The Diversity of Democracy Theory and Comparative Study: The Melanesian Countries

Abstracts
Of the proceedings of the December 17-18,2015
Conference
Pacific Community (SPC), Noumea, New Caledonia

Edited by Florence Faberon

Translation by Armand Hage

PEM
Presses électroniques de la Maison de la Mélanésie - Paul de Deckker

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Of the proceedings of the December 17-18, 2015 Conference

Pacific Community (SPC), Noumea, New Caledonia

Edited by Florence Faberon,

Maître de conférences de droit public, HDR, Université d'Auvergne, Centre Michel de l'Hospital (EA 4232)

Translation by Armand Hage,

Honorary Professor of English

ISBN : 978-2-9558903-0-1

Published December 2016

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Note to our Readers

This work is an abstract of the proceedings of the « Diversity of Democracy: Theory and Comparative Study, the Melanesian Countries » conference, which was held in Noumea December 17 and December 18, 2015. Readers can find the full text of the proceedings in French published by Centre Michel de l'Hospital – LGDJ (2015, 559 p.).

Acknowledgements

I would first like to thank all contributors. They provide us with tools for reflection. They help us build our own judgment so we can be better equipped to enter the democratic field on both sides of the Barrier Reef, by helping us make sense of the mysteries and potential of democracy.

A conference means teamwork. I thank the members of our editorial board and organizing committee Sémir Al Wardi, maître de conférences de sciences politiques, HDR, Université de la Polynésie française, Carine David, maître de conférences de droit public, HDR, Université de Nouvelle-Calédonie, André Roux, Guy Scoffoni, Laurent Sermet, professeurs de droit public à l'Institut d'études politiques d'Aix-en-Provence, Jean-Yves Faberon, Professeur honoraire de droit public et codirecteur de la Maison de la Mélanésie. A conference also needs supporting structures, such as universities and research centers or research associations. I wish to extend my warmest thanks to Institut Louis Favoreu at Aix-Mareseille University and to its director Xavier Philippe, who is with us today, to the Gouvernance et Politique Insulaire research center, Université de la Polynésie française, to Maison de la Mélanésie, Noumea, and to Centre Michel de l'Hospital, Université d'Auvergne, including Charles-André Dubreuil, who was acting Director for two terms. As for Institut d'études politiques, Aix-en-Provence, it provided active participation from its best professors.

Democracy is living together and the strength provided by being a group. In the academic world we like to experience this strength by expressing openness and pluralism, which are at the heart of the democratic spirit. In many respects, our academic work, thanks to our research structures, turns out to be the quintessence of our missions and the symbol of the influence of our institution: in this, we take part in invigorating democracy. This conference enables us once more to avail ourselves of the dynamics of debating and of the exchange of ideas.

I am always fully aware of how important the support and trust granted by our partners, be they public or private, are.

Research is made up of paths that cross and intersect. While on a path, we have encounters, words are exchanged, we reach out as well. Here, our partners are many and essential to the very cohesiveness of the group.

Our partners are eminently public, and I am grateful to the Director-General of the Pacific Community for the personal welcome he extended to us in this magnificent venue, the symbol of cooperation and development. I am also pleased to mention here our partnership with Fonds Pacifique, an economic, social and cultural cooperation fund for the Pacific. This organization is funded by the French Foreign Affairs Department, and through its support, it helps set up projects ensuring the integration of French Pacific entities into the Pacific Region. The Fund provided us support without which this conference could not have taken place under the present conditions. I thank its permanent ambassador and its representatives in New Caledonia for developing collaboration between French researchers and the Pacific area as a whole. Mr. Deputy Permanent Representative of France at the Pacific Community, Mr. Diplomatic advisor of the High Commissioner of the Republic in New Caledonia, Ladies and Gentlemen, I extend my gratitude to you for your support. The Overseas Minister has once again trusted us as she had done in the past, and research in French Overseas areas is highly promoted by her constant presence. The Droit et justice research mission has also provided valuable support, and I can only extend to it my warmest thanks, as it had faith in this ambitious project which attempts to go to the heart of the notion of democracy in order to capture the ways it is interpreted in Melanesia. Our work brings together not only French researchers, both from Mainland France and New Caledonia, but also colleagues from Fiji, Vanuatu, Papua-New Guinea, Australia, Canada, China and Italy. We also thank Agence universitaire de la francophonie for helping the conference take place and for disseminating its results. Our gratefulness also goes to Maison de la Mélanésie, which represents New Caledonia in Mainland France and helps people from New Caledonia along, especially young people when they are in Mainland France. As for the French state, it is an unfailing support. It helped me along in many respects in the projects that I have completed over the last

few years. The French state is always present, including in New Caledonia, and beyond partners already mentioned, I think especially of its most distinguished representation in New Caledonia, the Haut-Commissariat de la République.

Mr. High Commissioner, allow me to renew all my thanks to you and to the Mayor of Noumea, a member of Parliament, and to all the representatives of the New Caledonia public organizations: the Government Chairman, the Speaker of the Congress, the Chairmen of the Northern and Island Provinces, and the Speaker of the Customary Senate. Events such as this conference are possible only because you are by our side. You actively support research. You gather energies on a daily basis and you make democracy, *i.e.,* pluralism and respect for others flourish.

I also thank the private partners to whom we appeal and who support our projects, such as the Hertz Company.

I would also like to thank both the audience and our readers. A researcher is satisfied when his work is heeded, disseminated, and when it contributes to enriching stimulating debates. Democracy is by definition participatory, and democracy is unquestionably speech and transmission as well.

Florence Faberon

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Welcoming Speech

Dr Colin Tukuitonga,
Director General, Pacific Community (SPC), Noumea

We are delighted to welcome you. I would like to welcome you, to greet Mr. High Commissioner of the French Republic and all of you. Here you are at home and we are at home: France, New Caledonia, the twenty-six members that make up the SPC family. Welcome to all.

The Pacific Community has been in New Caledonia since 1949 ; it had been created in Australia in 1947. At the entrance to this room you can read, "SPC, the union of sciences and techniques at the service of a sustainable future in Oceania." Indeed, our organization is a technical and scientific organization, and therefore, topics like the one your conference deals with, democracy, are dealt with by our sister organization, the Pacific Islands Forum. Obviously, although it is not foreign to democracy, it works on development rather in its scientific and technical aspects. It is true it is essential to be familiar with the political environment in a broad sense. In other words, your presence here is a good thing for all, and I wish you an excellent conference in this SPC auditorium.

Conference Opening Speech

Vincent Bouvier,

Haut-Commissaire de la République en Nouvelle-Calédonie[1]

Mr. Director-General of the Pacific Community, Mrs. Faberon, Ladies and Gentlemen who represent the academic world, Ladies and Gentlemen,

Mrs. Faberon did me the honor of inviting me to this conference, and, in addition, she was so courteous as to ask me to say a few words for the conference opening; so I take the floor with humility, as I can see in front of me a particularly impressive panel; I will not allow myself to develop any considerations on democracy, either in the world or in Melanesia, before this audience made up of eminent and expert jurists particularly proficient in this subject.

However, I point out the wide scope of the topic you have elected to deal with and your anxiousness not to dodge any of its aspects:

- The rule of law and Melanesia, and as a result, the necessary reflection on its basic principles, its constitutional bases, the current judiciary systems and also the balance within tomorrow's Melanesian societies, reconciling democracy and native customary law, which are important issues for nation building.

- Democratic political life in Melanesia, both as a domestic and a regional/international perspective.

I would also like to say that the questions which bring you together are highly interesting as is the promising comparative approach you have chosen to favor today.

First, there is the issue of looking for a coherent definition of democracy, or a theory of democracy. I will still venture to offer a

[1] Mr. Vincent Bouvier, who was High Commissioner when the conference was held, is now Secretary General for the Sea.

minimal definition: on the one hand the participation, in forms that may vary, of the people or in other words of the citizens in political decision making, and on the other hand, the guarantee of a certain number of fundamental rights; such conditions presuppose the existence of the rule of law. In my view, it is inconceivable to speak of democracy as long as these two fundamental pillars are not both present.

Approaching democracy from a comparative standpoint does not necessarily come naturally. To accept the idea that political systems can be democratic in different ways is to bring in a challenge to the nature, or to the essence of the democratic principle, and therefore to its adaptive abilities. Of course, democracy as it is applied in practice always seems imperfect to us, but here we are dealing with something else. You propose to reflect on the practical aspects of democracy in states which are poles apart from democracy's birthplace, and therefore, you already accept the idea that defining democracy in the abstract does not cover every aspect of the issue. We must first ponder its content in the states that purport to apply it—the choices they have made in the definition of citizen participation in public affairs, the way these states define citizenship, the rights they regard as fundamental, and the structures they develop for the purpose of guaranteeing them....

I now come to deal with the second central issue of this conference—Melanesia. Is there actually such a thing as Melanesia? Is it something other than a geographical phrase? Does this geographical whole have a relevant internal coherence? Are we not here laboring under the influence of a description dating back several centuries, a simplistic and therefore somewhat improper one? Or is there real cultural and historical unity over and above a mental representation of space on ethnic criteria that are more or less proven?

If Melanesia does exist, then it has a legal, political and cultural reality which pre-exists the introduction of the democratic principle. Setting up the democratic principle in Melanesia inevitably causes, or may lead to friction, it may subvert the very

old local cultural structures, challenge the social organization systems and law as law is conceived and organized.

The comparative approach answers this criticism and allows us to determine how the democratic principle adjusts and must evince some flexibility in order to remain true to itself and move beyond some contradictions.

To these points we can add the fact that reflecting on this issue in Noumea, New Caledonia is highly appropriate. Since the Matignon Accords and, later, the Noumea Accords, New Caledonia is in the middle of a unique and highly original institutional experiment. In view of the vote provided by the Noumea Accord, a strategic reflection is ongoing regarding its future. The debates during the two days that start now come in the nick of time to enrich the reflection, the more so as the solution provided by the future government system in New Caledonia cannot be conceived as applying to an isolated territory. It must include a further dimension, that of a country which is necessarily open, a part of this Melanesian whole with which New Caledonia shares a destiny.

The Diversity of Democracy

Florence Faberon,
Maître de Conférences de droit public, HDR,
Université d'Auvergne, Centre Michel de l'Hospital (EA 4232)

In his January 31, 1964 press conference, General De Gaulle stated, "A Constitution is a spirit, institutions, a practice." We can use this analysis in examining democracy.

As a matter of fact, democracy is a spirit. We can think first about freedoms, all freedoms, and therefore about toleration and about their everyday use before even referring to etymology: democracy is power by the people. Democracy is not only majority rule, but also deep down respect for the minority. Equality and solidarity are added to form the spirit of democracy. This spirit is so essential that it is easy to understand how it has been the foundation of different civilizations—Ancient Greece and Ancient Rome, Christendom, the American and French Revolutions, etc. This spirit has been able to provide life to quite different government systems, whose geographic, historical, cultural origins are very much removed from each other, for as General De Gaulle rightly stated, the institutions and practice determine the government system on the basis of its spirit.

Democracy consists first and foremost of a political system which can overall be characterized, at least nowadays, as the rule of law. Concomitance between the two has not always been evidenced, but from here on in, democracy and the rule of law go hand in hand. Democracy means both rulers and the ruled obey the rule, under the authority of the judiciary power. The judiciary power has such a pivotal role in democracy that it is useful only provided it is strictly independent.

Once they have established this fundamental basis, traditional democracies (*i.e.,* the aliens in Melanesia) have various systems: judges may be elected or appointed, processes may be based either on legal precedent or on a code. But Melanesia also allows native customary rules. What is the place of judicial

pluralism in Melanesia, how can respect for customary rules be enforced, and consequently which democracy can we attain? The complex question of democratic pluralism in one single country is asked here.

In democracy, the supreme rule is the Constitution; the Constitution distributes powers, it describes the way they work and the way they are regulated. A democratic Constitution sets forth the way universal suffrage is the basis for the appointment of the different political bodies—the legislative power and the executive power. In this respect, Melanesia gives pause for thought, whether we consider the different versions of representative democracy which followed each other in Fiji or the restrictions placed on the electorate in New Caledonia in the name of decolonization.

But democracy, a freedom-based system, just like freedom, can exist only by setting its own limits. Democracy prevents anarchy through the law and order rules; these stand up against attacks on social cohesion, which is the basis of democracy. Democracy, the so complex political system, is not naïve enough to assume it can take root forever in harmony and consensus. To ensure its protection, democracy allows for an exceptional system, which fits situations marked by an exceptional crisis. Melanesia has experienced such events in each of its countries, and it can still search for the right way as in Bougainville, Papua-New Guinea.

There is no ignoring that the political system in a country with a rule of law moves beside a reality which is at variance with it, even totally different from it. Regarding Melanesia, we have to canvas political practices: in a democracy, they must afford freedoms and be tolerant.

Democracy is a form of government in which you can never be sure to know who is going to win elections before elections actually take place. It is not enough to exclude the single-party configuration. It is also necessary to secure real equality regarding freedom of speech. Equality in terms of freedom of speech should apply not only to all political opinions but also to opinions expressed by labor unions and religious organizations. All countervailing powers must count. All these types of associations

play their part in culture and in beliefs, which must be free in democracy—free to be in the minority, free to exercise power if and when they become a majority.

Democracy is a paradoxical idea; it allows all individuals to speak while shutting out the hubbub and, shutting out even more the sound of marching boots. Democracy can secure speech thanks to the general conviction that deep down, agreement on the kind of society is essential and establishes the legitimacy that all acknowledge. Freedoms for groups flourish within the fundamental democratic freedom. Democracy is a pluralistic yet cohesive society.

Democracy is a form of government in which freedoms are not limited to periods when elections are taking place or to political debates and posturing. Democratic practice means democracy in everyday life—the existence of public services, the fact that they can be accessed by all, their organization in the form of networks which can reach the whole nation and all groups of people.

Democracy does not mean only securing solidarity within the nation's population; it is also taking into account solidarity with other nations. Democracy is a universal form of government, and a democratic form of government is not meant to be alone. This aspect is particularly real for Melanesian countries, in the heart of the big Ocean, who have been connected to each other for centuries, since canoes came into being. It is easy to see that it is not simple to be a democrat and how a democratic society does not sail down a quiet river. The canoe called "Democracy" tacks between reefs, sails across headwinds, and sometimes comes across pirates. As she reaches the Melanesian Pacific, the crossing of the Barrier Reef has new contexts and new hardships in store for her, but here we believe in a world of spirits, and *we* know how powerful and upright the democratic spirit is.

Democracy is a sort of Promised Land to which different paths naturally lead us. In this respect, through an extraordinary alchemy, our so diverse peoples have a common spirit.

Introductory Papers

- I -
What Is Democracy?

What Is Democracy ?

Jean-Marie Pontier,
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Democracy is a form of government which enjoys a very wide consensus in the world (all countries claim they are democratic, even when they are not) and at the same time it is challenged, even misunderstood. However, one link is sure to be universally accepted, namely the link between democracy and the rule of law: while not all rules of law are democracies, democracy can only be based on the rule of law.

Democracy is not a fixed notion; it keeps evolving. It can be defined in relation to power, namely by saying that it is a form of government which provides an answer among others to the question of the basic principle of power; in democracy, this basic principle is numbers. Democracy is also more than a form of government; it implies beliefs, including belief in the virtue of compromise, but also in certain values which citizens can and must share. Such values are still more important than procedures for democratic life. Among the values, the moral requirements are inseparable from democracy; moral requirements imply both the rulers' dedication to public affairs and to the general interest, and citizens' duties toward the state and toward society.

History shows that the development of democracy was first the switch from a democracy called political democracy to a democracy known in Europe as economic and social democracy.

Political democracy stems from the liberal political philosophies, liberalism being intrinsically linked to democracy. Democracy is based upon several processes such as the franchise, which can be only universal suffrage (but universal suffrage is rather hard to define), separation of powers (which may have various forms), and lastly, in many countries, a multi-cameral legislative system, which more often than not is a bicameral system, with different powers vested in the second chamber, depending on the type of states.

Economic and social democracy, which developed in Western European countries, is an answer to the inadequacy of political democracy on account of the excesses of economic liberalism (political liberalism remaining unchallenged,) of urban concentration which followed industrialization, and of mass society. It resulted in the recognition of a new power given to the state, with the birth and development of the Welfare State. The Welfare State has obligations toward individuals and takes care of them. Economic and social democracy has also led to the recognition of new rights, which often have a collective nature, whereas the rights granted by political democracy were mainly individual ones. Economic and social democracy applies in areas with which the state did not deal, because it was not aware of them, such as culture and health. Local democracy, in the nations where it was limited, such as France, has developed to an unprecedented extent.

These breakthroughs of democracy raise questions now because democracy swings between a somewhat spent condition and renewal. The exhaustion of democracy is discernible through a certain disenchantment, in both the Weberian and common meanings, of democratic societies: individuals are disenchanted; they no longer trust their rulers, which estranges them from politics or delivers them to parties promising more than they can deliver; as for the rulers, they become aware of the limitations of their powers, because the policies initiated do not achieve their objectives. The policy of democratization, which is much valued in nations such as France, does not always achieve democracy, and sometimes it is but a delusion.

In addition, self-government and participation, two characteristics of democracy, also have their limits: constraints on individuals increase, restricting more and more some basic rights such as the right of property; participation, which has become an oft-used, even a worn-out topic, does not achieve its promise, and participation in the administrative services ("administrative democracy"), often vaunted as a new step in democracy, is often a pretense.

Democracy is confronted with new challenges. Some are linked to technologies, with the transformation, actually the "mediatization", of relationships (TV, social media,) with the problems raised by "electronic democracy" (which does not have only benefits.) Other challenges are linked to new behaviors on the part of individuals or groups (with what is known as "Civil disobedience" or "whistleblowers") and to attempts at reconciliation with the consumer society. In order to adapt, democracy must meet the requirement for transparency—but this notion has limits as well—and, maybe more so, for education, which is essential in living together peacefully.

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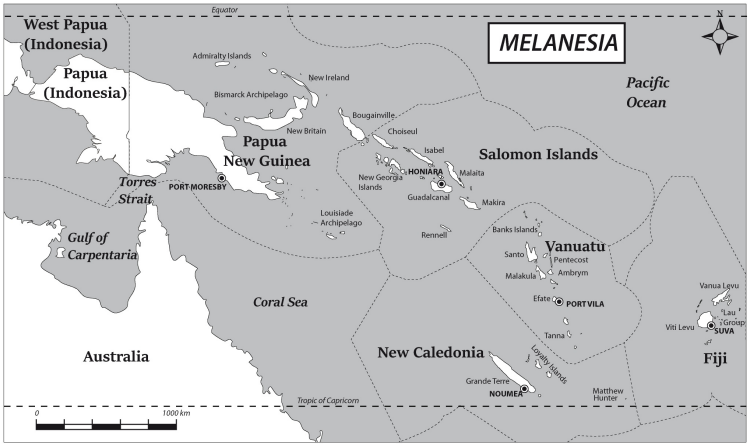
What Is Melanesia ?



Melanesia's Geography and Development

A Critical Introduction

Gilles Pestaña,
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Centre des nouvelles études sur le Pacifique (EA 4242 CNEP)

Although it is ancient, the geographical, historical and anthropological entity made up by Melanesia is rather hard to characterize. This paper offers a regional geography approach centered around three willfully provocative questions.

The first question deals with whether Melanesia actually exists. Cutting up divisions and territories on the map is always a construct. Can this region, which was named by Europeans in the nineteenth century, claim to represent a geographical "reality" likely to be relevant in the early twenty-first century? Melanesia is a perfect example of how individualizing and establishing boundaries for a region remain actions which are performative in nature, and we can wonder endlessly about its limits. Political boundaries, mapping, historical and linguistic facts, geographical and anthropological approaches are at variance when it comes to this group whose etymology may not be racist but racialist or race-based, to say the least (from Greek *Mela*, "black", and *Nesos*, "islands", Melanesia is the "black islands.") In addition, for decades, Melanesia was associated with negative images. While the thing "Melanesia" is not self-evident, it is essential to realize that nowadays it has been revisited and reinvented by the Melanesians themselves: they claim and recognize Melanesia as a component of their identity and unity.

The second question aims at challenging a theory which is widespread although it is most probably naïve: Melanesia is purportedly a region burdened with unsolvable problems, an accursed region. It allegedly accumulates difficulties—the violence linked to lands subject to major natural hazards and the difficulties

linked to political fragility and underdevelopment ("the curse of natural resources".) This notion is a mainstream disparaging notion which tends to turn into an unspoken assumption casting a pall of desperation on many studies dealing with the region. Without downplaying the huge difficulties which Melanesian lands have to face, it is fair to say that natural, economic, political and geographic fatalities do not exist. Each situation is specific, and in some projects, positive externalities which must be taken into account are added to negative externalities; besides, we should add that Melanesian societies are highly adaptive and resilient.

The third and final question is consubstantial to the previous one in the face of a despairing rhetoric: Is Melanesia doomed? While economic, political or social problems occur in a forcible way, one can find reasons for optimism through certain features such as biodiversity, linguistic diversity and cultural diversity. Thus, despite situations which may sometimes be troubled, Melanesian lands are not devoid of assets which help confront the future.

Melanesia is neither accursed nor doomed: it does exist, and it is even still a "new idea." "Democracy" may be poised to experience the same fate as "Melanesia," which was devised by Europeans, but is now re-devised by Melanesians.

History and Political Developments

Is Democracy an Exotic Plant Being Acclimated in Melanesia?

Paul Fizin,
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Democracy was born on the shores of the Mediterranean Sea, and just like a coconut thrown into the sea, it took root on Melanesian shores. Melanesia is a rich region, not only owing to its cultural diversity but also through its traditional modes and concepts of governance and through its ability to innovate and combine Melanesian tradition and democracy.

Democracy is based upon a certain number of values and concepts such as civil equality, separation of powers and political pluralism. The word's origin suggests that democracy is defined as government by the people. While these concepts were invented by the wheat civilization, the men of the yam civilization in Melanesia, as early as the pre-European period, also initiated original governance concepts. Clearly, democratic values vanish, they evolve, and sometimes they are to be found in the Melanesian concepts of governance which are founded on reciprocation and consensus. While democracy emphasizes the value of equality, Kanak society has always played up complementariness and reciprocation which relate to the notion of consensual democracy.

With the arrival of Westerners, through the alliance between the fan (in some Melanesian islands, a fan is a symbol of power reserved to high-ranking people) and the Bible, the early period was more dedicated to theocracy than to democracy. In Lifou, the arrival of the Gospel in 1842 brought new concepts relating to governance, and a theocratic form of government was set up. It was the result of a compact between the missionaries and the Lossi Big Chiefdom.

The idea of combining Melanesian values and practices and the democratic practice was born during the period of Melanesian

independences. It is embodied in the "Melanesian Way" (which is the title of 1980 Bernard Narokobi's book. It is also embodied in the setting up of customary chambers, although these have limited powers (the Great Chiefs Council in Fiji, the Sénat Coutumier in New Caledonia, the National Chiefs' Council in Vanuatu.) It is embodied in a certain idea of solidarity. In PNG, in Solomon Islands and in Vanuatu, the social practice known as Wantok (a mutual assistance system,) is widespread. Melanesian democracy is not a majoritarian democracy, and its political powers are unstable because they are fragmented. Majorities are often made up by unstable coalitions, as a result of the lack of major political parties, and rulers fall down as a result of shifting alliances. Generally speaking, democracy is male-dominated. Women are scantily represented in legislatures (for example, since independence, only three female representatives have been elected as members of the Solomon Islands Parliament,) except in New Caledonia. New Caledonia stands out because half the members of its Congress are women.

Basically, the practice of democracy in Melanesia raises the question of the transposition of democracy and of the nation-state as well as that of the ability to adapt to customary practices.

Melanesian Values

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Since the sixteenth century, many people from overseas, including those who worked on whaling boats and those who exploited sandalwood, have come repeatedly to New Caledonia. As early as their first stay on the island, those first comers found a solid working political structure. This accounts for the difficulty the first missionaries experienced in breaking into this solid structure. It also accounts for the confrontations between the natives and the French Army. From then on, Kanaks had to live with aliens. Now people talk about "two colors, one single people," and because it was necessary to make a distinction, two statuses emerged, one status was ordinary French law and the other customary law.

Within the big web of customary structures, both on the Main Island and on the smaller islands, there was no neutral stance. All parts of the web are linked by customary paths. Those relationships were the channels used to convey values such as respect, relationships, mutual understanding, reciprocation, love and all the news. As colonization jeopardized this civilization, the upshot was various revolts which led to many deaths. Big Chief Atai, Big Chief Noël, Eloi Machoro and his companion Joseph Nonaro, Big Chief Kwindo and Kanjo, Yeiwéné Yeiwéné, Jean-Marie Tjibaou..., which goes to show that the foundation of political struggle remains custom.

According to scientists, custom is a more than 4,000-year old civilization. It has been able to reach us intact today because to resist it knew how t o adjust to all the situations and all the periods in which it found itself.

You will notice that all our huts are round-shaped. In our philosophy, when the two ends of a circle meet it means there is no place for death. Only life is there. Sometimes, this circle, which is

the insiders' circle, may break through awkwardness. This brings a curse on the family, on the clan or on the district. In order for life not to be impacted by such failings, the offense is redeemed by inflicting the appropriate customary punishment on the offender, including lashing. Some tell us that such actions are illegal. In our view, this goes against youths' education. This is an example in which customary law and its values are not legally recognized.

This circle, which I took the liberty to describe, also defines traditional life based upon relationships, not only at the individual level but also at group level. Regardless of what the problem, or what the plan to implement is, the final decision is always the result of a consensus. In majoritarian democracy, as soon as a propaganda season starts, politicians across the political spectrum try desperately to offer to voters the most appealing platform possible, all the while being perfectly aware that power within the province or the city will go only to those who win a majority after the election. Those who are in the minority are shut out of political decisions. Therefore, nowadays, we are not afraid to state that custom is a democratic system, even more democratic than democracy itself, since it is consensual and inclusive.

Since custom is absolutely not anti-democratic, what is keeping us, whether or not we are independent, from having custom recognized as such and given its proper place in the current administrative and political setup of the country? Organizations such as the customary Senate have been implemented, but this is not sufficient; the Customary Senate should be in a position to make effective decisions.

Finally, Kanak cultural identity takes root on two bases: the Gospel and custom. So far various agreements have been concluded. In the wake of the Noumea Accord, the organic law sets up the framework within which numerous acts are passed. Now, it is important to recall here that the reason that leads us to such frenzy in lawmaking is the lack of love between us, whoever we are.

PART I:

MELANESIA AND THE RULE OF LAW

- I -

The Constitutional Bases

Democracy and Constitution

Democracy and Constitution
The New Constitutionalism

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The development of constitutional justice during the twentieth century has entailed an in-depth renewal of the relationships between constitution and democracy.

For a long time, the principle of the separation of powers established by the constitution embodied the main guarantee provided by democracy. Thereafter, it became apparent that the separation of powers was not by itself sufficient to guarantee the rights and liberties insofar as most contemporary democracies became "majoritarian democracies" wherein the executive branch rests upon a parliamentary majority which stands with it and support it. In order to guarantee that the "majoritarian will" should preserve political freedom and the citizens' basic rights, the constitution must establish a judicial review of the laws for the purpose of punishing restrictions by the legislative on those rights and freedoms.

The renewal of the relationships between the notions of constitution and democracy is predicated first and foremost on the mutation of the notion of constitution: its normativity and justiciability are now guaranteed by judicial review. This "guarantee provided by the constitution" allows the establishment of the rule of law, which, in many countries now has become consubstantial with democracy. As a result, democracy no longer implies only the participation of the citizens in exercising political power, but also the protection of individual rights and freedoms. Thus, this new conception of democracy rests on two pillars, the older one being the people's sovereignty and the more recent one the fact that the rule of law is guaranteed.

Enshrining the rule of law challenges the classical concept of representative democracy insofar as the content of the general will

is expressed by the law only insofar as the law is constitutional. Thus, the will of the representatives, who are elected through the democratic process, is under the control of the constitutional court, which is given the power to assess whether the constitution is effectively complied with, and this, obviously makes it play a crucial role. In this connection, there is a danger that the will of the constitutional court might replace that of the democratically-elected representatives, which at first glance may seem somewhat undemocratic.

The risk inherent in « government by judges » is linked, among other things, to the extent of freedom in constitutional construction which the court enjoys, as the constitutional standards it uses are more often than not, unspecified, and as a result, the court may make subjective rulings.

However, several justifications can be put forward to advocate the fact that democracy and the existence of judicial review by a court are compatible, and judicial review is presented as a guarantee for the constitution.

First and foremost, it is possible to maintain that the basis for judicial review's legitimacy is that the court does not have the final say: normally, when the court strikes down a law, it does not mean that this is an obstacle to the will of the legislative but rather a referral to another way: the court's striking down a law is not a final decision and it does not prevent the legislative from passing a constitutional law. Like a "lit de justice", the constituent power embodied by the people or by the people's representatives, can override an invalidation by the constitutional court. In this way, the democratic character of the rule of law is preserved. However, it is to be noted that obviously the constitution must not be too rigid; it should allow meeting the conditions for a constitutional amendment. Besides, it is also to be noted that the original constituent power must have decided not to limit the scope of the derived constituent power, by deciding that some constitutional provisions cannot be amended, which would give the court the final say.

Second, the compatibility between democracy and the existence of a constitutional court can be justified if we consider

that the court takes part in the democratic system in its capacity as a representative of the people's sovereignty, which amounts to saying that the law, an expression of the general will, is made by several partial bodies. The wills expressed by such bodies contribute to the shaping of the general will. The general will is not determined at election time but when the law must be enforced. The constitutional court would contribute as well to the expression of the general will insofar as it takes part in setting up the law, thereby performing an act of will.

Be that as it may, securing judicial review leads necessarily to the affirmation of a new conception of democracy, defined not only as the power of the people but also as the rule of law and the guarantee of fundamental rights.

Democracy and Constitution in Melanesia

Democracy and Constitutions in Fiji

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The Constitution of the Republic of Fiji has been in effect since September 7, 2013. It is the fourth Constitution in that nation since it gained independence in 1970. Before analyzing its democratic nature, and building on work conducted jointly with Marion Bastogi for the collective work *Etats et Constitutions du Pacifique Sud* (*Revue juridique polynésienne*, 2010,) it seems necessary to remind the reader how and why, unlike the other Pacific countries, this Pacific Island nation has changed Constitutions three times since independence.

For Fiji, reflection on the subject of "Democracy and Constitutions" is mainly built around the issue of the place given to the various communities. One basic element for understanding the situation in Fiji is the makeup of the population: currently, about 57% of the inhabitants are of Melanesian descent and 37% of Indian descent.

Fiji's political and constitutional development is particularly tumultuous, and it can be accounted for, among other things, by the coups which the nation experienced in 1987, 2000 and 2006. The 1987 and 2006 coups were initiated by the military, which did not happen in any other Pacific country. In both cases, the major initiators, Sitiven Rabuka and Frank Bainimarama, held power for a long time.

With the Constitution which was set up when Fiji gained independence, in 1970, Fiji was a dominion within the British Commonwealth. That Constitution had not been passed by a referendum or following a debate in Parliament, and it perpetuated the colonial system, in which communities were distinct,voters' lists separate, and elected officials selected by voters belonging to the same origin.

After the Constitution was repealed following the 1987 military coup, the "Constitution of the Sovereign Democratic Republic of Fiji" became effective as of July 1990. It provided for a restrictive representation of the Indian community and gave a prominent role to Melanesians, a system of government which bordered on Apartheid.

The Rabuka government had a "Constitution of the Republic of the Fiji Islands" prepared; it came into force in July 1997. This Constitution set up a system based on dialogue, consensus and power sharing among the communities. However, Rabuka's party lost the 1999 election to the Labor Party, which was chaired by an Indo-Fijian. The unrest came to a head, and on May 19, 2000, the Prime Minister and his supporters were taken hostage in the Parliament building. However, the Army did not go along. Its commander, Frank Bainimarama declared martial law, negotiated and obtained the release of the hostages; thereafter he arrested the coup leaders and set up a civilian government. But Bainimarama's political stances became radicalized, until on December 5, 2006 he initiated a coup. Parliament was disbanded, a popular Charter was drafted, and it set up the bases for the country's political development.

In April 2009, the President repealed the Constitution, dismissed the magistrates, announced that he would rule by order, and appointed Frank Bainimarama as provisional Prime Minister in charge of leading the country until an election was held in September 2014. The party created by Frank Bainimarama won the election; this victory amounts to an approval of the policy conducted since the 2006 coup and to the adoption by the citizens, albeit an indirect one, of a new Constitution which took effect in 2013.

Although it was not set up according to a democratic constitutional process (it was drafted under the strict control of the military government and not put to referendum,) this Constitution of the "Republic of Fiji" claims to enshrine a democratic regime and intends to secure the stability thereof. The 2013 Constitution provides that the Fiji Republic is a democratic and sovereign state based on the following values: equality among all citizens; respect

for human rights, for liberty and for the rule of law; an independent, impartial, competent and easy-to-access judiciary system; equality for all; protection for the underprivileged; human dignity; respect for the individual; personal responsibility and integrity; civic engagement and mutual assistance; good governance, notably the limitation and separation of powers; transparency and responsibility, and an enduring, efficient and prudent relationship with the natural environment.

The 2013 Constitution enshrines equality between all citizens, which is a major and indisputable breakthrough. However, special rights are granted to Melanesians, including the land—the land continues to be an inalienable collective property. There is also still room for positive developments (individual rights and freedoms need to be defined, the separation of powers, which is not really up to par, needs to be instituted, women's underrepresentation should end.)

The 2013 Constitution, in its provisions as in its implementation, does not fully abide by all the generally admitted democratic principles, but the country has come a long way when we compare this Constitution to the previous ones. Fijians are at the stage where they have the promise of democracy; they need time to end up with a perennial democracy.

Democracy and Constitution in New Caledonia

From a Situation at Odds with Democracy to the Overhaul of a New Social Contract

Bernard Deladrière,
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During the years between 1984 and 1988, when a civil war-like conflict raged in New Caledonia, someone may have written that the island was in a situation "at odds with democracy." As a matter of fact, the majority of the population that wanted to keep New Caledonia French was convinced that the French government in power at the time sought to force independence against the loyalists' will.

More than 25 years later, New Caledonia is still an entity within the French Republic. Its Constitution is the French Constitution. However, its specific identity has been taken into account in a special title in the Constitution (Title XIII). This title grants a constitutional status to the Noumea Accord, which was concluded May 5, 1998 between the two main political organizations in New Caledonia and the French Government.

New Caledonia is a living democracy in which the rule of law is guaranteed and secured. French citizens who are New Caledonia residents take part in all national elections. Therefore, they elect national representatives through the universal suffrage system. They are at the same time European citizens. Democratic debate is alive and well; it is performed on a permanent basis and all political parties are represented in the local Congress. We can say that New Caledonia meets the constitutional requirement for pluralism in ideas and opinions in a very satisfactory way. Economic and social democracy is also a reality, and it is multifarious, as there are seven labor unions and three employers' organizations. Last, but not least, respect for the rule of law is guaranteed by the court system and by the state's representative in

charge of checking the compliance of local authorities' actions with French law.

However, following the Matignon-Oudinot Accords (1988), and especially the Noumea Accord, significant attacks have been—and are still—directed against democratic principles not only in the political arena but also in economic, social and cultural fields.

The establishment of a « New Caledonia citizenship » has resulted in a freeze in the electorate for the provincial assemblies and the New Caledonia Congress. Thus, people who came over after November 8, 1998 and young people born in New Caledonia after that date, of parents who are not New Caledonia citizens, will never be enfranchised. The electorate for the vote on independence is also restricted and frozen. Besides, the institution of three provinces (two of which are ruled by the separatist minority) is the result of the acceptance by the loyalist majority not to implement the majority principle.

In economic and social matters, the unequal distribution of tax revenue among the three provinces is based upon the "rebalancing" principle; "New Caledonia citizens" and people who have been resident long enough have first call on employment; as regards the "Kanak identity", an agency for the development of Kanak culture and a Kanak languages academy were created; in addition, land distribution to Kanaks is ongoing.

If we stick to the basics, the record is a resounding success. For 27 years, New Caledonia has experienced a continuous period of peace, stability and prosperity. However, those waivers to democratic rules have been accepted because they were temporary or transitional. The overhaul of a new social contract can hardly be based on definitively disenfranchising a part of the residents of New Caledonia who are here to stay.

But taking into account "New Caledonia exceptionalism" must be achieved through "multicultural policies." This presupposes some common values to build on the cultural differences.

One can picture the passage of a real « Code of New Caledonia Citizenship" which could be based on democratic and republican values, but also Christian and Pacific values. This code would, among other things, define the method of acquisition of New Caledonia citizenship which should be inclusive rather than exclusive, but it would also define citizens' rights and duties.

Democracy in Papua New Guinea

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Papua New Guinea has been an independent state since September 16, 1975. Its Constitution asserts repeatedly that the nation is a democracy.

The organization of constitutional powers in Papua New Guinea is unquestionably a democratic one. While the United Kingdom monarch is its Head of state, he or she is represented locally by a Governor-General appointed by the Head of state; the Governor-General acts on and in accordance with the Government's opinion, and this opinion is provided in accordance with a decision by Parliament. The Prime Minister is a member of Parliament. He heads a government made up of ministers, selected among the members of Parliament. As the form of government established by the Constitution in 1975 is inspired by the British system known as "Westminster system", the Government is collectively responsible for its decisions before the legislature. Thus, it is Parliament, made up of members elected at the national level, of members elected at the provincial level and of members appointed by Parliament itself, which is at the heart of the constitutional makeup.

However, the Papuan constitutional framework cannot be viewed only from an organic vantage point. As in most Southern Pacific states, the Constitution combines independence and democracy with two other values, namely the recognition of God and the heritage of tradition. The Preamble to the 1975 Constitution proclaims unambiguously the will of the Papuan people to keep and pass on "Christian principles". However, while Christianity influences all aspects of Papuan life, there is no state religion in Papua New Guinea, which means each individual is free to practice any religion he chooses. Likewise, the Preamble emphasizes that the people of Papua New Guinea pays tribute to

the memory of its ancestors and acknowledges its valuable customs and its traditional wisdom. However, while the national law must be in perfect harmony with custom, custom must give way in case of departure from fundamental rights.

Presenting the constitutional framework cannot be sufficient to account for democracy in Papua New Guinea. It is also necessary to focus on its implementation, which has two characteristics: a weak national feeling and a challenge to judiciary power.

Although the Preamble to the Constitution provides that the people of Papua New Guinea is "united in one single nation," reality is quite different. Through many events, such as the one that led to the so-called "Panguna affair," (issuing copper mining licenses without prior consultation with the competent customary authorities on the lands involved,) we can realize not only that the national feeling can crumble fast when big money interests are at stake, but also that the individual interest of a local community often prevails over the national interest.

In addition, on account of the sometimes tempestuous relationships between the executive power and the Supreme Court (the 1979 Rooney case and the Somare-O'Neill conflict in 2011-2013, for example), we find that the separation of powers and the rule of law have trouble acclimatizing in Papua New Guinea.

Finally, if despite actual difficulties in their implementation, Papua New Guinea does establish the rule of law and political pluralism, it is still delicate to assess the strength of Papuan democracy.

The main reason for the difficulties encountered results from the great diversity of local particularisms and from the will to take them into account on a government level. This will, expressed as early as 1974 in the Report written by the Committee for Constitutional Planning, deprives the Papuan state "of certain instruments inherent to its sovereign functions, but it also has caused a certain judicial and administrative incompetence" (P. de Deckker and L. Kuntz, *La Bataille de la coutume et ses enjeux dans le Pacifique Sud,* L'Harmattan, 1998.) The assertion of the very much decentralized character of Papua New Guinea may reflect the

country's real nature. Some even contend that the word "Papuan" allegedly comes from Molucca and means "fatherless", which illustrates the notion of lack of centralized power. From democracy's vantage point, there should be no apology for the fact that a state allows a place, and even a very substantial place at that, to local entities. Clearly, however, for the time being, this place, maybe this too big place, hurts the country's unity and constitutes a real impediment to that "great future" (R.P. F. Hartzer, 1900) promised to Papua New Guinea.

Democracy and Constitution in Solomon Islands: Seeking a Homegrown Constitution

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Solomon Islands, a former British colony, obtained independence during the 1970s, just like most of the Pacific island territories. Solomon Islands have a little-known form of government—the country is currently a constitutional parliamentary monarchy and is a Commonwealth member. The head of state is Elizabeth II, locally represented by a Governor-General.

Because of the failure to consider the fact that Solomon Islands society was socio-culturally heterogeneous when the country gained independence, the islands framed a Constitution implementing an inadequate form of government, which has led to chronic political instability, and the customary rules and authorities were ignored in the political and legal system. This resulted in a break with the effective organization of society whose operation the Constitution intends to govern.

For the purpose of finding out the root causes of the dysfunction of government, we analysed various elements by turns : the choice in 1978 of a system based on a unitary state whose organization and mode of operation do not suit a pluralistic society; we also examined the voting system ("first past the post") for parliamentary elections which, in this context, has a very different impact from those found in a Western political system with a splitting up of the parliamentary representation, because Solomon Islands' system features a representation where it is more

important to be close to voters than to a political party. Finally, we deal with the fact that customary authorities and rules are given very little place in Solomon Islands' political and legal system with an unicameral Parliament and a lack of constitutional pluralism.

After a long and deadly internal conflict, the Salomon Islands contemplated the overhaul of the form of government as part of the 2000 Townsville Peace Agreement Act, with the stated desire to have a home-grown Constitution in order to shake the influence of the British political and judicial system in which the government is now locked-up. After a first draft of a Constitution in 2004, a participatory process for a constitutional revision including the whole population was set up in order to achieve the objective of a Constitution drafted by the local population and for the local population. Since 2008, this process, driven by the Constitutional Congress, which is made up of provincial and national representatives, along with several logistical and supporting structures and think tanks, has in turn been drafting the Constitution and consulting with the population.

The enactment of the Constitution was scheduled for 2016, even if its content is still undecided on a certain number of issues and even though the difficulties currently encountered by the Government will not all be solved. The new Constitution forgoes the monarchy for a republic as part of a system of government which remains a parliamentary system and opts for a federation; even if critics contend that this raises the question of costs and of the availability of a qualified labor force. The political system is reformed with a change in the voting system, as the alternative vote was the one preferred by the drafters. The party system is reviewed at the constitutional level in order to better include political parties in the institutional architecture. Finally, the place of customary authorities and rules does not seem to evolve significantly, even though some new features are established, such as communitarian governments.

Democracy and Constitution in Vanuatu

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In Vanuatu, it is a risky proposition to talk about uniform governance, for within each of the numerous islands there exist self-governing chiefdoms which function in isolation. The brutal advent of colonialism is to be blamed for the disorganization of native societies and a confusion in the very identity of the peoples involved, as a result of two colonizations, each being itself dual, both religious and political.

In religious matters, the competition between Protestant and Catholic conversions very quickly followed the same antagonistic patterns as Franco-British enmity. One of the consequences of the missions was the rejection of others on the pretext that they come from another tribe or speak another language. It was an attack on the ancestral links that preexisted the arrival of the Gospel, hence the destruction of the cultural matrix which had been common to the New Hebrides people.

In political matters, the very idiosyncratic condominium form of government was born in 1906. At that time, the London Convention declared the New Hebrides a "common influence land." The two powers would co-administer the islands on the basis of the condominium principle. The representatives of the two ruling powers organized and jointly ruled the Joint Naval Committee, the joint court and the common services (police force, postal and telegraphic service, ports and harbors, financial services, etc.) The joint administration worked along the main political lines set by the mother countries. There was a French prison and a British prison, a French hospital and a British hospital, French schools and British schools, French churches and

British churches. This dual system resulted in shutting out the natives from access to public service and from progress. As they were citizens of neither nation, they had to pick one protector from the two colonial nations. The pride of place went to the missionaries, who benefited as a result of the colonial power's rejection of natives.

Beyond this double colonization, Vanautu is marked by a chaotic access to independence. A petition was placed with the United Nations in 1971 by Jimmy Stevens, claiming independence. The same year, the English reverend Walter Lini established the New Hebrides National Party. This party, in 1974, became the Vanua'aku Pati, a mainly English-speaking party. From there on, the conflict between the English-speaking part (which was in the majority) and the French-speaking part (which was in the minority) took a turn for the worse, but an agreement made it possible to adopt a constitutional draft in September 1979. The condominium authorities called elections, and these took place in November 1979. The election was won by Walter Lini's party. Lini became head of the government. In 1979, some secession attempts were made by the supporters of France (in Santo, Tanna). These were suppressed by an armed Franco-British contingent, and in 1980, the proclamation of the Vemarana Independent Republic was crushed in turn. On July 30, 1980, the New Hebrides became the Republic of Vanuatu. Walter Lini asserted his power with military help from Papua New Guinea (the Kumul Force). Many French-speaking people were victims of repression, and they chose exile in New Caledonia.

Politically, Vanuatu is characterized by an imported traditional parliamentary Constitution. The Vanuatu Constitution purports to be in keeping with the "Westminster System," wherein the party in power faces the opposition, and the opposition, sooner or later, will be in power. This system did not make it easy to establish the Anglo-Saxon two-party system but resulted in the emergence of an unstable multiparty system, not unlike the Fourth Republic in France. Vanuatu looks like a micro state confronted with a host of crises. The very high fragmentation of Parliament reached a peak after the October 30, 2012 election. Out of the thirty or so competing parties, sixteen won representatives; they were

joined by four independent MPs. Edward Kilman, the of the Popular Progressive Party, who came out second after the Vanua'aku Pati, formed a coalition government with eight other parties. The latest parliamentary elections, in January 2016, enabled not less than 17 parties to be represented (8 are represented by a single member.) There are no women among the MPs. The fact that the population is scattered across 81 islands is reflected in the fragmentation of political parties; they unite depending on power relations and the influence of the main personalities.

Vanuatu's independence was gained under anti-democratic circumstances in many ways. The micro state that resulted suffers from many disabilities. However, it would be inappropriate to mock the chronic instability, as such instability is the result of pluralism which characterizes democracy and the legitimacy of political change. It is worth having a closer look so we may find some permanent traditions and the reality of palavers aiming for consensus. In this sense, democracy in Vanuatu attempts to acclimatize Westminster in the Pacific.

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Foreign-Grown or Alien Legal Systems

Judiciary Systems and the Rule of Law

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The comparative analysis of judiciary systems and of their components enables us now to highlight the essential link between Justice and the rule of law.

While "rule of law" means first and foremost the preeminence of law, checks and balances and guarantee of freedoms, the place given to courts can be only a central one. It was first in England and then in the United States that the idea emerged that only an organized justice system enabled individuals to be protected against the arbitrariness of those in power. Since real judiciary power was embedded in the Constitution of the United States (1787), many constitutions, international or regional charters placed justice at the heart of the rule of law. Thus, such documents and the way they are construed outline a global legal system.

Among the many contributions to the contemporary definition of the rule of law, that of the European Commission for democracy through law, the so-called "Venice Commission," presented in a March 2011 report, is particularly meaningful. The report means to reconcile the various notions of "rule of law", "Rechtsstaat" and "Etat de droit" and provide, at a time when law is being globalized, a definition focused on their converging requirements. Thus, according to this report, the consensus regarding the rule of law is based upon the respect for six major requirements: the preeminence of law, judicial security, the prohibition or arbitrariness, access to an independent and fair justice, respect for human rights, non-discrimination and equality under the law.

Henceforth, the link between justice and the rule of law, and broadly, between Justice and Democracy, appears to be predominant. The guarantees for an efficient justice condition the

workings among all six requirements. As a result, the role of the courts and their independence prove to be essential in any state featuring the rule of law. Therefore, nowadays, the democratic requirements for the organization of justice are essential for a government to be viewed as based on the rule of law and for the "international respectability" of a state.

Hence, we can now identify four major standards for any modern rule of law in the way it organizes its judiciary system, regardless of its size or its legal category, such as civil law, common law or a mixed law system: the power of courts must first be a separate and independent branch of power; effective administration of justice must assume respect for the principles of equal access and transparency, and for fundamental procedural rights.

Common Law and Civil Law in Vanuatu

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The recent 2015 crisis which resulted in 14 of the 52 national MPs in Vanuatu being convicted for corruption is part of a continuum of crises which the nation has been going through since independence. In fact, Vanuatu is going through rapid and deep changes. Its democratic structures are easy to unsettle through the corruption of those who wield power. However, the independent courts' stability seems to restore a balance up to a certain point.

From a comparative standpoint, the pluralist constitutional framework which is implemented must allow the British law and French law dating back to the New Hebrides Condominium to continue to be enforced. But ultimately, this framework will give way to a Vanuatu national law, where Kastom is enshrined as a legal rule. This is a major challenge, not to mention the respect for Melanesian values and the values of the Christian faith, which have the status of a constitutional principle in the Preamble to the 1980 Constitution.

The coexistence between written law (in this instance common law and civil law) and unwritten law (the numberless local customs) raises the issue of the dynamics of relationships between those systems and the way democracy operates. Does legal pluralism in the Vanuatu context really allow the expression of pluralistic standards or does it converge toward a single standards system?

Before dealing with common law and civil law, it is appropriate to deal briefly with *kastom, i.e.*, customary law which on all Vanuatu islands pre-exists the influence of the big Western written systems. Custom is recognized as a source of law enforceable from the standpoint of state law, and it also constitutes

a source of law in its own right. Indeed, custom is enforced "outside the system," with no need for any state involvement. Besides, most Vanuatu political leaders come from Melanesian families where custom rules. Economic and political relationships there are peculiarly different from what they are in Western societies. In power relationships, we can find corrupt practices and influence peddling which the judiciary power will end up punishing.

Beyond that, state law is divided into standards and legal practices borrowing both from common law and from the rules stemming from French civil law in the New Hebrides. In point of fact, common law has prevailed over the other standards, and this situation is not necessarily inevitable.

Indeed, many laws passed by Parliament resulted in filling up some legal areas (landed property, business, contracts, etc.) and their accumulation has had an organic effect. Unlike British laws, French laws are dated and they have not been superseded by new acts inspired by civil law. The common law way of thinking has become inescapable, the more so as legal minds, more often than not, turn to the neighboring systems (which are also common-law based) in order to find case-law solutions. Law professionals, who have studied common law, are not qualified to apply French law. So they would rather discard it if they can.

Despite the coexistence of the three official or national languages, the English language is predominant in Vanuatu law, and although, occasionally, the courts may have enforced some French law provisions, their decisions are made exclusively in English. The difficulty arising from using bilingual, and even trilingual drafting, is a real one. This being said, Vanuatu citizens are multilingual, and it remains paradoxical that no law is written in *Bislama*, which is the everyday most-spoken language.

Common law and civil law, as a written-law system, finally share a common feature—they are the product of traditions which are alien to Melanesian *kastom*.

To be sure, Vanuatu citizens have gained more independence by becoming a full-fledged people, but they have not fully embraced their country's state organizations. This writer suggests that civil law and *kastom*, in order to effectively compete with common law monopoly in the state's legal system, adopt common law form based on the notion of reform from within.

Democratic Requirements and New Caledonia Private Law

Isabelle Dauriac,
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Because « Democracy is nowadays a philosophy, a way of life and almost incidentally a form of government," (G. Burdeau), it must also invariably breathe its requirements, its values and its morals into the heart of New Caledonia private relationships law.

If we have to assess the democratic quality of private law as it is applicable in New Caledonia, it is because on account of the original constitutional status of New Caledonia, this law must be written locally and at the same time it must remain within the hierarchy of standards characterizing the French internal legal order.

Transferring standard-setting power from Parliament to the New Caledonia Congress does not involve any specific institutional danger of decline in terms of fundamental rights for New Caledonia residents involved in a legal action. Indeed, New Caledonia local laws, just like French national law, are subject to judicial review for checks on constitutionality and to a check on compliance with international conventions and treaties when the laws provide for litigation defense of fundamental rights, both operational and quality-related. What is known as "Question prioritaire de constitutionnalité"[2] is also valid in New Caledonia, and this safeguard is a major contribution to the fact that the New Caledonia private law is definitely constitutional.

[1] At the time the paper was presented during the conference, Isabelle Dauriac was on assignment at the University of New Caledonia.

[2] In French law, until the July 23, 2008 Constitutional amendment, it was impossible to challenge an act as unconstitutional once it was enacted and became final. The amendment allows a challenge, under certain conditions, after the legislation has been enacted, and the Conseil Constitutionnel can strike down provisions deemed unconstitutional.

By contrast, the transfer of normative powers to New Caledonia, an overseas territory within the French Republic, renews the significance and the values of a democracy to be redevised on the basis of specific local conditions. Many challenges confront the public organizations which ensure the democratic representation of the specific New Caledonia "citizenship".

New Caledonia lawmakers must appropriate newly acquired powers to provide the territory with the needed laws, which have to be adapted and accessible. The vitality of New Caledonia law is predicated on this premise.

The relationships between customs and fundamental rights bring new challenges both in the matter of courts' decisions and legal theory. However, only the future will tell whether those who are subject to customary statuses will take up these rights which are stated elsewhere to use them against their customs before customary courts.

The principle of citizens' equality under the law is going through re-phrasings in order to secure that Kanak identity is effectively recognized and to favor employment opportunity for New Caledonia locals and those whose have been residents for a long enough period of time. The process of making differences between people is at work both in civil matters and in matters relating to regulating the labor market.

All legal creative forces, local laws and court decisions, customs and written law, be it international, European or national and local, must engage in a constructive dialogue in order for the cultural and legal pluralism at work in New Caledonia not to hamper neither the needed economic and social rebalancing nor the full blooming of fundamental rights recognized to all.

Political and legal emancipation is a prerequisite for New Caledonia private law in the process of being built up to improve its inherent democratic qualities.

The French Judiciary System

Melanesia and Democracy

The "Administrative" Judge

Alain Levasseur,
Président des tribunaux administratifs
de la Nouvelle-Calédonie et de Wallis-et-Futuna

The distinctive features of the French judiciary system are well known. French law derives mainly from Roman law. This makes it distinct from common law. There is another difference insofar as the French system is based on a distinction between two types of courts which, in part, implement two different sets of laws through two different procedural systems controlled by two different sovereign courts. The issue is whether in Oceania this dual system, which is marked, since the Old Régime and the French Revolution, by the history and society of European France, has managed to adjust to the Melanesian world, and more particularly to New Caledonia, a place where traditions and custom prevail, a place fashioned in so singular a way by its own demographic development. I have been asked to contribute a paper, and as a practitioner of law and "administrative" magistrate, I suggest a pragmatic analysis of this issue, first from the standpoint of access to law for all New Caledonians, and thereafter from the standpoint of the specific features of each of the main categories of players who people the litigation scene in New Caledonia.

Access to law raises the issue of custom, of the neighborhood loci of public decisions, the increasingly enforced New Caledonia law and court decisions.

First and foremost, as regards the implementation of custom, chiefdoms are doubtless, according to European legal conceptions, public authority holders designed to organize part of the life of the Melanesian community. The ways decisions are made are very different from those which apply to legal entities

subject to public law of European origin, to cities, provinces, and New Caledonia itself. Customary public law decisions are in practice never submitted to review by an "administrative" court. Must they be? The question is only tentatively put.

Second, across the territory, the cities are the neighborhood loci for public decisions regardless of the various communities. New Caledonia residents of European descent or descendants of immigrants seem to be much more inclined than Kanaks to refer issues to "administrative" judges in case of litigation, which may suggest different ways to access law.

Third, the laws or regulations originating in Mainland France and enforced in New Caledonia are now very few. Evidence indicates that this trend will accelerate as New Caledonia residents will appropriate the law that has been transferred to them while adapting it to their needs and ambitions. "Administrative" courts will continue to rule "in the name of the French people", while enforcing New Caledonia law originating from New Caledonia citizens' deliberations.

Finally, this author emphasizes the role of case law or courts' decisions, especially when laws or regulations are incomplete or lack precision. He is concerned these abundant courts' decisions might lead to some reluctance to refer to the public service of justice, as the Speaker of the Customary Senate has recently stated: "Many cases end up in court and set legal precedents. In some ways, the law is written without us."

Regarding the players, it is appropriate to draw a distinction between the parties (the petitioners, the defendants, the third parties, who more often than not are from New Caledonia) and the professionals (attorneys and judges.) Attorneys are often from Mainland France, even though more and more are from New Caledonia. The author mentions the questionable situation regarding access to law and the rights of the defense in Wallis and Futuna, where attorneys are sometimes mandatory but where there are no attorneys' offices.

Last, « administrative » judges in New Caledonia, are actually all from Mainland France, since they include no magistrate from New Caledonia. Not only do we have to lament that, but we should also be concerned for New Caledonia's future.

The French Judiciary Systems, Melanesia and Democracy

The "Judiciary" Judge

Thierry Drack,
Premier président de la cour d'appel de Nouméa

In New Caledonia justice is not administered in the same way as in other parts of the French Republic. This is enough is to confuse any new judge coming from Mainland France. In New Caledonia we witness departures from the usual rules, local procedure, and Custom. The most befuddling thing for the newcomer is not as much the existence of a code of civil procedure or laws which are enforceable only in New Caledonia. As a matter of fact, these do not in the least impair the major fundamental principles of French justice, such as the impartiality and neutrality of the judge, respect for the adversarial system, the right to a fair trial. What disorients is rather the fact that we have to enforce laws taking into account the fact that the accused belongs to a specific community or has a specific personal status, and therefore we actually put aside one pillar of our system which is a feature of a democratic justice—equal justice for all.

We do not know whether this discrimination is something positive, but is it antithetical to the very notion of democracy, or on the contrary, does it make democracy stronger? We will leave the answer to the many eminent specialists who contribute to this symposium. What matters to us is the fact that justice in New Caledonia, through its action in civil matters in settling litigation referred to the courts, or in criminal matters to punish deviant behavior, contributes to keeping social peace in New Caledonia, such peace being a *sine qua non* for democracy.

We can assert that the specific legal devices implemented in the Code of judiciary organization in New Caledonia relating to Melanesians have promoted and still do promote the preservation of social peace. Justice, a prerequisite for democracy, appears to be

respectful of beliefs and traditions, which is conducive to better acceptance of court decisions. How do magistrates and people who have to go through the courts feel about the fact that diversity is taken into account? Is it possible to imagine it can be extended further as some customary leaders request? Such questions relate both to criminal and civil matters, and beyond that to the future.

Criminal law, criminal procedure for punishment of offenses, do not depart from usual and ordinary law, and as in Mainland France, apply to all regardless of the status of the accused or of the victim. There is no exception to this rule, and the Court of Appeals had the opportunity to restate that very clearly, notably in the matter of a customary eviction in a ruling by the first chamber April 28, 2009. However, the borderline is not as airtight as it may appear at first sight, and the uniform enforcement of criminal law bears qualification. Two combined points allow us to think so: the court's subdivisions in other cities and the judges' assistants in criminal courts dealing with misdemeanors.

While in criminal matters the principle is unity, subject to qualifications, there is no such a thing in civil matters and regarding customary lands, and this seems to challenge democracy itself. The customary civil status and customary lands involve a requirement to adjust. So long as all parties are subject to the customary civil status, or when litigation is about a customary land, lawmakers depart from the rules of ordinary law, including in the way courts are organized, as they are supplemented by customary judges' assistants.

Two questions may be asked for the purpose of ensuring a better consideration of diversity in judiciary organization in New Caledonia. Can we include in our judiciary organization code any courts made up exclusively of Melanesian judges to adjudicate on cases in which all the parties have a specific civil status? Can we contemplate, as some customary leaders claim, enforcing custom in criminal matters, with customary assistants and professional judges as in civil matters? If we leave it to everybody to suggest an answer, we have to specify that regarding courts made up of local judges, this device already exists in the jurisdiction of the Noumea Court of Appeals, namely in Wallis and Futuna. Regarding

criminal matters, even if we do not go as far as create a court which would enforce the "customary criminal law," it is possible, for example, to think about implementing a procedure in the juvenile court including some parts of custom likely to provide to young people some cultural points of reference. In this area, New Zealand practice is very instructive.

Finally, we can say that the choices were made for New Caledonia at a difficult time in its history, and these choices have favored a resolutely discriminatory judiciary organization and a resolutely discriminatory enforceable law. Far from weakening democracy, such choices, on the contrary, have strengthened it and also enabled the judiciary to find its place in the building of the common destiny for New Caledonia residents.

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Democracy and Indigenous Customary Law

Legal Pluralism in Melanesia

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Democracy as we see it nowadays seems to be a privilege granted to modern nations. In this respect, democracy could be conceived of only as representative government structures guaranteeing to every citizen the same legal regime, and law could proceed only from the state. This monistic conception leads to a positivistic ideology and opposes any idea of recognizing a law which would originate outside the state, in other words legal pluralism. Now, legal pluralism is alive and well in Melanesia as a certain number of indigenous law systems are still extant. The coexistence with state legal systems puts to the test the transposition of democratic models set up during the colonial period. The issue now, therefore, is to know whether our democracies can integrate the colonized peoples into their political scheme.

Currently, the various existing law systems are differentiated only by the will of the state and as a result of a culturalist stance which shuts out all political dimensions. Thus, while in New Caledonia indigenous rights are acknowledged, they are in no way equivalent to state law. However, this tricky context does not seem to hamper the democratic process, which is always part of complex histories and contexts. Recognition of a legal peculiarity even looks like an approach meant to atone for colonial injustices perpetrated upon indigenous people at specific periods of their history by democratic nations. Instituting a dialogue between two legal systems enforceable on two different categories of people would probably be an ordeal for democracy, but such ordeal would prove that the notion of democracy is adaptable.

If at first glance recognizing specific laws for certain categories of people may seem ambivalent in a democratic context, notably with respect to the equality principle, a closer look can prove that taking peculiarities into account elevates the very concept of democracy. Affirmative action is a democratic breakthrough if we think that it can make the ideal of equality fully effective by correcting the inequality of human conditions, including in the specific case of colonialism. This discrimination can atone, protect and be understandable if we observe that the indigenous populations' rights existed prior to the legal system slapped on by colonization.

In addition, nowadays democracy is no longer limited to the only issue of political structures and, notably under European influence, it includes the protection of fundamental rights, suggesting thereby a different understanding of such rights. This applies, for instance, to the right to "experienced" identity, that is, the identity people feel the most comfortable with, fashioned by court decisions with respect to Section 1 and Section 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. "Experienced" identity involves the right for an individual to "be identical to oneself, that is, made one psychologically and socially." (M. Greco, "La Reconnaissance de l'identité vécue : une confrontation entre jurisprudence de la Cour européenne des droit de l'homme et du droit positif français", Master 2 thesis, 2012, Université de Perpignan) In this juncture, the recognition of legal pluralism in New Caledonia would be a means to guarantee for Kanaks a right to identity through peculiar legal practices, within the group they belong to.

While democracy may well put up with the existence within it of legal pluralism,and consequently with the existence of indigenous rights, another hurdle seems to pit democracy against the content of indigenous rights. Their peculiarity, their patriarchal inequalities and their political systems evidently run counter to the Western democratic models.

Conventional wisdom apprehends indigenous rights as necessarily incompatible with the democratic representation of modern states, embodied, among other things, by universal

suffrage elections, representative political structures and separation of powers. Now, the apparent stability of those markers, the guarantors of democracy, is not complete. Such is the case with separation of powers, which is now challenged by a system based on presidential power, or with the usurped term "universal suffrage".

Because it is impossible for indigenous rights to apprehend and guarantee respect for fundamental rights, we are also faced with an argument which is often used to challenge the democratic aspect of those societies. One relevant example is the patriarchal system, which is alleged to run counter to the equality principle. This criticism is valid only if it is combined with a rigid view of indigenous right, seen as unlikely to evolve. Now, the analysis of power relations and the observation of periods in history prove that legal practices do evolve, which goes to show that whether or not it issues from the state, law has a dialectical dimension.

In the final analysis, if we follow the course of Melanesian customs over more than a century, and if we forgo an essentialist representation, legal pluralism is more a factor than a hindrance in helping democracy move forward. By instituting judiciary procedures within the indigenous way of life and rights, the dialogue between the different legal cultures strengthens the European approach through which democracy guarantees to the individual respect for his identity and for his collective history.

The compatibility of custom and democracy in Fiji:

Some observations from post-contact history

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This paper examines aspects of popular political participation in Fiji's post-contact period (1800-1850s). By re-reading the archives "against the grain", it critiques the notion that it was customary for Fijian chiefs to rule like despots and for people to blindly follow the edicts of their rulers. With a little bricolage, it reconstructs the world and stories of ordinary men and women in a way that simultaneously draws them away from the fringes of history and reconfigures them at the centre of history.

Expressions of hierarchy in early 19th Century Fiji are inescapable but overstated. Fijian chiefly institutions were never panoptical. "The people" were actively engaged in many layers of formal and informal politics. For instance, "peoples' assemblies" were regular councils that facilitated consultation and discussion about various public affairs, laws, and other matters pertaining to daily work. Although they were generally managed by the chief and his entourage, people could expect some room for negotiation. The existence and deliberations of these assemblies thus acted as institutional expressions of the limits that communities placed on their chief's exercise of power.

The management of power in the early 1800s was thus more than a mere top-down process. This complex inter-relationship is captured in the Fijian dictum "na turaga na tamata, na tamata na turaga" – "the chief is the people and the people are the chief". That is, while popular assemblies recognised the entitlement of chiefs to exercise control over the people, they also functioned as the practical and ritual means by which the common interest was

catered for. They were avenues by which people voiced their views on matters of significance to their families and communities.

Admittedly, consultation was usually premised on the chief's right to rule rather than on democratic notions about the people's right to demand it. Also, speech was restricted to adult males. Hence, while these assemblies help us to re-assess western views about chiefly despotism, they pose challenges in terms of inspiring democratization in the present.

Provisions for the distribution of wealth were also well established. Solevu feasts for instance, functioned as focal points for the pooling and redistribution of wealth. Other measures restricted chiefs' ability to appropriate wealth. For instance, land did not belong to them. While they could demand the fruits of it, they could not alienate *qele* – the soil that produced the fruits. Chiefly wealth was thus checked by well-established laws and rituals.

The prospect of being removed from office was often enough to deter chiefs from exploiting or brutalising their people. When chiefs became tyrannical, tribes could use an impending war to desert their ruler or to plan his demise by joining the enemy. Exceptionally, some chiefs met death at the hands of their subjects. Hence, there were thresholds of exaction and oppression beyond which the chiefs risked their lives.

Such examples of overt collective action were rare. When they resisted their chiefs, people were likely to use "weapons of the weak". These were safer and avoided the risk of direct clashes with authorities. Much grassroots politics took place in this way, although, a lack of documentary evidence makes it difficult to establish their exact nature.

In representing gender politics, early Europeans depicted Taukei women as "beasts of burden". Yet, the archives reveal that women enjoyed some power. A few were priestesses, negotiators, emissaries of peace, or chiefs. As Sahlins has shown, these women used their power to variously organise and reorganise society through the alliances they made and unmade. Ordinary women used a multitude of tactics to engage with the repressive apparatus of Taukei patriarchal control. This involved complex relations of

accommodation and transgression in which women simultaneously submitted to and subverted the rule of men within their homes.

The above principles and processes all pre-date contact with Europe and Christianity. They challenge the claim that democratic principles are foreign to Fiji. They open up entry points for discussing consultative decision-making, distribution of power, leadership, egalitarianism, accountability, collective action, decentralisation, and consensus-building – in the present. Fiji's bourgeoning democracy can strengthen its relevance and legitimacy by recognising the value of indigenous practices. Culture can be a powerful partner in the democratic process – not necessarily an obstacle. When culture produces and validates democratic principles, democracy ceases to be an abstract, foreign, or sacred phenomenon that only others understand and do. People can claim it as their own.

Observations by the Great Witness

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Avocat-conseil, Tremblay Bois Mignault Lemay, s.e.n.c.r.l.

It may seem surprising to pick a Canadian to start a debate on democracy in Melanesia, but actually we have things in common.

Democratic structures were brought to Canada by British colonization, but they had to be gradually adjusted to fit the local context, for Canada must deal with the First Nations, a minority of French descent which settled there over 400 years ago and with more newcomers. This led to the recognition in the Constitution of an asymmetrical federalism, a dual legal system, special statutes and the recognition of ancestral rights. As a result, our ongoing challenge consists in promoting the rights of all the components of Canadian society as well as the common values of that society.

The Melanesian states have in common with Canada the fact they have political structures which are part of their British and French colonial heritage. However, these structures have also had to be adapted to the Melanesian context, and we can wonder whether in doing so we have distorted the requirements of democracy.

The masterly contribution by Professor Pontier shows that the very notion of democracy is an evolutive one and it adapts to changes. Democracy makes the people, and not religion or ethnicity, the foundation of power. The majority prevails in making laws, while showing respect for the minority. But citizens' being disenchanted with ideologies and politicians, and the citizens' feeling of powerlessness as regards adequate participation in choosing decisions, are likely to lead to civil disobedience and rejection of the political structures. Therefore, democracy has to be reinvented. In Melanesia it has to face several challenges.

The first challenge relates to decentralization. The Melanesian states have many government levels. Do these make

for strength or weakness? The principle of subsidiarity, a fine thing in itself, may be nothing else in some of the region's nations than the balkanization of territories, of populations and of centers of power.

A second challenge relates to representation. Is the principle of one man, one vote, with full equality, inescapable at a time when it is not fully enforced in advanced democracies? In Melanesia, political considerations brought restrictions to the franchise for newcomers, whether directly as in New Caledonia or indirectly as in Fiji. Is redistricting for elections, which aims at giving more weight to certain communities than their number would warrant, really justifiable by motives pertaining to the preservation of pluralism? What about proportional representation, which favors diversity but sometimes government instability as well? Consensualism may be a solution, as in Canada's Nunavut. But negotiation should not be used as a form to block any change or at the expense of the general interest, as happened in Vanuatu. Nor is it always possible, as Fiji has shown.

A third challenge relates to custom and to the existence of many legal systems. Customary law and custom are present in all Melanesian states. An evolutive customary law which complies with fundamental rights can certainly be an enrichment. Is it not possible to contemplate considering or integrating some components of custom and private customary law at all stages in the process of passing public measures? Some recent examples show it is possible. This would avoid perpetuating a legal system founded upon two discrete components.

This leads me to my last point, the necessity for shared values. The unity of each Melanesian state presupposes a collective will to live together. This requires a certain number of fundamental values shared by the various populations of those states. Some of these values may be provided for in the Constitution, a law or a supra-legislative charter, but they can also be recognized by the courts. The Melanesian states on the whole have independent courts and judges. Professor Roux has reminded us that the rule of law is a component of democracy.

Without unity and efficient democratic structures working properly, are not the Melanesian states in danger of being dominated by economic and political interests which are outsiders to the region? Are some infringements of traditional democracy the price to pay to reach such unity? Are the affirmative action programs favoring some groups who were victims of discrimination which took place earlier to be outlawed or rather managed? Is it not possible to conceive within some states the existence of many nations? In Canada the indigenous nations and the Quebec nation are recognized within the Canadian nation.

Some recent experiences or some experiences under development show that the Melanesian states are able to innovate in this direction. As the Anglo-Saxons say, "We have to think outside the box", in order to avoid traditional models which are not adapted to the Melanesian context.

Part Two:

MELANESIA AND DEMOCRATIC POLITICAL LIFE

- I -

The Ways of Political Life

Pluralism in Political Expressions, Oppositions and Majority Changes

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Pluralism, oppositions and majority changes have become key words in a modern view of democracy. One such instance is the July 23, 2008 French constitutional Act no. 2008-724, providing for "modernization" of the Fifth Republic's government institutions. The act puts these three components at the heart of the Constitution with a view to addressing democracy's inherent contradiction.

As democracy is based upon the prevalence of numbers along with the fiction that a fraction decides for the whole population, in practice it tends to lead to the tyranny of the majority. In addition, the sacrosanct principle of the separation of powers, which is theoretically a guarantee for the balance of power among the three branches and for moderation on the part of political power, proves quite powerless... To the contrary, the way modern democracies work bears out what Bagehot stated a long time ago: in a parliamentary system, the separation of powers leads in practice to an all but full merger between the executive and the legislative, both held by the majority.

Pluralism, or the increased status given to diversity, which is allegedly good in itself, opposition, in this instance political oppositions, and majority changes, which amount to the sequence, or in fact the return into the political sphere of majorities but also of men, ideas and opinions, appear under such circumstances as cures to those quasi structural ills which democracy carries. Pluralism, oppositions and majority changes, these three notions seem at first blush closely linked to a sort of virtuous circle, pluralism entailing opposition, which in turns causes a majority change.

This seemingly virtuous circle may also get jammed. If pluralism in political expression must respect oppositions and accept majority changes, how far should it go? Does pluralism allow all kinds of opposition, and must it lead to all kinds of majority changes? Are oppositions capable of respecting pluralism? Or even do they want majority changes? Are they capable of assuming and exercising power, whether together or separately? Such questions must be included in the issue which has brought us together, democracy, whose malleability, and even evanescent nature have been highlighted.

Setting store by pluralism, oppositions and majority changes is part of a renewed view of democracy, a democracy that wishes to be modern and exemplary, in the words of the 2008 Constitutional amendment, so much so that these terms have become new elements in the definition of democracy.

Ancient philosophical foundations have led to considering minorities valuable and to recognizing the limits of majority decisions, and such notions are actually implemented in legal systems. This is apt to improve the way democracy functions. The minority must be heard. For that matter, in Kelsen's view, the essence of democracy lies in the possibility for majority and minority to reach a compromise. Democracy is improved by pluralism and by minority participation. This view was already advocated by Sieyès. It explains, for example, that interest groups are considered valuable, since they are regarded as links with civil society. This new vision of democracy also favors a functional approach by the minority, for the minority's duty is to compel the majority to debate and justify its actions. Still more, as part of a modern democracy, a role granted to the minority would make it possible to renew the theory of the separation of powers.

In this process of promoting some components, democracy remains both a framework and a limit. These elements are given more value insofar as they are useful to democracy, or at least as long as they do not disrupt it, so that they sometimes seem to be even capitalized on. Conversely, pluralism, oppositions and majority changes are limited, even denied when they appear to be harmful to democracy. In this way, the minority is kept in check

and given a sense of responsibility. Setting store by pluralism, oppositions and majority changes necessarily raises the issue of limits: To what extent? Can democracy include anti-democratic groups? As Pascal Jan pointed out, the answer to this question is obvious when it is asked in an autocratic regime, but it grows insoluble when it is contemplated in a pluralistic democracy. Thus, democracy makes up the foundation but also the limits of political pluralism.

Another pitfall is the question of how to preserve the setup of the collective "we" as it expresses itself in a representative democracy marked by the majority system. Setting store by pluralism should not lead to treating representative systems too roughly, for a representative system remains the favored channel for the expression of the general will. At this junction, it is necessary to mention again how important it was to introduce minority groups in 2008. This new feature was little debated, and as a result, it may have been called a minor, a "so-called" or a phony reform, and yet, it marks for the first time the institution into the Constitution of minority groups which are the real antonyms for majority and the vehicles of pluralism.

Is Local Democracy Sick?

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It seems to be a foregone conclusion: French people no longer trust and no longer believe in the representative system. They no longer think their representatives do represent them, and in some cases, they simply desert the public domain. This stricture is aimed both at the way the representative system works, for it allegedly no longer makes it possible to "will" for the nation and thus to meet the general interest, and at the lack of representativeness among elected officials and deliberative assemblies.

What are the symptoms and the remedies for the disease affecting French democracy in this way, and more specifically local democracy, which is of interest to us?

Local democracy, which exists at the level of local communities, be it purely elective or participatory, is allegedly sick on account of its standards, for it is locked up in normative constraints which freeze public life, so much so that people may have wondered whether there is a remedy consisting in setting up a democracy without the standards.

Local democracy is allegedly also sick on account of the obvious failure of the implementation of various forms of local elections given the too many standards which make implementing such mechanisms of participatory democracy pretty illusory. Suffice it to say that the record is paltry, not to say poor, in the matter of local referendums based upon Article 72-1 of the Constitution. Most logically, the record is paltry or poor in New Caledonia and its provinces since this procedure does not apply there. We can find the same thing regarding the procedures which are applicable to elective democracy.

According to the many criticisms leveled against the workings of local democracy, local democracy is a corrupt

democracy. It is allegedly on a quest for a new ethics for public decision, a new ethics regarding decisions that have been made.

Do these symptoms show a serious disease or a mere rheumatism affecting local democracy? Is local democracy really in a crisis or does it simply suffer from a poor image too widely disseminated by opinion polls and the media? To attempt an answer to these queries, we need to take three points into account: First and foremost, the much-criticized inadequacy of democratically-passed decisions to the general-interest purpose pertains to a quite subjective assessment of what the representative system is. Second, it seems that quite a few citizens are not ready to play by the rules of representative democracy. To this, we can add the fact that citizens themselves are not always convinced that such techniques have the merits they are purported to have. Finally, we must consider the pretty numerous reforms passed during the last decade to remedy some dysfunctions of local representative democracy.

With respect to these points, it is possible to analyze the suggested remedies likely to enable local democracy to meet citizens' expectations. One hypothesis is often set forth; it states that curing local representative democracy can be performed by way of putting citizens at the very heart of the way the common good is determined. Yet, local democracy will certainly not find its salvation in the development of new legal rules that define the limits of alternative citizen participation techniques which can really work only if they are based on some spontaneity. Positive law is sufficiently rich in techniques that make it possible to correct the flaws or the weaknesses in the majority system: the citizens' right to information, the right to be consulted, and, more rarely, the right to decide.

While French law regarding local democracy nowadays includes enough tools allowing to secure a more effective participation of citizens in the way the common good is determined, it seems these tools are not adequately used, owing to too great legal constraints, reluctance and lack of knowledge. Local democracy's disease is very certainly also a disease linked to the lack of familiarity with the enforceable rules, with government

institutions, and with political, economic and social issues relating to community development. Information makes for virtuous citizens—in the platonic sense; it makes it possible to participate, consent, and accept deliberations which are democratically passed by the local representative bodies.

Contrary to what is often asserted, the crisis of democracy does not stem from the citizens' lack of interest in public affairs and from the desertion of the public field. Therefore, the cure might come from citizens' regaining control of local democracy's existing techniques, from a re-acculturation of citizens regarding the exercise of elective and semi-direct democracy as it is currently organized in France and as its limits are defined by positive law.

Democracy and the Process of Institutional Development: the "Reflections on New Caledonia's Institutional Future"

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The purpose of this paper is to analyze the experience drawn from a particularly original political and institutional development process in New Caledonia. The end-purpose of this process is New Caledonia's emancipation in a democratic framework, since the May 5, 1998 Noumea Accord's preamble provides that an election on the transfer of sovereign powers, access to full sovereignty at the international level and the change from a local citizenship to full citizenship or nationality will be proposed to New Caledonia residents. This referendum is scheduled to start May 2014, and it might extend all the way to 2022.

While it is up to New Caledonia residents to decide upon New Caledonia's institutional future, democracy involves an educational aspect implying some knowledge of the various choices offered. Therefore, it is easy to understand how important it is to bring some thoughts apt to flesh out democratic debate. The *Mission de réflexion sur l'Avenir institutionnel de la Nouvelle-Calédonie* (a group assigned to reflect on New Caledonia's institutional future) will operate within this framework: the group has an approach and working hypotheses, each being explained but none favored over others. Various prospects for the future are identified, and the residents, once instructed, will be in a position to make a choice regarding New Caledonia's institutional future with full knowledge of the facts.

In order to prepare for this crucial event for New Caledonia's future, the then Prime Minister, in answer to a request by the Noumea Accord signatories, set up the abovementioned "Mission" by a September 20, 2011 order. The group is made up of Mr. Jean Courtial, conseiller d'Etat (a magistrate on the French highest "administrative" court), the group's head, Mr. Stéphane Grauvogel, Delegate General for Overseas, and myself, college professor, agrégé in public law, referral person for the Mission on institutional issues. Thinking innovatively, this Mission endeavored to bring to New Caledonia officials information enabling them to put together the theoretical and legal tools to fill in their reflection and to take part in informing the people regarding New Caledonia's institutional future. The legal setup was renewed by the new Prime Minister's October 17, 2012 decision—the Prime Minister having changed following a majority change a few months earlier.) This time, the Mission was in charge of summarizing the relevant information and providing to the "Institutional Future" steering committee some lines of approach and bases for discussion on New Caledonia's institutional future.

On the basis of the statement of conclusions' content, the Signatories' Committee, meeting in Paris December 6, 2012, had wished, that the Mission "[...] should modelize, through simulations, the various major hypotheses regarding the institutional development and chart the way sovereign powers can be exercised according to the major possible options depending on the results of the election provided for in the Agreement." In order to meet this request, the Mission endeavored to present four major hypotheses regarding institutional development and to present them both in an impartial and synthetic way, within the scope which was assigned to it. The hypotheses range from pure and simple independence to the consolidation of the current provisional status.

Among the hypotheses, two develop the prospects of New Caledonia's gaining total sovereignty. The first one is about full *sovereignty pure and simple*, without any special link with France, in other words, what is generally known as "independence". The second is about full sovereignty coupled with the preservation of a special relationship between a sovereign New Caledonia and

France. We called this hypothesis *full sovereignty with partnership*. The other two are self-government statuses within the French Republic: *an extended autonomy*, that is, a New Caledonia still more autonomous than it is today, and a *sustained autonomy* which would be confined to maintaining and strengthening the current provisional status.

In conclusion, and as we pointed out as part of the Mission, since the election of the fourth Congress in 2014, a new period has started. After the reflection and preparation period, this period, between 2014 and 2018 should be a period for debate, and certainly political negotiation with a view to preparing the self-determination vote. During this period, the state, which is a signatory and a partner in the Noumea Accord, will have to go along and support the institutional development. In this issue, as in others, for that matter, having an "on and off" state is inconceivable. Regardless of the institutional choice made by the New Caledonia population, and in compliance with the democratic principle, it is our strong belief that the state must remain a major partner in the implementation of this option.

- 2 -

Determining Public Policies

Public Policies: The Requirements of Democracy

Public Policies: The Requirements of Democracy

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While democracy is a reality in many states, its forms, the ways it is expressed have altered considerably across the planet. The "operationalization" of democracy, that is, the implementation of the political principles of public management (which are thrown together in the term "governance") is performed through public policies. Public policies are one step toward achievement between political programs and public decisions. They are part of a process which calls for players, networks and procedures. Public policies had long been viewed as a privilege of government services, but they have branched out through all decisions calling for public intervention.

Public policies are closely linked to the agencies that manage them. Unlike political platforms, which are designed to be endorsed by voters, public policies are implementation tools provided to administrations or agencies whose two major features are neutrality and technical skill. If democratic requirements are included in the way public policies are driven, the operators' frame of reference changes. Citizens have become players in public policy matters. They have either asserted themselves and demanded such participation, or been invited to participate in determining public policies as a result of a political choice made by decision makers.

The development of public policies has led to a challenge or a questioning of the managerial or administrative theories which saw public policies only in terms of the efficiency of public decisions. Public decisions must be conceived as collective

decision-making processes wherein information is shared and debated before choices are determined. This approach, however, would lead nowhere if it did not translate into a change in mindsets and in the relationships between decision makers and participants.

The quality of participation depends on the forms it may assume. Such forms must first lead people to reflect on the nature and diversity of participants. The notion of total neutrality is a hard-to-contemplate and hard-to-reach ideal. Interest groups are diverse and participation may reflect this diversity as well as its contradictions. Participation viewed as one component of the process of defining public policies implies identifying each form of participation and its suitability to the definition of the public policy. Whether it lies at the top of the hierarchy of standards, or at the supranational levels, or at the lowest level in decision making, participation in public policy or public decision gives evidence of the will to take into account the impact of the decision on those to whom it applies.

The criteria selected to analyze the participatory process are linked to the type of participatory process implemented in a given context. Besides, participation cannot be disconnected from the context in which it takes place. Whether it is part of an extant democracy or a democracy in the works makes for a complete change in the way it is viewed and the part that can be assigned to it.

The reflections conducted on the relationships between public participation and the determination of public policies prove that it is necessary to view these as an element contributing to the efficiency of such policies. Nowadays they are a constitutional or legislative requirement, which gives evidence of how interesting they seem to authorities. Participatory processes are not necessarily identical, but they all involve some familiarization and some knowledge of the procedures and mechanisms that are implemented. The randomness of participatory processes, their multifariousness, which is sometimes misunderstood by those who participate, impair their efficiency and their usefulness. Making

participation a reflex by setting up procedures including the processes may be one way to anchor democracy in public policies.

Participation cannot be established by fiat; it has to be learned and it requires practicing the ways and means for participation. Disseminating practices appears to be an essential means to reach a better understanding of participatory methods. Analyzing both successes and failures makes it possible to understand how public participation can develop. Participation is not more static than democracy is. Such permanent development can be linked to the previous requirements for making participatory methods systematic and for learning them. Because participation is multidisciplinary, it is difficult to apprehend; it requires the partners—participants/decision makers—to get involved in trying to understand everybody's expectations. It also requires realizing that participations are complementary in order to escape being turned into conflictual forums.

Public Service and the General Interest in Melanesia

Which Public Policy in the Matter of Equal Access to Health Care Is Needed to Make Health Care Policy in New Caledonia Compliant with Democratic Requirements?

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There are three areas in the matter of public health in the Pacific islands—a developed Oceania, which has the same health level as Europe and North America, an emerging Oceania and a less-advanced Oceania. New Caledonia ranks in the first group. It enjoys an overall satisfactory health care level, as is shown by the health general indicators. New Caledonia's situation relates it to a major European country.

The New Caledonia standardized death rate is hardly higher than that of Mainland France (4.78%) and very much lower than several French Overseas Departments (Réunion, 5.5%, and especially Martinique, 7%). Life expectancy (75.9 years for the overall population) remains higher than in many South Pacific countries. This is a higher level than the European Union average (75.6), and better than Poland (75.1), the Czech Republic (73.1) or Bulgaria (72.5). The infant death rate (4.6‰) tends to get closer to that of Mainland France, thereby bearing out the regular decrease in the trend curve.

Nevertheless, the density of physicians, 223 doctors for 100,000 population is lower than that of Mainland France, or the same level as the Hautes-Alpes Department in Mainland France

and a comparison with foreign countries would show Canada (210), the United States (220), or Austria (250).

In New Caledonia, the medical density is 272, and it shoots up to 404 in Noumea... This is a much higher figure than in the Provence-Alpes-Côte d'Azur area, which in Mainland France enjoys the highest density with 375 doctors per 100,000 people. However, the density collapses to 104 in the Islands Province. Touho and Voh in the North have a density under 50. The spread is in the ratio of 1 to 8. Thio can boast only one practitioner per 2,891 population, or 35 doctors for 100,000 population. Here the rates are lower than the worst figures in Black Africa—59 physicians per 100,000 population in Burkina Faso, 49 in Mali (2008), 39 in Chad, etc.

This situation calls for a financial effort. As the compulsory contributions system—which was designed to guarantee the social welfare of wage-earners alone—has reached its limits in view of the necessity to cover all residents, it seems difficult not to appeal to taxation. Locally, the rate of compulsory levies is around 30%. There is certainly room for maneuver if we compare this figure to that of Mainland France (44.9% in 2012 and 46.3 %in 2013). However, this is hardly a model to be copied. The question is still to know what price New Caledonia residents, notably the upper classes, are prepared to pay to fund a solidarity-based health system ... and provide a health content to the notion of democracy.

Kanak Traditional Medicine

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This paper explores the avenues currently considered to attempt to recognize traditional medicine as developed by local populations, to integrate it into the conventional health care system and move toward medical pluralism. This is a genuine democratic approach WHO has been promoting for a few years.

To deal with traditional medicine it is necessary first to put things in a proper perspective. What is traditional medicine? It is a set of practices used by a given society, traditional society. Its purpose is to identify the disease, make a diagnosis and then prepare the relevant remedies meant to bring the patient back to good health.

In the Pacific, as in New Caledonia, traditional medicine is based upon the local conception of health. For instance, here in New Caledonia, and this is also valid in the Pacific zone, people can fall ill in many ways: They may have the so-called natural diseases, such as those caused by the climates' influence, but also diseases called supernatural diseases, often linked to the clans' totems. Finally, there are so-called human diseases, caused notably by evil deeds...

The healer is a major personality in treatment protocols. The healer has received his knowledge from former generations, which gives him a right. He is the one who has the right to provide care. This is important in order to avoid self-medication problems and the disastrous consequences stemming from using plants without really being familiar with them.

We are in an oral society; hence, the oral transmission of knowledge in the medical field or in other fields is performed from one generation to the next. In traditional medicine, transmission must often be performed from father to son or from mother to daughter. Now, there is a problem: for various reasons, this transmission is being performed less and less often.

Therefore, it is important to gather this knowledge, to write it down, the purpose being to preserve it for the present generation but also to perpetuate it for future generations. If this work is not done, a heritage will be lost. Thanks to the involvement of some colleagues and some customary people, we try to do it to preserve this memory and safeguard this immaterial heritage.

It is important to know that traditional medicine is not the same in all customary areas. There are variants, such as the names of diseases, for example.

While the study of medicinal plants and traditional medicine is a cultural issue, even an identity and heritage issue, medicinal plants and traditional medicine are also avenues for research with major scientific points at stake. Traditional medicine provides a certain number of avenues to scientists; later on, scientists exploit, examine this traditional knowledge which may lead them to the discovery of new medicines. This raises another issue, the legal framework issue because here, notably in New Caledonia, there is now no legal framework for these types of research.

Obviously, traditional medicine is a public health issue. It is in the best interest of traditional medicine and modern medicine to work together; history shows that for millennia, man has always been treated with plants. Professor Antoine Leca states that "we know doctor-less societies but we do not know any societies without medicine." Traditional medicine has been around for thousands of years. In Africa, 80% of the population try to heal themselves with traditional medicine, and in developed countries, we can notice a resurgence of interest in this medicine. A survey conducted in American medical schools shows that 74% of respondents among students think that it is in the best interest of Western medicine to integrate traditional therapies and practices.

Social Policies

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Are the decisions made with respect to social work democratic (*i.e.,* anxious to serve the general interest)? Prior to offering a quick illustration of this issue which reveals major concepts (those regarding social protection, democracy, and more broadly the general interest) it is appropriate to start with a short quotation, for it testifies to the fact that political action initiates social protection: "Let us comprehend that political action and social protection make up an inseparable couple insofar as political action, as a blueprint for a way of human coexistence, is an answer, a stand taken relative to social protection's inherent division, a division which is the very essence of social protection," (M. Abensour, *Pour un philosophie politique critique,* Sens et Tonka, 2009, 400 p.)

But we also have to revert to semantics and its practice, for it always leads to reflection. In New Caledonia, and in the Northern Province (DASS and DPASS) social protection is tantamount to an "issue", that is, a concern, a cause of problems, a more or less complex situation; in the Northern Province, "social protection" also involves and implies "societal problems". In the Southern Province, "social protection" means "action", and in the Islands Province the word means communities and health.

This goes to show to what extent the topic is viewed as a major concern and a vast domain, for social protection is an area where public service must provide for itself a whole set of means whereby it will support society both to act on society and preserve its cohesion and to help the most vulnerable individuals or groups live better, self-sufficient and with self-esteem. Behind this action there are assistance, solidarity, protection, help, and still behind that is the public service's reason for being, namely social independence.

Here, political choices, just as in other democratic domains, are at first blush driven as much by the general interest as by the players' political responsibility. We get a sense of how complex the challenges we have to meet are.

These choices are first and foremost mechanical responses, actuated by the awareness of collective concerns or by a sum of special individual interests. They are utilitarian or voluntaristic, depending on the subject matter. Yet, they should all be inspired by a social justice approach which may be called distributive, insofar as it would give to each, according to his diversified needs, his fair share of what he needs to lead a decent life.

The very notion of general interest evolves depending on the social needs to be met, and such needs have evolved in New Caledonia. Three examples are typical of this—the elderly, persons with disabilities and the fight against social exclusion.

The authorities' approach with respect to the elderly is influenced by the actual decrease in inter-generational solidarity, the aging of our population and the prevalence of dependency. These factors have led to setting up basic old age pensions or develop old people's homes (EHPAD).

The same goes for the *6,000 persons recognized as disabled,* and the first major decisions for their benefit were made only six years ago, with more integration than inclusion, and inclusion requires building relations, which are peculiar to the social bond.

As for the fight against exclusion, it ends up with answers that are seldom inclusive. We only need to think about one of the realities, namely people living on the street. Here, the general interest often restricts authorities' action to concealing the fact that they are dropouts. Seeking a solution to exclusion goes beyond the first societal concern, namely emergency. It requires a reflection on integration which demands a benevolent gaze.

These various types of action are first a response to emergencies driven by vital imperatives for persons or groups to whom the democratic New Caledonia society has a duty and the means to respond. These emergencies are socially useful for politicians as well as for those at whom they are aimed. At first

glance, they are great for gaining votes, which is not insignificant for those in power. Is that a proof of democracy?

In conclusion, as Professor Xavier Philippe has stated, at the social level as in other matters, it has become essential to allow continuous debate on the choice of the purposes regarded as pertaining to the general interest and listen to the collective power along with the determination of the common good. Specifying its outlines and its usefulness, organizing democratic validation by way of votes, consultation, information and regulation, all this is what the assessment of public policies is about for the purpose of gaining more democracy, both in social matters and in other matters.

The High School "Juvénat", a New Caledonia Experience

Élie Poigoune,
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During the sixties, it was found that students from out of Noumea on the Main Island and students from the Islands had huge difficulties succeeding in high school in Noumea. The reasons for this failure are to seek mainly in the fact that most of those students were in boarding schools and they did not get any help in their school work, as they were away from their parents for a whole year. On week-ends, they went out to stay with their guarantors, who usually lived in Noumea working-class neighborhoods, and the guarantors did not always have the time or space necessary to help with school work.

In order to attempt to solve this school failure problem, some citizens, with help from the state and some companies such as SLN (the Nickel mining company), created the Association Jules-Garnier for a high school juvénat (AJGJ) in 1991. Its purpose was to provide to those students and to their parents a center where they would be housed and fed decently and, mostly, where during their school years in the evening they would get support from tutors in the main subject matters.

This project had a very hard time starting. After 20 years, however, the situation is a positive one. There are 70 students who hail from almost all New Caledonia communities, three quarters of them being girls. They attend various Noumea high schools: Blaise Pascal (Catholic,) Do-Kamo (Protestant,) Jules-Garnier (public,) Lapérouse (public.) They are housed and fed at Lycée Lapérouse boarding residence. Every evening, from 7 to 9: 30, they avail themselves of 2 ½ hours of study hall supervised by about ten tutors who come mostly from Mainland France. The subject matters involved are French, philosophy, English, history-geography, Physics and chemistry, Life and earth science, and

Maths. For the students, this adds up to a total of 20 hours of study weekly over and above class time.

Most tutors are retired teachers from Mainland France. They come over for a six-month or one-year period and they volunteer their help. In return, the association covers travel and housing expenses. Tutors are housed in one-bedroom apartments belonging to SICNC in the Magenta neighborhood. Funds for the association come from state subsidies and from New Caledonia public organizations such as the government, the provinces and the cities; some financial support also comes from local companies (SLN, Goronickel, SMSP, Enercal, BCI, EEC, etc.)

Thanks to such efforts, our 12-grade students have a 90-100% success rate. This rate was 100% in 2014 and 93% in 2015.

In the Juvénat, we put forth two values to supervise our students' lives: work and respect.

To succeed, a student must work hard in order to hope to go to college and follow a hard and exacting curriculum in Mainland France , after which he would come back home as a manager, and thus he can take part in building New Caledonia. In high school and in college, he must keep in mind that he can go very far in life provided he has self-respect and respect for others—tutors, teachers, school aides, school employees and his schoolmates.

The Juvénat is getting very encouraging results in school, and also in making healthy student-citizens who feel good about themselves, who are joyful and relaxed, with everything they need to face life's hardships. The Juvénat is also based upon volunteering, and volunteering carries values of sharing, solidarity and love for others. As tutors say, in this commitment, in the volunteer action of the tutors and the association members, there is something extraordinary, intangible pertaining to the energy that springs out of our deepest selves. After 2 or 3 hours of meeting or remedial action to the students, in the evening we go home physically exhausted, but inside of us we have received our salary. This salary is neither money nor material things. It is a huge inner happiness, that of having shared our presence, our time, our energy, in short, a part of ourselves with others. In this way life

takes on meaning and shines fully in its grandeur and beauty when it is devoted to others.

In some ways, we have taken part in loving others, in loving our Country, our Land, our universe.

Education and Democracy in Australia

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The history of Australian education reveals certain recurrent themes that remain of relevance today: church-state relations; the important role played by independent and denominational schools in a country that thinks of itself as being secular; state-Federal (Commonwealth) relations; funding; the situation of Aborigines in the education system and in society more generally.

The transmission of the age-old indigenous culture was completely different for the Western education system imported by British colonial rule. The relation to space and time was far removed from that of the Dreamtime. European Australia was founded as a penal colony the year before the French Revolution. The English authorities were concerned to impose order on a delinquent youth and the education system reflected the broader world of incarceration. An important part of the colonial population was Irish and Catholicism was synonymous with rebellion and nationalism. Religious and political divisions were to become a feature of Australian life well into the 20th century, and notably through the period of the Cold War.

After the end of the convict period (1850) a nationalist movement worked towards independence (1901). In the 1870s the Public Education Acts provided for the establishment of public secondary schools, but these remained elitist, as did universities which were not well aligned with secondary education despite having been set up to respond to the development needs of the country.

The Constitution of newly independent Australia limited cultural and racial diversity through the White Australia Policy. Aborigines were not Commonwealth citizens until 1967 and were largely excluded from public education. These attitudes played a role in Australia's situation in Melanesia. Until the 1930s, during

the Australian Protectorate of Papua New Guinea, the Australian authorities regarded the indigenous population as 'uneducable'.

The years 1950-1970 were a time of a major transformation in which the Federal government took on increasing power in the field of education. Democratisation of access to education was promoted, increasing the equality of opportunity, but it was not until the 1960s that secondary education became available for all. In this period school became a site of social justice and a factor of integration that took account of the developing cultural diversity of the country following the waves of new immigrants. From the 1970s University was free and remained so for most of the next two decades as the Federal government increased funding for higher education. Australia seemed more democratic and egalitarian than ever.

Neoliberal ideology took root among the major parties, both left and right, during the 1980s, and education came to be seen as a 'service' subject to market forces. The government encouraged competition in the name of freedom of choice. Over the past quarter-century universities have been called upon to play their part in the development of mass education and the commodification of offerings. At the same time, however, the internationalisation of academic staff and students gives the sector a reputation for quality in the context of entrepreneurial globalisation.

This change also concerns relations between Australia and the region. The globalisation of education and the spirit of competition mean that Australia indeed competes in some respects with universities of the region that it is also assisting in other respects. The Colombo Plan gives some measure of this change in perspective; from being an aid-oriented programme for students of the region, it has evolved into being part of an export industry based upon the laws of the market and a different approach to diplomacy in the Asia-Pacific area.

Democracy and Taxes

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Democracy implies taxes but cannot rely on just any form of taxation. More than a pillar of democracy, taxes are first and foremost unquestionably an attribute of state power, as taxes enable government to function properly. Taxes are unconcerned about the system of government which they mean to encourage but democracy is not unconcerned about taxation modes. Some taxes are democratic and some are not, or less so.

Taxes in themselves do not make democracy, but democracy is predicated on whether or not taxpayers take part in their determination through direct or indirect consent. Under Article 14 of the Declaration of the Rights of Man and of the Citizen, consent to taxes refers to the idea that taxation can be legally valid only if the taxpayer has first shown his consent. Therefore, the people is the source of power, including taxation power. While democracy is based upon the principle of consent to taxation, in view of the necessity of public funding and of the fact that public expenditures are a reality, the principle is not an express consent to public expenditures. It is a formal consent and not consent to the content.

In the final analysis, the significance of the place of taxes at the service of democratic exercise of power and of the general interest seems to downplay the fact that consent to taxation is necessary. This development stands out very clearly from constitutional decisions (see the June 18, 2010 French Constitutional Council decision CC, no.2010-5QPC, SNC Kimberley Clark.) Furthermore, these decisions are characterized by essentially technical concerns and they can meet democratic requirements regarding readability and intelligibility, which precludes too complex a tax system (see CC, December 29, 2005 n° 2005-530 DC *relating to the 2006 appropriations bill.*)

The tax/democracy couple can no longer be conceived of only in terms of the principle of consent to taxation. As democratic taxes are a tool for the assessment of public policies and state modernizations, they are allegedly first and foremost fairly distributed taxes, each having to contribute to funding public life and national solidarity on the basis of his financial means. Such distribution, however, can be accepted only insofar as it seems fair and useful to taxpayers. Democracy checks on the state's efficiency in the matter of taxation, and from here on in, the efficiency is assessed statistically, as government finance cannot escape economic analysis, and inevitably cannot escape the efficiency issue.

The state performs assessments, including self-assessment, for it is in search of tax and financial credibility. How democratic the fiscal revenues are seems to be predicated on this kind of assessment, which makes it possible to condition the continuation of public policies, and consequently their funding. This makes for a certain form of financial transparency, which is necessary for any democratic state requiring well-managed finance, with respect both to the citizens, who are taxpayers, and to the European observers and the observers who work in the stock market.

There is a democratic limit to modernization—the fact that tax usefulness is not apprehended. This requirement for understanding *a posteriori* corrects the *prima facie* non democratic effects of the lack of effective consent and of tax system complexity, which, it is true, only exceptionally constitutes a hindrance to the institution of taxes when we read the Constitutional Council rulings.

While consent to taxes assumes a prerequisite, namely authorization for public expenditures (thus taxes are consented to for the purpose of covering said expenses,) consent to taxes seeks preliminary acceptance of taxes as a mandatory contribution, disconnected from the matter it relates to. This change in perspective has probably contributed to the contemporary distrust for taxes. As this change favors a depersonalization of the right to consent to taxes, it also favors the disconnection between taxes and their usefulness.

Democracy and Development

Papua New Guinea

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Talk about the extraordinary diversity of Papua New Guinea, whether in terms of nature or in cultural terms has become commonplace. Yet, such diversity, combining all kinds of contrasts, looks like a party-colored garment in the writings of many commentators: they show a poor, undeveloped country, where violence, especially violence against women, is rampant, a country whose literacy rate is one of the lowest in the world. In short, Papua New Guinea is purported to be like all poor countries in the world but one that is a little more outlandish. This simplistic short cut is useful but it should be dismissed. Papua New Guinea is a complex country. What is true in one part of the nation is false or hard to verify elsewhere. Besides, we do not know what the real population is. Such lack of figures and general data makes public policies and governance tricky.

When we talk about democracy in Papua New Guinea we come across a dual opposition. Scholars often pit a theoretical democracy, that of Old Europe, which stemmed from the Enlightenment, against a more recent one, such as what Jean Commaroff suggests. This opposition sets forth a backward-looking view of democracy and a renewed vision of political science. It is also the struggle between North and South. But there is another split which appears more clearly in literature about Papua New Guinea or about political systems in the Pacific islands. In this juncture we find an opposition between those who claim that the South Pacific states are failed states, and their opponents,

[1] Nicolas Garnier, who was *Dean, Research and Post Graduate Studies (University of Papua New Guinea)* when the conference was held, is now Curator in charge of the Pacific Collections (Musée du quai-Branly-Jacques Chirac).

who charge them with holding a fragmentary and defamatory view (on such debates, refer to Bello Kombako's dissertation, 2004).

It is pretty hard to escape one of those two oppositions when we analyze Papua New Guinea's political situation since it gained independence. Some identify in the country's political instability an early warning sign of the emergence of novel political systems, in some ways a "Theory from the South", and perceive favorable indications (such as the increase in the literacy rate); others confine themselves to a strictly pessimistic assessment and put forward the lack of modern infrastructure, the inefficiency of a centralized administrative system and the shortcomings of the hierarchical political system, a country which falls short of its democratic ambitions and therefore of the care it should provide its citizens.

Political power has four missions—distributing public funds fairly, as money is the central topic of political speeches and a democracy indicator, but there is a lack of regular funding and the infrastructure is becoming obsolete; protecting against crime, a major concern (theft, sexual assaults, outside crime, political corruption;) promoting the country internationally, which warrants using exceptional means; refraining from using authority or force against traditional authorities or individuals in general.

Expecting largesse, security and forgoing coercion on the part of the state gives a specific tone to the definition of democracy in Papua New Guinea, while at the same time individuals and groups deny to public authorities any form of interference.

Papua New Guinea looks like a modern hierarchical state. The notion of a hierarchical administration which is both decentralized and with powers given to local state services suggests a graded system in the matter of the distribution of powers. Yet, inaction prevails. The attitude of elected officials and administrative managers actually testifies to the reality of their status. There is no recognition of decision-making power among voters and citizens subject to administrative power, nor among what we might call their representatives. It is at most a representative power which is exerted within very narrow limits.

Melanesians perceived Papua New Guinea's independence with both hope and distrust. Some thought of it as an opportunity

to develop an alternative political system which was neither communist nor conservative. The proponent of this standpoint was Bernard Narokobi. Narokobi provided a profile for the Melanesian Way. Yet, fears regarding independence emerged in many parts of the country. With a wealth of experience from the colonial period, many Melanesians saw in state power a danger against which it was necessary to provide protection. Such fear makes it possible to better comprehend the public authorities' reluctance to exert their power. In private conversation, including private debates, the Melanesian Way is now challenged. It is plainly charged with inefficiency, and especially with making for generalized corruption.

- 3 -
Regional and International Relations: Democratic Solidarities

Democracy: From Internal Law to International Law

Patrick Gaïa,
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In some ways, democracy as a form of government but also as an axiological concept has emerged "internally". Initially, it developed and was embodied in the state, that peculiar form of social and political organization (the Greek City, the Roman Republic, and later the modern state.) In its post-ancient form, we can find its inception in England in the early thirteenth century (Magna Carta, 1215.) Thereafter, it followed a slow but continuous process which, with the English, the French and the American Revolutions led to its final establishment and its gradual strengthening in Europe and North America. During the twentieth century it went experienced intercontinental expansion which is ongoing, although not always so smoothly, as of the early twenty-first century. This development has gone along with the expansion and the gradual developments of constitutionalism, so much so that the two concepts of *democracy* and *constitutionalism* eventually conjoined and merged into a form of completion currently embodied in the guise of the rule of law.

This does not mean that democracy has to come in a single mode. However, and at the same time, democracy has a *deep-seated unity*, an inherent axiology transcending the diversity of the ways it follows and the forms it takes when it is experimented with. It seems that it is precisely this conceptual and axiological unity which has led in a novel way to work on building new bridges between internal law and international law. Since the early twentieth century, and still more since the League of Nations was established, a process of "internationalization of democracy" has taken shape showing that the "democratic requirement" has grown

into a concern for the international community. This phenomenon was extended through the buildup of a body of international rules whose object, directly or indirectly, is democracy and whose purpose and design is to legally define the essential conditions and components of democracy. Democracy is no longer "state-centered".

From internal law to international law, a common body of law pertaining to democracy has been asserting itself, expressing a shared acceptance of the choice of democracy as a mode of government, and consequently respect for values such as the primacy of the individual, respect for the dignity of every human being, liberty, equality, etc. This shared law is promoted both internally, at the international level, and within the regional subsystems; it is built upon the "unifying doxa" of Human Rights which promotes both the individual's freedom and collective freedom.

Such real mutual close links and mutual appropriation still need to be qualified. International law and internal law are not impregnated with the same strength by the *"democratic prerequisites"*. In inter-state law there is a great variation in the way the inherent requirements of democracy are appropriated, and this variation leads now to closer links, even to phenomena of normative hybridization, now to the persistence of an irreconcilable difference between the two orders.

The development of the internationalization of law can sometimes work in favor of democracy (for instance by promoting decentralized transborder cooperation, participatory democracy, or through the active role international law plays in the institution of democracy in the nations that have gone through dictatorship periods or armed conflicts) but also sometimes against democracy. One example is the opposition and resistance put up by a part of society against the consequences of trade internationalization (which international law tries to encourage to a large extent) and the conviction that an event occurs in great part without society's taking part in it, or even against society. The danger here is increasing the correlative phenomenon known as "dropping out of democracy", which is already very clear to see within conventional

representative democracy. The aftermath shows to what extent the ever stronger sway held by international standards on internal law has upset the internal checks and balances by leading generally speaking to too much power for the executive in foreign relations at the expense of the legislative. As external standards take up new domains, we see a form of "de-democratization" of the production process of *both international and internal law* challenging the existence of the legislative as the main locus of the national political representation.

Here, one of the things we have to think about appears in full light; international (and European) law—and primarily their institutions—after having embraced democratic requirements, have to face a new challenge, that of their own democratization.

The Melanesian Spearhead Group

Mickaël Forrest,
Président sortant de la réunion des hauts fonctionnaires du Groupe du Fer de Lance mélanésien

First and foremost, I would like to thank the convenors of this conference for inviting me to take part in my capacity as outgoing president of the meeting of senior officials of the Melanesian Spearhead Group (MSG). I take this opportunity to greet the work performed by Mrs. Faberon and by Maison de la Mélanésie in Nouméa so this meeting is a success.

The sub-topic of this section, « Democratic Solidarities », is perfectly consonant with the purpose of the creation of the MSG. Melanesian solidarity on topics of common interest, around respect, tolerance and sharing values, is echoed in the founding act of the Group signed March 14, 1988 in Port Vila, Vanatu. This date unquestionably marks an active support for the Kanak cause in New Caledonia and for New Caledonia's access to full sovereignty.

Nevertheless, as soon as the Matignon Accord was signed, in June 1988, Melanesian leaders steered the MSG Group's programs toward strategic sectors for sub regional organization, still in a spirit of democratic solidarity, like the 1991 trade agreement.

From a democratic standpoint, it is interesting to present the political programs which the MSG has continuously developed, including through the increase of the organization's power, in 2008, with the creation of the secretariat, based in Port Vila. From then on, the organization has experienced an increasing development, both depending on the needs of one or several of its members and a specific need expressed by a specific situation within the Melanesian Arc.

From an international standpoint, MSG has developed several programs aimed at strengthening Melanesian solidarity. For instance, we can mention the "Noumea Declaration" signed in Noumea in June 2013 reaffirming the support of the MSG members to FLNKS as part of the implementation of an emancipation and

decolonization process. With respect to the disasters associated with the PAM cyclone in Vanuatu in March 2015, The MSG was able to provide a quick and well-organized response.

On the regional level, we have multiple and varied examples. As regards current events, we can mention the Declaration for the environment and against global warming which helped structure the political stance of the member countries on the subject. In a desire to achieve regional stability but also with a view to the expiry of the Noumea Accord, the agreement setting up the regional police academy deserves mentioning in the same way as the ongoing studies on the creation of the Development and Investment Fund or the master plan for Melanesian sea transport.

Regarding the "international" platform, the MSG has dealt with strategic topics. The Group's involvement for the success of Cop 21 has been hailed at the highest level, as well as the work achieved in Brussels, which enabled the MSG to organize in Noumea two weeks of trade meetings funded in part by the European Union through the Pacific Islands Countries Trade Agreement (PICTA).

In order to assess this solidarity in a more across-the-board way, it is interesting to study a more specific implementation.

First, the solidarity expressed toward Fiji during the period from December 2006 to September 2014, for despite different postures, the Group members kept seeking consensus in a spirit of solidarity. The fact that all members took part in the first meetings of Fiji's Friends as an advance indication for the creation of the Pacific Island Forum for development proves this solidarity in the same way as when the members gave Fiji the opportunity to chair the MSG from 2011 to 2013.

In addition, it is interesting to be able to assess the contribution of this "solidarity" to FLNKS as part of the expiry of the Noumea Accord. The most perfect example is, of course, the FLNKS's chairing the group from June 2013 to June 2015. The diplomatic support by members at the United Nations level or at the level of the Non-Aligned Movement is constantly verified at several levels.

In conclusion, the major issue for the MSG is to consolidate this spirit of Melanesian democratic solidarity in order to respond to the challenges our region faces, a development area, through the implementation of the 2038 for Prosperity-for-All Plan.

The Pacific Community

Jean-Luc Fauré-Tournaire,
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The Pacific Community (SPC) is not a political organization. Its purpose, since it was founded in 1947 by the Treaty of Canberra for the purpose of supporting the small Pacific island nations in their development at all stages and in all aspects. SPC is made up of seven technical and scientific divisions; three of them are located in Noumea, where the headquarters are, and four in Suva, Fiji, and those scientific and technical divisions often meet the crucial needs of the Pacific island nations.

SPC's strong points are, of course, fisheries in all their aspects, with the fisheries division based in Noumea, public health, geosciences, agricultural development, the protection and exploitation of the seabed, education, all the various ramifications of the male/female issues. All these divisions exist for the direct benefit of the Pacific island nations and territories.

Another field is the statistics division; as you know, many countries and territories in the region lack data, including data to design their development programs and assess their effects, and SPC provides help in terms of tools and statistical data.

France is an SPC member, for it is one of the founding members. After the totalitarian regimes' downfall, the issue was to develop and support those territories in a new and democratic spirit, so they could gradually gain independence. This conviction has existed since the beginning although SPC is not a political organization; however, it is founded on values, and as such it adopts the values of what we call democracy.

Initially, the founding members were six in number: Australia, the United States, France, New Zealand, the Netherlands and the United Kingdom. The Netherlands left SPC when their former territories gained independence; thereafter, the United Kingdom left as well. So we are four founding members, and in collaboration with the partners for development, we

support the 22 Pacific states and territories. The geographic area covered by SPC is Oceania, that is, the Pacific, from Pitcairn in the east to East Timor in the west, East Timor being a future member.

For France, the original character of this organization is not only that France is a member but the fact that France's 3 Pacific communities, namely New Caledonia, French Polynesia and Wallis and Futuna are members as well. In this organization, which is very respectful of its members and of the Pacific Regional Oceania Project (PROE), France and her 3 communities are full members, with voting rights equal to those of the United States, Australia, New Zealand, etc.

SPC is a bilingual organization which is still influenced by the history of the discovery of the Pacific by explorers who were mostly English and French. The French-English bilingualism is a feature of SPC and PROE. This matters for France. Besides, SPC's headquarters are located in Noumea.

The four founding members have representatives. For France there is a permanent representative, Ambassador Christian Lechervy, stationed in Paris, and a deputy permanent representative, myself, stationed in Noumea.

SPC is n is a continually organizatioevolving, and it meets the new challenges in the matter of sustainable development and natural disasters in the Pacific. As a result, there are many activities. One of the current issues is, of course, global warming, which relates across the board to all expertise domains covered by SPC. On November 17, 2014, the French President, François Hollande, was in this room with the Foreign Affairs and International Development Minister, Laurent Fabius, and the Overseas minister, Mrs. George Pau-Langevin. They had direct exchanges with the Pacific leaders. This was important for the COP 21 negotiations because the Pacific leaders talked explicitly and pointed out the fact that they were directly threatened by the rise in the water level, that soon their countries would be wiped out if nothing was done, and this message was heard. An ambitious request was made, limiting the global warming to 1.5° C. And finally, at the COP 21 meeting, this request by the small Pacific

island nations, presented and supported by all the Pacific leaders in Paris, was adopted.

During its latest ministerial conference in Niue, which chairs the organization for two years, SPC has adopted its new 2016-2020 strategic plan. We will be working on the basis of this plan during the coming months.

Australian Influence on Democracy in Melanesia

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Over the last several decades, the influence of Australia in the world and in the Asia-Pacific region has stood out owing to the plurality of its partners. Australia seeks to become a major player in Southeast Asia, as is shown by its important trade relations with China and Japan. At the same time, the special strategic relationship with Washington bears out the pluralistic side of Australian geopolitics. However, we can naturally question the compatibility of Australia's various partnerships and alliances, notably as regards China and the United States.

Currently, Canberra finds itself at the heart of the China-US relationship, to be sure a comfortable position, for despite its middle power status, it is interesting for both great world powers. But it is also overall an awkward situation if relationships between China and the United States sour. While the China-Australia relationship is one of the priorities of Canberra's foreign policy, Australia must find the right balance between its historic strategic and military interests (ANZUS) and the strengthening of its trade and diplomatic relations with China, and this pertains to a balancing act.

While at the international level we can view Australia as a middle power, the situation is totally different in the Pacific, and more particularly in the Melanesian Arc, where Australia is really a dominant power wielding unchallenged leadership resting on political and financial hegemony. On the basis of OECD data, Australia is the first country providing half of the public aid to development in the region; the aid is for education, health, women's rights, etc. Despite its status as Australia's major trade

partner, China entertains new ambitions in the Pacific and does not recoil at expanding investments and aid in this region.

There are, however, significant differences between Chinese and Australian investments in the region. Australian aid promotes democratic values whereas Chinese investments seem to be self-interested and conditioned by requital. Therefore, Australia and New Zealand aid appear as democratic walls against the less scrupulous Chinese investments. In addition, it is appropriate to point out that French aid in the area also contributes to the containment of Chinese investments.

Further, the extent of Chinese aid in the Oceania region needs qualifying. It is estimated in the area of 370 million dollars a year while Australian aid for Oceania is three times as big (1,041 million euros in 2013.) Currently, even if Chinese investments are marginal as compared to the Australian aid, Australia wishes to limit Chinese presence in this neighboring environment which it regards as its field of action.

The issue is finally whether to question the durability of this delicate diplomatic and commercial Sino-Australian delicate balance considering the development of the type of Chinese investments in the Melanesian area. While now Australia promotes democratic values in the region through its public aids for development, the type of Chinese investments give us food for thought regarding the real motivations and values of such investments.

International Treaties Regarding Human Rights: The Melanesian States

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Melanesian countries are parties to a limited number of treaties on Human Rights. With seven international commitments, Vanuatu is the most engaged nation, while Fiji has the least, three commitments. With six treaties, Papua New Guinea is at the high end of average. Solomon Islands, with four treaties, are at the low end of average.

Melanesian nations' acceptance to submitted to the control procedures of the treaties reflects a very mixed situation. The submission of implementation reports suffers long delays. By contrast, the states' cooperation and diligence go smoothly as far as the universal perdiodic review is concerned. Solomon Islands have accepted the individual complaint procedure regarding the Convention on the prohibition of all forms of discrimination against women and regarding investigative mechanisms. The same goes for Vanuatu; Vanuatu has also accepted the investigative mechanism relating to the Convention on the Prohibition of Torture.

The normative and institutional effective implementation of rights and freedoms remains to be perfected in domestic law. The Melanesian states have two constitutional features: they all include a bill of rights and they are dualistic. In Fiji, the Rights Constitutional Bill of Rights is comparatively substantial. PNG's Constitution is reputed for its constitutional charter. By contrast, the bills of rights in Vanuatu and Solomon Islands are more restricted. Regarding compliance with the Paris principles relating to the implementation of an institution for the protection of

Human Rights in national law systems, Fiji's Human Rights and anti-Discrimination Commission appears like a model.

Refraining from considering that Human Rights seem to be illusive in local contexts is a tough proposition. What to do to avoid such rights being illusive? Should we not reflect on the illusive Human Rights and on the relevance of the legal tools to improve individuals' situations? In itself, law has no performative authority: setting forth rights without implementing them is futile; indeed there is a total connection between the state, Human Rights protection, and international treaties. In this state-dominated context, there is no conceivable protection for Human Rights outside the state, and that is a very pessimistic vision.

How can we avoid the destruction of Melanesian culture by internationalized Human Rights? How can we keep Melanesian culture from being a hindrance to human rights? The issue of the Melanesian family, which had inflamed ethnologists who discovered those faraway lands, and which consists of gifts and counter-gifts within the family, is the subject of intense criticism from the UN Women's Rights Committee, especially regarding PNG.

Should we exhort the Melanesian states to ratify, as soon as possible, all Human Rights treaties? The whole issue is whether such ratification is a starting point or an end point.

PNG's cautious and perfectly reasonable response to Norway's recommendation (EPU report) will be watched closely. Recommendation no. 79-1 asks PNG to take steps to ratify all international treaties on Human Rights.

The European Union
Democracy, a European Union Value: Institutions and Practices for a Regional Democratic Solidarity

Jacques Ziller,
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Democracy is a European Union value. The Treaty on the European Union (TEU), as it is worded following the Lisbon Treaty, gives democracy a prominent place, and as early as 1951, democracy was one foundation of the European Communities.

The democratic principle is the basic principle of European institutions, and its respect is one essential requirement for Union membership. Later, democracy has also become gradually a basic value in international relationships as part of association agreements, in particular African, Caribbean and Pacific countries. That just shows the dual relevancy of the topic dealt with here for the "Diversity of Democracy. Theory and Comparative Study: the Melanesian Countries" conference: The immediate relevancy of the internal dimension of this topic for New Caledonia, which is part of the European Union with an OCT status, and the mediate relevancy of the external dimension for the other Melanesian countries.

One idea, that of representative democracy, is a central idea both in the laws and in the operation of the institutions as well as in the judgments passed regarding such operation, which more often than not, are summed up in the phrase "democratic deficit".

Democratic representation is illustrated by the European Parliament, by political responsibility within the European Council members, and by the role of national parliaments.

However, the Union's institutional system is often viewed as too complex and not democratic enough. The European Union government is not radically more complex than the system to be found in many great modern nations. Regarding the so-called

"democratic deficit", this is a phrase coined by Richard Corbett in 1997. Corbett tried to point out the lack of powers given to the European Parliament in the community treaties prior to the reforms brought in by the Maastricht Treaty. Thereafter, the concept was borrowed and developed by David Marquand also to characterize the Community before the Maastricht Treaty. The success enjoyed by this phrase is probably due to the fact that it is used for quite opposite reasons, both by the supporters of a stronger European integration and by the "Eurosceptics" of all kinds. There are no serious studies which make it possible to measure the "democratic deficit" of the European institutions, or to make comparisons with the "democratic deficit" of the other nation-sates' institutions, and therefore, this concept remains a mere catchphrase.

If there is a "democratic deficit" in the European Union institutions, it is a reality which is inherent to the very nature of the Union as a group of sovereign states which greatly expands the democratic institutions' limits within the member states on account of the common exercise of powers, a group that has not taken the leap toward a federal state which would find its legitimacy only in the representative democracy of its people. The real problem is to be sought in the member countries, as the Union does not have the means to force full respect for its values on the member states.

The assertion in Article 2 (TEU) of democracy as a common value for member states translates, in law, into two series of provisions: those relating to EU accession for a new member state, whose efficiency has been proven over time, and those relating to nations which are already Union members, and whose efficiency remains to be proven. While member states and the Union's institutions proved capable of setting up procedures and mechanisms fit to guarantee respect for democracy on accession, the same does not apply to states which are already members.

Article 7 (TEU) provides from now on possibilities for action when a « risk of serious violation » and « the existence of a serious and persistent violation" of the Union's values by a member state are involved. While it is too early to assess the

efficiency of this device, in any event, the treaties do not provide for the possibility for evicting a member state, knowing that the precedent created by the League of Nations fully showed the futility of such a threat. It is only too clear that once a nation is a Union member, the Union, in the current legal and political conditions, does not have the means to prevent violations of democracy by its member states.

Regarding the international scene, the Union aims, as per Article 21 (TEU), at promoting democracy. One major tool in this implementation is that of the conditionality clauses included in the association agreements and other agreements with non-EU states. It goes without saying that this function is particularly tricky to perform, for the Union will be called arrogant in promoting its values in this way. Here, New Caledonia may probably play a particularly significant role in the Melanesian sphere.

The European Union
A Testimony by Maurice Ponga

Maurice Ponga,
European MP, a Native of New Caledonia

As a Member of the European Parliament from a Melanesian country, I am just humbly providing a testimony on the way the concept of democracy is approached within the European institutions, and notably in the European Parliament.

Democracy is first and foremost, and it is important to point it out, a universal principle, a founding principle of the European Union. That is why it is written into the European Union Treaty, and the European Union uncompromisingly defends and promotes democracy.

For European members of Parliament, the issue of respect for democratic principles, both within the Union's member countries and in non-EU countries, is a priority, and this translates at several levels in parliamentary committees, in inter-parliamentary delegations, or during plenary sessions, but also as part of the election observation missions. All these create opportunities for dialogue, discussion and missions which make it possible to take appropriate action in case democratic values are attacked and to pass political resolutions, even emergency resolutions, condemning violations of human rights, as the case may be.

Regarding more particularly Melanesia and the way it is viewed by the European Union in the matter of democracy, it is appropriate to point out that Melanesia is made up of 5 countries and territories which have very different types of relationships with the European Union, and we have to take this into account. On the one hand, there are the Melanesia ACP-P countries, namely Fiji, PNG, Solomon Islands and Vanuatu, and on the other hand New Caledonia, an OTC.

Within the 4 ACP-P Melanesian countries, the Cotonou Agreement linking them to the European Union puts forth the

universal value of democratic principles. This agreement provides for a specific procedure whose purpose is to protect against any possible attacks on democratic principles and on the rule of law by the ACP countries, and in this respect, sanctions were applied against Fiji over the last few years until democratic elections were eventually held in September 2014. Exchanges between European MPs and the European Commission on the implementation of the 11th EDF are also a way to assess respect for democratic principles.

Finally, the role played by civil society is a good indicator of the state of democracy in a given country and it constitutes an alert in case of violation of the principles even if we may lament the fact that European MPs are still unfamiliar with Melanesian states and that civil society calls very seldom—or not at all—on European MPs regarding the possible violations of human rights and of democracy in Melanesia.

As the European Union is the first financial contributor in terms of cooperation for development and humanitarian aid and a major partner in the Pacific region next to Australia and New Zealand, the ACP states are attentive to the Union's stances.

The way Europe sees the situation in New Caledonia as an Overseas country and territory (OTC) in association with the Union is quite different. The purpose is rather to see how OTCs can help the neighboring ACP countries in the matter of democracy.

Relationships between OTCs and the Union are governed by the new Overseas Association Decision (OAD). This decision emphasizes the role of OTCs as pivots and promoters of the Union's values and standards in their respective regions, and in Section 1 the decision provides that a partnership is instituted, among other reasons, for the purpose of promoting the Union's values and standards in the rest of the world.

In this connection, New Caledonia has a major role in Melanesia, and the notion that the OTCs are outposts of the Union in the world must be an inspiration for the actions to be taken in the European Parliament. Thus, it was necessary to work on the strengthening of ties between the EU and the OTCs by enabling OTCs, among other things, to take part in European programs

which were so far reserved for European regions. Besides, it was essential to make New Caledonia residents more familiar with Europe by allowing them to visit the European Parliament so they can later become ambassadors of the EU and of the values it defends and promotes in New Caledonia.

New Caledonia is a non-European territory, but its inhabitants are European citizens, and at the international level they pertain to France. Should attacks on democratic principles occur, the Union would not remain inactive

As the only MP from an OTC, and a native of the Pacific, it is my concern to promote and defend the Pacific islands at the European level and to unfailingly pass on the Melanesians' concerns to the European Parliament.

Observations by the Great Witness

Hong Kong: A Model for Self-Government

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"One country, two systems," "a high degree of self-government" and "the people of Hong Kong governing Hong Kong" are the basic political and constitutional principles, traditional expressions of democracy, which were used as a keystone for the People's Republic of China resuming sovereignty over Hong Kong and the creation of the Hong Kong Special Administrative Region.

The relationship between the central authority and the Hong Kong special administrative region, established by the April 4, 1990 Hong Kong Basic Law, is undoubtedly a novel and special act with its specific features in its structure and its model. It is a novel act because it does not relate to any extant relation between the central authority and the infra-national and local units such as municipalities which fall under the control of the central government, to the autonomous national regions and to the special economic zones *(jingji tequ*.) It is unique insofar as it is hard to compare to other models. The substance and scope which the Hong Kong special administrative region enjoys are hard to compare with those which are granted to other infra-national components, whether within the People's Republic of China or in other unitary nations, and making a comparison with federal states is a complex operation.

Special administrative regions, whose pattern is provided for by Article 31 of the Constitution, do not challenge the unitary nature of the state, although they enjoy a high level of autonomy, which does not necessarily imply the development of a democratic practice (referring to universal suffrage, for instance), but SARs express freedom and respect for the rule of law, which are expressions of democracy.

"One country, two systems" is a reflection and a political principle which was initially suggested as a solution to the problems faced in Taiwan and, later, for Hong Kong's special situation. The idea was expressed in 1984 by the former supreme leader Deng Xiaoping. The principle allows the "democratic" coexistence of socialism and capitalism. Section 5 of the Basic Law provides that the socialist system and the socialist policies will not be extended to the Hong Special Administrative Region and that the capitalist system and the current way of life will not undergo any change for fifty years.

The phrase "One country, two systems" directly impacts constitutional law and order and allows various political, administrative, legal and social systems to coexist within the framework of a unified sovereignty and it can enable Hong Kong for instance to develop a model which might be a democratic one. In any event, the phrase uses democratic processes to ensure to Hong Kong a high level of autonomy. While the Basic Law specifies the scope of the power vested in the central authority, at the same time, as it is influenced by the "high level autonomy" principle and the "two-system" principle, the law specifies that the HKSAR government has extensive powers which may be called "autonomous powers".

The above is tantamount to power sharing and a respect for the rule of law according to pre-established mechanisms, just as can be done in democracy and in a system governed by the rule of law. The Basic Law is an act establishing separation of powers and regulating the standards and the conduct of said branches of power. To be sure, some grey areas may remain, and the central authority may take advantage of them to interfere with the special administrative region's affairs. Litigation may also emerge regarding who must exert such and such a power. However, very few incidents have been reported thus far.

If China must be regarded as a unitary state, the special administrative regions' powers are huge powers, and theoretically, the autonomy guaranteed to the special administrative regions by the Constitution and the Basic Laws can no longer be interfered with by the central government, or at least, should that be

necessary, it should require compliance with rules pre-established by the Basic Law.

Finally, the notion of « One country, two systems » was a creative and original one. The history of the Hong Kong and Macao handover to the People's Republic of China is still too short to be perfectly convincing. However, the Special administrative region appears as a decolonization solution. Be that as it may, "One country, two systems" has really become a model for autonomy in its own right, which—at least partly—calls for democracy's operating rules and relies, among others, on respect for the rule of law.

Conclusions

Democracy, Diversity, Avatars

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Obviously, the conclusions (and not a summary note) suggested here have been substantiated by the contributions and debates during the conference's two days. They attempt at figuring out a concept, the concept of democracy, which is so polysemous or to which so many nouns are attached that it becomes devoid of meaning. First of all, it seemed necessary to reaffirm that we cannot scrutinize our contemporary democracies in terms of ancient Athens on account of the fact that citizenship was restricted, that at the time the very notion of "person" was unknown to Athenians, and that in that holistic society, the individual could in no way claim any rights or guarantees from the City. Nor is it possible to compare our contemporary democratic experiences to Rousseau's absolute model in the Social Contract, for the Social Contract imposes such conditions regarding the very existence of such a regime (the size of the City, not too great inequalities in people's circumstances, and mostly the Virtue, which men need) that it seems hard to attain for our contemporary "cities", and in the final analysis Rousseau's model suits only an idealized Geneva..., or, according to Rousseau, eighteenth-century Corsica. Nevertheless, we have considered that some principles can be viewed as timeless, which was proven by our debates (equality in the exercise of power, equality under the law, equal opportunity, etc.)

The papers during this conference have shown a fear of the permanent danger of « democratorship". Therefore, it was necessary to identify which checks and balances, whether in Melanesia or elsewhere, are likely, among other things, to restrict, or even annihilate the "dictatorship of the majority" (whether such dictatorship relates to the electoral, constitutional or "spiritual"

aspect,) which is so much feared in democracy, and promote a genuine democratic education—judges, education, local government, associations, the media, political parties...

It appeared to me that the only means to understand the potential richness of the notion of democracy, that society based on autonomy, was to move beyond a definition based, as it traditionally is, only on the notion of equality, and to focus on freedom, or more specifically, on equal freedom for all. For this purpose, in the light of Giovanni Sartori's book (*Théorie de la démocratie*, Librairie Armand Colin, 1973) and of Hans Kelsen's book (*La Démocratie, sa nature. Sa valeur,* Bibliothèque constitutionnelleet parlementaire contemporaine, Librairie du Recueil Siry, 1932,) we have put forward the features which seem essential and go well beyond structures and standards—skepticism, relativism and the need for compromise as the only means to make democracy come alive. We followed Kelsen, starting from the last pages of his book, in order to apprehend how democracy must cause us to doubt, as the most celebrated trial in history, Jesus' trial, can show. Finally, this system must be characterized by its permanent development, its unceasing search for compromise, which is the only solution to ensure living together.

Melanesia, and more particularly New Caledonia, in line with the new "social contract" represented by the "Noumea Accord", will surely be used as a laboratory where we hope new formulas for political organization will be in a position to be reinvented.

Democracy: power by the people. But which people? Which peoples? Not all peoples are alike. Therefore, would they choose to have the same type of power? Could they? Would they? Western countries in Europe and North America suggest they devised democracy, it being understood that Ancient Athens and Ancient Rome were already well provided as regards thoughts and practices relating to the field of democracy. If democracy extended to all continents it was only because it had to go through some adjustments.

Is it really possible to adopt a typology in which the category called "democracy" can include a set of very different government systems? Is this evidence of the totalitarian success of democracy or on the contrary a debasement of a catchall notion? In order to move forward in this reflection, we need to characterize the minimal basic values, the essential requirements without which there is no talking about democracy. They have to be sought in two ways: law and the rule of law on the one hand, and on the other hand politics, the effectiveness of the freedoms of speech, association, political controversy and guarantees for (political) minorities, checks and balances and the common determination of public policies geared to the general interest.

We will analyze a certain number of countries which are characterized by their geographical location poles apart from the cradle of democracy and by the diversity of their territories, and such countries are related not only on the geographical level but also on the ethnic and historical levels. This group is Melanesia. Melanesia is made up of five very different countries but all are inhabited by Melanesian peoples—Fiji, New Caledonia, PNG, Solomon Islands, and Vanuatu. These five countries, each in its own way, institute the rule of law and political pluralism. To be sure, they are democratic, but diversely so.

PEM – Presses électroniques de la Maison de la Mélanésie - Paul-de-Deckker

http://www.maison-de-la-melanesie-pauldedeckker.com

ISBN : 978-2-9558903-0-1