

A New Indigenous Question in France's Overseas Territories?

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Whether they live in French Guyana, Mayotte, New Caledonia, Wallis and Futuna, or Polynesia, indigenous peoples have been largely forgotten during France's 2011 celebration of its "Year of the Overseas Territories." Yet their long-standing presence in the French national community has made these remnants of empire laboratories of national belonging—and the heart of France's political diversity.

After the vigorous commemorative debates of 2005, the question of France's colonial heritage made a decidedly less dramatic return to the public arena in 2011, on the occasion of the very conventional "Year of the Overseas Territories." The posthumous homage that the nation rendered to the great figures of West Indian anti-colonialism contributed to the reopening of France's postcolonial debate, albeit from a very particular angle: that of the "black question" and, more specifically, the problem of the "legacy of slavery" in the West Indies, Guyana, and Réunion, as well as the metropole.¹ This inquiry into the transformation of social relations resulting from slavery in the "old colonies"—between masters and slaves as well as their descendents—is an inescapable pillar of contemporary France's postcolonial debate. It is the counterpart to discussions on France's colonization of Africa and on postcolonial immigration, which problematize colonialism's legacy from the standpoint of

¹ See the seminar on the "Relevance of Aimé Césaire" organized by Eric Fassin and Louis-Georges Tin at the École normale supérieure (ENS) (<http://www.ehess.fr/fr/enseignement/enseignements/2011/ue/940/>) and the workshop on Frantz Fanon at Université Paris 3 (November 19, 2011) and at the ENS (March 27, 2012). See, too, Françoise Vergès, *La mémoire enchaînée. Questions sur l'esclavage*, Paris, Albin Michel, 2006; Jean-Luc Bonniol, "Les usages publics de la mémoire de l'esclavage colonial," *Matériaux pour l'histoire de notre temps*, 85, 2007, p. 14-21; Audrey Célestine, "Mobilisation et identité chez les Antillais de France. Le choix de la différenciation," *Asylon(s)*, 8, 2010 (<http://www.reseau-terra.eu/article946.html>).

another major divide, one that had been established in the “new colonies” by the nineteenth century: the “native subject” (*sujet indigène*) v. the citizen (*citoyen*)².

Yet there is an important blind spot in all these discussions of the French (post)colonial context: the distinct situation of formerly colonized native subjects who remained under French sovereignty even after the wave of independence that began in the 1960s and continues to the present day. At present, the French Republic includes five such groups: the Amerindians of Guyana, the Mahoris of Mayotte, the Kanaks of New Caledonia, and the Pacific islanders of Wallis and Futuna and French Polynesia. They all acquired full citizenship between the 1940s and the 1960s, as the result of very different colonial trajectories.³ These peoples are directly tied to the legacy of colonialism in France’s contemporary overseas territories, yet without being connected to the slavery debate. Because they never ceased to be French, they are also untouched by the problem of the transgenerational link between the experiences of colonization, immigration, and discrimination, as it is posed for French citizens with origins in the Maghreb or sub-Saharan Africa. These five groups thus occupy a paradoxical position—at once marginal and central—in the French postcolonial debate. They are marginal insofar as their small numbers in the metropole, compared to the children of African immigrants and descendants of slaves originating from overseas territories, contribute directly to their social and cultural invisibility at the national level. Yet they are central because their historic trajectories remind us so forcefully of the eminently colonial matrix of the category of “overseas,” which makes the “indigenous question” very relevant in today’s France. They lead us to interrogate, in the case of all five of these societies, the ruptures and continuities between the condition(s) of native subjects in colonial times and the condition of citizens today. This analytic perspective makes

² Jean-François Bayart, Romain Bertrand, “De quel ‘legs colonial’ parle-t-on?”, *Esprit*, décembre 2006, p. 134-160; Romain Bertrand, *Mémoires d’empire. La controverse autour du “fait colonial”*, Bellecombe-en-Bauges, éditions du Croquant, 2006; Ahmed Boubeker, Abdellali Hajjat (eds), *Histoire politique des immigrations (post)coloniales. France, 1920-2008*, Paris, Ed. Amsterdam, 2008; Catherine Coquery-Vidrovitch, *Enjeux politiques de l’histoire coloniale*, Marseille; Agone, 2009. French imperial historiography draws a classical distinction between the slave “old colonies” in America and the Indian Ocean, founded under the *Ancien Régime* (before the French Revolution), and the “new colonies” of the nineteenth century (from the French conquest of Alger in 1830 onwards) in Africa, Asia and Oceania.

³ The Kanaks and Mahoris had the status of “non-citizen native subject” until 1946, whereas colonial law defined the Wallisians and Futunians as “protégés” (i.e., the inhabitants of a protectorate) until 1961. Because of the different phases of French colonization in the five archipelagos of the French Establishments in Oceania (which later became French Polynesia), the status of citizen was given to some islanders while it was denied to others, even as the entirety of the Polynesian population (citizens and subjects) was categorized as “native” until 1946. Finally, in Guyana, administrative policies treated the Amerindians in practice as native subjects, even though they were never formally recognized as such by colonial law until the Frenchifying policies of the sixties.

it possible to situate the postcolonial overseas question in a field of possibilities that is much broader than that of the slavery debate: the problems of decolonization, citizenship, and “indigeneity” (*autochtonie*) in particular have profoundly transformed and continue to shape the political and legal dynamic in the five territories, each of which has its own distinct status.

Indigenous Trajectories and the Colonial Legacy in France’s Overseas Territories

These populations’ current relationship with the French Republic results from a distinct colonial history which, from the standpoint of the state, can today be defined alternatively in legal or political terms.

Thus the Mahoris, the Kanaks, and the Wallisians and Futunians enjoy under private civil law a “particular” or a “personal status” that is distinct from the Civil Code. As with most of the peoples colonized by France during the nineteenth century, colonial law appropriated their habits and customs and recognized their existence, yet without necessarily codifying them in writing. After the Second World War, in the renewed imperial context of the French Union and as a result of article 82 of the 1946 constitution, the accession of former native subjects to citizenship occurred without relinquishing their status (*dans le statut*)—reproducing, in other words, the colonial distinctions of private civil law within the context of the newly expanded citizenry. This provision was preserved in the 1958 constitution (article 75). Most individuals affected by this personal civil status, however, gradually left the French Republic as former colonies became independent. The Mahoris, the Kanaks, and the Wallisians and Futunians are now France’s only remaining citizens who are not subject to the Civil Code. They represent an extreme minority of the national population: around 100,000 people in Mayotte, 100,000 in New Caledonia, and 13,000 in Wallis and Futuna.

At present, parliament’s position on these special laws inherited from colonialism varies entirely from one context to another. In New Caledonia, “customary law” has been consecrated by the state and summoned to be specified in this form by the Noumea Accord (a text that has been integrated in the French constitution—see below); in Mayotte, however, these special civil laws have been largely emptied of their content and are in the process of disappearing since the island became an overseas department in March 2011. Despite the historical precedent of a Muslim status existing in the three departments of French Algeria,

Mahori Koranic law is at odds with parliament's current conception of a French department.⁴ Finally, this special civil status has been preserved in its current form in Wallis and Futuna. It should be added that this special status applies only as long as the members of the concerned group reside in their native communities. The experience of migration automatically places them within the realm of common law. This fact has at present given rise to a debate among Wallisians and Futunians, who are now more numerous in New Caledonia (20,000 individuals) than in their native islands (where there are 13,000 of them). They seek legal recognition of a Wallisian and Futunian customary status within New Caledonian society, alongside Kanak customary law.⁵

The specificities of the contemporary indigenous experience in French overseas territories can also be considered from the standpoint of political mobilization. In New Caledonia, Guyana, and Polynesia respectively, the Kanak, Amerindian, and Ma'ohi movements have since the 1970s and 1980s made claims against the state on the grounds that they are "peoples" distinct from the French. In this capacity, they demand a restoration of the political sovereignty that has been denied them since colonization, according to one of two alternatives: either through statutory independence and the creation of a nation-state independent of France; or through special rights as "indigenous peoples" (*peuples autochtones*) residing within the Republic. The latter demand, made in the name of indigeneity, is very common in Guyana, but less so in New Caledonia and Polynesia, where it has nevertheless represented a challenge in recent years to pro-independence discourse, which had previously been dominant. The significance of these two implications of decolonization is represented in the United Nations by two solemn declarations—both of which France voted to approve—that are tied to two distinct organizations: the Declaration on the Granting of Independence to Colonial Countries and Peoples of December 14, 1960, which authorizes the

⁴ Todd Shepard, *The Invention of Decolonization: The Algerian War and the Remaking of France*, Ithaca and London, Cornell University Press, 2006; Rémi Carayol, "À Mayotte, départementalisation à la pelleuse," *Le Monde Diplomatique*, June 2011 (<http://www.monde-diplomatique.fr/2011/06/CARAYOL/20657>).

⁵ Isabelle Rettig, *La communauté wallisienne et futunienne en Nouvelle-Calédonie. Facteurs de production et usages localisés*, MA thesis in anthropology, EHESS, 2005; Régis Lafargue, *La coutume face à son destin. Réflexions sur la coutume judiciaire en Nouvelle-Calédonie et la résilience des ordres juridiques infra-étatiques*, Paris, LGDJ, 2010; Régis Lafargue, "La République, la Coutume et le Droit de l'outre-mer: statuts territoriaux 'à la carte et kaléidoscope' des statuts civils personnels," in Natacha Gagné, Thibault Martin, Marie Salaün (eds.), *Autochtonies vues de France et du Québec*, Québec, Presses de l'Université Laval, 2009, p. 151-191.

Special Committee on Decolonization; and the Declaration on the Rights of Indigenous Peoples of September 13, 2007, which charges the Permanent Forum on Indigenous Issues.⁶

The United Nations Framework for Political Indigeneity

Beyond the general meaning of the term “indigenous” (i.e., “native,” “from here,” as opposed to “foreigner”), the legal and international category of indigeneity, as it has been defined by the United Nations, is the outcome of a long process of mobilization. It first appeared on the international stage in the 1920s, but became particularly prominent in the 1970s, led by militant organizations representing the colonized peoples of the old settler colonies in the Americas and the Pacific which had since become independent (the Amerindians of Canada and the United States, the Aborigines of Australia, and the Maori of New Zealand). Because of obvious concerns with demographic marginalization, the UN framework for political indigeneity proposes a model of decolonization, self-determination, and restoration of sovereignty that is distinct from statutory independence and the nation-state: the goal is to promote, within existing national contexts, not only the common individual rights of all citizens (which implies fighting against the discrimination and inequalities that indigenous peoples face), but also the recognition of specific collective rights reserved for indigenous peoples alone (political representation, land property, justice, education, natural resource management, administrative services, etc.). At the initiative of indigenous organizations themselves, no formal definition of the category of indigeneity has been entered into international law, in order to ensure that debate is not closed off and to leave open the possibility for future mobilizations in the name of indigeneity. Even so, consistent with the conclusions of the UN Special Rapporteur José Martínez-Cobo (in the five volumes of his report published between 1981 and 1984), several criteria are generally recognized as defining the boundaries of indigeneity in international law: roughly, this category refers to the last populations of the earth to be colonized or the victims of expansionist policies, who are dominated and find themselves in the political minority, with no or only tenuous access to natural resources, and who are economically exploited and culturally negated.⁷

⁶ <http://www.un.org/en/decolonization/specialcommittee.shtml>;
<http://social.un.org/index/IndigenousPeoples.aspx>

⁷ Isabelle Schulte-Tenckhoff, *La question des peuples autochtones*, Brussels, Bruylant, 1997; Natacha Gagné, “Indigenous peoples, a category in development”, in Paul Haslman, Jessica Schafer & Pierre Beaudet (eds), *Introduction to International Development Studies: Approaches, Actors, and Issues*, Oxford, Oxford University Press, 2nd edition, 2012, p. 454-472.p. .

From the standpoint of the individual, the indigenous person is, according to the Martinez-Cobo report, an individual who self-identifies as a member of an indigenous community (group consciousness) and is recognized and accepted by this group as one of its members (group acceptance). The purpose of this criterion is to affirm that determination of indigenous identity should not be made by the state, but by the indigenous peoples themselves. Even so, on September 13, 2007, when the Declaration on the Rights of Indigenous Peoples was being voted on, the French representative intervened to declare that the category of indigeneity within the Republic must also be accepted by the state. In essence, he said that the state can choose to recognize certain claims made on behalf of indigeneity insofar as they arise from “populations”—and not “peoples,” a concept that is tied to sovereignty in international law and which is contrary to the principle of the indivisible Republic⁸—and on the condition that they are restricted to overseas territories, i.e., connected to France’s colonial history. Implicitly, this position amounts to a refusal on the part of the state to consider the Corsicans, the Basques and other metropolitan separatists groups as “indigenous:”

At the national level, France, which is directly concerned by the indigenous populations of its overseas territories, leads programs supporting their economic and social development in a manner that is adapted to the particularities of these populations, as well as to their cultural expression. [...] For France, by virtue of the principle of the indivisibility of the Republic and pursuant with the fundamental principle of equality and its corollary, the principle of non-discrimination, collective rights cannot supersede individual rights. Special treatment may however be granted to indigenous populations on a territorial basis.⁹

If the Republic totally exempts metropolitan territory from the UN framework for indigeneity, this does not mean that the category of indigeneity necessarily applies to all overseas formerly “native” trajectories. Just because one was a native subject yesterday does not mean that one is an indigenous person today: witness contemporary Mahori and Wallisian and Futunian strategies for integrating themselves into France to various degrees, ranging from preserving the status of overseas territory (*territoire d’outre-mer*, or “TOM”) and special civil laws in the case of Wallis and Futuna, to the transition to overseas department (*département d’outre-mer*, or “DOM”) and the gradual disappearance of Koranic law in

⁸ Irène Bellier, “Usages et déclinaisons internationales de l’‘autochtonie’ dans le contexte des Nations unies,” in Natacha Gagné, Thibault Martin, Martin Salaün (eds.), *Autochtonies vues de France et du Québec*, Québec, Presses de l’Université Laval, 2009, p. 75-92.

⁹ General Assembly of the United Nations, Declaration on the Rights of Indigenous Peoples, French delegate’s speech, Thursday, September 13, 2007 (<http://www.gitpa.org/Processus%20GITPA%20200/GITPA%20200-2TEXTREF.htm>).

Mayotte. Witness the careers of formerly “native” activists in the major anti-independence parties of New Caledonia or Polynesia, who want significant political autonomy inside the Republic rather than independence or indigenous rights. Witness, too, the Kanak and Ma’ohi independence movements that want to leave French colonialism through independence rather than indigeneity. As for the structural crisis that for the past several years has shaken the Amerindian indigenous movement in Guyana, it demonstrates that invoking the indigenous argument may be opportune in some contexts (the 1980s and 1990s), but inopportune in others (the 2000s and 2010s), as an alternative Amerindian strategy is now being pursued through the state’s decentralized institutions (town halls, departmental councils, etc.).¹⁰ Today, those who might be called the “indigenous peoples of the Republic” are indeed Kanak, Amerindian, and Ma’ohi, but this category is far from exhausting all the political options arising from the “native/indigenous question” in contemporary overseas France.

The Republic’s Indigenous Peoples

The demands indigenous peoples have made of the state in French Guyana, French Polynesia, and New Caledonia must not be grasped as single, one-dimensional social phenomena: each must be situated within a very specific configuration, one that is closely tied to each local context. We will quickly describe the Guyanan and Polynesian situations before dwelling at length on the case of New Caledonia.

It is tempting to sum up the opposite political trajectories in these two territories as follows: indigeneity without autonomy in Guyana, autonomy without indigeneity in Polynesia. Influenced by indigenous activism in the Amazon basin and in the Americas more broadly, Amerindian activists in Guyana were historically the first actors to mobilize the discourse of indigenous rights in the French context, beginning in the early eighties. As for the state’s response, the balance sheet of three decades of indigenous activism is slight. It essentially consists in the creation of one new municipality in which the population is almost exclusively Amerindian (Awala-Yalimapo); the decree of April 14 1987, which grants “usage rights zones” to “communities whose residents have traditionally found their means of subsistence in the forest,” which in practice allows Amerindians to own their village lands collectively (but this provision has only been implemented three times since 1987 due to the

¹⁰ Stéphanie Guyon, *Du gouvernement colonial à la politique racialisée. Sociologie historique de la formation d’un espace politique local (1949-2008). St-Laurent du Maroni, Guyane*, doctoral dissertation in political science, Université Paris 1, 2010.

opposition of local elected officials); and, finally, the training of “bilingual cultural mediators” in some public schools. The “customary chiefs” (or “captains,” as they were known in the colonial era), the former go-betweens of the colonial state, enjoy only minimal recognition.¹¹ The reasons for these mixed results are demographic and institutional. Though ethnic statistics are forbidden in Guyana, it is estimated that Amerindians today represent around 4% of the Guyanese population (10,000 individuals out of a total population of 225,000), which permanently marginalizes them from an electoral and a political perspective. Moreover, the status of overseas department and region (article 73 of the constitution) seriously restricts Guyanese autonomy compared to metropolitan standards. Lacking a special legal status, Guyana can only consider institutional and administrative adaptations to Amerindian social realities at the law’s margins.

By contrast, the “Polynesian personality” enjoys much greater institutional recognition. An “overseas country” subject to article 74 of the constitution, French Polynesia is granted broad political autonomy as a result of several successive statutes (1984, 1996, 2004). With its own anthem, flag, seal, and its own order of titles and distinctions, the overseas community is led, according to official terminology, by a president who is the head of government, while the assembly approves the “laws of the land” (*lois du pays*). Recognized by the organic law of February 27, 2004 as “essential to cultural identity,” Polynesian languages are used on a daily basis in politics (including on the floor of the assembly) and the media (with news programs in Tahitian). They have been officially taught in primary school since 1982 and are the subject of a mandatory examination for those seeking to become schoolteachers. While the rules and regulations of the special local law were replaced by the French Civil Code between 1887 and 1945 (depending on the archipelago), most of the land has remained under the rule of joint ownership, which attests to the importance, in terms of land tenure, of local practices that differ considerably from French norms. Finally, over the last thirty years, there have been many cultural and artistic events publicly celebrating Ma’ohi identity (navigation, poetry, dance, tattooing, oratory art, etc.).¹² These local particularities are affirmed all the more strongly in that the original population remains very much in the majority, as the five Polynesian archipelagos did not experience settler colonization: in 1988,

¹¹ Gérard Collomb, “Du ‘capitaine’ au ‘chef coutumier’ chez les Kali’na,” *Ethnologie française*, 4, 1999, p. 549-557; Guyon, *Du gouvernement colonial*.

¹² Bruno Saura, *Tahiti Ma’ohi. Culture, identité, religion et nationalisme en Polynésie française*, Papeete, Au vent des îles, 2008; Tamatoa Bambridge, *La terre dans l’archipel des Australes. Étude du pluralisme juridique et culturel en matière foncière*, Papeete, IRD éditions-Au vent des îles, 2009.

according to the last territorial census to include ethnic statistics, 83% of the population completely or primarily identified as “Polynesian” rather than “European,” “Asian,” or “other.”¹³ This percentage has probably since declined, given that metropolitan immigration has increased.

Ma’ohi cultural self-affirmation and Polynesia’s institutional autonomy are distinct in that they developed historically, beginning in the 1970s and 1980s, independently of any reference to political indigeneity, which at the time was beginning to emerge on the international scene. The terms of the local debate boiled down to the choice between autonomy and independence: the issue was that of the relationship to the French state, which itself was closely tied to the question of financial aid, which since the 1960s has kept Polynesia in a state of financial perfusion. Even so, the political split between autonomy and independence does not correspond as such to a social or racial divide between the European colonizer and the indigenous colonized, as it does for example in New Caledonia. The primary architect of the autonomist measures in Polynesia, which created political institutions and symbols resembling those of a sovereign state (yet without claiming to replace it), is none other than Gaston Flosse, the close friend of Jacques Chirac and opponent of independence. Some authors speak of his “double nationalism”—Polynesian in relation to the state, French in relation to other countries—which is ultimately not that different from a moderate idea of emancipation defended by the pro-independence leader, Oscar Temaru.¹⁴ In any event, Polynesian and Ma’ohi political and cultural expression is not typically conceived in terms of indigenous rights. Only the activist Joinville Pomaré, a descendent of the royal family that ruled Tahiti when the French first arrived, has attempted over the past decade to invoke political indigeneity in Polynesia on the basis of a number of customary and royalist claims: the denunciation of the refusal to honor treaties signed in the nineteenth century between France and his ancestors, the restoration of traditional chiefdoms and tribunals, the creation of

¹³Between 1962 and 1983, the census included a fifth category, “halves” (*Demis*), corresponding to a mixed-race group recognized by Polynesian society. Even so, in a context marked by increasingly assertive claims made on behalf of Ma’ohi identity, the category of the “halves” disappeared from the census in 1983 and was replaced by that of “Polynesians and assimilated groups,” followed simply by “Polynesians” in 1988. Individuals were however allowed to fill check off multiple boxes to indicate that they were of mixed ethnicity. Jean-Louis Rallu, “Les catégories statistiques utilisées dans les DOM-TOM depuis les débuts de la présence française,” *Population*, 53, 3, 1998, p. 589-608.

¹⁴ Samir Al Wardi, “Le mouvement indépendantiste en Polynésie française de 1946 à nos jours,” in Natacha Gagné, Marie Salaün (eds.), *Visages de la souveraineté en Océanie*, Paris, L’Harmattan, Cahiers du Pacifique Sud contemporain, 6, 2010, p. 139-158.

a customary senate, etc. For now, however, the impact on the Polynesian political scene of the indigenous arguments invoked by Joinville Pomaré has been marginal.¹⁵

The “Kanak People” and Independence

Whatever the institutional arrangement implemented in Guyana and Polynesia, representatives of the French state have never accepted that the claims of the Amerindians or the Ma’ohis be made in the name of a “people.” Already in 1991, the French constitutional court, invoking the Republic’s indivisibility, condemned the famous reference to the “Corsican people, a component of the French people.” Similarly, the state only recognizes “overseas populations” (see the constitutional revision of March 28, 2003) and, among them, “indigenous populations” (see the declaration cited above by France’s UN ambassador in 2007), older references to “overseas peoples” included in the preamble to the 1946 constitution (relating the French Union) and article one of the 1958 constitution (relating to the *Communauté*, a temporary union established between France and its former colonies) notwithstanding. Yet on September 13, 2007, France did indeed vote in favor of the Declaration on the Rights of Indigenous *Peoples*. Besides the usual diplomatic haggling, this vote was probably made possible by the fact that an exception already exists to the principle of the unity of the French people: since 1998, by virtue of the Noumea Accord, which has been integrated into title XIII of the constitution (articles 76 and 77), the Republic officially recognizes the existence of a “Kanak people” in New Caledonia. From this perspective, the Caledonian situation is for France a diplomatic boon—after having long been a thorny issue—which allows it to present itself before international organizations as a state that respects the rights of indigenous peoples.¹⁶

It is however somewhat ironic that the Noumea Accord is considered as a tool for ensuring the application of indigenous rights in New Caledonia. The text’s original purpose was not to link Kanak claims to the UN framework for indigeneity, but to decolonization. Signed on May 6, 1998, between representatives of the French state, the leaders of the Kanak and Socialist National Liberation Front (*Front de libération nationale kanak et socialiste* or

¹⁵ Bruno Saura, “Le mouvement royaliste et coutumier contemporain en Polynésie française: de l’étranger-roi à l’autochtone souverain ?”, in Natacha Gagné, Marie Salaün (eds.), *Visages de la souveraineté en Océanie*, Paris, L’Harmattan, Cahiers du Pacifique Sud contemporain, 6, 2010, p. 159-183.

¹⁶ See the answer (dated September 20, 2011) to the French delegate to the report on New Caledonia by James Anaya, the United Nations Special Rapporteur on the rights of indigenous peoples (www.delegfrance-onu-geneve.org/spip.php?article1104).

FLNKS) and the leaders of Rally for Caledonia in the Republic (*Rassemblement pour la Calédonie dans la République* or RPCR), the Noumea Accord belongs unquestionably to the history of Kanak pro-independence activism: it follows on the heels of the dissident movement for cultural renewal in the 1970s, the nationalist heyday of the 1980s (notably the difficult period of the “events”—“*les événements*”—of 1984 to 1988), and the Matignon Accords of 1988. The latter restored civil peace, postponed the question of independence for ten years, and addressed other pro-independence demands, during the transitory decade between 1988 and 1998, by emphasizing the need for a “rebalancing” (in politics, economics, education, property, culture, etc.) in favor of the Kanaks.

Because of the colonial settlement policies pursued in New Caledonia until the 1970s, the Kanaks are a minority of the Caledonian population: according to the 2009 census, they make up about 45% of the archipelago’s 245,000 inhabitants.¹⁷ If the FLNKS has since the 1980s received strong electoral support from the Kanaks (between 70% and 80% of Kanak voters), the main anti-independence parties have always received, until the present, an absolute majority of votes cast at the territorial level (around 60%)—in other words, the near-totality of the non-Kanak votes plus those of a reliable Kanak “loyalist” minority.¹⁸ The perpetuation of this balance of electoral power through the 1990s explains why the three signatories preferred to negotiate a new political compromise rather than to hold the self-determination referendum provided for by the Matignon Accord. Approved by a local referendum held on November 8, 1998 with 72% of the ballots cast (and a 74% turnout), following a joint appeal on the part of the FLNKS and the RPCR calling for approval, the Noumea Accord was integrated into the French constitution during the constitutional revisions of July 6, 1998 and February 19, 2007.

Progressive Decolonization According to the Noumea Accord

Explicitly defined in its preamble as a “decolonization” agreement, the Noumea Accord rests on three essential provisions. The first concerns the gradual and irreversible transfer of state functions to New Caledonia. By 2014, only five sovereign functions will continue to belong to the French state: defense, currency, justice, public order, and foreign

¹⁷ <http://www.isee.nc/population/population.html>. New Caledonia is currently the only territory in the French Republic where censuses are allowed to include questions about ethnic membership.

¹⁸ Eric Soriano, *Une trajectoire du politique en Mélanésie. Construction identitaire et formation d'un personnel politique. L'exemple kanak de Nouvelle-Calédonie*, doctoral dissertation in political science, Université Montpellier 1, 2001.

relations. At this stage, a local self-determination referendum on the transfer of the remaining functions, and thus on the accession of New Caledonia to the status of a sovereign state, will be held sometime between 2014 and 2018. The second key provision is the definition of “New Caledonian citizenship,” which may become full-fledged nationality at the conclusion of the process. While the accord remains in effect, this local citizenship is granted to all French people (whether or not they are Kanak) who can prove that they have resided in New Caledonia for ten years and arrived before November 8, 1998, as well as their descendents. To this are attached a number of special political and social rights: only Caledonian citizens are allowed to vote in provincial elections and in the final self-determination referendum. Furthermore, locally, they are entitled to preferential treatment in terms of employment compared to non-citizens. Beyond this legal definition, Caledonian citizenship represents, from a procedural perspective, the social bond *par excellence*. According to the Accord’s preamble, its goal is indeed to forge a new identity based on the idea of a “common destiny”:

It is now necessary to start making provision for a citizenship of New Caledonia, enabling the original people to form a human community, asserting its common destiny, with the other men and women living there. [...] The past was the time of colonization. The present is the time of sharing, through the achievement of a new balance. The future must be the time of an identity, in a common destiny. (Preamble, point 4).¹⁹

In order to prevent the transfer of functions and citizenship from fueling a “white” New Caledonian independence movement, a third provision of the Noumea Accord consecrates the recognition of the “Kanak people,” its “identity,” and its “sovereignty,” as a “precondition” to building its celebrated common destiny. This willingness to make the Kanak people once again the heart of the decolonization process led the signatories (including, it must be noted, representatives of the settlers and the state) to produce a common commemorative narrative recognizing the trauma of colonialism as experienced by the colonized inhabitants, which was integrated into the accord’s preamble:

The time has come to recognize the shadows of the colonial period, even if it was not devoid of light. The impact of colonization had a long-lasting traumatic effect on the original people. [...] Colonization harmed the dignity of the Kanak people and deprived it of its identity. In this confrontation, some men and women lost their lives or their reasons for living. Much suffering resulted from it. These difficult times need to be remembered, the mistakes recognized and the Kanak people’s confiscated

¹⁹ English translation of the Noumea Accord, available from Australian Indigenous Law Reporter, at <http://www.austlii.edu.au/au/journals/AILR/2002/17.html#Heading55>.

identity restored, which equates in its mind with a recognition of its sovereignty, prior to the forging of a new sovereignty, shared in a common destiny.

The recognition of Kanak identity results in the promotion of various institutions and structures that the accord calls “customary:” “customary areas” and a “customary senate” (the regional and territorial emanations of the administrative “chiefdoms” identified by the colonial state in the nineteenth century), “customary law” (a renaming of the special civil law governed by article 75), and “customary lands” (the old “native reserves” and other territories retroactively ceded to the Kanaks in the name of land reform). Let us mention, finally, the measures for strengthening Kanak cultural heritage (the Kanak languages, place names, and the repatriation of Kanak museum objects), in which the development of Kanak culture (the Tjibaou Cultural Center) and the choice of symbols of identity (flag, name, anthem, paper money design) are intended, in the language of the preamble, to express “the essential place of the Kanak identity in the accepted common destiny.”

Between Citizenship, Indigeneity, and Independence

It is thus solely within the context of gradual decolonization provided for by the Noumea Accord that the state formally recognized the existence within the Republic of a people other than the French people. Citizenship in New Caledonia thus provides the model for a society that one might describe as multicultural—but a singular and differentiated multiculturalism, consisting, according to the accord’s categories, of an “original people” (“*peuple d’origine*,” ie. the Kanaks) and “communities” that arose from colonial migration (Europeans, Wallisians, Indonesians, Vietnamese, etc.). If such political and legal innovations could be integrated into the very text of the constitution, despite the fact that they seem to be the very antithesis of the French republican tradition, the reason ultimately lies in their transitory character. Following the referendum that will bring the Noumea Accords to a close (between 2014 and 2018), the cards will be reshuffled and no one knows what will become of this constitutional architecture. It cannot, of course, be ruled out that this transitory solution will be made permanent: if it rejects independence, New Caledonia’s trajectory within the Republic may continue to derogate from the most basic rules of a unitary nation-state, and could even become the laboratory for a broader challenge to these rules at the national level.

As the moment of truth for self-determination rapidly approaches, the consequences of the official recognition of the Kanak people in New Caledonia illustrate even right now, in a

paroxysmal way, the tensions and the reconfiguration of the indigenous question within the French overseas space. Even within the Kanak world, the Noumea Accord's provisions on Kanak national identity have been politically appropriated in widely divergent ways. For the leaders of the FLNKS, the struggle is no longer focused on the "rights of the Kanak people," as these have now been fully recognized by the Accord, but rather on their practical implementation within the broader framework of citizenship. This strategic reorientation led to their adoption of the consensual project of a "common destiny," their participation in the ordinary game of representative democracy (electoral competitions, exercising power through the institutions, etc.), but also their choice of a capitalist and industrial development strategy based on exploiting Caledonia's rich underground nickel deposits.²⁰ However, from the point of view of the Kanaks who are invested in the so-called "customary" structures, the Noumea Accord offers possibilities of unprecedented claims for new rights on the basis of Kanak identity: their goal is now to acquire them from the state, multinational corporations, settlers and local elected officials (be they European loyalists or pro-independence Kanak leaders), notably by transcribing customary law and the demand for greater power for the customary Senate. This new Kanak strategy has been gradually elaborated since the beginning of the 2000s, in reaction to vast mining and land exploitation projects that the neighboring Kanak people experienced as alienating and from which the "managerial" and consensual strategy of the pro-independence movement did not seem to offer sufficient protection. It is precisely in these distinct historical conditions and with the intent of reinforcing the legitimacy of claims made in the name of "custom" that the framework of the rights of indigenous peoples was imported to New Caledonia by various customary authorities.²¹

In this new "customary-indigenous" perspective, official recognition of the Kanak people is no longer seen as a stage in a long struggle for independence, nor an arrangement that is inseparable from the project of citizenship and decolonization, but simply as the local application of international principles for protecting indigenous peoples, independently of the question of independence. The Noumea Accord's promotion of Kanak identity is, from this

²⁰ Leah Horowitz, "Towards a viable independence ? The Koniambo Project and the political economy of mining in New Caledonia ", *The Contemporary Pacific*, 16, 2, 2004, p. 287-319; Marie Salaün, Jacques Vernaudeau, "La citoyenneté comme horizon: destin commun, demande sociale et décolonisation de l'école en Nouvelle-Calédonie", *Anthropologie et sociétés*, 33, 2, 2009, p. 63-80.

²¹ Christine Demmer, "Autochtonie, nickel, environnement: une nouvelle stratégie kanak," *Vacarme*, 39, 2007, p. 43-48. 2007; Benoît Trépied, "p. Indigenous struggles and water policies in contemporary New Caledonia", *Social Identities*, vol. 18, No. 4, July 2012, p. 465-479.

perspective, a political tool at the disposal of “customary authorities” for preserving the interests of “indigenous peoples” in relation to—or even in opposition to—the project of a “common destiny,” which is ultimately suspected of being just another instance of colonial hypocrisy, despite the fact that the FLNKS signed the document. Henceforth, two alternative and competing Kanak strategies are at odds with one another over how to fight the inequalities and discrimination bequeathed by colonization and which still afflict the Kanak people. This completely unprecedented redefinition of the indigenous question— independence v. indigeneity in one and the same place—makes New Caledonia an exemplary limit-case, one that is particularly illuminating and revelatory of the complexity of the colonial legacy and postcolonial issues which currently traverse France’s overseas territories—these last “confetti of empire” in the Caribbean, the Indian Ocean, and the Pacific.

First published in laviedesidees.fr. Translated from French by **Michael C. Behrent** with the support of the **Institut Français**

Published in booksandideas.net 13 June 2012.

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