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## The French Pacific in 2019: an historical overview from the colonies to autonomy<sup>1</sup>

Serge Tcherkézoff

For Stephanie Anderson, *in memoriam*

More than half a century after decolonisation, which brought an end to the European Empires and effaced the former distinction between ‘indigenous subjects’ and ‘citizens’, the French Republic continues to administer several former ‘colonies’, a term now institutionally invalid in French law. In some cases, it is still dealing with the distinction between ‘indigenous’ and ‘non-indigenous’ people even though everyone, ‘indigenous’ and ‘non-indigenous’ alike, is a citizen of the same French state.

### 1---Constitutional developments

The French Overseas, or literally “Overseas France” as it is called [*la France d’outre-mer*] represents only 4% of the total French population, but a much higher percentage in terms of land area and considerably more again when considering maritime area. In the Pacific, three entities are part of Overseas France: New Caledonia, French Polynesia and Wallis-and-Futuna (hereafter: NC, FP, W-F). Immediately after WWII, a new legislative period, which is called the Fourth Republic by historians, was established with a new French Constitution (1946) that gave the status of Overseas Territory (*Territoire d’outre-mer* or *TOM*) to the former “colonies” (the latter term was then abolished in law), in the Pacific and elsewhere. It also granted full French citizenship to former ‘indigenous subjects’. This has been a fundamental transformation, except for inhabitants of the central part of French Polynesia, i.e. Tahiti, who had previously been given access to this citizenship.

Despite this, the effective participation of former colonial ‘subjects’ in the French electoral system was only gradual, with the slow establishment of electoral rolls, first giving priority to the local elite [*notables*], and, in some cases, with a formal distinction between two different electoral rolls based on the former difference in status. It should be noted that, until 1961, Wallis-and-Futuna (W-F) was a part of the *TOM* of French Polynesia (FP). In 1961, a new Statute was legislated that defined the status of W-F as a *TOM* of its own.

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<sup>1</sup> This text had been finalised on the occasion of the workshop It has been given to participants as an additional reading and is now included in the publication of the workshop.

In 1957, a ‘fundamental law’ [*loi-cadre*], which came to be called the “Law Defferre” (after the Overseas Minister of the time) abolished the double electoral roll where it existed and created a new and strong notion of ‘autonomy’ for the various French *TOM*-s, by establishing their right to have a Government Council made up of locally elected members (and some French public servants). There was a clear intention to pave the way for independence. (Two years later, under Charles de Gaulle, a very different view would prevail in the French Government). This Government Council would become the Territorial Assembly as we know it today in each French Pacific entity.

The 1958 French Constitution (which inaugurated the Fifth Republic) provided the choice between having greater autonomy but remaining within France, total assimilation by becoming a ‘district’ of France [*département*], or leaving the French Community. The two French Pacific entities, NC and PF (the latter including W-F), chose to stay with France as a *TOM*.

Much later, in 2003, the official name of “Overseas Collectivities” (of France) (*Collectivité d’outre-mer COM*) replaced the label *TOM*, the word ‘Collectivity’ placing greater stress on the common identity of a population than did the word ‘Territory’<sup>2</sup>. Also, the 2003 French Constitutional revision, which was a profound transformation of the relationship between the State and its ‘territorial collectivities’ (metropolitan and overseas), states that each Overseas Collectivity is to be administered through a specific Organic Law [*loi organique*]. Such a law is, in short, a kind of local Constitution setting out the administrative arrangements for the local institutions and their elected councils, regulating the adaptation of metropolitan laws, allowing for the possibility of enacting specific local laws called ‘laws of the country’ [*lois du pays*], etc., with great autonomy. Thus each Organic Law can be a doorway to a progressive transfer of full authority in most areas pertaining to social-cultural organisation [*les transferts de compétence*].

Within the different Overseas Collectivities, New Caledonia occupies a unique place. As is well known, a very specific Organic Law was enacted in 1999 for NC, following the signing of the 1998 Noumea Agreement, which expanded the Matignon-Oudinot Agreement of 1988, and which itself started the peace process after the violent conflicts of the period 1984-1988 between independentists and pro-France inhabitants. Through this specific Organic Law, NC is no longer only a French Overseas Collectivity *COM*, but somehow a “Community *sui generis*”, as stated in some official writings, even if the expression does not have a constitutional status *per se*<sup>3</sup>. A

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<sup>2</sup> This certainly creates a difficulty for translation, as ‘collectivity’ in English is used only in the singular, referring to a system of relations or a set of people (“the spirit of collectivity”, “new forms of collectivity are now emerging”, “women’s (or men’s) collectivity...”, etc.). But the label ‘Community’ would be a mistranslation; the French Overseas ‘Collectivities’ are all part of the broader French ‘Community’ so we have to use the neologism ‘Collectivities’ to translate the French term for the political-territorial entities of Overseas France.

<sup>3</sup> The Organic Law of 1999 expands and adds specific provisions to the “Titre XIII” of the French Constitution. NC is the only Overseas Collectivity to have a Constitutional Chapter [*Titre*] for its own status. The content describes the various local institutions. The expression “Communauté *sui generis*” is not explicitly stated in the Constitution, or in the Organic Law of 1999. But one can read on the Government portal “Collectivités locales.gouv.fr : le portail de l’Etat au service des collectivités”:

whole new section of the French National Constitution was drafted to define the specificity of New Caledonia (“*Titre XIII*”), and it is the only Overseas Collectivity to have a whole Constitutional ‘Chapter’ [*Titre*] to itself.

We mentioned that each Organic Law can define a progressive transfer of full authority in areas pertaining to social-cultural organisation [*les transferts de compétence*]. On this transfer, the 2003 French Constitution revision added: “except all areas listed in art. 73” (of the French Constitution). At that time, in 2003, the areas listed as the exceptions that could not be considered by future transfer of authority were the following: “nationality, civic rights, guarantee of public freedom, the wellbeing and capacity of persons, the delivery of justice, penal law, foreign affairs, defence, security and public order, currency, credit and exchange rates between currencies, and the electoral regime”<sup>4</sup>. But the next sentence added an essential nuance: “This list can be given specific definition and completed through an organic law” [*Cette énumération pourra être précisée et complétée par une loi organique*], which left the door open to transferring authority in more areas, in the near or distant future. It thus applied to the NC case where more areas and functions could indeed be transferred; in 2014, the only ones that were still not transferred under NC authority were usually listed as “defence, currency, justice, public order and

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<https://www.collectivites-locales.gouv.fr/statuts-nouvelle-caledonie-et-polynesie> (accessed 20 Feb 2019), a portal stamped with the French Republic logo, with the logo of the “Direction générale des Collectivités locales”, and the logo of “DGFIP : Direction générale des Finances Publiques”, in the section “Les statuts de la Nouvelle Calédonie et de la Polynésie”, in the first sub-section called “Statut particulier : Nouvelle-Calédonie” (page 1) :

“[...] as a consequence of this Chapter XIII] *le statut des territoires d’outre mer n’est plus unique [...]* La Nouvelle-Calédonie échappe au statut général des collectivités locales défini par le titre XII de la Constitution. Toutefois, la révision constitutionnelle de 2003 l’intègre à la liste des collectivités d’outre mer (article 72-3). En fait, la Nouvelle Calédonie est une collectivité « sui generis ». Dans ce cadre, on emploie l’expression « collectivité d’outre mer à statut particulier » pour la désigner.” -- Which translates as: “...the statute of the overseas territories is no longer unitary... New Caledonia is not party to the common status of the local collectivities defined by Chapter XII of the Constitution. Nonetheless, the constitutional revision of 2003 brings it within the listing of the overseas collectivities (art. 72-3). As a matter of fact, New Caledonia is a collectivity ‘sui generis’. In this context, the expression that is used to designate New Caledonia is “overseas collectivity with a specific status” [...].”

Thus, it is not clear by whom, when and where the expression was coined for the first time and this expression does not have any constitutional-judicial validity, but it is now frequently used as a reminder that, at the Constitutional level, New Caledonia is the only Overseas Collectivity which has a “specific status” unlike any other.

<sup>4</sup> “...la nationalité, les droits civiques, les garanties des libertés publiques, l’état et la capacité des personnes, l’organisation de la justice, le droit pénal, la procédure pénale, la politique étrangère, la défense, la sécurité et l’ordre publics, la monnaie, le crédit et les changes, ainsi que le droit électoral.”; again reminded recently in the report of 21 June 2018 by a special Parliamentary committee: “Rapport d’information fait au nom de la Délégation aux Outre-mer par MM Hubert Julien-Laferrrière et Jean-Hgues Ratenon, Députés” (Assemblée Nationale document n° 1104); the “Délégation aux Outre-mer” includes over 50 Parliamentarians, and among those one finds of course the Parliamentarians from the Overseas Collectivities. On line at: <http://www.assemblee-nationale.fr/15/rap-info/i1104.asp>

foreign affairs”<sup>5</sup>. It should be added, for NC as well as for FP, that tertiary education and research is still under the authority of Paris. But an important nuance is needed as to justice and foreign affairs in NC.

Regarding justice, there is now a dual system for civil law matters, and “customary law” can prevail in some cases. On the other hand, one could say that the authority of the Court, even when in a “customary law session”, remains under the French system. To understand this, we need to go through the complex history of individual dual status in NC: this will be the subject of section 3 (see *infra*).

But regarding foreign affairs, the dual aspect is quite straightforward, and it has benefited from a strong impetus since 2018<sup>6</sup>. In the Noumea Agreement and the Organic Law, it was already stated that the relations of NC with foreign countries would be a “shared” authority between NC and France. In 2012, NC signed an agreement with both the French Ministries of Foreign Affairs and Overseas to be allowed to deploy a network of its own ‘delegates’, nominated by the NC government, within the five French Embassies of the Pacific (Australia, Fiji, New Zealand, Papua New Guinea, Vanuatu)<sup>7</sup>. A first delegate (Yves Lafoy) was posted to Wellington. Five years later, the NC Government advertised to fill the five diplomatic posts. More exactly four of them, as Yves Lafoy’s delegation was renewed, but this time to Canberra, while four new delegates were selected for Suva, Wellington, Port Moresby and Port Vila through a rigorous selection process requiring high competency (and tertiary degrees) in law, international relations and English<sup>8</sup>. During 2018-19 the nominees are undergoing several months of intensive training at the renowned Political Sciences Institute in Paris. The expansion of

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<sup>5</sup> Trépiéd, Benoît. 2012. “Une nouvelle question indigène outre-mer ?”, *La vie des idées.fr*, issue of 15 May. But see the official report (January 2016) to the French Senate, drafted by the Committee [*Commission*] which visited Overseas France, and which states that, since 2013, “it can be said that the entire civil law has been transferred to NC authority”: <http://www.senat.fr/compte-rendu-commissions/20160118/>

see also : <http://www.collectivites-locales.gouv.fr/statuts-nouvelle-caledonie-et-polynesie> (accessed 1 November 2016).

<sup>6</sup> For the following information, by way of personal communication, my thanks go to, H.E. Christian Lechervy, until recently Ambassador of France to the Pacific Community and Secretary of the French Government for Pacific Affairs, in May 2018, and in February 2019 Yves Lafoy, for several years Delegate of New Caledonia at the French Embassy in Wellington, and now at the French Embassy in Canberra: see his posting:

<https://au.ambafrance.org/Opening-of-the-New-Caledonia-Delegation-in-Australia> where a two page presentation with more details can be downloaded.

<sup>7</sup> A first agreement was already on its way around 2010 (<https://caledonie-ensemble.com/2011/12/14/representants-de-la-nc-au-sein-des-ambassades-de-france-aupres-des-pays-de-la-zone/>).

<sup>8</sup> Final designation achieved in June 2018 (<http://lemagdugouv.nc/2018/06/21/quatre-nouveaux-diplomates-caledoniens/>);

several items of NC legislation, concerning the regulations relating to, and administration of, government jobs and the medical coverage for NC officials overseas, was necessary and was voted by the NC Assembly<sup>9</sup>, which in itself shows the degree of legislative ‘autonomy’ and initiative from NC. On the NC Government official website, on that page (see note above), one sentence at least of the presentation refers to these delegates, of course with quotation marks, as “[...] our ‘ambassadors’ [...]”<sup>10</sup>.

Let us now turn to the situation in French Polynesia. In 2004, FP was termed an “Overseas Country [*pays d’outre-mer*] within the Republic, which constitutes an Overseas Collectivity whose autonomy is laid down by articles [...] It is self-governing, freely and democratically, with representatives elected in local elections...”.<sup>11</sup> Thus the label ‘Country’ [*pays*] is used several times in the Organic Law of 2004, combined interestingly with the expression “Overseas Collectivity” [*Collectivité d’outre mer*]: “Being an Overseas Country within the Republic, French Polynesia constitutes an Overseas Collectivity” (see official text in note). The term “country [*pays*]” in the expression “Overseas Country” though does not create any specific constitutional-juridical validity.

Regarding the transfer of authority, the 2004 Organic Law for French Polynesia made a precise list of the areas where a local legislative adaptation was not possible: everything regarding constitutional institutions of the French state, namely defence, nationality and the status of citizens, individual rights in relation to French institutions, money laundering, customs authority, foreign investments in any area pertaining to state authority and foreign affairs (the text goes into minute details, see note)<sup>12</sup>.

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<sup>9</sup> <https://gouv.nc/actualites/11-03-2017/un-statut-pour-les-delegues>

<sup>10</sup> « Désignés par le président du gouvernement, nos futurs “ambassadeurs” devront justifier d’une solide expérience en droit international, relations internationales ou commerce international, s’engager à exercer leur fonction pour une durée minimale de six ans, et valider un excellent niveau d’anglais. Avant leur prise de fonctions, une formation de neuf mois leur sera dispensée à l’Institut d’études politiques de Paris Sciences-Po, entrecoupée de stages en immersion » (*ibid.*).

<sup>11</sup> “Organic Law n° 2004-192 of 27 February 2004 creating a status of autonomy for French Polynesia” [*Loi organique... portant statut d’autonomie de la Polynésie française* <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000435515> article 1: *Pays d’outre-mer au sein de la République, la Polynésie française constitue une collectivité d’outre-mer régie par l’article 74 de la Constitution... se gouverne librement et démocratiquement, par ses représentants élus... détermine librement les signes distinctifs permettant de marquer sa personnalité... aux côtés de l’emblème national et des signes de la République. Elle peut créer un ordre spécifique reconnaissant les mérites de ses habitants... Art 2: ... La France et la Polynésie française veillent au développement de ce pays d’outre-mer [...]*].

<sup>12</sup> “Par dérogation au premier alinéa, sont applicables de plein droit en Polynésie française, sans préjudice de dispositions les adaptant à son organisation particulière, les dispositions législatives et réglementaires qui sont relatives :

1° A la composition, l’organisation, le fonctionnement et les attributions des pouvoirs publics constitutionnels de la République, du Conseil d’Etat, de la Cour de cassation, de la Cour des comptes, du

Discussions have now been partly set in train again, as the French legislative bodies, the Senate and the National Assembly, have been examining, as we speak (February 2019), the new drafting of an Organic Law for FP. One novelty is the full recognition of the historical “contribution” by French Polynesia to the French national “development of its nuclear defence”, with significant consequences in terms of compensation, research, reviving and rehabilitating collective “memory”, etc.<sup>13</sup>. Another is “enlarging the extent of international institutions of which FP could become a member”<sup>14</sup>, besides other measures relating to the autonomy of legislation in

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*Tribunal des conflits et de toute juridiction nationale souveraine, ainsi que de la Commission nationale de l'informatique et des libertés et du Contrôleur général des lieux de privation de liberté (1) ;*

2° *A la défense nationale ;*

3° *Au domaine public de l'Etat ;*

4° *A la nationalité, à l'état et la capacité des personnes ;*

5° *Aux statuts des agents publics de l'Etat ;*

6° *A la procédure administrative contentieuse ;*

7° *Aux droits des citoyens dans leurs relations avec les administrations de l'Etat et de ses établissements publics ou avec celles des communes et de leurs établissements publics ;*

8° *A la lutte contre la circulation illicite et au blanchiment des capitaux, à la lutte contre le financement du terrorisme, aux pouvoirs de recherche et de constatation des infractions et aux procédures contentieuses en matière douanière, au régime des investissements étrangers dans une activité qui participe à l'exercice de l'autorité publique ou relevant d'activités de nature à porter atteinte à l'ordre public, à la sécurité publique, aux intérêts de la défense nationale ou relevant d'activités de recherche, de production ou de commercialisation d'armes, de munitions, de poudres ou de substances explosives.*

*Sont également applicables de plein droit en Polynésie française les lois qui portent autorisation de ratifier ou d'approuver les engagements internationaux et les décrets qui décident de leur publication, ainsi que toute autre disposition législative ou réglementaire qui, en raison de son objet, est nécessairement destinée à régir l'ensemble du territoire de la République ».*

<sup>13</sup> « [Le projet de loi organique...] confirme la reconnaissance, par l'État, de la contribution de la Polynésie française au développement de la capacité de dissuasion nucléaire et rappelle que ses conséquences sanitaires doivent être indemnisées et la reconversion de l'économie polynésienne accompagnée à la suite de la cessation des essais nucléaires. », (official declaration by the French Government Council of Ministries, 12 Decembre 2018) (see :

<https://www.legifrance.gouv.fr/affichLoiPreparation.do?idDocument=JORFDOLE000037800454&type=general&typeLoi=proj&legislature=15>

It may be added that, recently, the FP Government and the University of French Polynesia signed an agreement for the development of a program (« History and Memory of the Nuclear Testing in French Polynesia » *Histoire et mémoire des essais nucléaires en Polynésie française*), housed in the *Maison des Sciences de l'Homme du Pacifique*, that would enquire on site, gather and archive all possible historical information, opening the way for the establishment of a future official FP « *Centre de mémoire du fait nucléaire* » (<https://www.radio1.pf/lupf-va-alimenter-le-centre-de-memoire-sur-le-nucleaire/>). Local associations have long been active to attract international attention to this too easily forgotten period of French colonisation, such as « Association 193 » (in reference to the 193 tests carried out between 1966 and 1996) (see : [https://www.tahiti-infos.com/L-association-193-fete-ses-3-ans-de-combat-antinucleaire\\_a164007.html](https://www.tahiti-infos.com/L-association-193-fete-ses-3-ans-de-combat-antinucleaire_a164007.html)).

<sup>14</sup> « Il élargit enfin le périmètre des organisations internationales auxquelles la Polynésie française peut adhérer. » (ibid.).

management and commercial affairs. Regarding this question of international institutions, it has been widely publicized how NC and FP, on their own initiative (but an initiative applauded by France) in 2016 became full members of the Pacific Islands Forum, an inter-governmental organisation that, as such, until then included only fully independent states or “associated” states (Australia, Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu).

The case of W-F is clearly different. The inhabitants are still waiting for a specific Organic Law to be drafted<sup>15</sup> and the Collectivity is still to a large extent administered under the 1961 Statute. Thus, until very recently, W-F was not part of the Forum at all. Finally, a few months ago (September 2018) at the last summit of the Forum (the 49<sup>th</sup>), after nearly a decade of presenting their case, W-F has been admitted under “associated” membership status; and here also France applauded the decision.

Another linkage with international organisations is, on the contrary, strongly criticized by France. Regularly petitioned by various “small” states of the Pacific and by the FP and NC independentist parties, the UN committees for “decolonisation” continue to list French Polynesia on their list of “non-self-governing Territories”, despite criticism by the current FP government claiming that FP does in fact enjoy a great autonomy<sup>16</sup>. Here again, one can see all the debate that can arise about the concept of ‘autonomy’ in political sciences. FP, together with NC, was listed in 1946, then delisted from the following year<sup>17</sup>, and again listed, in the case of NC, since 1986, under petition from the FNLKS, at the height of the “events” before the Matignon-Oudinot Agreement, and in the case of PF since 2013, after the petition by several Pacific countries, in

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<sup>15</sup> Noted in 2012 in the official French “Public service of the diffusion of legal dispositions”  
<https://www.legifrance.gouv.fr/Droit-francais/Guide-de-legistique/III.-Redaction-des-textes/3.6.-Application-et-applicabilite-des-textes-outrre-mer/3.6.9.-Wallis-et-Futuna>

<sup>16</sup> <https://www.un.org/press/fr/2018/cpsd663.doc.htm>  
<https://www.presidence.pf/intervention-du-president-a-lonu/>

<sup>17</sup> The UN has asked the “administering” countries to provide a list of the non-autonomous territories. After it first provided a list in 1946 that included all the former “colonies”, France made a declaration in 1947 insisting on the transformation into “districts” [*départements*] for several territories and on the “juridical assimilation” of the others (through their access to French citizenship) (see: Marie-Claude Smouts, *La France à l’ONU*, Paris, Presses de la Fondation nationale des Sciences Politiques, 1979, p. 217-218, quoted by Stephanie Graff, “Quand combat et revendication kanak ou politique de l’Etat français manient indépendance, décolonisation, autodétermination et autochtonie en Nouvelle-Calédonie”, *Journal de la Société des Océanistes*, 2012, n°134, p. 15). At the time, the UN list followed advice from administering countries. Later the UN established special committees on the issue of “decolonisation” (“Committee of 24”, “Fourth Committee”). These sit every year and can hear declarations presented by administering countries but also by delegations from territories that claim to have remained under a “colonial” or “non-autonomous” status.



concert with the then pro-independentist government of French Polynesia led by Oscar Temaru<sup>18</sup>. Since then, a delegation from the FP independentist party regularly presents a declaration at the UN<sup>19</sup>.

## 2---Autonomy gained, lost, and slowly regained

One last historical insight is needed on the continuity — or more exactly on the discontinuity — of the post-WWII period for the French Pacific Overseas Collectivities. From 1946 up to 1958 (and 1961 for W-F), and again from 1988 up to the present, the direction of the transformations has constantly been towards less legal discrimination between the members of these communities and, at the local government level, more autonomy in the exercise of local authority and in implementing local legislation, vis-à-vis France.

But the route taken in that second period, from the 1980s, is, in a way, just catching up with what was almost present in the general “*loi-cadre*” of 1957, the Defferre Law, which granted a local Government council to each overseas Collectivity. In the interim, when Charles De Gaulle created the impetus for the new 1958 Constitution which invested tremendous powers in the Head of State (the position to which he acceded at this time), a hand in an iron glove was laid on the French Pacific local governments.

There were two reasons for this. Firstly, De Gaulle knew in 1958-1960 that France would soon lose its Sahara possessions where nuclear testing was being carried out, and that the only possible new site would be in French Polynesia. And indeed, installation began in Papeete and Moruroa in 1964 after two years of political manoeuvring and threats from Paris directed to the local government of French Polynesia, in order to have two atolls “given to France” as military bases<sup>20</sup>. Secondly, his vision of the role of France in the world was somehow renewed with recourse to the old imperialistic attitudes, even if the strategy was no longer that of seizing colonies but still one of vying to establish France’s strong “influence” throughout the world.

Without going into details, a series of legislative acts drastically diminished the autonomy and self-governing powers that were starting to be put in place in 1958-1960. One was the “Jacquinot Law of December 1963” (again named after the “Minister for Overseas” of the time) which was a blow to New Caledonia. The Government Council created, as elsewhere, by the 1957 “Loi Defferre”, which was in charge of “administering the Territory” (even if “under the authority of the Governor” representing the French State), became merely an advisory body to the

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<sup>18</sup> <https://www.un.org/en/decolonization/nonselvgovterritories.shtml>  
<https://www.un.org/press/en/2016/gaspd608.doc.htm>  
<https://larje.unc.nc/fr/la-reinscription-de-la-polynesie-francaise-sur-la-liste-des-pays-a-decoloniser/>

<sup>19</sup> Most recently in October 2018 (see: <https://la1ere.francetvinfo.fr/polynesie/tahiti/polynesie-francaise/elus-polynesiens-devant-4eme-commission-onu-mardi-prochain-635358.html>).

<sup>20</sup> <http://www.moruroa.org/Texte.aspx?t=102> (accessed 2<sup>nd</sup> November 2016).

Governor. The position of Vice-President, a de facto head of local government, was suppressed, the number of members reduced, the right of being called ‘Ministers’ cancelled and the title changed to “advisers to the Government”, etc.

The door was opened wide in a bid to attract large numbers of immigrants, from Europe and elsewhere, to counterbalance the indigenous influence (the Kanak influence — but the name “Kanak” had not yet been coined by Jean-Marie Tjibaou). (Later, under pressure from the Kanak in the face of this massive immigration, France accepted that strong limitations be put in place as regards the local political rights— mainly that of voting for local representatives — that could be given to recently arrived immigrants; see *infra* section 4). It was also in the early 1960s that the ownership of anything located “under the ground” [*le sous-sol*], in a word the various mining resources, which were under the authority of each local government in the Overseas Collectivities, was transferred back to the French government (including, first of all, the Caledonian nickel). All this lasted well into the late 1970s.<sup>21</sup>

### **3---Individual status**

It is in this wider historical context that we can understand another specificity and historical development in the French Pacific (and in other former French colonies): from “indigenous” colonial status to the dual civil status of today.

The question of contemporary citizenship in the French Pacific is straightforward and does not require much discussion. All inhabitants, provided they fulfil certain conditions of birth place and/or length of full residency, are French citizens and thus can vote when it is time to choose the Head of the French State [*Président de la République*], the parliamentarian(s) who will represent their local constituency in the French national Parliament (and the Senate) and the mayors of their local territorial units (the *communes*).

Thus, the provisions of earlier colonial times regarding citizenship are long gone. Kanak who were “indigenous non-citizen subjects” until 1946 and Wallisians and Futunians who were “protected subjects” until 1961 (since W-F was a French “protectorate”) are French citizens. In FP, the island group of Tahiti enjoyed a more advanced French status before other groups in FP, but the notion of ‘indigenous subject’ somehow persisted in some FP groups. Today all permanent inhabitants of French Polynesia, as all other permanent inhabitants of these French Pacific entities, are French citizens.

But this accession to French citizenship, between 1946 and 1958-1961, did not nullify the ‘civil law status’ of each individual which was either a “common law (civil) status” (also called “ordinary law (civil) status”) [*statut de droit commun*] or a “particular (or specific or personal) civil status” [*statut de droit particulier*], which in NC would be termed a “customary law civil status” and even a “Kanak civil status”. In the 1946 French Constitution, it was explicitly written

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<sup>21</sup> My thanks to my colleague of UNC Patrice Godin who drew my attention to the 1963 “Jacquinot law” and its consequences.

(and again in the 1958 Constitution) that the acquisition of French citizenship was not dependent upon the civil status of each inhabitant: “citizens of the Republic who do not have ordinary (common) law civil status retain their personal status as long as they have not renounced it”<sup>22</sup>.

Here a long and painful history needs to be recalled, that of the French colonial institution of what came to be called the “*Indigénat*”, a set of rules specific to ‘indigenous’ status. Initiated in French North African colonies early in the 19<sup>th</sup> century, and gradually reproduced and extended in other colonies, the *Indigénat* system consisted of granting to the colonial administration the right to make a clear distinction between different statuses of residents of the colony and to enact differential codes of local regulations. Thus, the colonial administration made a distinction between the ‘indigenous’ (the *indigènes*) and the French (and other European) settlers and public servants. The colonial administration also enacted, locally, without any legal debate and approval at the State level, a set of prohibitions, punishments, and also local taxes per capita. It became known as the “Code of indigenous status” [*Code de l’indigénat*], even if it was not based on a fully written and legally sanctified code of laws<sup>23</sup>. This set of rules and obligations applied only, in each colony, to the people under the ‘indigenous subject’ status. When, after WWII, citizenship was granted to all, it immediately meant the end of any possibility of applying a different *penal* set of rules to anyone according to his/her former ‘indigenous’ or ‘non-indigenous’ status. But for *civil* law it was another matter.

The French constitutions (1946, 1958) did not abolish, at the level of civil law, the former notion of ‘indigenous subject’. A major change was that, suddenly, it was no longer an obligatory status. One could opt out. The new universal citizenship and suffrage meant that no one could be deprived of enjoying full French citizen legal rights, including a civil status under the common law. But for the people classified as having a “particular (personal) civil status” status, for all matters regarding the civil law it became optional whether to renounce it (and to adopt the common law status) or to retain it.

The underlying strategy was certainly not to maintain a colonial-racist distinction forever. French universalism is strongly assimilationist at the level of principles, while leaving enough doors open to nourish all kinds of inequalities at the practical level. On the contrary, the goal was to gradually see the extinction of the former ‘indigenous’ status, but, for material as well as cultural reasons, such a global change affecting all the regulations which fell under the civil law could not be achieved in one day.

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<sup>22</sup> “ *Les citoyens de la République qui n’ont pas le statut civil de droit commun (...) conservent leur statut personnel tant qu’ils n’y ont pas renoncé.*” See details and discussion in Régis Lafargue, *La coutume judiciaire en Nouvelle-Calédonie...*, Aix-en-Provence, PUAM Ed, 2003, p. 8, and the whole file « France in the Pacific 2013-2014 » / September 2014 ANU Working with legal pluralism (lectures presented at a workshop in ANU, and additional juridical-political French papers translated in English : on-line at [www.pacific-dialogues.fr](http://www.pacific-dialogues.fr) : see column « operations »).

<sup>23</sup> Isabelle Merle et Adrian Muckle, *L’indigénat. Genèses dans l’empire français. Pratiques en Nouvelle-Calédonie*, Paris, Ed. du CNRS, 2019.

The strategy of assimilation is still prevalent. The French Constitutional Council reaffirmed in 2003<sup>24</sup> that all legislative initiatives which can help the evolution of customary laws towards full “compatibility with constitutional principles and rights” were to be promoted, “provided that it would not put in question the very existence of the local civil status”<sup>25</sup>.

One observation is useful as to this French assimilationism and the revealing difference between the French legal notion of ‘*peuple*’ and ‘*population*’. Because of the supreme value put on the unity of the Republic, expressed in legal terms by the principle that “there is no possibility of any subdivision within the French Republic” [*le principe de l’indivisibilité de la République*], France does not recognise any “indigenous [*autochtones*] peoples within the Republic” (in the sense of the French word ‘*peuple*’, closer to the 18<sup>th</sup> century British notion of ‘nation’), and it recognises only “indigenous populations of the Overseas France territorial collectivities”, who can thus benefit from “specific provisions... on a territorial basis”<sup>26</sup>. Of course, this is at the level of diplomatic principles and official speeches, within international arenas. In more local contexts, there is one strong exception: the Noumea Agreement signed by France does recognise the “Kanak people” [*le peuple Kanak*] and not just the Kanak population.

What had not been envisaged by the French Republic in the 1950s was that this supposedly temporary provision for dual statuses under civil law among the citizens would be a way for future independentists, at least in the Kanak case, to advance the building of a whole juridical system — the “customary law” [*droit coutumier*] — which, instead of being a temporary step towards assimilation, would be seen by them as a useful development. Indeed, it is viewed by a number of Kanak people as a necessary separate context and a stepping stone towards the building of a future legal system *per se* for a future independent New Caledonia (-Kanak). It became an important point in the Noumea Agreement of 1998 and in all the ensuing debates on the future of the country.

As for Wallis-and-Futuna, customary law status is effective, and not without problems<sup>27</sup>.

In the case of French Polynesia (FP) this dualism does not exist. In FP, there are no dual personal statuses, and it is in relation to land tenure and maritime areas that a certain legal

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<sup>24</sup> Declaration 2003-474 DC of 17 July.

<sup>25</sup> quoted in “Le droit de l’enfant outre mer”, report published on line by the NGO “GISTI” (“Groupe d’informations et de soutiens aux immigrés”), no date: 13 (accessed at: [http://www.gisti.org/IMG/pdf/CRC.C.FRA.4.Add.1\\_fr.pdf](http://www.gisti.org/IMG/pdf/CRC.C.FRA.4.Add.1_fr.pdf) on 2 November 2016).

<sup>26</sup> Trepied 2012, *op.cit.*: 6, quoting a French government declaration at the UN in 2007.

<sup>27</sup> See the discussion by Allison Lotti in the ANU Sept. 2014 workshop, on line (only available in French for the moment) : [www.pacific-dialogues.fr/home.php](http://www.pacific-dialogues.fr/home.php), in « operations », entry « Custom and the State : New Caledonia and comparisons » / « download the presentations »/ 9.WF\_Allison\_Lotti\_Droit\_coutumier\_FR

pluralism is at work<sup>28</sup>. The absence of dual statuses for the inhabitants of FP can be historically understood through the close ties that the colonial power had with the local authorities. The duality of status of persons in FP was abolished by a legislative act in March 1945. In fact, it was cancelled in 1868 for the island of Tahiti, in 1880 for the other islands of the “King Pomare kingdom” (islands around Tahiti) and in 1945 for the whole of FP.<sup>29</sup>

The explanation rests with the strong colonisation established from the start and the control exercised over the local “kings”. Indigenous status and the customary juridical system have been viewed as reflective of the local indigenous kingship powers and administration and the network of authority emanating from local chiefs-kings. As French colonial policy in Tahiti was very keen to establish total control, in the context of the rivalry from the start with the British (through British/French Protestant/Catholic missions), the control of Tahiti and of the Pomare chiefly line, then of the Tahitian Kingdom, and then of the whole archipelago, resulted in this eradication of any “customary” system of statuses or courts that could create an exception to French assimilation. The question of the material difficulty elsewhere, in 1945, of implementing immediate integration evolving from a customary system to common civil law, was irrelevant in FP where gradual integration has been operating for a good part of the territory for decades, even including the granting of citizenship. With the intensification of French control, the Protectorate regime became a direct colony (under the name of French Establishments of Oceania), with the support of King Pomare V, and all his subjects were granted French citizenship in 1880, which then resulted, under the 1887 agreement, in the suppression of all specific customary legal provisions.

The case of FP is also particular from another point of view. Unlike the NC case, where the question of the special place and rights to be enjoyed by the “indigenous” [*autochtone*] people/population is central to territorial political discourse, debates in FP on the evolution and future of the country revolve entirely around the question of “independence/autonomy” (severing all links with France or staying within France, but with substantial autonomy in most of the governance sectors)<sup>30</sup>. The debates are not about the place of the “indigenous” people vis à vis the “non-indigenous” people — a distinction which is not part of FP colonial history. Partly because in FP, the proportion of *de facto* indigenous people has always been over 80% (as in other independent or ‘associated’ Polynesian States: Tonga, Samoa, Cook, Tokelau etc.). Local

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<sup>28</sup> See the discussion by Tamatoa Bambridge (in English) in *ibid..../PF\_Legal Pluralism Today\_T.Bambridge\_EN*

<sup>29</sup> François Luchaire, *Le Droit d’Outre-Mer et de la Coopération*, 2ème édition, PUF, Coll. Thémis, 1965, p. 290, quoted in Lafargue, *La Coutume judiciaire en Nouvelle-Calédonie*. Aix-en-Provence, PUAM Ed. 2003: 19).

<sup>30</sup> See the papers by Moetai Brotherson, Steve Chailloux and Semir Al Wardi in the VUW Workshop “...French Pacific” of 14 March 2019: abstracts available on-line ([www.pacific-dialogues.fr/home.php](http://www.pacific-dialogues.fr/home.php) : “operations” / “Sovereignty...French Pacific... 14 March 2019” / [download] “...program with abstracts...”); full papers available later at the same entry or with reference of the future publication).

discussions are centered on another set of issues: the place to be given to the ‘*Mā’ohi*’ identity and values. I certainly concur with this remark advanced by Trepied<sup>31</sup> on the difference between NC and FP.

Another context should also be remembered. Here again a very long history of contrasting European influences, visions and projections onto Pacific peoples, has been a continuing trend through the contrast between the strong devaluing of “Melanesian” peoples, in terms of racial distinction, since the end of the 18<sup>th</sup> century and the non-rejection, or sometimes even positive value placed upon “Polynesian” peoples.<sup>32</sup> In NC, usually a strongly “loyalist” (that is: anti-independentist) resident, if he is not a Kanak, will not want somebody to confuse his identity with that of a Kanak. If he/she has not entered into a mixed-blood marriage, the idea of choosing a Kanak first name for his/her children will not arise. (Of course there have been and there are a number of non-Kanak residents who are strongly in favour of independence). In contrast, a *Popa’a* (European) individual living in FP, born there or not, of mixed blood or not, will usually have no objection to somebody calling him a “Polynesian”. And it is well-known how *Popa’a* couples, even residing in FP for a temporary work, will sometimes choose a local name (a “Tahitian name”) for their children born during their residence<sup>33</sup>.

The dual distinction of statuses in NC created a legal pluralism within the broad domain of civil law (but not in the penal law). All inhabitants are treated equally for any crimes that fall under the penal law. But for all civil law matters, from questions related to birth, marriage, divorces through to residency, land ownership, etc., or violence and any unlawful acts that fall below the penal level, there can be a differential treatment, and in part a different system of courts of justice, according to the status of the individual: did he/she retain his/her ‘customary’ status, or did he/she choose, at some point, to relinquish this status and adopt the ‘common law’ status? Indeed, from the dual status of inhabitants emerges the possibility of a dual judicial system of courts and a dual code of laws.

As previously said, this does not apply to FP. As for W-F, the creation of a customary court system was made possible by the 1961 Statute, but it was finally legislated only in 1978, and its establishment is still a matter for the future. It was never achieved! There is *de facto* no

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<sup>31</sup> Trepied, Benoit, *op.cit.*, p. 9-10.

<sup>32</sup> See Serge Tcherkezoff, 2003: "A long and unfortunate voyage towards the ‘invention’ of the Melanesia / Polynesia distinction (1595-1832)", *Journal of Pacific History* vol. 38, n°2, pp. 175-196; 2009: *POLYNESIE / MELANESIE : l’invention française des « races » et des régions de l’Océanie*. Papeete, Au Vent des Iles [E-book (2013): <http://librairie.immateriel.fr/fr/ebook/9782915654523/polynesie-melanesie> 2011 : « Inventing Polynesia » in *Changing Contexts - Shifting Meanings: Transformations of Cultural Traditions in Oceania*, Elfriede Hermann (ed.), University of Hawai’i Press / The Honolulu Academy of Arts : 123-137.

<sup>33</sup> And, in some media publications, i.e. *Le journal des femmes*, « Tahitian » first names are even lauded as a « beautiful » choice to be considered by French metropolitan families planning to have children (see : <https://www.journaldesfemmes.fr/maman/bebe/1180774-20-beaux-prenoms-tahitiens/>)

customary court provided by the administration, and all civil cases between individuals of a “customary status”, which should come in front of a “customary court”, are dealt with in W-F as they always have been: before the traditional local authorities (family head, village chief, district chief).

On the contrary, in NC, the customary court system has become an important part of post-Noumea Agreement life and the centre of vivid debates about its role, its limits, the jurisprudential nature of the code of customary law, the question of attempting to codify it, etc.<sup>34</sup> This started late, after 1998. Already the explicit legislation about the creation of a customary court system was enacted quite late, in 1982. Up until then, French authorities considered that all ‘customary’ cases should be dealt with under the authority of the traditional institutions (clan, village, etc.). But then, shortly after 1982, as the NC entered into the dramatic period of deadly conflicts, euphemistically called the “events”, nothing happened regarding the establishment of a customary court system until the Noumea Agreement (1998) was signed.

The demand by the Kanak to have their own judicial system, at least for civil matters, was a very important part of their request for recognition of the specificity of ‘Kanak identity’, and the specificity of their culture and languages, and it has been strongly reiterated in the negotiations that led to the Agreements. Since then, ‘customary’ justice has been administered: persons of customary law status are able to present their case in front of specific courts (established in three parts of NC) with a professional judge assisted by two ‘customary assessors’ who are supposed to better understand the customary context. As there is no written code, the decision is based on the appreciation of ‘custom’, with, since the 2000s, the gradual laying down of a jurisprudential basis.

The dual judicial system can have serious consequences for the lives of individuals. For instance, in the case of divorce, customary law will look not only at the willingness of each of the spouses to divorce, but also at the opinion of their respective clan chiefs, since the clans were involved in the initial approval of the marriage. Inheritance after the death of one of the spouses can be considered very differently by a common law court and a customary court, because customary regulations particular to a given cultural area can oppose other considerations (importance of the clan over the nuclear family) to the common law rule which makes the immediate children the primary heirs<sup>35</sup>. Of course, one can opt out of his/her personal customary status to take on ordinary (common law) status and then become subject to ordinary law. But, in cases opposing two persons, both of them should then opt out. Another consideration is the heavy

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<sup>34</sup> See the paper by Godin & Passa and the other publications referred to in their paper, from the ANU Sept 2014 workshop, on line : [www.pacific-dialogues.fr/home.php](http://www.pacific-dialogues.fr/home.php), in « operations », entry « Custom and the State : New Caledonia and comparisons » / « download the presentations » / 1. NC\_Custom, Law, Society\_P.Godin and J.Passa\_EN. (available in English and in French)

<sup>35</sup> Discussions raised in a recent symposium held on 3 November 2016 at UNC on « Identité et Droit » (my personal notes, from several contributions, particularly from the lawyer Lisa Kibangu); see the web site of the Department of Law : <http://larje.univ-nc.nc/index.php/les-seminaires-et-conferences/colloques-et-journees-d-etudes/79-colloque-2016/485-coloque-du-larje-l-identite-et-le-droit>

consequences of breaking away from customary status: there are consequences on all other aspects of daily life, or local social status, and there is no easy possibility of returning to a status once it has been relinquished. One can guess the innumerable problems than can arise in customary law cases.

Last but not least, there is no written code for customary law, and everything rests on the persuasiveness of the “knowledge” of local custom. Significantly, the French Ministry of Justice has funded several long-term research projects, by two different groups of scholars, with the aim of studying and recording the results of a great number of customary court cases, in order to create a data base for jurisprudential access.<sup>36</sup> Some strongly approve of this process while others fiercely oppose such projects, saying, if uncontrolled, that this research could lead to a written customary code, which could then “incorporate traditional inequalities” (women vs men, young vs old, everyone vs the “chiefs”, etc.). Thus, it could have these inequalities frozen in law and make it much more difficult to eradicate them.<sup>37</sup> At this time, these conflicting positions are still unresolved and the debates continue.

#### **4--Two categories of citizenship and three separate electoral rolls in NC**

Another dualism has also been introduced into the official system in NC via the Noumea Agreement: a dual definition of ‘citizenship’. In the Noumea Agreement and the 1999 Organic Law, a notion of “New Caledonian citizenship” [*citoyenneté de la Nouvelle-Calédonie*] was created: those who, depending on their origins and the number of years in NC, have the right to vote for local representatives. These elected representatives then sit at the Territorial Assembly of each Province (three Provinces were created, each with its own Provincial Territorial Assembly). Part of each of the three Provincial Assemblies then join together to constitute the central Parliament or New Caledonian Territorial Assembly, specifically called the Congress.

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<sup>36</sup> The reports are now available :

CORNUT Etienne & Pascale DEUMIER, "L'intégration de la coutume dans le corpus normatif contemporain en Nouvelle-Calédonie", French Ministry of Justice, 2016, Report on-line:

<http://www.gip-recherche-justice.fr/publication/view/lintegration-de-lacoutume-dans-le-corpus-normatif-contemporain-en-nouvelle-caledonie-2/>

and

DEMMER Christine ed. "Faire de la coutume kanak un droit. Enjeux, histoire, questionnements", French Ministry of Justice, 2016, Report on-line:

<http://www.gip-recherche-justice.fr/publication/faire-de-la-coutume-kanakun-droit-enjeux-histoire-questionnements/>

<sup>37</sup> See, from the ANU Sept 2014 workshop, the paper by Godin & Passa, : [www.pacific-dialogues.fr/home.php](http://www.pacific-dialogues.fr/home.php), in « operations », entry « Custom and the State : New Caledonia and comparisons » / « download the presentations », *op. cit.*.



To be able to vote, any individual must have either already been on the electoral roll of 1998 for the Noumea Agreement Consultation (hereafter NAC), which implied their having resided in NC for the previous ten years, thus since 1988; or having had their permanent residency in NC for at least 10 years before the election where they would vote for the first time, or being a child of a parent who is able to fulfil one of the above conditions. But, in 2007, a fundamental change was approved by France: the electoral roll as defined above would be “frozen” and not “sliding”<sup>38</sup>. As mentioned in section 1 above, this French decision accompanied the strong request from the Kanak not to be politically submerged by the recent immigrant population, which would be the case if the latter were to have the same political rights as all the long-term residents, whether ‘indigenous’ or not.

Thus, the only people who could vote were: a) those who were on the NAC 1998 roll (being residents since 1988 or earlier), and b) those nominally listed in 1998 as a resident but in the category “not allowed to vote for the 1998 consultation” (as they did not have their ten years of residence at that time). Any more recent French immigrant to NC, who arrived after 1998, even after 10 years of residence, and his/her children, are, at this point of the legislative system, unable to vote for local representatives. Official calculations showed that this affected only 0,5 % of the potential voters in 2009 (but will affect some 6% in 2019)<sup>39</sup>.

Everyone who is a French citizen can vote in French elections. But only a portion of this French citizens’ electoral roll are also ‘local citizens’, and thus are allowed to vote for local representatives — and for the referenda on the future of NC (the 2018 referendum which just happened a few months ago, and the future ones).<sup>40</sup> This was also a provision of the Noumea Agreement of 1998: within a period of twenty years, the country would decide on its future and only “NC Citizens” would be able to vote. There are even supplementary restrictions (length of residency) for the composition of the electoral roll for the final referenda, as compared to the

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<sup>38</sup> Such a major change, a breach of individual constitutional rights if seen only from the constitutional standpoint of French citizenship, required a constitutional change and as such a vote at a majority of 2/3 of the French Congress (the term used when the National Assembly and the Senate join for a vote). The result was clear-cut : 724 voted « yes », 90 voted « no », 75 did not cast their vote (see : <http://www.maire-info.com/etat-administration-centrale-elections/elections/le-congrs-vote-le-gel-du-corps-electoral-en-nouvelle-caledonie-article-7994>).

<sup>39</sup> The first local elections, where new voters who could have voted under the 10 years “sliding” scheme but were unable to do so as a consequence of the “frozen” scheme, were in 2009. A committee of the French Senate calculated the numbers of those residents who could have voted under the “sliding” system but became unable to vote: some 700 for the 2009 elections, some 4700 in 2014, and some 8300 in the future 2019 local election, which represent, out of the total potential population of voters, 0.5% in the 2009 elections, 3.4% in 2014 and 6% in 2019 (see <https://www.senat.fr/rap/106-145/106-14510.html>).

<sup>40</sup> See, from the ANU Sept 2014 workshop, the paper by Ixeko-Godin, on line in [www.pacific-dialogues.fr/home.php](http://www.pacific-dialogues.fr/home.php), in « operations », entry « Custom and the State : New Caledonia and comparisons » / « download the presentations »:...../2 NC\_Citizenship, T.IXeko-Godin\_EN.

electoral roll for local elections to the Provincial Assemblies: those who were not allowed to vote in 1998 because they did not then have their 10 years' residency and who do not have the personal customary civil status must at least have been full residents since 1994<sup>41</sup>. Thus, there are three separate legally defined electoral rolls in NC: the “general list” [*liste générale*] for all French elections; the “specific list for Provincial elections” [*liste spéciale pour les provinciales — LESP*] (residency from at least early 1998) and the “specific list for the Consultation” [*liste spéciale pour la Consultation — LESC*] (“Consultation” being an abbreviation for “Consultation for self-determination”) (residency from at least 1994).

Here again, as for other constitutional matters already mentioned, the two types of citizenship in NC, and the three separate electoral rolls, makes this Overseas France entity indeed a “Collectivity *sui generis*.”<sup>42</sup>

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#### 41

« 1) Avoir été admis à participer à la consultation du 8 novembre 1998. 2) N'étant pas admis à participer à la consultation, remplir néanmoins la condition de domicile. 3) N'ayant pas pu être inscrit sur la [LESC](#) du 8 novembre 1998 en raison du non-respect de domicile, justifier que cette absence était due à des raisons familiales, professionnelles ou médicales. 4) Avoir eu le statut civil coutumier ou, né en Nouvelle-Calédonie, y avoir eu le centre de ses intérêts matériels et moraux. 5) Avoir l'un des parents nés en Nouvelle-Calédonie et y avoir eu le centre de ses intérêts matériels et moraux. 6) Pouvoir justifier d'une durée de 20 ans de domicile continu en Nouvelle-Calédonie à la date de la consultation et au plus tard le 31 décembre 2014. 7) Être nés avant le 1er janvier 1989 et avoir eu son domicile en Nouvelle-Calédonie de 1988 à 1998. 8) Être nés à compter du 1er janvier 1989 et avoir atteint l'âge de la majorité à la date de la consultation et avoir eu un parent qui satisfait aux conditions pour participer à la consultation du 8 novembre 1998. »

Most of the electors are registered automatically, provided they are :

« 1) Les électeurs nés en Nouvelle-Calédonie et présumés y détenir le centre de leurs intérêts matériels et moraux, dès lors qu'ils y ont été domiciliés de manière continue durant trois ans. 2) Les électeurs ayant été admis à participer à la consultation du 8 novembre 1998 approuvant l'accord de Nouméa. 3) Les électeurs ayant ou ayant eu le statut civil coutumier. 4) Les électeurs nés en Nouvelle-Calédonie avant le 31 octobre 1980 et présumés détenir le centre de leurs intérêts matériels et moraux en Nouvelle-Calédonie, car inscrits sur la liste électorale provinciale. 5) Les électeurs nés en Nouvelle-Calédonie après le 31 octobre 1980 et présumés détenir le centre de leurs intérêts matériels et moraux en Nouvelle-Calédonie, car inscrits d'office sur la liste électorale provinciale. 6) Les électeurs nés à compter du 1er janvier 1989 et ont fait l'objet d'une inscription d'office sur la liste électorale pour l'élection des membres du congrès et des assemblées de province et que l'un de leurs parents a été admis à participer à la consultation du 8 novembre 1998. »

(see <http://www.nouvelle-caledonie.gouv.fr/Politiques-publiques/Elections-2018/Referendum-2018/Les-electeurs/La-liste-speciale-pour-le-referendum-LESC>)

#### 42

In March 2019, this final note had: “My thanks to several people who had generously helped me to straighten my « Frenglish » : Stephanie Anderson, Marie Cherkezoff, Jon Fraenkel.”

[addendum 25 April] I did not expect to receive the following month the sad news of the passing away on 16 April of Dr. Stephanie Catherine Morton, née Anderson. Over the years, I had immensely benefited from Stephanie's expertise as a scholar who worked on the history of early encounters between Australian/Pacific peoples and Europeans (many would know her *Pelletier : The Forgotten Castaway of Cape York*, Melbourne Books, 2009), and who also happened to know very well the French literature of voyages of those times. Stephanie had an extraordinary command of the French language, classic and modern, and in this capacity, had helped me many times with translations into English or editing, as she

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did for this paper early March without letting me know that her condition was ailing. Everytime, for works as varied and highly specialised as sociological papers on the theory of gender by the French sociologist Irène Théry (see [http://www.pacific-dialogues.fr/op\\_irene\\_thery\\_article\\_ouvrage\\_eng.php](http://www.pacific-dialogues.fr/op_irene_thery_article_ouvrage_eng.php)) or juridical analyses by Professors of law or Judges on « customary law » in New Caledonia (see [http://www.pacific-dialogues.fr/op\\_france\\_pacific\\_sept2014\\_debates\\_studies.php](http://www.pacific-dialogues.fr/op_france_pacific_sept2014_debates_studies.php)), or my analyses on the Tahitian and Samoan early encounters with the French, Stephanie's expertise for translation has been decisive and brought an immense help for fostering the « Pacific Dialogues » between the Francophone and the Anglophone worlds.