

# Governing Through Fear in France

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Catherine Haguenu-Moizard

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The present pandemic affects our ways of life and acts as a magnifying glass: It helps us to see the main features of our political and legal systems better. In France, the Act of Parliament from March, 23 reveals a well-known feature of the French fifth Republic: Parliament is not considered as a major political institution. Furthermore, it reveals yet again that the state of emergency has become common since 2015.

Since the 24<sup>th</sup> of March France has been living under a new legal regime called the state of sanitary emergency (*état d'urgence sanitaire*). It is copied from the "ordinary" state of emergency which may be declared under a 1955 Act, modified in 2015 in case of "serious breach of public order" or "public disaster". The state of sanitary emergency was created by an Act of Parliament of March 23, 2020 which modifies the rules of the public health code (Official Journal, March 24). This peculiar regime may be declared by the government for a month and may be renewed by Parliament without any time-limit. The Act derogates from this procedure and already declares the sanitary state of emergency for two months. During this state of sanitary emergency, the Prime minister is authorized to take a number of decisions in order to protect the health of the population. The Act of Parliament lists ten possible types of decisions, like quarantine, limitations to freedom of enterprise or closure of various public places. The Prime Minister has issued an order (*décret*) on March 23 which provides for all these measures (Official Journal, March 24). This new set of rules has been thoroughly analyzed by [Aurore Gaillet and Maximilian Gerhold](#). I will attempt to develop a complementary point of view.

## The weakness of the French Parliament

The entire political system in France is based on the President. The President is directly elected (constitutional reform of 1962) and his term has been reduced to five years, meaning that the National Assembly is elected immediately after the President (constitutional reform of 2000). The Constitution gives a number of powers to the French President, but they do not go beyond those of most elected presidents over the world. Contrary to other heads of State, he is the leader of the majority party. When his Prime Minister can rely on a majority in the National Assembly, the executive is almost all-powerful. The National Assembly merely adopts the legislation devised by the executive and does not control it very much. The second Chamber, the Senate, may try to oppose but it does not have the last word.

The state of sanitary emergency Act has been adopted in five days by an overwhelming majority of members of Parliament. Only 38 members of the National assembly (out of 544) and 2 senators (out of 254) have voted against it. Parliamentary amendments extending the controlling powers of Parliament have been rejected. The Act merely provides that the two chambers of Parliament must be promptly informed of the measures decided by the government and may request

more information (article L 3131-13). The National Assembly has decided to set up an information mission (*mission d'information*), directed by the speaker, Richard Ferrand. An information mission does not have many powers. Moreover, Richard Ferrand is a friend of Emmanuel Macron and has never shown any willingness to let the members of Parliament carefully scrutinize the government's actions. In the Senate, a fully pledged debate is expected in a year's time. The conditions for a proper control of the government are not met.

Nobody denies that the government must be allowed to act swiftly and may have to restrict individual freedoms. But the lack of Parliamentary control – although typical of the fifth Republic – is worrying, not only for the present but also for the future. First of all, nobody knows when the virus will stop. The state of emergency might be renewed for a long time. We have already experienced the difficulty to put an end to a state of emergency. After the terrorist attacks in November 2015 in Paris, the state of emergency was renewed six times, lasting for almost two years. The President then and his government were afraid of being accused of weakness if they returned to a normal legal situation. Second, other epidemics are bound to take place sooner or later. The state of sanitary emergency might be declared again. The Public Health Code will not be amended after the end of Covid-19. Complaints have been filed against members of the government because of their alleged belated answer to the needs of the population. The judges should not be the only ones to scrutinize the government's decisions. A democracy requires political accountability.

## **The everlasting state of emergency**

As the philosopher Giorgio Agamben has said, the state of exception “has become the normal condition” (*Le Monde*, March 24.2020). In France, we have lived under the state of emergency from November 14, 2015 until November 1, 2017. The special powers awarded to the administration have then [entered the ordinary legal systems with minor changes due to the Terrorism Act 2017](#). The 2015-2017 experience has also shown that there is always a risk of abuse of extraordinary powers. The special powers awarded to the Home Secretary and to the prefects were supposed to help against terrorism. They were used to prevent demonstrations during the 2015 United Nations Climate Change Conference in Paris. Members of environmental movements and left-wing activists were subject to house arrest. Prefects ordered searches of homes and vehicles without any link to terrorism. Some policemen have used excessive violence (see the Defender of Rights' criticism in an interview, *Le Monde*, 26.2.2016). The new Act of Parliament allows for far-reaching limitations of individual freedoms. There is no way to be sure that these powers will only be used when it is necessary for public health.

The Act also entitles the government to adopt orders based on article 38 of the Constitution (delegation of legislative power to the government) in order to adapt Labor law (article 11). This delegation of legislative power is valid for three months. The government has already published [four orders, giving extra powers to employers and reducing the powers of the employees' representatives](#). One may wonder whether all these changes in Labor law were really necessary for sanitary reasons.

It seems that over the years, and especially since 2015, French governments are getting used to governing through fear. The fear of terrorism and now the fear of an illness are used to make us accept yet another reduction of the role of Parliament and major limitations of our freedoms. There seems to be an urgent need to come up with other ways of governing modern societies.

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