalty of confiscation of all or part of their property (Penal Code, art. 422-6), are placed under the provisions relating to the period of unconditional imprisonment (Penal Code, art. 132-23), and can be deprived of their French nationality (Civil Code, art. 25 and 25-1, this sanction being applied as a punishment validated by the *Conseil Constitutionnel* (Constitutional Council) in its decision No. 2014-439 QPC [urgent constitutionality ruling] of January 23, 2015). In solidarity with the victims, the product of a financial or property sanction imposed on a person convicted of an act of terrorism is allocated to the contingency fund, which is at present mainly financed by a contribution levied on property insurance contracts (Penal Code, art. 422-7). The rules governing terrorist offenses are not, however, exclusively rigorous in nature. There are, in fact, some rules favorable to terrorists, or at least to some of them: we refer here to those who repent of their crimes, bringing to mind the famous Italian "*pentiti*" who collaborated with Judge Giovanni Falcone in the Palermo mega-trial of 1986.

As in matters of organized crime, anti-terrorism law distinguishes several categories of "*penitent*." The first are those persons whose evidence makes it possible to prevent a planned offense in which they have been involved from taking place and, where relevant, to identify the other offenders. In the case of these people—for whom the possibility of assembling all the elements of proof constituting the attempted act may be in doubt—the legislators have provided for exemption from punishment. In other words, although guilty, the terrorist cannot be sentenced (Penal Code, art. 422-1). The second category groups together those who, after committing an act of terrorism, then provide information to the authorities, thereby making it possible either to prevent the offense from taking place, to avoid the offense causing harm or, where relevant, to identify the other authors or accomplices. For these terrorists, the leniency of the legislators is more limited. No possibility of exemption from punishment is offered, merely a reduction of sentence. Specifically, the custodial sentence incurred by the terrorist is reduced by half (20 years in the case of a life sentence, according to Penal Code art. 422-2). Finally, since the reforms brought about by the "Perben II" Act of March 9, 2004, the revelations of persons already sentenced and incarcerated may be taken into consideration for the purpose of awarding exceptional reductions of sentence. Depending on the relevance of the information provided, and the seriousness of the offense that their statements have made it possible to bring to an end, the sentence reduction accorded by the judge responsible for enforcing sentences can range in amount, but for those given a fixed-

term sentence, it can never exceed a third of the sentence pronounced. For the remainder, the reduction of the sentence reaches its maximum at one third of the probation period of 15 years (Code of Criminal Procedure, art. 729), after which conditional release may be considered. Regardless of the place of arrest or place of residence of the terrorist, only the Parisian jurisdictions for the enforcement of sentences (JAP (*Juge de l'application des peines—judge responsible for the enforcement of sentences)*, TAP (*Tribunal de l'application des peines—court responsible for the enforcement of sentences*), and the *Chambre de l'application des peines* (chamber responsible for the enforcement of sentences)) have authority in this matter (Code of Criminal Procedure, art. 706-22-1, as modified by the Law of January 23, 2006). In addition to these mitigations of their punishments, those who offer up evidence can now benefit, as in Italy and the English-speaking countries, from two types of protection (Code of Criminal Procedure, art. 706-63-1). The first type is purely legalistic, and concerns civil identity. Following a reasoned order from the President of the Paris *Tribunal de grande instance* [High Court] (or of the First President of the Paris Court of Appeal in the case of a refusal to proceed on the part of the President of the Paris *Tribunal de grande instance*), those who "collaborate with the authorities" and their close family can be authorized to use an assumed identity. This authorization cannot be revoked, but it can be withdrawn in the hypothetical situation where it is deemed no longer necessary, or if its beneficiary adopts behavior incompatible with the implementation and appropriate operation of said measure. The second form of protection concerns physical security and the social reintegration of the individuals concerned. All such measures (police protection, payment of compensation where the person is unable to work, and so on), which are very useful in practice, fall within the competencies of a national commission working alongside the Minister of the Interior—the *Commission nationale de protection et réinsertion* [National Commission for Protection and Reintegration]—the composition, remit, and modes of operation of which are detailed in a very recent decree issued by the Council of State (decree No. 2014-346, of March 17, 2014, relating to the protection of persons mentioned in art. 706-63-1 of the Code of Criminal Procedure who receive exemptions from or mitigation of their penalties). The measures are implemented by SIAT, the Service *interministériel d'assistance technique* [Interministerial Technical Support Service], whose decisions are not subject to appeal, and must be obeyed by all administrative bodies and organizations with a public service function.

B. A system showing signs of administrative overlap

Although the war against terrorism relies on an arsenal of repressive measures that can regularly adapt to the evolving threat, criminal law has not yet exhausted the range of legal options put in place against this modern-day threat. In addition to the apparatus of criminal law, there is an increasing battery of administrative measures available. The scope, combination, and ongoing nature of them are not without risk to the fragile relationship between liberty and the protection of the public. The apparent consensus across the political spectrum regarding this "doubling up" of official measures is a legitimate source of concern for various reasons. Firstly, it affects a number of fundamental rights, such as freedom of movement, freedom of expression, property rights, and the right to privacy. Secondly, it escapes judicial authority, the principal purpose of which is to act as the "guardian of the freedom of the individual" (art. 66 of the French Constitution). Thirdly, when the authorities

leap into action, it is very often the result of an accelerated procedure that considerably restricts the time available for the reflection and development of arguments necessary in democratic debate (on this point, see the laws of January 23, 2006; December 21, 2012; and November 13, 2014); this is not without consequence for the quality of the texts adopted into law. Lastly, adopting anti-terror laws at breakneck pace does not allow for the thorough and rigorous assessment of existing laws that would enable us to determine the relevance and effectiveness of the measures already in force.

Given that the terrorists' greatest victory would be to imperil the rule of law, states that respect the rule of law cannot, in the name of fighting terrorism, simply take any measure they deem appropriate, for this would eventually undermine, and indeed destroy democracy, precisely in order to defend it (on this issue, see the opinion of the *Commission nationale consultative des droits de l'Homme*, dated September 25, 2014, regarding the bill reinforcing provisions related to the fight against terrorism). Here, the intrinsically repressive measures that are increasingly placed within the remit of the administrative police are potentially dangerous if not accompanied by all the corresponding guarantees relating to due process.

Can preventive measures like government bans on leaving or entering the country be justified merely by a call for greater efficiency in the fight against terrorism (*Code de sécurité intérieure* (CSI) [National Security Code], art. L.224-1 ff., and *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA) [Code of Entry, Residence, and Asylum Rights of Aliens], art. L. 214-1—as stipulated in the Law of November 13, 2014)? Can measures so harmful to freedom of movement (the ban on leaving the country effectively involves the withdrawal and invalidation of a person's passport and identity card) reasonably be decided by the Minister of the Interior solely on the basis of "serious reasons to believe that the individual concerned is planning a journey for terrorist purposes?" In practice, will the argument not rest solely on the information held by the services attached to the *Direction Générale de la Sécurité Intérieure* (DGSI) [General Directorate for Internal Security], in other words, incontestable documents that can, in certain circumstances, be kept secret for "reasons of national security?" Did the recent, so-called "Tarnac affair" not make clear the fallibility of information provided exclusively by the services answerable to the Ministry of the Interior? In order to be described as "serious," should the Minister's "reasons" not be backed up by facts and information likely to convince an objective observer? What is one to make of the willingness to tolerate contradiction, evident in the fact that the observations of the person concerned are not admissible into evidence until after the written, reasoned decision of the Minister of the Interior has been given? Likewise, what is one to make of the provisions setting forth the principle of justifying government bans on movement in and out of the country. Unless considerations of national security say otherwise (CESEDA, art. 214-3): doesn't the fight against terrorism intrinsically rest on just such considerations, which are thus liable to void the reasons of any substance given? And what does this say for the notion of providing reasons for unfavorable government decisions derived from law No. 79-587, relating to the justification of administrative actions and the improvement of relations between the government and the public?

If we substitute "freedom of expression" in this discussion for "freedom of movement," the risk of arbitrary government is all the more clear. Can interference with freedom of expression and the blocking of access to websites that incite or defend acts of terrorism still be considered a government matter, even when one or more crimes have

already been committed? In the legislation (art. 12 of the Law of November 13, 2014), the administrative authorities are perfectly within their rights to ask providers of Internet hosting services to remove terrorist content and, if removal is not forthcoming, to prevent access to the sites concerned. Does the recognition of this prerogative for administrative authorities not represent a blurring of the traditional distinction between the administrative police (assigned to the prevention of criminality) and the judicial police (tasked with its suppression)? Shouldn't the blocking of access to Internet sites rather be the responsibility of the judicial police with the result that such measures would then be decided and monitored by judicial authority (*Juge des libertés et de la détention* (JLD) ["liberty and custody judge"]), acting as the guardian of freedom? Similarly, is government (in this case the Minister of the Economy together with the Minister of the Interior) not encroaching on the territory of the judiciary when it decides to freeze the assets of persons who commit acts of terrorism (Monetary and Financial Code, Legislative section, art. 562-1)? Where does the insidious shift from complementary to overlapping prevention and enforcement agencies leave the separation of powers so solemnly proclaimed in art.

At a time when terrorism has struck like never before on French soil, it is important to recall, as Prime Minister Manuel Valls did in his speech of January 21, 2015, that the fight against terrorism calls for determination, perseverance, and coherent action. The immediate reaction is the macho imposition of urgent measures (not emergency measures) to strengthen the services of the state (reinforcement of the personnel and materiel of the intelligence services, improvements to the equipment and weaponry of the forces of order, better detection of the process of radicalization, oddly (?), in prison, the creation of a specific register for terrorism-related information, and so forth). However, the fight against terrorism is not simply about the state. It is a fight for civilization because freedom and tolerance are at stake. In response to the globalization of the threat, the fight against terrorism must win out over pointless rivalries and become the organizing principle of international relations.

We should also celebrate the present mobilization of the international community (UN, EU, IMF, NATO, WEF, and more) as well as the many initiatives now emerging (the Stockholm Program, validated by the European Council in June 2014, the European PNR (Passenger Name Record) Project, that allows the exchange of air passenger data between member states, the proposals to modify the rules of the Schengen Agreement on border controls, among others), all of which are aimed at the eradication of "global terror" which is now emerging as one of the great challenges of the new millennium.