

## ***COLLEGIAL POLICY IN NEW CALEDONIA TODAY***

New Caledonia, *la Nouvelle-Calédonie*, is a French overseas territory, made up of a main island (*la Grande Terre*), the Loyalty Islands and several smaller islands. It is located approximately 2000 km east of Australia, midway between New Zealand and Australia. New Caledonia is a little bigger than the more well-known Fiji Islands<sup>1</sup> (18274 sq km). The latest census (in 2009) estimates the population to be 245,580, a third that of Fiji. Its capital and only “city” is *Nouméa*. New Caledonia is not officially called a “territory”; the *Nouméa Agreement* of 1998, known as the “*Accord*”, refers to New Caledonia as “*le Pays*”, that is, both a country and a nation... Today New Caledonia is an “internally self-governing French country”.

Where does the name New Caledonia come from? The rugged coastline reminded Captain Cook of Scotland, so he named the country New Caledonia (Caledonia being the old Latin name for Scotland). In French, *Nouvelle-Calédonie* is the official name but the territory is often colloquially called *Calédonie*. The nickname (*le*) *Caillou* (literally “the stone or the pebble”) is an endearing term used by the European community of New Caledonia to designate the country. It refers to the main island of New Caledonia which is essentially a nickel-rich long rock formation emerging from the Pacific Ocean.

Another name *Kanaky* is also used, especially by the independentist movements. The word comes from *kanaka*, meaning “human being”. It turned into *Canaque* in French and became derogatory. In the 1970s when the native Melanesian inhabitants started organising themselves into political parties and called for independence, the word was transformed into a symbol of political emancipation and pride. The official name of the country, *Nouvelle-Calédonie*, could be changed in the near future as a result of the *Nouméa Agreement*, which stated that “*a name, a flag, an anthem, a motto, and the design of banknotes will have to be sought by all parties together, to express the Kanak identity and the future shared by all parties.*” So far, however, there has been no consensus on a new name for the country, even for “*Kanaky-New-Caledonia*”, which would be similar to Papua-New Guinea.

Historically, the island became a French possession in late 1853, as a part of an attempt by Napoleon III to rival the British colonies in Australia and New Zealand. The sole reason for the Island to remain French was because the British needed a good relationship with France, to stop the growing power of Bismarck’s 2<sup>nd</sup> German Empire. Following the example set by the United Kingdom in parts of nearby Australia, between 1864 and 1922, France sent a total of 22,000 convicts to penal colonies along the South west coast of New Caledonia<sup>2</sup>. The indigenous Kanak population declined drastically in that same period due to introduced diseases and an apartheid-like system called *Code de l’Indigénat*, which imposed severe restrictions on their way of life, freedom of movement and land ownership. Today the Kanaks account for less than 45% of the

---

<sup>1</sup> 18,575 square kilometres vs 18,274 sq km for Fiji.

<sup>2</sup> This number included regular criminals as well as political prisoners such as Parisian socialists and Kabyle nationalists. Towards the end of the penal colony era, free European settlers (including former convicts) and Asian contract workers greatly outnumbered the population of forced workers.

population. The existence of several native languages means that French has become the “*lingua franca*”, the common language, used everywhere on the island.

The *Grande Terre* is by far the largest of the islands, and the only mountainous one. The island has a mountainous backbone, which historically divided between the dry west coast and the more humid east coast. Europeans settled on the dry west coast of *Grande Terre*, which is more favourable for livestock farming, leaving the east (as well as the Loyalty Islands and the Isle of Pines) to the Kanaks. This resulted in an ethno-cultural division, which coincides with the natural one.

Politically, New Caledonia has been on the United Nations list of non-self-governing territories since 1986. The *Front de Libération Nationale Kanak Socialiste (FLNKS)* used agitation to begin advocating for independence in 1985. The FLNKS (led by the late *Jean-Marie Tjibaou*, assassinated in 1989), asked for the creation of an independent state of “*Kanaky*”. The troubles culminated in 1988 with a bloody hostage taking in *Ouvéa*, one of the Loyalty Islands. This unrest led to agreement on increased autonomy under the *Matignon* Accord of 1988 and the *Nouméa* Accord of 1998. The latter describes the process of transfer of power as “*irreversible*” and also provides for a local Caledonian citizenship, local official symbols of Caledonian identity, as well as the duty of mandating a referendum on the contentious issue of independence from the French Republic sometime after 2014.

The Noumea Agreement emerged through a political negotiation between the two main political forces in New Caledonia. As a result, it is a well-balanced and odd compromise between two incompatible logics. After this compromise became enshrined in the Agreement of 1998, France modified its Constitution to include it as the thirteenth section of the French Constitution, called “*transitional enactments concerning New Caledonia*”.

The status of New Caledonia is unique and has its own odd characteristics. One of the most important and odd features of New Caledonia, is the “Collegial Policy”, which has put the new country into an exceptional political situation.

The collegial policy shares the political power between the indigenous people and the descendants of French settlers. However, 11 years after the Caledonian people said Yes to the Noumea Agreement<sup>3</sup>, the balance of power remains fragile.

---

<sup>3</sup> On 8 November 1998, the participation rate was approximately 74%, with the “Yes” winning with 71.87%, which was well beyond the threshold of a binding referendum. Was this result the same in the three provinces? The success was resounding in both Kanak provinces, with 86.79% in the Northern Province and 95.47% in the Loyalty Islands Province and to a lesser extent in the Southern province, with only 62.99%. While the people of 6 towns or villages refused the *Matignon* Agreement in 1988, all the 33 towns and villages, including Noumea, expressed themselves in favour of “Yes” (JORF –the Official Journal of the Republic of France- n° 261 du 10 novembre 1998, page 16956).

## **I - COLLEGIAL POLICY LEADS TO SHARED POLITICAL POWER IN NEW CALEDONIA**

The constitutional status of New Caledonia was crafted to prevent a majority from holding political power. Its aim is to lead to a consensus between the political forces, both Kanak and non-Kanak, without going straight to a deadlock! Thus, political power is shared:

- Firstly, the establishment of three “Provinces” as regional councils shares the power on a regional basis. The Noumea Agreement follows the US and Australian federal models; it lists Caledonian power (like the Commonwealth of Australia’s power) and leaves all unlisted power to the “Provinces” (like the States in Australia).
- Secondly, the power inside the government itself is shared according to a system of checks and balances. To explain this: the voting system used to elect the congress is proportional representation, which makes it very difficult to get a majority. This situation is classical, even in the Australian Senate. Furthermore, the Noumea Agreement provides that the members of government themselves may be elected by the congress under a system of proportional representation! So, all the main political parties may join the government. It is called “*collégialité*”, in English “Collegial Policy”.

This deeply differs from the classical political system. The Caledonian system is based on a simplistic electoral mathematic rule, slightly limited by the possibility to choose the number of members of government. Proportional representation both in congress and government gives the New Caledonian political system its exceptional character.

It is exceptional, but not unique: proportional representation at government level also exists in Switzerland. But it is unlikely that the wise Swiss democratic system would work in New Caledonia. It has been tried in Fiji, but it has never worked and has resulted in a coup. Thus, the Fijian political model does not induce optimism.

Does such a Collegial Policy work in New Caledonia? Although we could expect instability as a result, the system has given a paradoxical answer: the government is secure, but weak.

### ***A – A secure government***

The way of electing the government appears to be simplistic: firstly, the parties, which are represented in congress, present a list of names of members or non-members of the congress. Secondly, each Representative votes for their favourite list. The number of members is proportionate to the votes cast. What is strange is that there isn’t any political debate about the governmental framework prior to the election, nor is there a policy choice. Each party delivers its own opinion separately.

What is becoming harder is choosing the Head of government! The president has to be elected by his colleagues during their first meeting. This requires at least a majority within the members of the government<sup>4</sup>. At this time, a “tacking practice” takes place. As you know, “tacking” was the habit of the House of Commons to attach (to tack) substantive provisions to money bills to make it difficult for the Lords to reject them. That practice is still going on in the USA and it has appeared in New Caledonia. Every issue can be linked to another and it’s a hard bargain.

Furthermore, after a president has been elected, the portfolios still have to be allocated. This is difficult, because the Organic Law (which implements the Noumea Agreement) requires each minister to countersign the collaborative decision. Thus, any one of them can stop the process.

That’s the main reason why the government is secure. Nobody has a real interest in overturning the government! And the creation of another government would lead to the same structure! A crisis cannot be avoided by the dismissal of a minister, the resignation of the government itself or even through the use of the parliamentary couple of censure and dissolution:

- There is no way to force a minister to resign and the resignation of the government also requires a majority vote! Only the resignation of the president can drag the government down!
- Passing a vote of no confidence in the Caledonian government makes no sense, because all the parties are represented. Its only use would be to change the president of the government. But there is an easier way to challenge the president. If all the members of the same party in the government resign at the same time, proportional representation can’t be achieved and the Organic Law forces the government to resign!
- Dissolution of congress could be a solution, but this is not in the hands of the president of the Caledonian government; it is in the hands of the French government. The French government does not use discretionary power: indeed, it is under hard constitutional pressure. Dissolution can only be pronounced if *“the running of the government is proved to be impossible”*.

Therefore, the government is secure but weak.

### ***B – A weak government***

To make any decision, the government has to find a majority; and this is not a relative majority. It requires the consent of a majority of the members of government. No one party has a majority. So, each decision takes a long time to reach.

The president of the government still has a casting (predominant) voice but only when the government is divided into two, with only one abstention. For example, in a government of 10 or 11 members, which is an average size, the majority needed is 6. If the deadlock concerns 5 members against another 5, the president can use his predominant vote, but not if it is 4 against 4, with 2 abstaining members.

---

<sup>4</sup> Philippe Gomès, the current president, was elected unanimously.

Consequently the parties have quickly found a very easy way to fight the predominant voice scheme. They only need not to attend the government meeting, which makes it impossible to get 5 votes in favour of an executive decision!

Furthermore, the collaborative decision, if adopted, must be countersigned by “*the minister in charge of enforcing the regulations*”. Thus, each minister “in charge” can easily refuse to add his signature to a decision, even if it has been adopted by a majority of the members of government.

All these rules, which force people to work together, are understandable. But they make the decision-making process rough. Therefore, what has happened was inevitable. Because a tough decision is difficult to make, even in a strong and homogeneous government, such a decision in any matter has never been adopted! So, all you have to do is to give some electoral gifts to the voters, and never increase taxes. This way of governing favours one of the worst French flaws: the irresponsibility of government.

The previous governments could easily fool the voters, because the Treasury coffers were full with the booming mining industry taxes and the contributions from France. But if the economic situation takes a bad turn, it would be hard for any government to keep up with such high level public expenses! As you know, the economic downturn began in 2009 and the mining taxes have been reduced drastically.

These are the features of Collegial Policy in New Caledonia, with its strengths and weaknesses. It appears more like a political compromise than an efficient system of checks and balances.

Nevertheless, it could work, if the political parties found compromises and created some constitutional customs (conventions)! The New Caledonian system might lead to the acknowledgement of a “right of implicit veto”. This veto could be used by the most important parties in the case of disagreement about any decision made by the government. On the other hand, the government has to be prevented from passing a project without consensus. The constraints placed on the majority and the power of veto of the minority undoubtedly leads to a “democracy of concordance<sup>5</sup>”.

It is up to the elected representatives of the congress to create a constitutional custom. However, the loyalist parties are reluctant to do this. After the last elections in 2009, they preferred to make a majority together, thus marginalizing the independentist parties. Instead of creating a constitutional custom, they created the current fragile balance of power.

---

<sup>5</sup> The opposite (and the usual way of governing) is the democracy of competition.

## II - THE BALANCE OF POWER IS FRAGILE TODAY

After the election of the congress in 2009, the “loyalist” parties signed a political agreement called “*entente républicaine*” (“a republican understanding”). An awkward expression, which means the Kanaks are not republicans! Its main purpose is to share out the most important political functions of the country among the loyalist parties: the presidency of the government, of congress and that of the *province Sud* (the Southern province). Implicitly, this is a return to majority rule for governing the country.

### ***A - A return to majority rule for governing the country***

Collegial policy was neglected during the first mandate of the Noumea Agreement (1999-2004). The governments, first led by *Jean Lèques*, the mayor of *Nouméa*, then by *Pierre Frogier*, one of the two New Caledonian Representatives in the French Parliament, had a majority in the Caledonian congress. Neither *Jean Lèques* or *Pierre Frogier* decided to implement Collegial Policy. At a time so close to the signature of the Noumea Agreement, the independentist parties were so shocked that they refused to have their headquarters in the same building as the loyalists... Consequently, the two parts of the same government were in separate buildings in the town. They only met during the council of ministers on Thursdays!

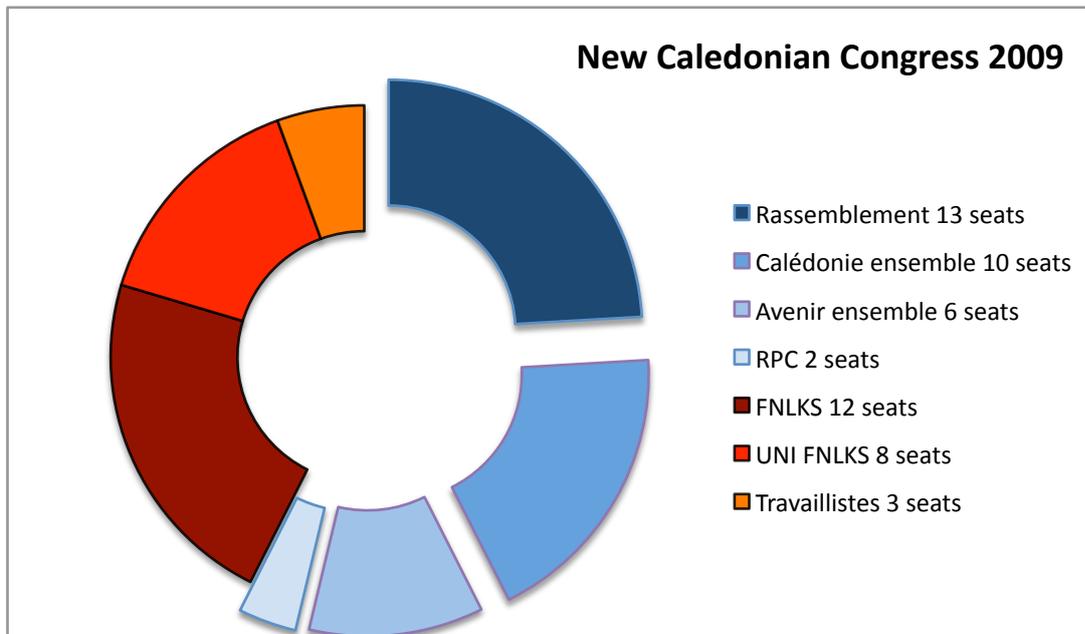
In 2004, (the second mandate of the Noumea Agreement), there was a sweeping change. The RPCR (“*Rassemblement pour la Calédonie dans la République*”), the most important loyalist party led by *Jacques Lafleur*, split into two parts, with the emergence of “*l’Avenir ensemble*” (which means “Future together”). It was an enormous surprise that the new party won against the old one. But no party had a true majority in the Caledonian congress. *Marie-Noëlle Thémereau* became the first female president of the government. She tried to implement Collegial Policy.

To make decisions, she had to find a majority in both government and congress. Before each decision, she had to obtain the consent of a majority of the members of government or congress. She always found a diverse coalition, a kind of “*à la carte meal*”. Each decision took a long time to reach, but the independentist parties appreciated the functioning of the institutions. After three years of governing, she resigned and *Harold Martin* took over. He tried to rebuild a loyalist majority with the *Rassemblement*. This new policy led to a division in his party with the emergence, beside *L’Avenir ensemble*, of a new party *Calédonie ensemble*. As a result, they were three loyalist parties, whereas there had only been one in 1999... The *Rassemblement* also suffered great difficulties and split once again. *Jacques Lafleur*, the old chief who lost the presidency of the *Rassemblement*, decided to go alone, with le “*Rassemblement pour la Calédonie*”. Consequently, four loyalist parties went to the polls in 2009!

The independentist parties were not united either. Because of the power struggle between the president of the Northern province and the other leaders of the Liberation Front, the two founder parties of the front (“*l’Union calédonienne*” and “*l’Union pour*

*l'indépendance*") went separately in competition to the polls. Moreover, a new left-wing radical Kanak party, called the Labour Party ("*Parti travailliste*") also tried its luck and won three seats in the congress.

As you can imagine, there was no absolute majority in congress...



Furthermore, the election in the Loyalty Islands Province was declared void by the French *Conseil d'Etat*<sup>6</sup> on the 16 October 2009. The motive was excessive use of proxy voting. A high proportion of the electorate lives in *Nouméa*, not in the Loyalty Islands and squarely refuses to vote in the Southern Province. The Loyalty Islands population has to go to the polls once more next Sunday (6 December 2009). What is at stake in this election is that the loyalist parties could win one of the 7 seats currently held by the Independentists.

Instead of pursuing Collegial deliberation and seeking different majorities depending on the issue, the loyalist parties decided to sign a political agreement to share out the most important political functions of the country among themselves. This return to majority rule worries the Kanak Liberation Front, which thus becomes a minority.

Fortunately, the constitutional systems, including ours, provide other checks and balances. Collegial Policy is strongly protected.

<sup>6</sup> Conseil d'Etat n° 328626 du 16 octobre 2009.

## ***B – Protection of Collegial Policy***

However, the majority rule is softened by the existence of three “Provinces” as regional councils, which share the political power on a regional basis. The internal federal system is a kind of check, because it limits what the Caledonian government can do. Two of the three provinces have a large majority of Kanaks. Consequently, the presidencies of Northern and Loyalty Islands provinces are theirs by right! Collegial Policy also gives the Kanaks 4 out of the 11 members of government.

The independentist parties can rely upon another safeguard, that is the French Constitution itself. The Noumea Agreement is included in the French Constitution and has a legal constitutional value. It requires the French government to act within the Constitution and apply the Agreement. The Noumea Agreement means that both congress and government are increasingly empowered by the gradual transfer of power from France to New Caledonia. Key areas (e.g. taxation, labour law, health, foreign trade...) are already in the hands of the territorial congress and government. Further authority will be given to the congress in the near future (e.g. civil law, corporate law, High School Education, civil defence, etc.). Ultimately, until New Caledonia decides on its future, the French Republic should only remain in charge of *foreign affairs, justice, defence, public order, and currency*, the so-called “sovereign functions”.

The French Parliament has facilitated the transfer of High School Education by financial compensation. If the New Caledonian congress refuses to accept the full transfer of power, the French government has threatened to promulgate a new Organic Law, which it will impose on New Caledonia. But both government and congress decided to pass the bill on 23 November 2009. This transfer of power has reduced the tension and has been the first sign of consensual behaviour in looking towards the future of the country. Thus, the Caledonian show goes on...

However, the main safeguard of Collegial Policy, the “icing on the cake”, is the strife between the loyalist parties who signed their republican understanding. The two main loyalist parties had no common strategy during the 2009 election and have different opinions about most issues. To make it easier to follow, the *Rassemblement* prefers confrontation to negotiation, and conversely, *Calédonie ensemble* prefers negotiation to confrontation. Fortunately, the president of the government, *Philippe Gomès*, is the leader of *Calédonie ensemble* and he frequently opens the political debate. Being open-minded could be the first step to a political opening in the congress. If the loyalist parties disagree about most issues, sooner or later the president will look for another majority; this is an advantage of Collegial Policy. You don’t have to change the government to change the majority needed to pass a bill! In a recent session of congress<sup>7</sup>, most loyalist parties decided not to vote on the welfare bill. So the president had to work in with an independentist party.

Now for something ironic! *Philippe Gomès*, the Head of government, can sometimes be compared to a South American politician. He’s a kind of *Juan Peron* or a right-wing *Hugo Chavez*: he is often arrogant and pompous in his speech. He often makes promises,

---

<sup>7</sup> 9 November 2009.

which he can't deliver. In New Caledonia, he made a name for himself as a man who follows his heart and trusts his instincts about people. But, he's also considered to be a manipulator. Time will tell if he's really a statesman or not.

At a time when New Caledonia is dealing with the global economic downturn, what will happen now?

For me, the Noumea Agreement has started a little mysteriously: As you may have already noticed, the 21<sup>st</sup> century has begun with 10 years of economic growth, even uncontrolled growth: it was the time of the "housing bubble" and the increase in the price of raw materials, especially nickel; but, it was also the time for an enormous increase in French public spending, budget deficits and debt. All of these created an economic boom in New Caledonia. And people gave all the credit to the Noumea Agreement! Peace led to growth! But the huge uncertainty is this: Did peace lead to growth or did economic growth and soaring income lead to peace? We won't have to wait long for the answer...

As my colleague *Christophe Chabrot* will tell us, the Noumea Agreement surprisingly plans multiple referendums, but only for Caledonian citizens<sup>8</sup> and only during the 4<sup>th</sup> mandate of the congress (from 2014 to 2019). This strange provision requires one question, repeated three years if necessary, that is if the previous has failed.

If the people's answer is negative for the third time, the Noumea Agreement requires that the political parties negotiate the matter and provides an effective standstill provision. Until the negotiations succeed, the political system will remain unchanged "*à son dernier stade d'évolution*", in English "at its latest stage". The French Constitution defines this "irreversibility rule" as a constitutional principle.

There are three ways to decolonize: independence, establishing a "free association" status, or integrating with the administering power. However, the Noumea Agreement has ruled out the possibility of integration.

The congress of New Caledonia will both choose the date of the referendums and formulate the question. This difficult task will be achieved by a majority of three fifths of the members of congress.

There are many issues at stake:

---

<sup>8</sup> The electorate of Caledonian citizens comprises all those who have the right to vote in the election of the congress of New Caledonia. Only those residing in New Caledonia before the Noumea Agreement (that is before 8 November 1998) and proving that they have been continuous residents for 10 years can vote in the election of congress. Any French citizen, who moved to New Caledonia after 8 November 1998, will never be able to become a Caledonian citizen, at least as long as the Constitution remains unchanged. According to international Law, the country, which is engaged in a decolonisation process, has to discourage immigration from the Motherland. The Kanaks are still extremely concerned about new French settlement in New Caledonia. See Dr Christophe Chabrot: *People's involvement in statutory changes in New Caledonia*, 11<sup>th</sup> PIPSA Conference.

- Will New Caledonia be able to afford independence? If not, how can it retain financial aid from France?
- How to fulfil sovereign functions, if New Caledonia ever has to?
- Could New Caledonia afford a local currency or should it keep the fixed exchange rate between the Pacific Franc and the Euro?
- How to control the influx of migrant workers from metropolitan France to New Caledonia?

All these issues are very controversial and potentially conflicting. That's why the development of an elaborate and complicated question for the referendum might be an avenue worth investigating for the congress.

This question might include a compromise, which gives a mix of contradictory signs to the people of New Caledonia: New Caledonia might accept the sovereign functions, and as a result might develop into a State but at the same time, it might sign an agreement with France to allow it to exercise these sovereign powers for 20 more years...

To sum up, nothing has changed but everything is different!

Such a compromise would require a lot of prudence and shrewd negotiators to work out a deal. It will put the Collegial Policy to a severe test. Hopefully, the worst will never happen. The Noumea Agreement is often referred to as a "bet on intelligence"; we shall find out in due time!

*Thanks for listening!*

Mathias CHAUCHAT  
Professor of Law, University of New Caledonia,  
<http://larje.univ-nc.nc> - [mathias.chauchat@univ-nc.nc](mailto:mathias.chauchat@univ-nc.nc)