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Vanessa Codaccioni. States of exception and their targets: Racialized groups, activists and the civilian population. *Comparative Studies of South Asia, Africa and the Middle East*, 2020, 40 (2), pp.230-236. 10.1215/1089201X-8524138 . hal-04223339

**HAL Id: hal-04223339**

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# States of Exception and Their Targets

## *Racialized Groups, Activists, and the Civilian Population*

Vanessa Codaccioni

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On November 13, 2015, the most deadly attacks in France since the Second World War took place. A murderous hostage taking in a Parisian concert hall (Le Bataclan), a series of shootings in the streets of Paris, and suicide attacks outside the Stade de France in Saint-Denis resulted in the deaths of 131 people. Subsequent to these attacks, a state of emergency was declared in France,<sup>1</sup> authorizing an exceptional regime of a kind that was completely invented in the Algerian colonial context.<sup>2</sup> “The state of emergency was an immediate, powerful, and effective response to protect our fellow citizens, to stop fanatical individuals, criminals who want to attack our country, its values; to attack our democracy,” said Prime Minister Manuel Valls a week later.<sup>3</sup>

Authorizing administrative searches without judicial control, day or night, house arrest or even the prohibition of demonstrations, this state of emergency was quickly denounced for its excesses and inefficiency. However, it was extended several times until November 2017,<sup>4</sup> when some of its provisions became part of ordinary law.<sup>5</sup> What in the past was temporary, has therefore become the norm, detached from the immediate postattack situation to become permanent. Above all, the state of emergency has resulted in the intensified repression of two categories of the population: activists and people of Muslim faith. More than four hundred French Muslims have referred complaints to the legal staff of the Collective against Islamophobia in France (CCIF) for discrimination.<sup>7</sup>

This situation is neither unique to France nor unprecedented. Since 9/11, the terrorist threat has been publicly associated with Islam as an ideology, as a mode of religious identification, as a way of life, a practice.<sup>8</sup> For example, the UK Home Office Minister Hazel Blears said in 2005 that members of the Muslim community should expect to be arrested by the police. In France, this formula “terrorist=Muslim” is older and goes back at least to the 1990s, when there was a radicalization of antiterrorism following the creation of a new offense: criminal association in connection with a terrorist enterprise. As part of an increasingly preventive and proactive strategy (creating its own targets), this offense favors arbitrary and mass arrests. It notably gave rise to the largest French antiterrorism trial, the Chalabi trial, in which, at the beginning of 1998, 138 people were judged in the same court, sometimes only for having a copy of the Quran at home.<sup>9</sup> The recent state of emergency has thus continued this criminalization of Muslim practices, in the context of a media and political instrumentalization of the “fear of Islam,” an Islamophobia radicalized by the attacks of September 11, 2001, as evidenced by the increase in physical attacks and verbal insults.<sup>10</sup>

The French state of emergency therefore had two characteristics: it became partly permanent, and it mainly targeted individuals who had no connection with terrorist networks. To understand this situation, we must go beyond the murderous and tragic events of November 2015. We must try to understand how exceptional measures or *dispositifs* emerge in Western democracies and, more important, how the exception gradually contaminates common law and modifies its initial targets. While many legal theorists, philosophers, historians, and sociologists have conceptualized the state of exception, from Carl Schmitt to Jacques Derrida and Walter Benjamin, I would like

to discuss the thesis of the “permanent state of emergency” developed by Giorgio Agamben. In his book *State of Exception*, the Italian philosopher shows how the exception normalizes and becomes commonplace in contemporary regimes. He then describes how the “state of exception in which we live has become the rule” and takes the form of a “sustainable practice of government.”<sup>11</sup> However interesting it may be, this thesis of a permanent state of exception is nevertheless underpinned by too unified and totalizing a vision of the emergency, and it conceals one of the essential problems linked to the state of emergency: targeting, profiling, and differentiation. Who is targeted by the exception? Why? What does this targeting tell us about the nature of the exception, how it is introduced, rationalized, implemented, and also perceived by its contemporaries?

To answer these questions, we must begin by specifying that the state of exception is not a dome enclosing all people but a sum of social and contextualized practices,<sup>12</sup> called for by the executive branch and implemented by judges or police forces. Moreover, the state of exception in a strict sense is a specific set of repressive measures delimited by the law and handed down for police, military, judicial, or administrative uses that are equal neither in their intensity nor their effects. Especially, the state of exception is profoundly discriminatory in its logic and method—it only affects a small portion of the population that becomes overcriminalized—but its targets evolve as it becomes institutionalized. It is the process of this unfolding that this article attempts to demonstrate. For this purpose, I will rely on the history of the exception in France, and in particular insist on two genealogies of the state of emergency: the colonial genealogy of exceptionalist logics, in which Algeria plays a central part (section 1); and a more metropolitan genealogy of political repression which targets “enemies within” and is embodied in special courts (section 2).

### **The Algerian War as a “Colonial Matrix of Exception”**

The state of emergency in 2015 stemmed first and foremost from a colonial genealogy that dates back to the Algerian War, a conflict that took place between 1954 and 1962, during which the French state fought the independence struggle of the National Liberation Front (FLN).<sup>13</sup> If this war is central in the history of repression in France, it is because it constituted a “matrix of the uses of exception,”<sup>14</sup> which definitively marked certain French practices of police, administrative, judicial

and military domination over ‘undesirable’ and racialized population. Moreover, the legacy of this war was a reservoir of experience in terms of exceptions, with subsequent French governments not hesitating, as after the attacks of November 13, to reuse some of its most derogated and discriminatory measures.

### *Discrimination, Colonial Repression, and Targeted Exception*

To fight against Algerian independence fighters and their supporters, the French state mobilized three types of measures in Algeria. The first are measures that, though illegal, were nonetheless tacitly accepted by the authorities: torture, rape, summary execution, and arbitrary detention. The second are semi-legal measures that resulted from a compromise with the law, such as the creation of internment camps.<sup>15</sup> These measures themselves can also be seen as part of a history of colonial domination and differentiation, as the historian Sylvie Thénault has shown in connection with administrative detention.<sup>16</sup> And third are statutory exceptions, that is, those introduced by the Parliament and the Senate. This was the case with the State of Emergency Act of April 1955, with curfews; the banning of meetings and demonstrations; the closing of theaters and cafés; police raids at night; prohibition of residence and internment for thousands of people; control of the press, publications, and radio broadcasts; and the trying of civil cases by military personnel.

In this context, it was racialized bodies that were subjected to these most repressive, violent, and murderous practices. The measures that were the “most exceptional” mainly affected Algerian women and men. If those people who were called the “Europeans of Algeria” thus had exceptional or semilegal measures imposed on them in Algerian territory, this was to a much lesser extent and under different conditions. For example, Europeans were also subjected to internment in camps, but they were held in the Lodi camp, a camp where living conditions were better than in the other camps.<sup>17</sup>

This situation of exceptional repression that mainly affected Algerians and the differential management of illegalisms, as Michel Foucault would put it,<sup>18</sup> can be explained in several ways. The first concerns the procedures for adopting exceptional measures. From this point of view, what was happening in Algeria was typical of contexts of crisis in which governments, formally in a strategy of self-defense, use exceptional measures to restore order and eradicate threats to the nation, the

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1 state, or, as here, to territorial integrity. As president of  
2 the council Pierre Mendès France said at the beginning  
3 of the war, “We do not compromise when it comes to  
4 defending the inner peace of the nation and the integ-  
5 rity of the republic.” Prime Minister François Mitter-  
6 rand said as much when he visited Algeria on November  
7 12, 1954: “Algeria is France,” he proclaimed, “negotiation  
8 with the rebels is war.”<sup>19</sup> France could never acknowl-  
9 edge that it was at war with Algeria, because that would  
10 imply it was a full-fledged state entity. In addition to  
11 delegitimizing the FLN’s struggle, this refusal partly  
12 explains the choice to “invent” an exceptional regime  
13 under the sign of emergency rather than to declare a  
14 state of war.

15 This also means that the exceptional repression  
16 affecting Algerians must be linked to the logic of colo-  
17 nial domination specific to Algeria. The Algerian soci-  
18 ologist Abdelmalek Sayad wrote, with regard to French  
19 colonization, “Total colonization, systematic, intensive,  
20 colonization of population, colonization of property  
21 and wealth, of the soil and subsoil, colonization of men  
22 (bodies and souls), especially early colonization[,] can  
23 only lead to major effects.”<sup>20</sup> This “total colonization” is  
24 therefore reflected in severe and relentless repression,  
25 which was based on the colonial ideology itself, and  
26 which involved the superiority of the European popula-  
27 tion over the Arab one. Thus, exceptional practices must  
28 also be related to the representations of the “enemies  
29 to be fought” created by the repressive agents. And,  
30 with regard to the army (the main agent of repression  
31 in Algeria), its action was directed by a racializing and  
32 racist vision of the Algerian independence movement,  
33 this vision itself stemming from colonial racism present  
34 in all institutions.<sup>21</sup>

35 Considered as subhuman, animals, and in particu-  
36 lar rats,<sup>22</sup> Algerians could thus be subject to all sorts of  
37 exceptional measures that could not be inflicted, at least  
38 in such a radical way, on French or European citizens.  
39 Their long exclusion from French citizenship worked to  
40 expose Muslim Algerians to targeted punitive practices  
41 during the Algerian War. Certainly Algerians obtained  
42 new rights after the Second World War, particularly  
43 political rights, and became “full-fledged citizens” in  
44 1958.<sup>23</sup> But, as in metropolitan France, these legal devel-  
45 opments were met with resistance from repressive  
46 institutions (the army in particular), which continued  
47 to look at and treat Algerians as subcitizens. Above  
48 all, introduced as part of a policy aimed at reconciling  
49 republican values and maintaining the French pres-  
50 ence in Algeria,<sup>24</sup> the citizenship laws never affected the

punitive colonial practices targeting Algerian men and  
women, who would acquire their independence just a  
few years later in 1962.

#### *The State of Emergency: From Colonized Algerians to Muslims*

The state of emergency is only one of the measures  
taken to maintain French colonial domination. But  
what is important to emphasize here is that the excep-  
tion is therefore not established outside the law, or out-  
side all legality. The strength of the exception is that it  
is enshrined in the statute books and law, which gives  
it legitimacy and allows it to be reintroduced later, in  
other contexts, and with other targets. It is therefore no  
surprise that the state of emergency was used several  
times not only during the Algerian War (1958, 1961–63),  
but also after the conflict. It was established in the  
French territory and former colony New Caledonia first  
in 1985 during clashes between supporters and oppo-  
nents of independence, and to confront the indepen-  
dence struggle of members of the Kanak and Socialist  
National Liberation Front (FLNKS). It was revived again  
in 2005, at the time of urban revolts that took place in  
several French cities and whose starting point was the  
death in Clichy-Sous Bois, a Paris suburb, of two young  
people (Zyed Benna and Bouna Traoré) pursued by the  
police. This time the state of emergency was aimed at  
young people from working-class neighborhoods, often  
from North African immigrant backgrounds, who his-  
torically are a police target in France.

Of strategic repressive scope, this exceptional leg-  
islation cannot be reduced to its colonial origins alone.  
Nevertheless, in both cases, it did target inferiorized or  
racialized groups, which is further confirmed by its use  
between 2015 and 2017. While it was supposed to fight  
the jihadist threat, the state of emergency was actually  
mobilized to verify the “dangerousness” of thousands  
of Muslims. To cite just one example, take the case of a  
mother whose home was raided because, according to  
the search order, “she lives in a place where there are  
serious reasons to believe that she co-habits with one  
or more persons whose behaviour constitutes a threat  
to public security.” But it is only when her lawyers peti-  
tioned to have the decree annulled that the real cause  
of this search was declared: her involvement in a Mus-  
lim association, the discovery at home of religious  
books, “allowing confirmation of her strict practice of  
Islam,” and “her dangerous entourage,” an entourage  
that had not been in trouble with the police. And if the  
administrative court annulled the decree, the mother

was nevertheless stigmatized—an article evoking her supposed radicalization appeared in the national press, and she was later fired from her job for “loss of trust” after the prefect (the local representative of the Ministry of the Interior) had called her employer to inform him of the threat she posed to the state.<sup>26</sup>

Here again, these abuses are the consequence of an antiterrorism policy that is increasingly intended to be preventive and whose objective is to “neutralize” individuals before they take action. But contemporary antiterrorist profiling is racial profiling that is coupled in France with an Islamophobia partly inherited from colonial racism and illustrated by the ever-renewed debates on the veil.<sup>27</sup> In this sense, the state of emergency only makes a derogatory and discriminatory regime visible and sheds light on what states of exception are: always targeted specific groups or individuals. The latter are most often members of racial minorities or at least members of racialized and stigmatized groups who have few resources to deal with the exception. More generally, they aim to separate the population into two categories: those subject to the law in the ordinary way, and those to whom the guarantees proper to states that observe the rule of law will be refused. In other words, states of emergency may have two objectives: to keep a part of the population in a state of legal inferiority and hence intensify their legal inferiority by the use of exceptional repression; or else to relegate new categories of the population to a state of “lesser rights,” in Foucault’s terms.<sup>28</sup>

#### **State of Exception, Extraordinary Justice, and Exceptional Courts in France**

The second genealogy of the state of emergency, and more generally the French exceptionalist logic, is that of metropolitan institutionalized exceptional justice targeting “terrorists” and “political enemies.” This exceptional justice can be defined in two ways. First, it can be seen as a form of justice embodied in special courts subject to executive power, as is the State Security Court (1963–81).<sup>29</sup> However, exceptional justice can also have a broader meaning, and can be considered as an aggravated repressive regime established to treat a specific “target population” differently and more severely. This is what counterterrorism is all about. The transition from one to the other of these exceptional justice regimes in France then sheds light on the trivialization of the exception and the gradual extension of its targets.

#### *Institutionalizing Extraordinary Justice: The Creation of the State Security Court*

At the end of the Algerian War, General Charles de Gaulle established a new exceptional jurisdiction, the State Security Court, to try the members of the Secret Armed Organization, French pro-Algerians who had committed numerous attacks in Algeria and France, some of which were directed against him. This new court was the latest in a long series of special courts created in contexts of crisis to quickly and severely repress targeted groups of people (opponents) through derogated penal rules and try them for crimes regarding public order, state protection, or attempts to stage a coup. In fact, France has a long tradition of resorting to exceptional justice. French rulers have regularly tried to take control of the judiciary to administer justice themselves and weaken the power of judges. The Vichy regime, the Liberation, and the Algerian War are typical examples of such politicization of justice,<sup>30</sup> and of those moments when the executive establishes, in the name of the protection of the *res publica*, an exceptional repressive regime aimed at its designated enemies.<sup>31</sup> During these times of crises special courts are a key mechanism and show, since the French Revolution, common features: composition, procedures, and the issuing of judgements derogated from the rule of law; members of these courts were former military personnel or judges chosen by the executive branch; expedited procedures and judgement were the operating rules to the detriment of defense rights; police powers were extended and preventive detentions were longer than usually authorized. However, their main common feature was their short existence, which is attached to all exceptional measures. They were at first designed as an exceptional and provisory response to radical violence.

The State Security Court had all the characteristics of the special courts that preceded it, and especially the military courts of the Algerian conflict: it was created in a context of crisis; it judged political crimes and offenses more severely; it permitted exceptional police and prison practices, including fifteen-day police custody in the event of a state of emergency, long-term detentions, the use of collaborators. It did not respect the ordinary methods of trying people, since those brought before it were sentenced by career soldiers. In sum, the postwar State Security Court copied the exceptional courts in which Algerians and their supporters were tried during the war, once again confirming the “matrix of the exception,” which originates in and expands from colonial modes of repression. It also confirms that states of

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1 emergency are not parentheses in the tranquil lives of  
2 democracies and that “exceptional traces” remain after  
3 a war or crisis. In particular, certain cycles of violence,  
4 by the radical degree to which they target “public ene-  
5 mies,” and by their duration, are part of a crystallization  
6 of the exception in various repressive institutions (the  
7 police, the judiciary, the army). This crystallization then  
8 favors, despite the end of the emergency, their survival  
9 and perpetuation.

10 But to fully understand this institutionalization  
11 process, we must also consider the two features of the  
12 State Security Court, which distinguished it from other  
13 exceptional institutions. First, to make it more accept-  
14 able (since it must be established by a vote in the Parliam-  
15 ent and the Senate), the radical degree of the excep-  
16 tion was diminished. The central distinction was the  
17 reinstatement of an appeal before the Court of Cassa-  
18 tion, France’s supreme court of appeal. Indeed, during  
19 the Algerian War—and before, as Sarah Ghabrial’s piece  
20 in this special section, “Reading Agamben from Algiers,”  
21 details—the possibility of launching an appeal was sup-  
22 pressed, which goes some way to explaining the very  
23 large number of death sentences actually carried out. In  
24 view of the potential scandal caused by retaining this  
25 exceptional provision in time of peace, the possibility  
26 of appeal was reintroduced in the criminal proceedings  
27 of the State Security Court. This shows how the excep-  
28 tion must be made politically and legally acceptable,  
29 through adjustments to its degree of deviation from  
30 the norm. Second, and above all, unlike prior French  
31 exceptional courts, the State Security Court did not last  
32 for just a few weeks or a few months, but actually ran  
33 for eighteen years. This institutionalization finds two  
34 objective reasons: its creation by the formal vote of the  
35 Parliament (and not through a simple executive order or  
36 decree like previous courts), and the multitude of polit-  
37 ical events (violent demonstrations, attacks, discovery  
38 of spy networks) that justified its activity (five thousand  
39 people charged in eighteen years).

40 In these ways, de Gaulle’s court shows how excep-  
41 tion may be implemented into a “rule of law” regime.  
42 Created during the state of emergency, it survived  
43 three presidencies and thirteen governments, judging  
44 at first opponents from the extreme Right then those  
45 of the extreme Left (May 68 or Maoist opponents) to  
46 finally focus during the 1970s on regional independen-  
47 tists. The State Security Court, suppressed in 1981, thus  
48 exemplifies the progressive broadening of targets from  
49 authors of terrorist attacks, to protesters, or even peo-  
50 ple dispensing leaflets. Indeed, it became a commonly

deployed repressive instrument and consequently an  
adjustable tool that fit different situations, infractions,  
and sociological and political contexts. If states of  
exception initially target specific people, they tend, if  
they last, to affect more and more individuals who are  
very different from the initially targeted population.

#### *Evolution of Repressive Measures: From State Security Court to Counterterrorism*

The history of the State Security Court and its dissolu-  
tion also illustrates the movement from an extraordi-  
nary exceptional justice to a constant one, and explains  
how repressive regimes may successively mutate and  
evolve during “disruptive moments” like the 1980s.

Indeed, the 1963 laws had created not only the State  
Security Court but also a set of specific police and judi-  
ciary rules exclusively authorized and enclosed in de  
Gaulle’s court, which did not simply disappear upon  
the court’s closure. Rather, its suppression led to the  
enhancement and renovation of other exceptional mea-  
sures in French counterterrorism. Upon accessing state  
power and responsibilities, the Left, led by President  
François Mitterrand, applied a program based on sacral-  
ization of the rule of law and of its principles: equality  
of all before the law and justice, primacy of common  
rules over special ones, and rejection of exceptional  
measures, no matter what the crimes or misdemeanors,  
even of a terrorist nature. This amounted to a depolit-  
icization of what had been a political justice, expelling  
every overt trace of exception, including military courts  
in time of peace and the State Security Court.

Yet, removing these jurisdictions did not perma-  
nently erase everything that grounded the judicial infe-  
riority of certain groups of people. Since 1986, when  
the first counterterrorism bill was voted into law, many  
measures introduced by the State Security Court have  
been refurbished. A few examples, among others, may  
be given: derogated qualification for laying charges,  
police practices such as extended preventive deten-  
tion, and increasing specialization and centralization  
of jurisdiction with the creation of a “special” court  
deprived of a jury. French criminal courts fall now in  
two categories: ordinary ones and ones specially com-  
posed for terrorism. And if the State Security Court  
has never been recreated despite the will of the Right  
and the extreme Right to resurrect it, it is only because  
most of the mechanisms that made it possible to subject  
part of the population to a specialized repressive regime  
have been incorporated in more mundane ways into the  
judicial system, and also because, gradually, the trial

courts have become less central in the repressive arsenal. Their role has gradually been devalued to the benefit of other institutions involved in the fight against terrorism, in particular the intelligence services.

### Conclusion

To be interested in the targets of the exception allows us to deconstruct the image of states of exception that would fall on all indifferently. It reveals the discriminatory and racializing character of exceptional schemes and their objective of distinguishing between “ordinary” citizens’ rights and the “lesser rights.” The latter are often racialized minorities, victims of discrimination, racism, or racial profiling specific to certain types of repression (colonial repression, antiterrorism). If there is a permanence of the state of exception, it only applies to targets reduced to juridical inferiority, or weakened by the law, who daily endure the effects of exceptionalist reasoning. As these groups have little support from the population, most of them indifferent to their repression, the exceptional measures to which they are subjected are legitimized and adopted. More precisely, the discriminatory nature of the state of exception allows it, in spite of everything, to be seen as acceptable because the great majority of the population does not suffer the effects of states of exception or thinks that it will never have to do so. But, very quickly, the perpetuation of the exception leads to a diversification and an extension of the targets, as more and more individuals are finally subjected to exceptional repressive regimes. For example, they may be activists or demonstrators seen as “political enemies” by the government.<sup>32</sup> Recent counterterrorism developments, such as coercive tools (detention, house arrest, legal pursuits) or intrusive tools (phone or data surveillance in public or private spaces, spywares, etc.) only reinforce the process and lead to a generalization of the targets. That is to say, the strength of the targeted and discriminatory nature of the antiterrorist exception, which, by initially affecting only racialized minorities manages to limit the extent of the scandals and resistance that it could provoke, allows in the end a more generalized repression.

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*tiques (Repression: The State against Political Challenges)* (2019, Textuel).

### Notes

1. It was established by decree of the Council of Ministers on November 14, 2015.
2. Thénault, “L'état d'urgence (1955–2005).”
3. Speech by the Prime Minister on November 20, 2015. [www.gouvernement.fr](http://www.gouvernement.fr).
4. It has been extended six times, each time by an act of Parliament and the Senate.
5. The law strengthening internal security and the fight against terrorism was passed on October 31, 2017.
6. Regarding activists, two weeks after the declaration of the state of emergency, on November 29, 2015, twenty-four environmental activists were placed under house arrest. Moreover, in just two years' time, more than four hundred activists have been banned from demonstrating. Codaccioni, *Répression*, 9.
7. Charef, “Les conséquences de l'état d'urgence sur la société française.”
8. Jabri, “War, Security, and the Liberal State.”
9. Cettina, *L'antiterrorisme en question*, 161.
10. Geisser, *La nouvelle islamophobie*; Hajjat and Mohammed, *Islamophobie*.
11. Agamben, *State of Exception*.
12. Bigo, “Exception et ban,” 115.
13. See, e.g., Harbi and Stora, *La guerre d'Algérie*.
14. Codaccioni, *Justice d'exception*, 15.
15. Thénault, *Une drôle de justice*, 9.
16. Thénault, *Violence ordinaire dans l'Algérie coloniale*.
17. Funès, *Le camp de Lodi*.
18. Foucault, *Surveiller et punir*, 98–104.
19. Droz and Lever, *Histoire de la guerre d'Algérie*, 62.
20. Sayad, *La double absence*, 2.
21. According to Raphaëlle Branche, a specialist on abuses committed by the army during the Algerian War, this colonial racism partly explains the use of torture. Branche, *La torture et l'armée*.
22. As one soldier told us in 2006.
23. Indigenous until 1947, they became “French Muslims” on that date. Shepard, *Comment l'indépendance de l'Algérie a transformé la France*, 41.
24. Shepard, *Comment l'indépendance de l'Algérie a transformé la France*, 88.
26. Charef, “Les conséquences de l'état d'urgence sur la société française.”
27. Scott, *Politics of the Veil*.
28. Foucault, “Va-t-on extraire Klaus Croissant?,” 365.
29. I have devoted a book to this institution, based on its archives and those of General de Gaulle: Codaccioni, *Justice d'exception*.

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30. For the Vichy regime, see Sansico, *La justice du pire*; for the Algerian War, see Thénault, *Une drôle de justice*.

31. Jaffré, *Les tribunaux d'exception*.

32. Codaccioni, *Répression*.

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