

REMARKS ABOUT NEW CALEDONIAN CITIZENSHIP

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1. The Noumea Accord

It is as much from a historical as a legal perspective that the Noumea Accord signed on 5 May 1998 between the State, the RPCR and the FLNKS appears to be an extension of the Matignon-Oudinot Accords concluded ten years earlier. It completes the organisation of New Caledonia by giving it time to evolve. It is symbolised by the recognition of the Kanak people, the acceptance of the process of decolonisation, the removal of the High Commission as the administrator of the Territory in favour of a collegial government of the country and the creation “of a citizenship of New Caledonia”. At the political level this creation of a specific New Caledonian citizenship at the very centre of the French nation certainly constitutes its main advance in relation to the previous accords.

The spirit of the Accord is well encapsulated by its preamble of which I shall quote some passages.

1). *Recognition first of all of the existence of an indigenous civilisation in New Caledonia:* before France took possession in 1853, the “Grande Terre and the islands were inhabited by men and women now known as Kanaks. They had developed their own civilisation, with its traditions and languages – custom – which organised social and political life. Their culture and their symbolic world was expressed through different forms of creative production.”

2). *Recognition of the historical connection of the Kanak world to the land:* “Kanak identity was based on a particular connection to the land. Each individual and each clan defined itself in terms of a specific relationship to a valley, a hill, the sea or a river mouth, and carried in its memory the acceptance of other families on its land. The names that tradition gave to each element of the landscape, the taboos which applied to some of these and the customary pathways structured space and exchanges.”

3). *Recognition of the harm caused to the Kanak people by the takeover of their land:* “Colonisation undermined the dignity of the Kanak people, depriving them of their identity.”

4). *The will to assume this heritage, but also to go beyond conflict and to build a common destiny encompassing all the communities present in the country:* “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.”

Without going into an analysis of the preamble, it will be noted that for those who drafted the Accord colonisation damaged the dignity of the Kanak people by depriving them of their identity as a people, and not of their sovereignty. With the Noumea Accord it is a matter of establishing a new citizenship, and not yet of deciding on the country’s link with France. Nonetheless the perspective is decolonising in its intention: “Decolonisation is the means of re-establishing a lasting social bond between the communities that now live in New Caledonia, by allowing the Kanak people to establish new relations with France that are in line with the realities of our time.” The Accord even declares that “the institutions of New Caledonia” which will come about “will express the new stage towards sovereignty.”

But let us stay with the present for the moment.

The actual text of the Accord signed in 1998 develops the project of citizenship along two complementary axes: one establishing common citizenship, the other recognising a) specific rights in relation to the Kanak people as a whole, and b) a different status, a “Kanak customary law civil status” in relation to each citizen of Kanak origin. Before the Noumea Accord the distinction was made between the ordinary law status [*statut de droit commun*] and a specific law status [*statut de droit particulier*]. The “terminological modification”, writes the jurist Régis Lafargue,

“signifies a complete change of perspective and the abandoning of any policy of assimilation. There is now no longer an ordinary law status [*statut de droit commun*] which would be predominant in relation to the other statuses or earmarked to become the universal status. The ordinary law status could in fact be

designated ‘civil-ist status’ [*statut civiliste*] since it is the status of one category of the population only”.

So much then for legal status.

Let us now look at the situation, at least broadly speaking, relating to the question of the construction of common citizenship, the basis for the creation of a common destiny.

In the course of the period covered by the Accord, the preamble tells us,

“signs will be given of the progressive recognition of a citizenship of New Caledonia, and this recognition must give expression to the community that is chosen and united by its common destiny [*celle-ci devant traduire la communauté de destin choisie*]¹ and, after the end of the period, be able to be transformed into a nationality, if it were so decided”.

Let me enumerate these signs as they are set out there:

- 1) the limitation of the electoral body for the elections to the local assemblies particular to New Caledonia to persons who have resided there for a certain length of time.
- 2) priority given to local employment, in order to take account of the limited labour market.
- 3) the gradual establishment of sovereignty shared between the State and New Caledonia with the irreversible transfer of some responsibilities [*compétences*]² of the former to the latter on the one hand, and with the joint exercise of some responsibilities on the other.

Here I shall emphasise the link between the definition of the electoral bodies and the establishment of a specific citizenship in New Caledonia.

¹ [ST] The famous expression “*communauté de destin*” conveys the idea of peoples uniting in their common destiny (viewed until then as having separate destinies) and creating a single community embracing a shared vision as to its future. The preamble of the Accord introduces the notion of “*destin commun*” or common destiny. The introduction goes on to say that, guided by this notion of a common destiny, people will choose the “*communauté de destin*” that they wish to have. Preamble: “...*peuple kanak... reconnaissance de sa souveraineté... partagée dans un destin commun.*” Introduction: “*L’un des principes de l’accord politique est la reconnaissance d’une citoyenneté de la Nouvelle-Calédonie. Celle-ci traduit la communauté de destin choisie et s’organiserait...*”.

² [ST] Those responsibilities are at the State level: for instance the school system.

Citizenship and the right to vote are necessarily related. The citizen is he/she who votes. And this summary definition is given a particularly blunt twist in New Caledonia because the Noumea Accord has arranged for a "transitional" disconnection between French nationality and New Caledonian citizenship. This is the question of the right to vote. French legislation has even intervened a second time, through the constitutional revision of 19 February 2007 to freeze or crystallise the New Caledonian electoral body. This freeze is presented as a definitive institutional gain.

I shall develop a little the question of the "transitional" disconnection³ of citizenship.

The organic law which implements the Noumea Accord provides, in its article 4, for the citizenship of New Caledonia:

"A citizenship of New Caledonia is instituted for the benefit of persons of French nationality who fulfil the conditions set out in articles 188 and 189."

These are the articles in question:

"Article 188: Composition of the electoral body

The congress and the provincial assemblies are elected by an electoral body composed of the voters satisfying one of the following conditions:

- a) To fulfil the conditions to be enrolled on the electoral rolls of New Caledonia set up in view of the consultation of 8 November 1998;
- b) To be enrolled on the auxiliary register (*Tableau annexe*)⁴ and resident for ten years in New Caledonia at the date of the election for the provincial congress and assemblies;
- c) To have attained the age of majority after 31 October 1998 and: either to be able to prove ten years of residence in New Caledonia in 1998, or to have had one

³ [ST] The term "disconnection" [*déconnexion*] used by the author refers to the distinction between French citizenship and de facto New Caledonian "citizenship", under transitional electoral provisions, for the purposes of meeting the conditions to be entered on the "special" electoral roll in order to be able to vote at local elections.

⁴ [ST] This register listed the people present in New Caledonia at the time of the 1998 ballot and who did not fulfil the conditions to be entered on the electoral rolls established for the consultation of 8 November 1998. From then on, the electoral roll became "sliding" [*corps électoral glissant*], in the sense that the requirement of ten years' residence could be established at each new election. But, responding to a strong demand from Kanak people, France accepted a constitutional change in 2007 and the electoral roll became "frozen" [*corps électoral gelé*], that is restricted to the 1998 list.

of their parents fulfilling the conditions to be a voter at the election of 8 November 1998, or to have one of their parents enrolled on the auxiliary register and to be able to prove ten years of residence in New Caledonia at the date of the election.

II – The periods passed outside of New Caledonia to perform national service, to pursue studies or training or for family, professional or medical reasons do not, for persons who were previously residing there, constitute an interruption to the time period taken into consideration for assessing the residence condition.

Article 189 – Special electoral list⁶

I – The voters fulfilling the conditions set out in article 188 are enrolled on the special electoral list for the election of the congress of the country and provincial assemblies. This list is drawn up on the basis of the current electoral list and of the auxiliary register of voters [that were] not eligible to take part in the [1998] ballot.

II – A special administrative commission has responsibility in each polling station for the establishment of the special list and of the auxiliary register of the voters not eligible to take part in the ballot. It is composed of

- 1 – A magistrate of the judicial order nominated by the High Commissioner;
- 2 – The delegate of the administration nominated by the High Commissioner;
- 3 – The mayor of the commune or his representative;
- 4 – Two voters of the commune, nominated by the High Commissioner, following consultation with the government of New Caledonia.”

New Caledonian citizenship thus understood, as we can see, excludes from voting people from metropolitan France who have only recently arrived in the country. These people cannot take part in the provincial elections and in the important electoral

⁶ [ST] This electoral roll is described as “special” [*la liste spéciale*] because it applies only to local elections: for the Congress and Assemblies of the Provinces of New Caledonia. It does not apply to the “general” elections (municipal, parliamentary) in which everyone votes. The general elections are held within metropolitan France as well as within all French territories to elect the Municipal Councils (from which the Mayor is then elected) of each commune and the national French Parliament. For these general elections, the electoral roll in each municipality of New Caledonia is the “general” roll, constituted by all citizens. Everyone entered on the special roll is also entered on the general roll. But when it comes to the local elections (Congress, Assemblies), only a portion of those entered on the general roll can vote: those who are also on the “special” roll.

consultations about the institutional future of the territory. New Caledonian citizenship, writes Régis Lafargue,

“which is meant to foreshadow what the New Caledonian nationality of the future might be, underlines the fact that there can coexist a system of ‘personal’ rights linked to a heritage or to a lasting presence on a portion of the territory of the French Republic. This adjustment to the classic democratic rule is intended not to crush minorities.

2. Current discussions

This summary of the current legal situation leads on to the following question: what are the pathways that have been more or less clearly mapped out and debated for exit from the Noumea Accord⁷? Despite the time that has elapsed and the transfer of responsibilities already carried out, it does not seem that the political positions current in 1998 have evolved greatly. One could even say that the approach of the end of the period covered by the Accord gives a glimpse of the return of the same tensions as those observed during the period preceding the signing of the Accord. As if, in the end, it had only served to delay the moment of confrontation.

This is of course an optical illusion. After the Accord nothing has been and never will be as it was before. The responsibilities handed over to New Caledonia are permanent. And the referendum at the end of the Accord, whatever form it takes⁸, will only relate to sovereign responsibilities [*compétences régaliennes*]: justice, public order, defence and currency, with credit, exchange rates and foreign affairs. The impression of lack of movement perhaps comes firstly from the fact that today none of the institutional parties of the country has been able to develop and communicate to the population a clear and credible political project as to the post-Accord era. What type of society? Of democracy? Of multiculturalism? Of economic development? This vacuum is interpreted by many people as a lack of preparation and contributes to the rise of anxieties and

⁷ [ST] The expression “exit from the Noumea Accord” [*la sortie de l’Accord de Nouméa*] only refers to what can/will happen “after” the end of the Accord, that is after the period (2014-2018) planned in the Accord for the referendum to be held on the future of the country, and which should end the transitional period that the Accord established. It does not refer to any rejection of, or distancing from, the spirit of the Accord.

⁸ [ST] The precise form that the referendum will take has not yet been decided, the content of the question(s) to be asked is still under discussion.

tensions. Another reason for the unease relates to the fact that the Accord has not kept all of its promises. The development since 1998 is undeniable but, quite clearly, the imbalances, the inequalities and the discriminations remain too numerous not to weigh heavily in the debates of the coming months and years. Here too the absence of any real project for the society to come is a matter for concern.

In fact, it is really only the State which today seems to concern itself with the exit from the Accord and to this end sends observers, experts and missions tasked with observing, thinking about and possibly developing exit strategies. The main report published to date is that co-signed in 2013 by the State Advisor Jean Courtial and the Professor of Public Law Ferdinand Melin-Soucramanien and entitled “Reflexions on the institutional future of New Caledonia”. It outlines four scenarios of possible development for the country: the pure and simple accession to full sovereignty, full sovereignty in free association, extended autonomy and continuing autonomy (as it stands today).

1) Continuing autonomy [*autonomie pérennisée*] would amount to perpetuating the present status of New Caledonia when by the very terms of the Noumea Accord and of the Constitution of the French Republic it is intended to be transitional. Is that really conceivable?

2) A “pure and simple accession to full sovereignty” would correspond, as the authors of the report write, “to what present terminology would define as the accession to pure and simple independence, like that, at the beginning of the 1960s, of the sub-Saharan countries of Africa and of Madagascar or, more recently, of Djibouti and of the Comoros.”

3) The hypothesis of full sovereignty in free association [*avec partenariat*], and here too I quote the authors of the report,

“brings something more than that of the pure and simple coming to full sovereignty, even accompanied by cooperation agreements with France. It brings a project for free association that maintains a privileged link with France of a New Caledonia that has become fully sovereign.”

The examples given of this type of link are

“the free association arrangements set up [...] in the Pacific, between the United States and the Federated States of Micronesia, or in Europe, between France and

Monaco as well as between Liechtenstein and Switzerland and, from another perspective, the classic relationships of cooperation that France and the states of sub-Saharan Africa established at the beginning of the sixties during the coming to independence of these states, especially with the cooperation agreements between France and the Ivory Coast.”

4) The status of extended autonomy refers to an extension of the responsibilities of New Caledonia, in other words to another way of handling the sovereign responsibilities since it is only these that are still to be transferred at the end of the Noumea Accord. The authors make the comment that in this hypothesis as in the previous one,

“the principal responsibilities would ultimately be exercised by the political authorities of New Caledonia. What would change would be that in the case of full sovereignty in free association, the initial responsibility would belong to the political authorities of New Caledonia, whereas, in the case of extended autonomy, this initial responsibility would remain in the hands of the political authorities of the French Republic. In the first case, the initial responsibility would really be *transferred* to New Caledonia. In the second, it would simply be *delegated* for its benefit, where officially the French Republic would remain the formal holder of sovereignty.”

The possible constructs that define future “citizenship” are therefore, quite directly, the possible scenarios that define the status of the country.

Thank you for your attention.