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Caroline Bouix

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Les statuts personnels en Nouvelle-Calédonie

Vers un pluralisme égalitaire ?

Personal statuses in New Caledonia

Towards egalitarian pluralism?

Caroline BOUIX

Maître de conférences en droit privé

**Université de la Nouvelle-Calédonie / Laboratoire de
Recherches juridique et économiques (LARJE)**

Ladies and gentlemen, researchers and distinguished guests, it's with great joy and gratitude that I stand before you today to participate in this conference, which is taking place in the breathtaking setting of the Cook Islands.

It's my privilege to present to you the thought-provoking topic of "Personal Statuses in New Caledonia : Towards Egalitarian Pluralism?".

In this conference, we will delve into the complexities surrounding personal status, and explore the path towards achieving a society that embraces egalitarian pluralism in the context of New Caledonia.

(Introduction: A Pluralistic Society)

New Caledonia, a French overseas territory with a rich history, is an archipelago in the South Pacific that first encountered the Western world in 1774 when English navigator James Cook discovered it. Subsequently, France colonized New Caledonia and claimed possession of the territory in 1853.

However, the territory was not uninhabited ; it had been home to the indigenous Kanak people for approximately 3,000 years,

kanak people who lived according to their own legal system and customs.

Despite the influence of French colonization, the Kanak customs have endured and continue to govern their way of life.

In addition to the Kanak community, other communities emerged in New Caledonia during the colonial period.

The presence of convicts and free settlers contributed to the establishment of a European community, which exists in New Caledonia today as descendants of these early colonists. /

Furthermore, due to economic factors, individuals from other French overseas territories, particularly from French Polynesia and Wallis and Futuna, have gradually settled in New Caledonia.

Finally, the territory also hosts a significant number of French nationals from mainland France who temporarily come to work in New Caledonia.

New Caledonian society is indeed complex and diverse, with its inhabitants coming from various ethnic backgrounds.

This unique historical background has contributed to New Caledonia having a significant level of legal autonomy in comparison to the laws that apply in mainland France. This autonomy is provided for in the Nouméa Accord of 1998 and an organic law of 1999.

Firstly, there are the laws of the French State, which are applicable to all French citizens, whether they reside in mainland France or the overseas territories. These include criminal law, for example.

Next, there are the rules established by the political institutions of New Caledonia (Congress, Government, Provinces) in areas where powers have been devolved to them by the French State. Today this includes civil law, which we will discuss further.

Lastly, there are the customs determined by Kanak institutions (clans and tribes). These customs come into effect when the French State recognizes their existence in specific areas.

To effectively accommodate this pluralistic society and respect each individual's cultural identity, different personal civil statuses are applicable to those living in New Caledonia.

But what exactly is personal status ? It refers to a legal status specific to a social group, community, ethnic group, or religion. These different statuses result in the application of diverse laws in civil matters only, civil matters including legal capacity, family-related matters (such as marriage and filiation), and personal property.

The goal is to apply laws that align closely with an individual's identity.

For instance, a person with customary status is governed by customs in civil matters.

In light of the three "no" votes in the referendums on self-determination, it is crucial for New Caledonia to reflect and assess the coexistence of these different statuses. They are intended to reflect the cultural diversity of the region, but it is essential to examine whether they are treated equally.

Let's now explore the first personal status in New Caledonia :

1. ORDINARY CIVIL STATUS

The ordinary civil status serves as the default status for individuals unless they fall under another specific status. Its purpose is to ensure that everyone is covered by a personal status.

This ordinary civil status triggers to the application of "ordinary law". However, it is challenging to determine what exactly "ordinary law" entails today.

While it traditionally referred to the civil law generated by the French State, since 2013, civil law has come under the jurisdiction of New Caledonian institutions.

As a result, there are now two civil laws : mainland France civil law and New Caledonian civil law.

This change raises several questions as the organic law, that governs the ordinary status, has not been updated to accommodate this new civil law. Therefore, it remains uncertain whether the ordinary law still refers to mainland France civil law or if it has become New Caledonian civil law.

Judicial practice tends to favor the latter interpretation, suggesting that the civil law applicable by default in New

Caledonia is Caledonian law. However, due to the lack of legal provisions, this does not address all the questions surrounding the matter.

This leads us to consider the hypothesis of establishing a specific New Caledonian civil status.

2. A CALEDONIAN CIVIL STATUS?

While it is accepted that New Caledonian civil law exists, there is currently no definition of "New Caledonian civil status". This absence of legislation makes it challenging to regulate the application of New Caledonian civil law.

Can New Caledonian civil law be applied in mainland France to individuals originating from New Caledonia ? Conversely, should individuals from mainland France temporarily residing in the territory be subject to New Caledonian law, or can they retain the benefit of mainland France law ?

The forthcoming reform of New Caledonia's statuses should provide an opportunity to address this development and potentially establish a distinct New Caledonian civil status.

Now let's explore another personal status, the :

3. KANAK CUSTOMARY CIVIL STATUS

Unlike access to ordinary civil status, obtaining the Kanak customary civil status is subject to specific conditions.

This status is acquired through birth or lifestyle.

When an individual holds Kanak customary civil status, Kanak customs govern civil law matters.

However, there is an important limitation to the application of these customs in civil matters, even for individuals with Kanak civil status. This limitation pertains to mixed situations.

For instance, in the case of a marriage between a Kanak person and an individual with ordinary civil status, which law applies ? According to the organic law, the solution is straightforward, and perhaps too simplistic : ordinary law applies to any mixed situation.

Nevertheless, alternative solutions are conceivable, such as allowing individuals with different statuses to choose which law governs their union and determines the status of their child.

Finally, it is worth mentioning another hypothesis : whether there exist other customary statuses in New Caledonia.

4. OTHER CUSTOMARY STATUSES?

It is important to remember that there is a significant Wallis and Futuna community in New Caledonia. In Wallis and Futuna, the majority of the population adheres to traditional customs.

However, when individuals originally from Wallis and Futuna reside in New Caledonia, the question arises : can they request the application of Wallisian customs in civil matters ? In practice, the answer tends to be no, although it is far from clear-cut.

The Organic Law of New Caledonia only addresses the question of mixed situations, consistently stating that ordinary law applies.

This answer is surprising, to say the least. If the parties fail to specify which status they have chosen, ordinary law applies, which does not necessarily reflect the cultural identity of either party.

CONCLUSION: EQUAL STATUS?

In the assessment of the Nouméa Accord published in 2023, it is claimed that the implementation of customary civil status has "resulted in a situation of legal pluralism where the different statuses are equal."

However, the validity of this claim is questionable. As we have seen, customary civil status has its limitations, and ordinary law, despite the myriad of questions it entails, continues to prevail in many situations, disregarding the cultural identities of individuals.

The simplicity of the current solution, or perhaps even its inadequacy, contrasts with the diversity and richness of New Caledonian society. The plurality of laws and personal statuses could be reimagined to achieve greater equality among identities.

Thank you all for your kind attention.