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THE CENSUS AND THE QUESTION OF ETHNICITY: THE FRENCH APPROACH IN A COMPARATIVE FRAME

Carine David

The purpose of a census is or should be to gather information in the interest of the public good and the development of social policy. The information sought traverses a very broad range of fields involving the private lives of individuals. Many typical questions concern factual matters and are unproblematic. Some, however, can be quite sensitive, even controversial, such as religion, ethnicity and race, and governments generally sollicit the support of a majority of the population before including these categories in a census.

In France, the question of ethnicity has been more controversial than in many other parts of the world. In order to understand the reasons for this we will examine the country's particular approach to ethnic identity in the context of French Republican values and its fundamental opposition to the gathering of statistics about ethnicity. This is something underpinned by the French Constitution, as reflected, for example, in the strongly worded ruling of the Constitutional Council (*Conseil Constitutionnel*) in 2007. We will highlight the conservative nature of the French approach to ethnic identity and its use in census by adopting a comparative method, both internationally and with regard to the Republic itself, namely by contrasting it with the particular case of New Caledonia. In doing so, we shall examine the argument in favour of a 'New Caledonian exception' and its potential consequences. **Does the gathering of ethnic statistics have a useful purpose in this territory which gives it a legitimacy that is denied at the national level in France and, if so, might this in turn have a bearing on the situation in the rest of the Republic?**

A comparative approach to ethnic census

At the outset, given the sensitivity of the subject, it is important to make certain terminological clarifications. Firstly, we are talking here about the specific case of a census and not the more general field of statistics. Unlike statistics, a census is organised by and for the government to determine the size and main characteristics of the population. The objective is to align public policies with social needs.

More controversial is the term 'ethnic'. The difficulty lies in the lack of a universally accepted definition. A report of the French Committee for measuring diversity and assessing discrimination (COMEDD)[1] indicates that there are more or less strong connotations associated with ethnicity. Hence, depending on where the cursor is placed, its acceptability will meet with more or less approval.

At the lower end of the scale are questions relating to the country of origin/nationality of a person's forebears. In this case, most countries conducting a census, including France, could be seen as organising an ethnic

[1] *Comité pour la mesure de la diversité et l'évaluation des discriminations* (COMEDD), [Inequality and discrimination. For a critical and responsible use of statistics tools], *Report*, 5 February 2010.

census. A middle position could be seen as falling within the definition given by Max Weber, under the heading 'Ethnic Groups':

> Ethnic groups are those groups of people who nurture a subjective belief in common descent due to similarities in the external habitus or customs, or both, or in memory of colonisation or migration, such that this belief becomes important for the spread of communalisation, regardless of the existence or not of a blood relation. [2]

> **We can conclude then that similarity and contrast of physical type and custom, regardless of whether they are biologically inherited or culturally transmitted, are subject to the same conditions of group life, in origin as well as in effectiveness, and identical in their potential for group formation.** The difference lies partly in the differential instability of type and custom, partly in the fixed (though often unknown) limit to engendering new hereditary qualities. Compared to this, the scope for assimilation of new customs is incomparably greater, although there are considerable variations in the transmissibility of traditions.
>
> **Almost any kind of similarity or contrast of physical type and of habits can induce the belief that affinity or disaffinity exists between groups that attract or repel each other. Not every belief in tribal affinity, however, is founded on the resemblance of customs or of physical type. But in spite of great variations in this area, such a belief can exist and can develop group-forming powers when it is buttressed by a memory of an actual migration, be it colonization or individual migration.** The persistent effect of the old ways and of childhood reminiscences continues as a source of native-country sentiment (*Heimatsgefühl*) among emigrants even when they have become so thoroughly adjusted to the new country that return to their homeland Would be intolerable (this being the case of most German-Americans, for example).

For Weber, 'race' and culture should be placed on the same level of sociological analysis since they are both criteria of differentiation that inspire a sense of community.

At the other end of the scale, a strong sense of ethnicity appears as an expression of identity. It is here that we find the difference between the categories of 'race' and 'ethnicity': a race is based on physical appearance or phenotype, whereas ethnicity refers more broadly to culture and history as well as to a set of practices or cultural elements such as kinship, religion, language, geographical origin, nationality that are used to determine the identity of the group.

However, it appears that in many cases 'ethnic' censuses are at least partially also based on race, that is they take into account, either exclusively or partly, a person's skin colour. The example of the United States is quite enlightening in this regard. As early as 1790, the first U.S. census gave a racialised account of the population, distinguishing four categories: free white men, free white

[2] Max Weber, *Economy and Society* [*Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* [1922], Berkeley, University of California Press, 1978, p.388.

women, other free persons and slaves. The racial principle would be affirmed in the 19th century census with the introduction of mulattos[3], Chinese and Indians. It continues today even if the registering of waves of immigrants arriving is conducted without further ado either according to a racial (Asian peoples) or ethnic (European peoples) classification.

It is of course this latter sense of ethnicity that is subject to debate. This is due to the fact that whilst an ethnic census understood in its 'soft' sense is colour-blind (albeit not origin-blind), this is not the case for the second type of ethnic census which is almost systematically based, at least in part, on a black/white divide.

In France it is this aspect of ethnic identification that is considered to be intolerable, as indicated in Article 1 of the Constitution: 'France is an indivisible, secular, democratic and social Republic. It ensures equality before the law for all citizens regardless of origin, race or religion. It respects all beliefs'. It was on the basis of this section of the Constitution that the French Constitutional Council has considered that gathering statistics based on ethnicity or race is unconstitutional.

However, this conservative position of the Constitutional Council appears contradictory, to the extent that, under the guise of protecting 'visible minorities', the Council prohibits any gathering of ethnic data in the census, whereas such a practice is normally justified precisely by the need to have an accurate update on discrimination against such minorities, in order to implement public policies to reduce them. Yet this situation is the more complex in that an analysis of the practice of 'ethnic census' reveals that they are not always very transparent and that the supposed primary purpose is sometimes lost from view, both in terms of the motivations of governments using them and of their desired outcomes. This ambivalence probably also explains in part the reluctance of a number of countries, including France, to use such instruments.

The use of an ethnic census: fears and realities

If the stated goal of an ethnic census, namely to combat discrimination, is commendable, the fact remains that its implementation leaves room for practices that are not always noble. In most countries where it is used, an ethnic census is presented as a tool in the fight against discrimination. The justification for such a census is that it is an instrument for implementing public policies to reduce inequalities that may exist between the majority group and minority groups.

There is a need to know the reality, that is to say the extent of discrimination. In this regard, some authors consider that not generating ethnic statistics is to deny the existence of the victims of discrimination. We could describe this as denial of discrimination by omission. For others, this intention to gauge discrimination is a false pretext as there is no need to corroborate the obvious with figures. However, the example of affirmative action policies in India for particular disadvantaged castes gives insight into the absence of the need for reliable and recent data. Indian censuses had not been conducted on the basis of belonging to a caste since 1931, which means that public policies of affirmative action in favour of the most disadvantaged castes were based on figures that were

[3] A mulatto was then defined as any person having a quarter or more of 'black blood'.

completely out of date.[4] At least this was the case until 2010, when a census by caste was decided, a moved that sparked controversy, however.

The example of the United Kingdom gives insight into another aspect of the debate, which is interesting in the way it has evolved. Ethnic censuses have only been conducted in Britain since 1991. The authorities first had to overcome the reluctance of ethnic organisations concerning the use that would be made of such data by the government. Indeed, the introduction of an ethnic census was initially based on mixed motivations. There was a desire to counter the claims of the far right, on the one hand, and to put in place a policy of immigration control, on the other. However, these organisations are now largely in favour of such censuses in that they allow them to add weight to the demands they make of government because of their potential impact at the ballot box.

Beyond the issue of enumeration, the above-mentioned French COMEDD report stresses that 'Measuring discrimination or its opposite, diversity, is not a matter of counting the victims, it is about developing an analysis, describing mechanisms and unravelling factors, comparing the risks and monitoring developments.' [5]

The Netherlands also recognises the presence of ethnic minorities on its soil and carries out ethnic censuses. These are also found in many countries which are pioneers in this field such as India, the United States, Canada, Brazil and closer to us, Australia, New Zealand, and Fiji. All these states justify an ethnic census as 'a vital tool of social engineering for [their] government'[6], enabling a reduction of inequalities in respect of 'visible minorities'. Yet opposition to an ethnic census is not unique to France. It is also found, for example, in Spain, even though that country has significant 'indigenous' populations (Basque and Catalan). Provinces may, if they wish, add a question related to language, but this is not a mandatory field. Similarly, Belgium makes no reference to the Flemish or Walloon identity of the population in its census or to the use of different languages. Finally, the German situation is worth mentioning, as that country does not recognise ethnic minorities within its territory.

The ethnic census in France: principles and concerns

This situation in France is similar to that of Germany in that it is contrary to republican principles to treat individuals on the basis of characteristics related to birth. In addition to the anti-communitarian and 'racial' argument, there is debate about the reality of the anti-discrimination 'alibi' of ethnic censuses, both in terms of the motivations for holding such census and their effects.

It is undeniable that the ethnic census has a significant political function, especially when it comes to deciding on the choice of categories.[7] This raises numerous concerns that lead inevitably to a clear distrust towards it. The

[4] Bhagat B. R., 'Census and Caste Enumeration: British Legacy and Contemporary Practice in India', Genus, 2006, LXII (No. 2), p. 129.
[5] COMEDD, *Report, op. cit.*, p. 148.
[6] Lassalle D., 'Question ethnique et question religieuse dans le recensement de la population britannique de 2001: polémiques et enseignements' [The ethnic question and the religious question in the British census of 2001: controversies and lessons], *Revue européenne des migrations internationales*, 2001, vol. 22, No. 1.
[7] Bhagat B. R., *op. cit.*, p. 119.

following are some arguments developed by its detractors, although this list here is by no means exhaustive:

One is that the data produced would only be descriptive and not be useful or at least not for the implementation of public policies nationally. Another is that extremist groups could make a questionable use of such data in order to demonstrate the inferiority of one ethnic group over another[8]. Further, some communities are afraid that they could serve as scapegoats, for example, with regards to crime.

There is also a widespread fear of a data transfer to the Interior Ministry to identify illegal immigrants, resulting in the tracking of some sectors of the population. In France this notion of 'FILING' also refers to the creation of files at the time of the Vichy racial laws against Jews[9]. Indeed, it would appear that an ethnic census is sometimes introduced in order to provide a tool for immigration control and the determination of immigration policy[10].

One of the most common arguments in France is that the ethnic statistics gathered could become a source of communalism in that they could allow ethnicity to become the basis of claims for benefitting from affirmative action. This is, incidentally, precisely the goal acknowledged by countries practising such policies, especially in the English-speaking world. 'Ethnicity is therefore one of the areas of crystallisation of the dialectical link between the French conception of the unitary state and the logic of minority rights and indigenous peoples.' [11]

Political considerations

In addition to these practical difficulties, we agree with Mehar Singh Gill that the terms of a census are largely set and therefore reflect the State's political will in any case. Thus, if the political will is to accommodate differences, then the data will reflect this ethnic differentiation[12]. For example, in Ethiopia, in the 1998 census, 80 local ethnic groups were identified (excluding foreigners). Some of the identified communities had a population of fewer than 100 people across the entire country. Here, the ethnic factor was crucial in the development of the Ethiopian regime, the census being the centrepiece of the new state structure because it was made to consolidate the administrative boundaries of the new federal State[13]. It is called Ethiopian ethno-federalism, each ethnic group corresponding to a given territory.

Conversely, political considerations may require the production of an image of a homogeneous population. In this case, a low number of categories offered will be proposed. In this regard, an analysis of categories in the censuses in India before and after independence is very instructive. While the British colonial

[8] Some American sociologists have gone as far as to deduce from the results of IQ tests the almost 'genetic' intellectual inferiority of black people.
[9] See notably COMEDD, *Report, op. cit.*, p. 22.
[10] See Bhagat B. R., *op. cit.*
[11] Rouland N., Pierré Caps S. and Poumarède J., *Droit des minorités et des peuples autochtones [Rights of minorities and indigenous peoples]*, Paris, PUF, 1996, p. 516.
[12] Singh G. M., 'Politics of Population Census Data in India', *Economic and Political Weekly*, 2007, p. 241.
[13] Fiquet E., 'Fonder un régime sur le recensement ethnique : le fédéralisme éthiopien' *[A regime based on ethnic census: Ethiopian federalism]*, *Critique internationale*, No. 45, Oct-Dec. 2009, pp. 37-56.

state wanted a more diverse vision of the Indian population, in accordance with its 'divide and rule' strategy, the Indian state has, since 1947, attempted a homogenisation of Indian society.

When applied to the New Caledonian census, such reasoning results in the following situation: where the different ethnic groups do appear, they are not identified, for example, by Kanak tribe or customary area (the question was present in the 2009 and 2014 questionnaires, for example, but the data were not made public), just as no distinction is made between Wallisians and Futunians living in New Caledonia. Thus, an overall snapshot of the communities present in the territory is given, but certain details are considered to be not conducive to building a 'common destiny', as called for by the Noumea Accord.

The creation of categories also allows for people to be put in particular groups. In this sense, it is very clear that a census is used to create communities or fundamentally alter the features of existing categories.[14] Geographical boundaries are also important. For example, in New Caledonia, the division of the territory into provinces[15] led to a reinforcement of the idea that these are an appropriate level of government. If there had been a different territorial division, the census results might have been different. In this regard, the example of Ethiopia mentioned above is instructive.

Practical difficulties

Nevertheless, analysis of the use of ethnic censuses reveals that a major problem, and the cause of many debates, lies in determining the terms of reference, including the formulation of ethnic categories. Yet this formulation is vital, as the number of ethnic categories cannot be indefinitely multiplied without compromising the reliability and usefulness of the responses given[16]. 'The categories are necessarily based on the processes of categorisation drawn from the social order in which and for which they were created, as otherwise they would run the risk of having no relevance at all.' [17]

Several statistical techniques are therefore available, and the choice of which ones to use is not trivial: self-assessment (by the respondent or the interviewer) and *ex ante* or *ex post* categories (predefined classification categories or not)[18], all combinations being conceivable. Hetero-assessment requires relying on the evaluation of the investigator to determine categories post hoc. It also raises the issue of the freedom of the individual to state his or her identity. *Ex ante* self-assessment requires a closed list even though there is no ethno-racial science for developing a rational set of categories. This method is used especially in England, Canada, the United States and New Caledonia. However, some

[14] Cohn B., 'The Census, Social Structure and Objectification in South Asia', *in* Cohn B., *An Anthropologist Among the Historians and Other Essays*, Delhi, Oxford University Press, 1987, pp. 224-254. See also Bhagat R. B., *op. cit.*

[15] The three provinces (North, South, Loyalty Islands) were created by the (1988) Matignon Accords (editor's note).

[16] See the example of Canada with the emergence of the notion of 'visible minorities': Potvin M., 'Le rôle des statistiques sur l'origine ethnique et la "race" dans le dispositif de lutte contre les discriminations au Canada' [The role of statistics on ethnicity and 'race' in the fight against discrimination in Canada], *Revue Internationale des Sciences Sociales*, 2005, No. 183.

[17] De Rudder V. and Vourc'h F., *op. cit.*, p. 243.

[18] Le Bras H., 'Quelles statistiques ethniques?' [Which ethnic statistics?], *L'Homme*, No. 184, 2007, pp. 7-24.

authors regard it as illusory. It cannot be successfully applied unless the pre-determined categories are universal and natural, in which everyone finds their place[19]. Whilst no solution is really satisfactory, it appears on the whole that *ex post* self-assessment is considered the least bad, in the sense that it fully respects the freedom of individual choice.

As noted by the sociologist Peter Ratcliff, the principal architect of ethnic self-definition in British censuses, there is a fundamental contradiction in self-assessment tin so far as, the only thing that matters in terms of discrimination is how a person is perceived, regardless of his or her self-perception. It is impossible, however, to investigate each and every individual in order to determine how they are perceived by society. Institutions in charge of gathering statistics set up complex processes to 'reconstruct' the answers of respondents to match the categories considered as relevant by the government. Hence there is a risk of manipulation of results.

Another factor to consider with regards to the reliability of the data lies in the so-called 'interviewer effect'. An example of this can be found in the archives of a survey conducted in the 1930s in the southern United States with the last surviving slaves. They show how stereotypes of the investigators had influenced the responses of some interviewees, for example when the investigators spoke of 'the good old days' when referring to the period of slavery. As another example, it has been shown that a black interviewer 'sees' his interlocutor as being whiter than a white interviewer does![20] [21]

All of these philosophical, practical and political elements have an influence in varying, albeit non-quantifiable, degrees on the refusal of the French Republic to resort to an ethnic census. How then can we explain the fact that the 2009 and 2014 censuses in New Caledonia contained a question relating to the community of belonging?

The Caledonian exception: a case of public interest

Some of France's overseas territories are not subject to the same legal statute as metropolitan France. Thus, in Wallis and Futuna as in French Polynesia, there have been ethnic censuses in the past. In the case of New Caledonia, with the exception of 2004, every census since 1956 has contained the question of community belonging. Accordingly, in these overseas territories, what is unacceptable for the French Republic often becomes suitable or, as in the case of New Caledonia, even desirable and necessary.

Whilst the French Data Protection Act (*loi informatique et libertés*) of 1978 provides for a general prohibition on the statistical treatment of sensitive data, it may be waived, under the authority of the *Commission Nationale Informatique et Libertés* (CNIL), and provided certain criteria are met: public interest is one such ground for exemption.

In New Caledonia, the 'ethnic' component of the census is considered as one of the tools for the implementation of the policy of 'rebalancing' (between communities and provinces), as set out in the Noumea Accord. The objective of

[19] Le Bras H., p. 9.
[20] De Rudder V., Vourc'h F., *op. cit.*
[21] See also the excellent demonstration in Forbes D. J., 'The Use of Racial and Ethnic Terms in America: Management by Manipulation', *Wicazo Sa Review*, 1995, p. 53.

rebalancing justifies a range of affirmative actions to reduce inequalities suffered by the indigenous people, the Kanak. The ethnic data provide institutions with tools to implement 'rebalancing', and these do not seem to have created particular difficulties thus far.

Indeed, the CNIL issued a favourable opinion on the 2009[22] census, recalling that 'the collection of data on the ethnicity of people, given the socio-demographic characteristics specific to the territory of New Caledonia, corresponds to a requirement of public interest'[23], notwithstanding that in 2007 the Constitutional Council ruled that such data gathering was contrary to Article 1 of the Constitution.[24]

In order to consider an ethnic census as being consistent with constitutional rules applicable in New Caledonia, we can refer to the ante-penultimate paragraph of Article 77 of the Constitution which states that 'other measures necessary for the implementation of the Noumea Accord referred to in Article 76 are defined by law.' In this context, it is possible to consider, in accordance with the jurisprudence of the Constitutional Council, that the above-mentioned 1978 Act may well contain provisions derogating from the Constitution, as long as these find a basis in the Noumea Accord and are a necessary measure for its implementation. This seems to be indeed the case with the ethnic census[25]. Given the political situation in New Caledonia, one cannot deny the 'strategic' value and the eminently political nature of such data.

However, the limits imposed on the use of ethnic data collected in the 2009 census are noteworthy. Thus, information about the community of belonging cannot be disclosed to a geographic level below that of the Province, and its intersection with other variables is limited to dissemination in the form of standard tables or summaries, to the exclusion of detailed tables. No information on tribe membership is to be circulated. The underlying political objective is clear: to maintain a unified vision of the Kanak population.

Ethnic census and ethnic mixing: a tool for measuring integration

The results of the 2009 and 2014 censuses did not any reveal any previously unknown data. They showed that the Kanak community represented approximatively 40 per cent of the population, followed by the European community (less than 30 per cent). Not surprisingly, Wallisians and Futunians formed the territory's third community (around 8 per cent), followed immediately by a new category of mixed race ou "several communities" (*métis*), also around 8 per cent of the population. Whilst one cannot make comparisons with previous censuses, since this question was not previously included, the mere fact that this category was introduced is important in itself. Nevertheless,

[22] More generally on the legality of the 2009 census, see Matutano E., 'Réflexions sur la légalité du recensement de la population en Nouvelle-Calédonie' [Reflections on the legality of the census in New Caledonia], *Droit administratif*, 2010, No. 8. See Adrian Muckle and Benoît Trépied, "Les Transformations de la 'question métisse' en Nouvelle-Calédonie (1853-2009", Anthropologie et Sociétés, Volume 38, Numéro 2, 2014, p. 89–108.
[23] CNIL, Délibération No. 2009-317, 7 May 2009, *JORF*, 26 July 2009.
[24] Decision No. 2007-557 DC of 15 November 2007, *JORF*, 21 November 2007.
[25] See in particular decision No. 2009-587 DC of 30 July 2009, *JORF*, 6 August 2009, p. 13125.

when in 2009 this category was called "métis", in 2014, the terminology changed into "persons belonging to several communities".

A census thus becomes a tool for measuring the mix of the population. In the logic of the Noumea Accord, rebalancing is a necessary step in building a common destiny for all in New Caledonia. Nonetheless, it seems to us that this common destiny, which is simply the emergence of a national sentiment, has to pass through a mixing of the population, whose components might otherwise only just coexist. It is the *Métis* who would represent the new indigenous people in this emerging nation.

Ethnic statistics in a number of countries include the category of miscegenation. For sociologists, this demonstrates a multicultural conception of society, inter-ethnic unions often being viewed as positive markers of integration/assimilation.[26] It is indeed in this context that the ethnic census was used until recently in French Polynesia.[27] This raises the second usefulness of the question on ethnic belonging in the 2009 and 2014 New Caledonian Censuses, as people were invited to indicate their identification with one or more communities. However, it is unfortunate that in this census, people of mixed race were not characterised as such. Thus, we do not know what racial mix was most commonly encountered: European/Kanak (male or female?), Kanak/Wallisian, European/Wallisian, whereas in the U.S, for example, the census of 1890 already went as far as to identify even quadroons and octoroons.

Incidentally, the question of miscegenation in the ethnic census demonstrates the racial connotation contained in these investigations. For example, the *métis* was defined as follows by the 19th century French dictionary *Littré*: 'Someone who is born of a white male and an Indian (American) woman, or an Indian (American) male and a white female; one says mulatto when it comes to a white male and a black woman or a negro and a white female.'[28] Even today, one can find a French dictionary defining a *métis* based on skin colour, as in the example of the *Larousse*: 'someone who comes from the union of two persons of different skin colour.' An analysis of U.S. censuses confirms this view, notably with the 'one drop rule', whereby anyone who has had a black ancestor is considered to be a *métis*. The same can be seen in the British censuses since 2001.

The introduction of the category of mixed race in a questionnaire may be motivated by the desire to reduce the size of one part of the population or it can be interpreted in various other ways, including the desire to show or not the degree of assimilation in a given society. As we can see, the introduction of an ethnic census is usually motivated by a desire to implement public policies in order to reduce inequalities with respect to visible minorities. But it can be motivated by other considerations. Moreover, determining the terms of the census can guide public policy in a pre-determined direction. For the particular case of France and New Caledonia, one might conclude by saying that despite

[26] Lassalle, D., *Actes du colloque Statistiques ethniques* [Proceedings of the Conference - Ethnic Statistics], October 2006.
[27] See Rouland N., Pierré Caps S. and Poumarède J., *op. cit*., pp. 541-546.
[28] The warning to today's reader is instructive in this regard: 'Some meanings of the definitions in the *Littré* dictionary would currently be marked as "discriminatory", "derogatory" or "racist", which was not the case at the time of *Littré*.'

its refusal to resort to them, metropolitan France itself is in need of such statistical tools at least as much as New Caledonia. Geography is also now playing its part, and time-honoured Republican principles can be challenged on the other side of the world. The upshot might even be that these tools are reintroduced in the coming years at the national level, according to the well-known technique of testing ideas and models in an 'overseas laboratory.'

We cannot therefore but regret, with D. Turpin, the 'republican fundamentalism' shown by the Constitutional Council,[29] despite the fact that such data are important in New Caledonia and would probably be equally useful in France.

[29] Turpin D., 'Decision No. 557 DC of 15 November 2007 of the Constitutional Council, with regard to the Control of Immigration, Integration and Asylum Act: the Mosquito and the Camel', *Recueil Dalloz*, 2008, p. 1638.