Customary law, customary justice and emancipation: a debate
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(ST: The following text, written by members of the LARJE, laboratory of law and the economy of the University of New Caledonia, is the home page of the topic "Customary law...a debate", one of the many topics of current interest on the site of
of the laboratory : http://larje.univ-nc.nc/index.php/15-analyses-arrets-decisions/droit-de-la-nouvelle-caledonie/429-droit-coutmier-justice-coutumiere-et-emancipation-un-debat
[accessed 2 May 2014])
(translated by Dr. Stephanie Anderson, EHESS@ANU program, October 2014).

The Noumea Accord recognises two peoples, the Kanak people and the French people who, for an indeterminate period of time, share French nationality. Recognition has been granted to the right of the Kanak people to live according to its customs. The New Caledonian people exists only in the circumlocution "common destiny". We are all familiar with the words of the Noumea Accord. It must enable "*the Kanak people to establish new relations with France* (and not necessarily in France) *corresponding to the realities of our time*". "*The communities that live in the Territory have, by their participation in the building of New Caledonia, acquired a legitimate right to live there and to continue to contribute to its development. [...] It is now necessary to establish the foundations for a citizenship of New Caledonia, enabling the original people to form, along with the men and women who live there, a human community asserting its common destiny.*" We note that the "others', the non-Kanaks, form communities... But to ensure this synthesis of the common destiny it is necessary to have an open mind. The reference of common destiny here is not the French Nation, one and indivisible, with its tendency to assimilation, but rather a reference to the Pacific, which tends to embrace the cultural diversity of its communities and to be more Anglo-Saxon. The Europeans will not blend into the yam cycle while the Kanaks have seen themselves as not being able to be assimilated for 160 years now. It will be necessary to pass through a long period of respectful coexistence and much legal pluralism.

Legal pluralism: "*coexistence of a civil law established and transferred on 1 July 2013 and and of a customary law produced out of a struggle undertaken for the political recognition of Kanak identity*".

Customary institutions versus Customary Senate and customary civil courts: "*the most recent institutions, political and legal, to have emerged in New Caledonia, by which can be expressed a customary law under discussion and reformulation*."

The present time is perhaps not yet the right one for definitions: the time when, with the advent of the dictionary, the setting down of the word that is entered there forces the consecration of the reality that is named. For the present the New Caledonian experience is giving rise to new realities in search of meaning. A new and unusual challenge must be taken up: the "invention" and the "inauguration" of new pathways for New Caledonian civil law. The extreme sensitivity of the issues gives rise to the polemic. All of these issues need to be discussed widely.

In response to others (http://www.vacarme.org/), Isabelle Merle's contribution, an academic colleague attached to the CNEP Laboratory, has enriched our thinking about these issues. Should we not understand "the aspiration of the Kanaks to a debate that is autonomous but linked to the problematic of contemporary issues" without on that account "restricting [them] solely to the set of issues surrounding customary law"?

You will find here Isabelle Merle's contribution and Elie Poigoune's reply to the journal *Vacarme*:

I. Merle, On the subject of "Customary justice in new Caledonia"

Reply by E. Poigoune, LDHNC

Note added by Pacific-dialogues: the article in the Journal *Vacarme* can be directly accessed at http://www.vacarme.org/article2263.html; an English translation of the article has been achieved through the EHESS@ANU program, as quotations from this article, made by other authors in their papers given at the ANU symposium of 25 Septembre 2014, needed to be rendered in English. However, the authors of the article did not wish to have the full translation made available on line in this context (symposium on Legal Pluralism), arguing that their text has not been written for an academic debate about legal pluralism: "we do not wish to be positioned 'for or against legal pluralism' in general. We are keen to situate this debate in New Caledonia within a specific political history and a local sociology where *The* custom would be part of an altogether different elaboration (including the question of male domination)." ["Lors de notre réunion d'équipe, nous avons décidé de ne pas donner suite à ta proposition. Nous préférons viser une réelle republication en anglais de notre article. Nous ne tenons pas à être positionnés "pour ou contre le pluralisme juridique" en général. En revanche, nous sommes attachés à situer ce débat en Nouvelle-Calédonie dans une histoire politique particulière et une sociologie locale où *La* coutume relève d'une construction qui pourrait être autre (y compris concernant la question de la domination masculine). Nous ne sommes pas certains que ta mise en perspective respecte ce point de vue."] (personal communication from Christine Demmer, for the whole team, e-mail addressed to Serge Tcherkezoff, 12 June 2014).