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## ***People's involvements in statutory changes in New Caledonia***

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Our traditional western conception of democracy is not universal, and is not the only way of expressing democratic values. It neither always allows the best solutions to conflicts between people or a group of them. The New-Caledonian example comes here to remind us humility and modesty.

Discovered by Europeans in 1774 by English captain James Cook, New-Caledonia became a French colony in 1853. Originally populated by Kanaks, these inhabitants were progressively parked in reserves to keep the best lands to settlers. Later on soldiers, civil servants, farmers, some industrialists, and of course convicts (22.000 prisoners were deported between 1854 and 1897) came to populate this new land. To a lesser extent, populations from India, Madagascar, Reunion island, Indonesia or Japan came were sent to serve the European settlers or to set in themselves. This melting pot created a specific context for the current independence claim.

New-Caledonia is now divided in 3 Provinces (the South, most populated, which is rich and with a majority of Whites, the North and the Loyalties Islands which are quite poor and populated by Kanaks). The territory is ruled by a Congress composed by some counsellors elected in the Provinces, and by a collegial Government composed of representatives of the different political parties of the Congress. The French State is represented in particular by a “Haut-Commissaire” (High Commissioner) which job is to ensure the respect of law and order. Though new demographic data should be soon provided by a census held this winter, we can however roughly estimate that New Caledonia is populated by 250.000 inhabitants, whom 45% are Kanaks, 35% are Europeans, 13% are Polynesians. The 2% rest corresponds to small Indian, Indonesian or Algerian communities. About 30 languages are spoken. We must bear in mind that Kanaks became a minority, still the most important community, at the beginning of the 70's.

It's precisely in the 1970's that independentists claims began to be more visible and radical, particularly with Jean-Marie Tjibaou who organized in Nouméa in 1975 a major Kanak cultural event. These claims led to the creation at the end of the 1970's of an Independence Front, which confronted the loyalist party.

New-Caledonia is on the UN list of the non self-governing territories, to be decolonized (Special comity of the 24), with 15 other territories such as Bermudas, Gibraltar or the Falkland island. The confrontation between independentists and loyalists became quite violent in the 1980's, while the French president F. Mitterrand seemed to agree with the independence of New-Caledonia. Between 1984 and 1988, dozens of people died in this conflict. In 1988, French policemen were taken hostage by an independentist commando. This dramatic event finished in a blood bath (25 killed, whom 19 were Kanaks) and paved the way towards a pacific solution to this endless conflict and stop the violence escalation.

Since this period, an original and specific democratic process has been organized. History proved that democracy in time of decolonization can't be summed up to a single electoral operation of auto determination. This type of democratic process is more complex.

In New-Caledonia, this process led to a radical transformation of France's position. This change is in fact double. In the one hand, the State has given up its historical and visible colonial domination, to accept the possibility of New-Caledonia's independence. Since 1988 indeed, France seems ready to accept any solutions agreed by all the partners of this conflict, without trying to impose its point of view. This allowed a real debate to occur and a true dialogue between all the parties. Renouncing to its past domination and by taking an unbiased stance, the French Government appeared as a credible partner for the Kanak independentists.

On the other hand, the French Government managed to distinguish itself from the white Caledonian population (nicknamed "Caldoches"). This dissociation permitted to treat them as partners with whom to negotiate. After being furious against the State position in 1984-86, and now enjoying a certain credibility and impartiality, the Caldoches accepted the new role played by Paris.

Both transformations allowed a change from a violent duality to a constructive trinity. And this is at the core of New-Caledonia's evolution. With the clear identification of the forces involved and of their political stances, a complex game could start with the French Government playing the role of an active and neutral mediator. Since this period, Paris is arbitrating between Kanaks and Caldoches and is the guarantor of the collective agreements.

This evolution and the new relations between Kanaks and the Europeans led to a democracy in three acts. Firstly the time of dialogue and negotiations (I), secondly the time of people's validation (II), and thirdly the time of local elections to give local authorities the chance to act and prevent violence (III). This popular involvement in statutory changes is quite specific.

## **I – A democracy based on negotiation**

New-Caledonia is a « land of words », as its national motto says. Kanak culture is marked by a debate process called « palabre » (endless speaking), which enables everyone who has right to speak to express his opinion until a collective consensus is made. Then the agreement reached must strictly be observed by everyone. It's with this traditional dispute settlement method that the 1980's Events were going to be solved little by little.

A lot of different statutes have been adopted during the 1980's, imposed by both national legislative or executive power (laws of 6<sup>th</sup> September, 23<sup>rd</sup> August 1985, 17<sup>th</sup> July 1986, 22<sup>nd</sup> January 1988). But none of them managed to pacify this independence conflict, even when granting a large autonomy or providing for an auto determination referendum. Moreover, they often contributed to inflame the debates.

The first direct negotiations with Kanaks independence leaders were a failure. For example, a round table occurred in Nainville-les-Roches in July 1983, bringing together representatives of the French State, White Caledonian authorities and members of the Kanaks Independence Front. An official declaration was then written which proclaimed the "*innate and active right to independence*" of the Kanaks. Of course, White Caledonian representatives didn't sign this declaration. Nevertheless, the 1984 statute tried to concretely applied the declaration, but was rejected by the Caldoches along with the independence movements- which refused to participate to the elections this law was providing for.

It is an other conception of dialogue that permitted to pull out of the turmoil. The context also helped a lot, with the massacre of Ouvea. To face this violence escalation, the French Government sent a “dialogue mission” in New-Caledonia, to meet and hear the parties involved in the conflict, to restore trust and dialogue. Two main agreements would emerge from this process.

Firstly, the **Matignon Agreement** had been negotiated during fifteen days in the governmental palace (hôtel de Matignon), and finally signed the 26<sup>th</sup> June 1988. During these two weeks, with the mourning of the Ouvea's dead people, the three partners (the French State, the White leaders and the Kanak leaders) tried to negotiate and to find solutions to stop the violence and future turmoil. This Agreement was symbolized by the handshake of JM. Tjibaou and J. Lafleur, the two antagonistic leaders. It was then completed by the **Oudinot Agreement**, signed in the Overseas Secretary in Oudinot street, the 20<sup>th</sup> August 1988 and which was designed to prepare the law carrying out the agreements and the auto determination referendum planned for 1998. These agreements were quite well respected by all the partners, thanks to their validation by referendum of November 1988 and the adoption of a law transposing this agreement within the legal system. Nevertheless, we can notice that both leaders negotiated against their own public opinion. And finally, JM Tjibaou was killed one year later by a Kanak who accused him to betray his people.

These Agreements were indeed well accepted by local populations too. New institutions and new competences were pacifically established, and Kanak culture started to be recognized. However, the prospect of the auto determination referendum was quite worrisome because of the return of violence the campaign or its results could generate. At the beginning of the 1990's, loyalists began to seek another solution, followed at the end by the independence movement: both rejected the prospect of a referendum. Indeed, demographic projections could have explained that independence would not have been chosen. A negative referendum could have revived the conflict between both communities without providing any solution. Whatever the results were, they were not to be accepted by the other party. On the contrary, this type of referendum ends up with a winner and a loser deeply antagonized and sorely unable to agree on such a fundamental question. This referendum would divide New-Caledonia without offering sustainable solution.

To avoid these negative hypotheses, the **Nouméa Agreement** has been negotiated and signed the 5<sup>th</sup> may 1998. This agreement occurred after the **Bercy Agreement** (1<sup>st</sup> February) which transferred to the Northern Province the administration of an important nickel mining concession. The construction of an ironworks near the mine, which is going to open in few months, will help the economical readjustment demanded by the Kanak Independence Front.

The Nouméa Agreement was negotiated during two months, while all the partners were quite divided themselves (cohabitation between a socialist Prime minister and a more conservative President, opposition among Kanak independentists, etc.). New leaders were also appearing.

This Agreement reinforced the recognition of Kanak culture (name of the cities, customary status and land, Kanak languages, etc.), created new institutions (Customary Senate) and planned new and irreversible transfers of competences. The definitive transfer of regalian State competences is to be submitted to a referendum around 2014. The Preamble of this Agreement is fundamental; it tries to create a new link between all the New-Caledonians. This text reminds the readers the dark ages of colonization and the progress it allowed, recognized the Kanaks' suffering as well as the courage of the first settlers. On both these developments, a New-Caledonian citizenship is to be created and opened to the whole populations who had earned historically the right to participate to the political construction of this “common destiny”. The consequences of these different points of the Preamble are developed in the rest of the Agreement. This text and the legal novelties it created forced to review the French constitution. This agreement was validated through a local referendum, and its content implemented by two laws in March 1999.

Criticized since its origin, this agreement is now the foundation which shapes political action or project towards New-Caledonia, as it represents a difficult consensus between the partners. Its failure could bring back war and the end of the cooperation, or trust it tries to create.

In the future a **new important Agreement** will perhaps be negotiated to avoid again this dangerous “blade referendum” of auto determination planned for 2014-2018. In the last electoral campaign of May 2009, some leaders began to talk officially about this possibility. The options are to push away again the auto determination (in 10, 20 or even 50 years), or to renegotiate the institutional organization, or to find any other question which would not oppose Kanak and “Caldoches”. The independence movement is assessing these options understanding that electoral results would still show that Kanak independentists are an electoral minority.

The pacific dispute settlement in New-Caledonia is above all a negotiated solution. Time of decolonization achieved through a statute initiated from the metropolis seems to be over. These “palabres” between political leaders does not include New-Caledonians. But they also enjoy their own power of decision.

## II – Evolutions democratically accepted

One of the main characteristic of the Nouméa process is that every negotiated solution has been accepted by a direct consultation of populations, either by referendum or simple vote on the statutory changes. As such, the local population has its word to say.

France enjoys a certain expertise in this field. Indeed, about 23 votes for a territorial question occurred in France since 1860. Regarding the New-Caledonia problem, 3 referendums have been organized: one in September 13<sup>th</sup> 1987, one the 6<sup>th</sup> November 1988, and one the 8<sup>th</sup> November 1988. As we said, an ultimate referendum of auto determination is planned to happen in 2014, in 5 years.

The **1987 referendum** is the only one concerning the auto determination question. Its legal foundations lay on the article 53 of the Constitution. It was organized during the 1980’s Events, and could have participated to toughen the conflict. It was opened to New-Caledonians to the exclusion of French citizens whom residence was not New-Caledonia. The electoral body was composed by people who have been living in New-Caledonia for at least three years. This system allowed people who had recently set in the territory to vote and hence was rejected by independentists who boycotted the vote. The participation was only about 59%, and gave 98% of the voters voting in favour of the maintaining within the French Republic. By projection, this result means that independentists voters are not in majority (a little less than 40%), at least in this electoral body and in this context. This makes us realize how important the question of the electoral body is.

At the opposite, the **1988 referendum** embraced the whole French people, based on the article 11 of the Constitution (referendum initiated by the President of the Republic on a bill). The question was about the validation of the Matignon and Oudinot Agreements and the law on the transitory status of the territory which apply these Agreements, waiting for the auto determination referendum planned in 1998. We may remind that at the beginning, these Agreements were not so well received by local populations, loyalist or independantist. Then, the power of decision given to the whole French people was a solution to integrate these agreements in a national choice, and to overpass a possible opposition of local populations.

At a national level, the participation has been very weak (37%). French people didn’t really understand the complexity of the problem or didn’t feel they were competent or interested in that

choice. The “yes” won with 80%, so these agreements were accepted and a statute adopted few days after. In New-Caledonia, the participation has been more important (63%). Luckily, the “yes” won too but with only 57% of the votes (what could have occurred if New-Caledonia would have voted “no”?). Nouméa and the South Province, with a majority of European people, rejected this referendum with 67%.

The third **referendum of 1998** is quite particular. It should have been an auto determination referendum organized in application of the Matignon Agreement. But to avoid a return of the violence, political partners agreed to negotiate a new transitional agreement which avoided the auto determination issue. Therefore, the referendum was upon this Nouméa Agreement and not on independence question, and was based on another article of the French Constitution. This vote was only opened to the person who have been living in New-Caledonia for 10 years (and could have voted for the Matignon referendum of 1988). The participation was quite positive (74%) and the “yes” won with 72% of the expressed voices (52% of the registered voters). The approbation had been massive within the Kanak provinces (87% in the North Province, 95% in the Islands Province) and a little more reserved in the South (58%).

The Nouméa Agreement provides for a new referendum of auto determination which is supposed to happen somewhere between 2014 and 2018. The local population will be consulted upon a special question provided for in the Agreement : “*the consultation will be on the transfer to New-Caledonia of regalian competences, the access to an international status of full responsibility and to the change from citizenship to nationality*”. In case of acceptance of these transfers (i.e. : foreign affairs, justice, public order, defence and currency), New Caledonia would access to independence. In case of rejection, it would remain in the status of large autonomy within the French Republic if no other negotiated solution is reached. Once again, only the local population will be consulted based on a residential criterion.

In case of negative referendum, the Nouméa Agreement provides for an original process : a second referendum can be organized in the further two years, and a third one in case of new rejection. After the third possible reject, a meeting between all partners must be called to find a solution. Here again, an important place is given to political negotiations, before any legal decision. For example, any new negotiation before 2014 on the modification of the Nouméa Agreement is conceivable, if all the parties agrees on the change the date of the referendum or to change the question.

This decolonization process is clearly democratic and seems to be now pacific. But it shows that direct democracy and referendum are not simple tools to settle conflicts, and must adapted to other types of democratic techniques, even traditional ones such as the “palabres”.

Another point must be highlighted. The auto determination referendum organized by the Nouméa Agreement would lead to a very specific decolonization. In case of acceptance, the independence means to cut any hierarchic links with France and total freedom for a sovereign New-Caledonia. But the present population is called to stay in this new state, Kanaks and non Kanaks. White people would also become citizens of this new country. Kanak independentists recognize the integration to this new state of non Kanaks and of all people who have a right to live there because of historical reasons (this principle has been formalized in the Nainville-les-Roches Declaration of 1983, and often reminded by independantist leaders). Then, by “decolonization” we should better understand “territorial independence”.

Two consequences :

- the fear of the “algerian syndrome” is lessened. Right after Algeria’s independence the European population was expelled, even the ones who have living in Algeria for

generations, with a sordid slogan : “the luggage or the coffin”. In New-Caledonia, the question of independence seems to go on in another way.

- The independence is not based on the transfer of powers to the Kanaks but to local authorities in general. These authorities are often in the hands of European or loyalist leaders. The Kanaks, nowadays in minority, are administering the poorest Provinces and are holding a blocking power in the Government. Moreover, the last transfers of competences are given to the Congress and to the Government, which can weaken the Kanak provinces whereas they had obtained a central role in the Nouméa agreement.

So “decolonization” in this case could mean independence, but independence may not mean decolonization if Kanak people are still dispossessed of real political or economical powers in their territory. This is because this democratic process of decolonization is based on the cooperation of different communities to achieve a Caledonian citizenship encompassing beyond any ethnic criteria Kanaks and non Kanaks. In this objective, the important point is the composition of the electoral body which should vindicate this new concept of Caledonian citizenship.

### III – An original Caledonian citizenship

At the heart of the local population’s involvement lays the question of the electoral body. This question has been fiercely negotiated, and original solutions have been provided. The objective is double: preserving the Kanak vote as they became a minority, and recognizing the legitimacy of non-Kanak residents to participate to this process. On a more theoretical note, the point is to pass from the concept of « Kanak people » to the « Caledonian people ». To materialize this transformation, a « Caledonian citizenship » was created by the Nouméa Agreement.

The right to vote in New-Caledonia local elections is based on residential criteria, and not on a nationality or ethnic one. But this residential criteria is not the same for all the votes. We have to distinguish 3 types of elections, and 4 different electoral lists.

- The **national elections**, ruled by national law, are the municipal elections, the legislative elections (2 MPs are elected to seat at the Assemblée Nationale), the senatorial elections (1 senator representing local authorities is elected in New-Caledonia) and the Presidential election. We have to add to this list the European elections, 3 European MPs are elected in the French Overseas territory.

Any French citizens can participate to these elections without restriction. So, a French metropolitan coming to New-Caledonia can register himself on the general electoral list as soon as he arrives on the New-Caledonian territory. We have to add to these citizens the E.U. nationals who are granted the right to vote to municipal and European elections since Maastricht treaty (1992).

- The **local Caledonian elections** which aim is to designate the elected members of Provinces along with the members of the Congress designation (Caledonian Congress is partly composed by elected persons of the Provinces). These elections are reserved to the persons living in New-Caledonia for a certain period and who are registered in a special electoral list controlled by an administrative commission. This differentiation is provided by the Nouméa Agreement. After a certain doubt regarding the interpretation of this Agreement, the Constitution was modified. The electoral body is now surely composed by the persons who were registered on the 1998’s referendum electoral lists (and who were resident in New-Caledonia since 1988 at that time), or the one who can justify a residence in the territory for 10 years since 1998 (and not after).

This is a clear limitation of the political rights of the French metropolitans who have recently settle in New-Caledonia, and this was clearly designed to contained the so called “settling colonization”

criticized by the independantists. For example, I couldn't vote for the provincial elections of May 2009 because I just settled in New-Caledonia in 2008. 18.000 potential voters (on 136.000 effective voters), holding the French citizenship have been removed for this election (about 13,5% of the general electoral body). The European Court of Human rights accepted twice this exclusion, basing its opinion on the fact that it was organized by a political agreement which permitted to reach peace in the territory, and could enter in the leeway that democracy can permit for any State. We should note that in the other side, some Kanaks, born in New-Caldeonia but who have left it and cannot prove a 10 years residence, are also not registered on this electoral body, like C. Karembeu, a famous football player who won the world cup in 1998 and live in Europe now.

We should note more seriously that this electoral restriction will be even more important for the next 2014 election, excluding people who had set in New-Caledonia since 1999, 15 years ago. We can imagine that these people could represent at that time about 20% of the general electoral body. This is quite important as the 2014 election are going to designate the persons who will negotiate the end of the Noumea Agreement, the last transfer of competences and the auto determination referendum. This exclusion will be especially notable in the South Province, composed by a strong European population, in general in favour with the French unity. Because of internal immigration, a lot of Kanaks coming from other Provinces are now living in this South Province and are called to register themselves in the cities of residence and not in their city of origin. With the exclusion of loyalist voters for these 2014 provincial elections and these news inscription of Kanaks, the political results can change quite a lot in this Province, traditionally anti independantist, and modify deeply the composition of the Congress at a crucial period.

A **last electoral list** must be mentioned, concerning this **2014-18 auto-determination referendum**. A special electoral body is provided for by Nouméa Agreement. Only these who could demonstrate a historical interest to this vote are granted the right to participate to this vote, hence protecting the Kanak vote. The criterion is again residential and not ethnic or based on French nationality. To simplify, are allowed to vote the persons, and their descendants, who could have voted for the 1998 referendum, or the one who can justify a residence of 20 years in the territory in 2014 (who settled in New-Caledonia before 1994).

So, the right of auto determination is not reserved to the sole Kanaks, but opened to all people who have participated to New-Caledonia's historical development. The decolonization doesn't give independence to the first inhabitants, but to all the populations who have been present in the territory for a long time and interested by its "common destiny", as says the Nouméa Agreement. This is the condition to create an open community, not limited to Kanaks, but in the same time protective of the later who are now in minority in their own island. The effort is shared by both communities: Kanaks accept the voting right of the non Kanaks, and European people accept to give up the fundamental "one man-one vote" principle and the exclusion of a quite important part of the electoral body based on a residential criteria.

As we can see, this pacific decolonization process, based on negotiation and opened to new legal solutions unknown until now to the French legal system, can have a certain democratic cost. Nevertheless, the statistic projections cannot permit to be sure of the final result of this referendum, if organized. Above all, nobody knows what can happen in case of independence with the disappearance of the third partner, France State, which is now the guarantor of peaceful dialogue between both communities and provide so many money to develop Caledonian territory and help strongly the economic readjustment. With 30% of population living under the level of poverty in spite of a GDP of 26 554 €/hab (a little more than New-Zealand), the question of independence is perhaps, in fact, not the important one. Independence must mean something more.

*Dr Christophe CHABROT, Nouméa, le 6 novembre 2009*