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New Caledonia: a Promising Attempt to Constitutionalize a Sovereignty Conflict Going Wrong

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Abstract

New Caledonia is a French autonomous territory in the South Pacific whose constitutional status is designed to be transitional. It derives from the 1998 Nouméa Agreement, based on the 1988 Matignon-Oudinot Agreements. These Agreements ended violence between loyalist and indigenous groups and delayed a promised independence referendum by 30 years, in return for territorial and non-territorial autonomy. Indeed, the Nouméa Agreement provided the New Caledonian divided society with a power-sharing system that up to 2021 worked well. It recognizes the ‘Kanak people’ and ‘shared sovereignty’. It also entrenches procedural rules for a series of referendums that, if the restricted electorate had voted in favour, would have guaranteed full sovereignty to New Caledonia. In early 2024, two years after the inconclusive third and last independence referendum, tensions escalated and in May 2024, following deadly riots over a voting reform proposal, the French Government declared a 12-day state of emergency. There is no consensus on New Caledonia’s final constitutional status. Instead, dialogue between the parties has eroded and a true ‘Indigenous-settlers’ reconciliation is far from being reached. Combining historical background with recent legal and political analysis, this paper offers insight into the intricate history – and problematic present – of New Caledonia.

Keywords

New Caledonia, sovereignty, self-determination, independence referendum, decolonization, power-sharing



1. On the constitutional recognition of Overseas France ...

Overseas France (119,394 km²) includes Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Barthélemy, Saint-Martin, Saint-Pierre-and-Miquelon, Wallis and Futuna, French Polynesia, French Southern and Antarctic Lands, and New Caledonia. All 12 French overseas territories – inhabited by an estimated 2,2 million people – have different political statuses and relations to Paris, the European Union, and their respective world regions.

In constitutional terms, Overseas France is classified into Overseas Departments (*départements d'outre-mer*, DOM) and Overseas Territories (*territoires d'outre-mer*, TOM), according to the Articles 73 and 74 of the 1958 French Constitution (FrConst). With the 2003 constitutional revision,¹ DOM and TOM changed their names and have become Overseas Departments and Regions (*départements et régions d'outre-mer*, DROM), and Overseas Collectivities (*collectivités d'outre-mer*, COM). In essence, DROM are governed by the principle of legislative identity, meaning that national legislation automatically applies. Yet this allows for some degree of legislative differentiation. Indeed, Article 73 of the 1946 Constitution of the Fourth Republic already provided the French Parliament the ability to differentiate or adapt legislation in the DOM on an exceptional basis. This arrangement was maintained under the 1958 Constitution of the Fifth Republic. The 2003 constitutional revision went a step further. It gave the DROM themselves a limited power to derogate from national legislative provisions, although subject to parliamentary supervision and oversight.

COM instead are granted more extensive autonomy because of their peculiar organization (*organisation particulière des collectivités*, Article 74 FrConst). They are only subject to the laws specifically extended to their respective territory in accordance with the principle of specialty of legislation (*spécialité législative*). This means that laws passed in metropolitan France must include a special reference rendering (parts of) them applicable in the respective COM (i.e. *Saint Barthélemy, Saint-Martin, Saint-Pierre-et-Miquelon, la Polynésie française* and *les îles Wallis et Futuna*).



2. ... and the *sui generis* collectivity New Caledonia

New Caledonia (*Nouvelle-Calédonie*) belongs to Melanesia and is home to 271,400 people (ISEE 2020). It is located at 16,822 km from metropolitan France, almost 2,000 km east of Sydney, Australia. It has an area of 18,575 km² and its Economic Exclusive Zone – strategically and economically relevant for France – covers 1,4 million km² (French Government 2024). From 1946 to 1998, New Caledonia was vested with the specific status of TOM, as defined by the different French Constitutions and in spite of multiple reforms of its local administrative government regime (1957 Defferre Law; 1963 Jacquinet Law; 1969 Billotte Law; 1976 Stirn Statute; 1979 Dijoud Law; 1984 Lemoine Law; 1985 Pisani Plan; 1985 Fabius Plan; 1986 Pons I Statute; 1988 Pons II Statute); (in brief, see annex in Fisher 2013; in detail, see Minvielle and Pascual 2021). In other words, New Caledonia experienced a ‘waltz of the statutes’ (Jacquemart 1989: 64), or ‘institutional yo-yo’ (Agniel 1997: 41)^{II}, progressively outlining the main features of New Caledonia’s political system. This gradual statutory evolution, in accordance with the logic of transition from colonization to decolonization,^{III} led to the establishment of a unique self-governing entity within the French Republic. Its political autonomy made many French authors echo the question posed by Thierry Michalon (1982): is the French Republic a federation that ignores itself?

The Nouméa Agreement of 5 May 1998 (or Nouméa Accord;^{IV} Nouméa is New Caledonia’s capital) makes New Caledonia an exception in Overseas France insofar as it enshrines its different and unique legal framework within the FrConst (Chauchat 2011). The unorthodox nature of the Nouméa Agreement was such that back then Socialist Prime Minister Michel Rocard told the signatories the very day the Agreement was signed to ‘anticipate pleasurably the perplexity of public law professors faced with the innovative and unusual nature of the constitutional instrument [they had] just invented’.^V As a response to decades of political troubles and bitter civil conflicts between movements of the Indigenous Kanak^{VI} population and those of French settlers, France revised its Constitution to allow for a change in the territorial status of New Caledonia, over the question of New Caledonia’s self-determination (i.e. the transition from colonization to decolonization, with the possibility of attaining full sovereignty).



The constitutional revision was implemented by constitutional law no. 98-610 of 20 July 1998.^{VII} This revision provided for a referendum on the Nouméa Agreement and New Caledonia, from 1998 onward, has been vested with a constitutional status – Title XIII Transitional Provisions Pertaining to New Caledonia of the FrConst – different from the status of other overseas territories that are governed by the Title XII On Territorial Communities and Articles 72 and 74 of the FrConst. After the approval of the Nouméa Agreement in the referendum of 8 November 1998,^{VIII} a series of implementing laws further defined the constitutional status of New Caledonia. All this steadily contributed to what has been termed the development of a ‘Constitution outside the Constitution’ (Young 2008; Ginsburg et al. 2009), ‘a mini Constitution within the main Constitution’ (Havard 2021: 226), or a form of New Caledonian Constitution artificially and temporarily inserted into the FrConst (Chauchat 2007: 2244), which destabilizes and impacts the entire French public law (Gohin 2008: 291). Such a development coupled with academic interpretations explains three issues. First, the reluctance of metropolitan France in the exercise of gradual transfer of powers (for a critical review on the Nouméa Agreement as a time-taking post-colonial tactic see Berman 1998). Second, the absence or underestimation of other elements such as public participatory constitution-building which could tame sovereignty conflicts (Palermo 2019) as well as the conduct of a series of independence referendums that does not correspond to what has been termed ‘deliberative peace referendums’ (Levy et al. 2021).^{IX} Third, the position of French courts that have gradually restricted the scope and substance of legislative powers (Blanc 2015: A63-A67).

Among the implementing laws of the Nouméa Agreement, most importantly, the Organic Law no. 99-209 of 19 March 1999^X was passed to define the procedures and time schedule of the transfer of major responsibilities from French authorities to New Caledonian authorities. At term, this process could lead to full independence with the handover of the sovereign powers France holds, meaning that New Caledonia would gain full sovereignty. Article 3.3 of the Nouméa Agreement provides that ‘justice, public order, defense and currency (together with credit and exchange rates), and foreign affairs [...] shall remain within the competence of the French Republic until the new political structure resulting from the votes put to the populations concerned, provided for in [Article] 5’.

With the Nouméa Agreement, the constitutional status of New Caledonia is grounded in the principles of shared sovereignty and of irreversibility of transferred powers.^{XI} The



principle of shared sovereignty means that executive and legislative powers are jointly shared between metropolitan France and New Caledonia, so not simply decentralized. This comes in the form of enumerated powers and thus follows a federal logic (Chauchat and Cogliati-Bantz 2008). The legislative powers have been distributed between the Parliament (Congress) of New Caledonia and the French Parliament on the basis of a double enumeration of legislative powers, an arrangement that has given New Caledonia control over many fields (Suksi 2021). A specific category of legislation – *lois du pays* (in detail David 2009; 2024) – enables New Caledonia to enact laws independent of any authorization, an anathema to the French tradition (Diémert 2005; Custos 2007). Indeed, the concept of ‘shared sovereignty’, closer to anagogy than legalism, carries a mystical force which irreversibly reduces the power of the French government in New Caledonia (Gravelat 2021: 242) and, if so, it is discussed through the prism of the federalizing logic by disaggregation (Beaud 1999).

The irreversibility principle means that any transfer of powers is permanent. Indeed, point 5 in the Preamble of the Nouméa Agreement, in line with the aim of emancipating New Caledonia, provides that ‘the transferred powers cannot be reclaimed by the French government, and this shall reflect the principle of irreversibility governing these arrangements.’ If the transfer of powers is defined as irreversible, the Nouméa Agreement which defines the transfer as irreversible, is not itself irreversible, in spite of its constitutional nature.^{xii} In essence, the *pouvoir constituant* remains unshared between New Caledonian and French authorities as French constitutional law is not irreversible (Gohin 2008: 293).

The transfer of powers follows a gradual approach. It vests New Caledonian authorities with the power to co-define details. Paragraph 3 of the Nouméa Agreement Preamble establishes that employment regulation, trade, natural resources, and primary education are to be transferred immediately, among others. Policing, civil defense, civil law, commercial law, land ownership, real property rights, local government, and others are, instead, to be transferred at later stages. This gradual approach is typical for *interim* constitutional reforms that aim at guaranteeing a continuing open and inclusive process of constitution-building in conflict-affected societies, or war-torn nations, insofar as it gives time to find procedural support for reconciliation and set up *interim* bodies. In the case of New Caledonia, the Nouméa Agreement set up a body called the ‘Committee of Signatories’ (CoS). Initially, the CoS was tasked with ‘assisting in the drafting of the texts required to implement the Agreement’ and then with ‘monitoring the implementation of the Agreement’. As partner



and guarantor of the Agreement, the French Government heads the CoS, which meets annually in Paris, with the Minister of Overseas Territories or Prime Minister as chair. Originally a solemn consultation between the Agreement's historic signatories,^{XIII} the CoS meetings have, over time, mutated into a decision-making body combining the ideas and efforts of the French Government and all the representative political forces and institutional presidents. The meetings provide a time and a place for discussion on how each party involved views the implementation of the Nouméa Agreement, and for taking decisions on both key guidelines and intransigent disagreements.

This specific and comparatively unique constitutional status has not only guaranteed New Caledonia a certain level of autonomy compatible with international standards in the field of transition processes from colonization to decolonization, but has also protected the integration of New Caledonia into the constitutional system of the French Republic (Blanc 2015: A41), without however granting New Caledonia self-organisation of constitutional nature in *strictu sensu* of federal theory. For many scholars, the territorial arrangements of New Caledonia represent an increasingly 'contractual' conception in French public law, referring to its adaptability when confronted with indisputable cultural diversities (Le Pourhiet 2002). Indeed, from the viewpoint of minority rights, populations of New Caledonia (but also those of other COM and in part of DROM) *in concreto* appear to be treated as minorities and, on a case-by-case basis, enjoy special rights (Palayret 2004), although not officially recognised as minorities by France. While there is evidence for this (for an overview see IACL-AIDC Blog 2020), France in general holds on to its 'stereotypical perception of homogeneity' (David 2020). Waves of unstable equilibriums between Indigenous and settler communities remain high on the agenda in many overseas territories.

For New Caledonia, as of early 2024, expert observers warn that 'work is needed now to ensure history does not repeat itself' (Fisher 2024a). Indeed, local academics compare the situation to the 1980s, when violence with bloodshed and a referendum boycott similar to the one in 2021 forced France to negotiate with pro-independence parties (Louis-José Barbançon 2024; he is of the opinion that there is still time to relaunch a dialogue, under certain conditions, not least because seeking consensus is a central tenet of Oceanic cultural Kanak tradition).^{XIV} Others define the situation as a 'fallback to colonialism' (Kowasch et al. 2022), or give evidence of the fact that it is 'a form of [steady] re-colonization [within decolonization]' (Leblic 2022). Along the same lines, Chauchat (2019) while analyzing the



first independence referendum held on 4 November 2018 argues that 30 years of dialogue about decolonization have not succeeded in reaching agreement on a consensual future. Instead of ‘internal decolonization’, a crossed interethnic majority in Congress and a halt to French efforts to strengthen the anti-independence demographic and electoral majority are needed. After the events in early May 2024, namely the deadly riots over the voting reform proposal^{XV} to expand the electoral body and the subsequent declaration of a 12-day state of emergency by decree in the Council of Ministers (i.e. signed by the President of the French Republic) on 15 May,^{XVI} New Caledonia is far from having an interethnic dialogue in Congress, and France is seeking to reestablish negotiations to secure the end of violence and ultimately also the end of the transitional constitutional status of New Caledonia (see further in parts 5 and 6).

3. On the (post-)colonial and current political demography

European influence in New Caledonia started in 1774 when British captain Cook sighted its coast. Twenty years later, the French also reached New Caledonia under captain D’Entrecasteaux. On 24 September 1853, the island became a penal colony under French administration and a destination for missionaries and settlers. The French colonial power resorted to the violent repression of the Kanak tribal and linguistically variegated cultures, and the Kanak pre-colonial intertribal rivalry.

With no negotiating power, the Kanak became marginalized socially, economically, and geographically. In 1887, le *code de l’indigénat* (the Native Law;^{XVII} Merle and Muckle 2022) was passed, while establishing parallel civil jurisdictions for French citizens. It confined Kanak people to reservations, unable to leave without permission from the colonial authorities. Colonial land grabs resulted in Kanak reservations being reduced to barely ten per cent of the land area of *Grande Terre*, New Caledonia’s main island; customary chiefs who refused to act as functionaries of the colonial regime were removed and replaced by compliant administrative chiefs whose duties included imposing taxes and providing unpaid Kanak labour for public works and settler farms. The establishment of reserves and the displacement of the population exacerbated the Kanak claims to the land for two reasons.



First, land clearing undermined one of the key principles of Indigenous populations, namely the identification of their identity and cultural heritage with their land of origin. From 1998 onward, the Kanak identity is grounded in a dual system of social organization (ordinary codified law and customary law^{xviii}) that defines land as a common natural resource and is structured by a specific link to land. This link is defined by means of three types of land: private land, public land, and customary land (Fisher 2014: 5). Second, land claims in New Caledonia are closely linked to the management of resources, particularly nickel (discovered in 1874), with New Caledonia at present possessing about 25 per cent of the world's nickel reserves.

By the turn of the 20th century, the Kanak population had fallen to less than 30,000, pre-colonial estimates having ranged from 50,000 to well over 100,000. New Caledonia, like Algeria, was conceived as early as the 1860s as a welcoming place for French population, with the policy of settlement that was reaffirmed several times, in the 1950s for agricultural development and in the 1970s for the nickel boom. The policy of settlement succeeded to turn the Kanak population in a numerical minority.^{xix} Describing the impact of colonialism, the Customary Senate, an advisory body established with the 1998 Nouméa Agreement,^{xx} wrote in the Charter of the Kanak People (2014: 4)^{xxi} ‘... the violence of colonization resulted in the disappearance of clans and chiefdoms, and the displacement of all or part of the populations of tribes and entire regions. The trauma of this violence has permanently marked the customary structures and the people who inhabit them’.

As of the 2019 census, 111,860 persons declared themselves as belonging to the Kanak community, out of a total number of 271,400 inhabitants of New Caledonia. This number represented the first increase in Kanak percentage since the 1980s, growing from 39.1 per cent in 2014 to 41.2 per cent in 2019 (ISEE 2020). Next to Kanak, European-origin groups are divided into *Caldoches* (early French descendants), *Métros* (French immigrants and temporary workers), *Calédoniens* (ethnic French from recently settled families), and *Pieds Noirs* (Northern African French). The sizes of these groups have often changed and they overall account for almost a quarter of the total population. The third main demographic group is the Wallisian and Futunian community, which represents 8.3 per cent of the population. The remaining includes several other ethnicities, such as Indonesians, Vietnamese, Chinese, Filipinos, Indians, West Indians, Arabs, Berbers, and others. However, censuses usually



overlook the growing percentage of *métissage mélanésien* (Anderson and Anderson 2017: 127-128).

The 1980s were particularly significant for the Kanak (internal) self-determination struggle that is heavily interlinked with land issues and economic development. Large-scale land redistribution, initiated with the 1978 Dijoud Plan, was redesigned with the Matignon-Oudinot Agreements in 1988, and finally formalized with the 1998 Nouméa Agreement. Most importantly, the 1988 Matignon-Oudinot Agreements ended the violent period since 1984 that saw pro-independence parties opposed to anti-independence ones (i.e. loyalists in favor of keeping New Caledonia in the French Republic).^{xxii} The period 1984-1988 is euphemistically known as ‘the Events’ (*les Événements*), reaching its climax on 5 May 1988 with the tragedy at the Ouvéa cave which resulted in the death of 21 people (Fisher 2024b: 230; Havard 2021: 224; Kowasch et al. 2022: 12). It has its roots in the Kanak Awakening of 1969-1976, the convergence of powerful structural forces, such as the recolonization of the territory by France in the 1960s, accompanied by massive immigration during a nickel mining boom, and the return to home of radicalized Kanak and Caledonian students from France, who, in 1975, called for a referendum on self-determination (Chappell 2013). In 1983, a first negotiation between independentists and loyalists took place in Nainville-les-Roches, without success. On 13 September 1987, a first independence referendum was organized by the conservative French Government (98.3 per cent voted in favor of remaining in the French Republic). Independentists, however, boycotted it because it allowed residents of only 3 years to vote.

With the 1988 Matignon-Oudinot Agreements, it was agreed that the ‘interested populations’ in the future of the territory of New Caledonia would be the only ones entitled to vote in the elections of New Caledonian institutions – three Provincial Assemblies (South Province, North Province and Loyalty Islands) and, drawn from them, the Congress – as well as in the referendum of self-determination to be held within 10 years, subsequently postponed until 2014 and 2018 following the 1998 Nouméa Agreement (that ultimately extended the residence requirement to a minimum of 20 years). This meant that only those residents present in New Caledonia at the time of approving the Matignon-Oudinot Agreements (i.e. 6 November 1988) would be able to vote. Support for the Matignon-Oudinot Agreements was fragile, evident in the assassination of Jean-Marie Tjibaou, the Kanak leader and signatory of the Agreement, on 4 May 1989, by a radical independentist,



just one year after the signing of the Agreement. Tensions remained high until both sides in the early 1990s agreed to take up the idea of a ‘negotiated independence’ (Fisher 2013: 69). The reasons why both parties agreed to defer the independence referendum were different. The pro-independence parties wanted to develop more capacity and expertise needed to manage an independent Kanaky (the Kanak name for New Caledonia). The anti-independence parties hoped for further ‘economic rebalancing’ (Blaise 2017) of the marginalized Kanak population, so that more Kanak would become convinced of the benefits of remaining in the French Republic. The North Province and the Loyalty Islands, where most Kanaks live, are characterized by lower rates of wealth and less developed infrastructure compared to the South Province in which Nouméa, the capital, is located. These inequalities must be considered when analyzing the Kanak cycles of rebellion and civil unrest, and the wider pro-independence movement (Gorohouna and Ris 2017; see also Pantz 2024).

In 1998, under the Socialist French Government of Lionel Jospin, the Nouméa Agreement extended the date of the referendum to 2018, to be held in the final term of the Nouméa Agreement that also established the New Caledonian Congress.^{xxiii} The Congress is composed of 54 members and, drawn from the Provincial Assemblies, they are to be elected every five years for the duration of the Agreement by a frozen electorate confined essentially to those with 10-years residence to 1998. The Nouméa Agreement furthermore established a multi-party Government composed of 5 to 11 members (the number is fixed by an act of the Congress) that gets elected by the Congress through proportional representation and whose decision-making procedure requires simple majority of its members, with the President having the casting vote in the event of a tie.

The 1988 and 1998 Agreements brought stability and they, until 2021, have worked well (Fisher 2024b: 232), evident in the passing of more than 200 *loi du pays* (with over a third relating to New Caledonia’s tax regime; Havard 2021: 229). Politically, in the first four elections from 1999 to 2019, the anti-independence parties retained the majority in the Congress. In May 2019, in the elections to the Provincial Assemblies that took place half a year after the first independence referendum on 4 November 2018, the strength of the anti-independence parties declined to 25 seats (from a maximum of 36 seats in 2004, and from 29 seats in the 2014 elections), while the pro-independence parties increased their seats from 25 seats in 2014 to 26. For the first time, they won more seats than the anti-independence



parties. Most importantly, a new Wallisian-based party won the remaining three seats and became the kingmaker when voting for the Government. As of May 2024, both the Congress and the Government are headed by a leader of the independentists group.^{xxiv} This is a *novum* under the yet in force but technically expired Nouméa Agreement.^{xxv}

4. On the citizenship of New Caledonia

The 1998 Nouméa Agreement, signed on 5 May 1998 by the Kanak independence movement *Front de Libération Nationale Kanak et Socialiste* (FLNKS) and the conservative settler party *Rassemblement pour la Calédonie dans la République* (RPCR),^{xxvi} defined a ‘citizenship of New Caledonia’, not a New Caledonian citizenship (*sic!*). The citizenship of New Caledonia is the most significant and yet polarizing aspect of the Agreement (Robertson 2024: 259), and a current bone of contention in view of the deferred elections of the three Provincial Assemblies and the Congress^{xxvii} from May 2024 to, at the latest, 15 December 2024 (Declotire 2024; see further in part 6). The distinction between those having a citizenship of New Caledonia and those not possessing one, i.e. the infringement of the right to vote and the principle of equality enshrined in the FrConst, is considered legitimate and legal, in international law^{xxviii} and in national law,^{xxix} because it is intrinsic to the decolonization process. In other words, the citizenship of New Caledonia is a provisional and evolving instrument designed to serve for the duration of the Nouméa Agreement. Its aim is to create a New Caledonian community across ethnic and community lines, i.e. a ‘community of common destiny’^{xxx} (Cornut 2021: 256; on the often-repeated mantra of ‘common destiny’ see critically Guiart 2024).

In essence, the citizenship of New Caledonia translates in three issues. First, the right to vote for the Provincial Assemblies and the Congress, and the right to vote for the deferred independence referendum. Second, provisions promoting local employment in the private and public sectors (i.e. mandatory duration of residence per profession category, with a maximum duration required for a profession category being 10 years; Robertson 2024: 267–268). Third, identity politics, including the (dis-)agreements over the adoption of symbols that represent New Caledonia, and the very name of the country. New Caledonia has adopted



a new anthem, banknote designs, and a motto. However, it so far failed in adopting one flag and a country name that is in the spirit of ‘common destiny’. Two flags are co-official, the French tricolour and the flag of the FLNKS (since 2011). On the name, instead, New Caledonia is the only official one.^{xxxii}

Regarding the right to vote (Robertson 2024: 265-267), the Nouméa Agreement established ‘restrictions on the electoral body for elections of the country’s institutions and for final consultation [referendum on self-determination]’ (Preamble to the Agreement). The question of how such restrictions should look like in detail, i.e. the criterion of length of residence, was heavily debated. None of the parties favored a 10-year-long continuous residence in New Caledonia. The independentists wanted a *frozen electoral body*, meaning that only those present in New Caledonia before the approval of the Agreement *and* able to justify a 10-year-long residence would be entitled to take part in provincial elections and the independence referendum(s). The non-independentists favored a *sliding electoral body*, meaning that all those who could justify a continuous 10-year-long residence would be entitled to take part in provincial elections and the independence referendum(s). Most importantly, the date of residence was not meant to be the date of arrival to New Caledonia, but the date on which the person enrolled on the general electoral list at the local municipality. In addition, those who did not have the minimum residence period were placed on an auxiliary roll. This created major political division. It finally resulted in the Constitutional Act 2007-237 of 23 February 2007 that establishes a frozen electoral body, meaning that any person who arrived in New Caledonia after 8 November 1998 – the approval of the Nouméa Agreement – would be excluded from voting in elections for the three Provincial Assemblies, the Congress, and the final consultation, or until the Agreement is in force. Some exceptions were made (for details see Chauchat and Cogliati-Bantz 2008; Robertson 2018). In 2016 and 2017, with the independence referendum to be held within 2018, the issue of the special electoral list for the independence referendum dominated the CoS meetings (Robertson 2024: 267).



5. On the three independence referendums 2018, 2020, 2021

On 4 November 2018, the first independence referendum was held (Fisher 2024b: 234-235). The 1998 Nouméa Agreement provides for up to three rounds of voting in the event of a ‘No’ vote outcome in the first independence referendum. In Article 5, it specifies that if independence is rejected in the first referendum, there is an option for another referendum so long as the poll is requested by at least a third of the members of the Congress, to be held in the second year following the first poll. Shall independence be rejected in the second referendum too, then there is also an option for a third one, to be requested by the same vote in Congress and with the same timeframe. In case of a third ‘No’ vote, the parties would need to meet and consider the situation together. To this end, the political system of New Caledonia set up by the 1998 Nouméa Agreement would remain in force.

Article 5 also clarifies that the result of the poll applies comprehensively to New Caledonia as a whole, meaning that it is not possible for one part of New Caledonia to alone achieve full sovereignty, or alone retain links with the French Republic. Regarding the timeframe, the same Article provides for the first independence referendum to be held any time after the provincial elections in 2014 (‘the date of the poll will be set by the Congress in the course of the fourth term, by a qualified majority of three-fifths of its members’). If the Congress had agreed immediately to initiate the first referendum, the series of referendums would have concluded by the end of 2018, before the elections of the Provincial Assemblies of May 2019. However, the pro-independence and anti-independence parties could not agree on the question to be put on the ballot until the very last moment. Finally, the referendum on 4 November 2018 marked the beginning of the potentially four-year self-determination process that is, like the *sui generis* collectivity New Caledonia itself, unique. The restricted electorate was for the first time out of three asked to return a ‘No’ or ‘Yes’ vote on the question ‘Do you want New Caledonia to attain full sovereignty and become independent?’. The option of turning New Caledonia into an associated state with the French Republic - discussed at UN level and by the Kanak independentists - was never considered.

The turnout for the 2018 referendum was a historic high of 81.01 per cent in comparison with elections to the European and French Parliaments, and the New Caledonian Congress.^{xxxii} Out of 174,165 registered voters in the special electoral roll,^{xxxiii} 78,734 voted



'No' (equaling 56.67 per cent) and 60,199 voted 'Yes' (equaling 43.33 per cent), with 141,099 voters and 138,933 valid votes cast. The clear majority opposing full sovereignty suggests a setback for New Caledonia's independence coalition FLNKS. However, the size of the 'Yes' vote has disappointed loyalists of the French Republic and opened the way for the second referendum in 2020 (Maclellan 2019). The result is consistent with the trend in provincial elections as described above. For both sides, the real shock in the results was the clear ethnic division in the vote; essentially all pro-independence voters were Kanak (Pantz 2018; Fisher 2019).

When looking at the spread of the 'Yes/No' vote across New Caledonia in the second independence referendum on 4 October 2020, the South Province located southwest on New Caledonia's main island, with its capital Nouméa, to a large extent voted 'No' (70.86 per cent), while the rest of New Caledonia, the less populated North Province located on the main island and the Islands of Loyalty that form the third Province of New Caledonia's second tier of government, to a large extent voted 'Yes' (respectively 78.34 and 84.27 per cent). Again, this distribution of the votes aligns with the distribution of the Kanak, even though it cannot be assumed that all Kanak are pro-independentists and all non-Kanak are loyalists. However, the 2020 vote deepened division between the sides and heightened loyalist concerns (Léoni 2020).

The number of registered voters in the second independence referendum was higher (180,799 instead of 174,165) because of changes in demography, i.e. persons being of voting age on that date. However, the increased numbers of voters in the second independence referendum do not suggest a big enough cohort to really shift the results.

The margin in the results of the second independence referendum was narrower than the one in the first independence referendum. Out of 180,799 registered voters in the special electoral roll, 81,503 said 'No' to getting full independence from France (equaling 53.26 per cent) and 71,533 answered 'Yes' when asked 'Do you want New Caledonia to accede to full sovereignty and become independent?' (equaling 46.74 per cent), with 154,918 voters and 153,036 valid votes cast; just 9,970 votes separated the two sides as opposed to 18,000 in 2018. The turnout in the 2020 independence referendum (85.69 per cent) was even higher than the one in the first independence referendum held in 2018 (81.01 per cent).

The 2020 independence referendum was re-scheduled from 6 September because of the coronavirus pandemic.^{xxxiv} This caused major discontent within the pro-independent camp.



They claimed that the imposition of the Coronavirus policy to New Caledonia by metropolitan France was in breach with New Caledonia's autonomy that grants the archipelago the competence in the fields of social protection, public health and hygiene, and sanitary control to its borders (New Caledonia up to early September 2021 only had very few infection cases, and no mortalities, not least because it applied severe policies regarding incomers and quarantine measures).

On 12 December 2021, the third independence referendum took place, with pro-independence leaders calling for 'non-participation'. With a voter turnout of just 43.87 percent (80,881 voters and 78,467 valid votes), the official results to the question 'Do you want New Caledonia to accede to full sovereignty and become independent?' were 3.50 percent (2,747) in favor and 96.50 percent (75,720) opposed. This differs drastically from the first two referendums in terms of both turnout and results, and effectively nullified the political effect of the third vote (Kowasch et al. 2022).

Preparations for the third independence referendum were undertaken in a deeply divided climate. Three issues are noteworthy. First, pro-independence parties dominated both the Congress and the Government, a *novum* under the Nouméa Agreement. With pro-independence parties holding well over one-third of the seats, the Congress on 8 April 2021 supported the call for the third referendum, with all anti-independence parties abstaining. Second, the presence of the coronavirus: by October 2021, mortalities – most in Kanak areas – exceeded 200 (of a population of 270,400). Thus, independence leaders on 4 October 2021 requested a postponement of the vote due to the many mortalities and the Kanak mourning traditions of up to 12 months (the request was supported by the larger Indigenous population community; Fisher 2024b: 243; and in an open letter in the French newsletter "*Le Monde*" signed by 64 worldwide academics; Trépied et al. 2021). Third, nickel management was of political contest, once again (on nickel as a political tool see Gorohouna 2021; Kowasch and Merlin 2024). In this divided climate, France continued to make considerable efforts in encouraging dialogue between the two sides. However, it changed its strategy in comparison to the 2018 and 2020 independence referendums. The third referendum was not held with France being impartial (Fisher 2024b: 237-242). President Emmanuel Macron replaced officials responsible for the New Caledonia portfolio and turned the French Government from an impartial guarantor of the Nouméa Agreement into a player who, in absence of an agreement between the New Caledonian parties and despite the room for manoeuvre in



setting the date (Beaud 2021), on 3 June 2021 unilaterally fixed the 12 December 2021 as the date of the third independence referendum, to secure the end of the Nouméa Agreement and to make sure that the series of independence referendums comes to an end before the French presidential and parliamentary elections in April and June 2022. By doing so, it ‘betrayed commitments of more than 30 years to a peaceful and inclusive decolonization’ (Gagné 2024: 225). On 23 June 2021, the Congress endorsed the referendum date, with pro-independence parties abstaining or opposing. Their position was not to hold any referendum between September 2021 and August 2022, instead advocating to postpone it to October 2022 so as to separate politics in New Caledonia from politics in metropolitan France, at the one hand, and respect mourning traditions of the Kanak at the other (Brengarth 2022).

Separatists argued early on that the two campaign cycles should not overlap. Interestingly, in early concurrence, French Prime Minister Édouard Philippe also went so far as to state ‘We have ruled out that this third consultation could be organized between the middle of September 2021 and the end of August 2022.’ He went on to reason it by saying ‘It seemed to us collectively that it was preferable to clearly distinguish between national electoral deadlines and those specific to the future of New Caledonia.’^{xxxv} And back in 1988, the then French Prime Minister Michel Rocard after the Matignon Agreement also had argued along the same lines: ‘I do not know where each of us, we are in 3, 5 or 10 years, but we should make a solemn commitment. New Caledonia never should again become an issue of French politics’ (cited in Kowasch et al. 2022: 13).

The independence coalition FLNKS called into question the legitimacy of the 2021 referendum. On 3 June 2022,^{xxxvi} the highest administrative court in Paris rejected the claim brought by the Kanak Customary Senate to nullify the 2021 results. The court said the Customary Senate’s declaration of a year of mourning ‘was not of a nature to affect, in itself, the sincerity of the ballot’ because coronavirus had calmed by the time the campaign period had begun. The pro-independence parties turned to the United Nations too. On 12 December 2022, the General Assembly ‘calls upon the administering Power, in cooperation with the territorial Government and appropriate bodies of the United Nations system, to develop political education programmes for the Territory in order to foster awareness among the people of their right to self-determination in conformity with the legitimate political status options, [...]’ (United Nations General Assembly 2022: 4) – thus criticizing in diplomatic terms the position of France in favour of the ‘No’ vote (Chauchat 2023: 2).



6. On a ‘relational’ model to be built anew

As this paper has shown, reflecting on Overseas France requires us not only to transcend disciplinary boundaries, but to think globally and regionally too. On the one hand, French-administered territories outside Europe are located across many and very diverse geographic regions. On the other hand, despite or due to their constitutional ties to metropolitan France (and the European Union), they were and are still subject to conflictual dynamics in ‘relational constitutionalism’ – within their geographic region and beyond.

Zooming in to New Caledonia, in the first half of 2024, three issues are at stake, and contested. First, the limit of the voter eligibility in view of the 2024 elections of the three Provincial Assemblies and the Congress. The electoral body for New Caledonia’s election of the three Provincial Assemblies and the Congress is defined in Article 77 of the FrConst and Article 188 of the Organic Law of 19 March 1999. This electorate has been frozen at 1998 since the constitutional reform of 23 February 2007. As a result, in 2023, around 20 per cent of citizens (42,596 voters) were registered on New Caledonia’s general electoral roll but not on the special electoral roll for the three Provincial Assemblies and the Congress.^{xxxvii} In order to remedy this situation, a draft constitutional law^{xxxviii} presented by the French Government modifies the electorate for the elections of the three Provincial Assemblies and the Congress by opening it up to voters that are registered on the general electoral roll of New Caledonia, who were born in New Caledonia or who have been domiciled in New Caledonia for 10 years. This change will make nearly 25,000 people eligible to vote, including 12,000 Indigenous (a + 14.5 per cent in voter eligibility; Maclellan 2024). This constitutional amendment, i.e. the sliding electorate, contains a mechanism for being suspended, if a political and institutional agreement is reached between the New Caledonian parties before the date of the next provincial elections (set for 15 December 2024 at the latest). The conclusion of such an agreement, in the spirit of the ‘common destiny’, remains the French Government’s objective.^{xxxix} Earlier, in late 2023, French President Emmanuel Macron had asked the highest administrative French court to consider whether the electoral rules could be changed by simple legislation. On 7 December 2023, the court unequivocally stated that alterations to the Nouméa Agreement in a period of ‘seeking consensus’ about the final constitutional status of New Caledonia can only be made by constitutional amendment (i.e.



by involving both parliamentary houses). Politically, the sliding electorate would swing 2 or 3 seats at each election to the loyalist parties and thus prevent the FLNKS from retaining a majority in the Congress. This is the reason why the voting reform has led to massive riots in early May 2024. They involved supporters and opponents of independence, and they led to casualties. The ‘*Cellule de Coordination des Actions de Terrain*’ (CCAT), a collective entity created at the end of 2023 to mobilize against the reform of the electoral body, was behind the massive blockades that have paralyzed especially the area of the capital Nouméa. The deadly riots have necessitated the declaration of a state of emergency and the dispatch of numerous police forces from metropolitan France to deal with the growing number of acts of vandalism, violence, and looting. On 27 May 2024, French President Emmanuel Macron decided to lift the state of emergency, in a move meant to allow political dialogue following the unrest. Earlier, during his visit to Nouméa on 23 May 2024, he asserted that New Caledonia is not the ‘Wild West’, so the Republic must regain authority on all fronts and provide security for everyone,^{XI} in view of reestablishing a dialogue between all parties.^{XII}

The second contested issue is the right to self-determination (Chauchat 2024). The FLNKS has proposed a final transitional phase during the next term of office, i.e. five years, with a non-binary referendum to be held in which the question posed relates to an associated statehood between New Caledonia and France. This is not admissible for the French Government that instead has proposed to introduce a period extending over one or two generations (20 to 40 years) and wants any future self-determination referendum to be initiated by a two-third majority in Congress. Debates on the question of who is to decide now are in full swing, and complex. The ‘matrix pact’ (Beaud 2021), i.e. the Agreements that set the course of New Caledonia’s self-determination, resulted in the ‘No’ to independence expressed three times in the ballot box. For some, it is thus for the French people as a whole to decide, also because metropolitan France has never consented to delegating its sovereign power beyond the 2021 vote (Descheemaeker 2023). However, according to the Nouméa Agreement, in the event of a triple ‘No’, the political partners will meet to examine the situation thus created, to resume negotiations. Hence, would any political decision on the future of New Caledonia belong solely to the New Caledonian parties, with the French Government acting as a Third-Party mediator? And who would be the negotiating signatories in such a case? How is the composition of the CoS and its working mode redefined over time? Questions that were not addressed back in time when the Agreements were negotiated



and transformed into a ‘constitutional political pact’ (Beaud 2021) to overcome unconstitutionality obstacles regarding certain provisions such as the frozen electorate or the granting of legislative powers to a territorial entity other than the State.

One issue is clear. Trust between the parties has been at an all-time low since May 2024 at the latest. With trust at short supply at all levels of government, and metropolitan France facing a major political crisis after the 2024 elections for the European Parliament of 9 June, the possibility of promptly addressing the third open issue (Fisher 2024b: 245), that is the transfer of further powers as per Nouméa Agreement (i.e. the remaining Article 27 powers of tertiary education, broadcast media and provincial and municipal administration) and the joint handling of some issues such as nickel management, control of immigration, future of land management, economic inequalities, and social isolation of young Kanak, are delicate and dim.

After the visits of President Emanuel Macron to New Caledonia in July 2023^{XLII} and May 2024, the prospect of a ‘common destiny’ – although extolled in the Nouméa Agreement – has never been so remote in recent years. New Caledonia’s society is deeply polarized, local politics is in a stalemate, and Kanak representatives are absent in key negotiations over the final constitutional status of New Caledonia (Fisher 2024b: 244). It is time to remind all parties of what Jean-Marie Tjibaou once said: ‘Sovereignty means the right to choose one’s partners. For a small country like ours, independence means working out interdependency’ (cited in Baker 2019).

Post-Nouméa is yet to be built. So is the Indigenous strategy in the South Pacific. The two cannot but go together in a world region that is enmeshed in global networks, sovereignty conflicts, and multilateral relations (Heathcote 2021). And if New Caledonia’s final *sui generis* constitutional status truly wants to stand up to the reality check, one must admit that the means used, i.e. the constitutionalized political referendum(s) pact, at last is contradictory to the end initially pursued (Beaud 2021). New paths must therefore emerge to advance and fine grain the scholarly fields of deliberative peace referendums (Levy et al. 2021) and the (still evolving) comparative law of secession (Delledonne and Martinico 2019).



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^I In accordance with Article 1 of the FrConst resulting from the amendment of 28 March 2003, France ‘shall be organized in a decentralized basis.’ This reform does not apply to the *sui generis* collectivity of New Caledonia.

^{II} Guy Agniel, New Caledonia’s first Professor of Law, used the image of a yo-yo to depict New Caledonia’s relations with the French Government. New Caledonia is the body of the yo-yo, moving towards and away from the finger of the player – the French Government – which controls the yo-yo’s movement up or down the string. The historian Isabelle Merle (1995) has clearly shown that when the French took control of New Caledonia in 1853 they had no precise political plan for the archipelago, and ever since the French Government has only proposed plans and statutes for New Caledonia in response to the successive crises the territory has experienced. On the role of the French Government controlling the yo-yo, see Gravelat 2021.

^{III} New Caledonia was on the United Nations List of Non-Self-Governing Territories from 1946 to 1947, following the transmission of information on New Caledonia and Dependencies by France under Article 73e of the Charter of the United Nations. Calls for greater autonomy were treated within French President De Gaulle’s larger post-war policy of forming a French ‘community of dependencies’ with some autonomy. France, therefore, refused to allow its overseas territories to be considered as Non-Self-Governing Territories in the newly formed United Nations. With this promise, in the 1958 referendum, 98 per cent of New Caledonians who voted (77 per cent of the then 35,163 registered voters) chose to stay with France (*Journal Officiel de la République Française 1958, Proclamation des résultats des votes émis par le peuple français à l’occasion de sa consultation par voie de référendum le 28 septembre 1958, 5 octobre*). The level of autonomy however appeared inadequate to satisfy the political desires of New Caledonian authorities and political forces, including the Kanak independence movement. In 1986, the General Assembly re-inscribed New Caledonia, by considering that ‘New Caledonia is a Non-Self-Governing Territory within the meaning of the Charter’. See General Assembly resolution 66 (I) of 14 December 1946 and 41/41 of 2 December 1986. See Regnault 2013.

^{IV} *Accord sur la Nouvelle-Calédonie*, signed on 5 May 1998 in Nouméa; JORF, 27 May 1998, 8039–8044.

^V *Déclaration de M. Rocard, le 5 mai 1998*: ‘Je savoure à l’avance la perplexité des professeurs de droit public devant la nouveauté et l’étrangeté de l’objet constitutionnel que vous venez d’inventer ensemble [...]’; cited in Lemaire (2012: 824).

^{VI} Kanak is derived from the term *Canaque*. It was introduced by Polynesian sailors and had a pejorative meaning in the local context. In the early 1970s, the native peoples of New Caledonia changed the spelling to Kanak, marking the birth of a Black Power type of consciousness. Kanak population is made up of more than 300 tribes speaking more than 30 languages including dialect variations. On Kanak languages, see Leblie 2024.

^{VII} *Loi Constitutionnelle n. 98-610 du 20 juillet 1998* JO 21 July 1998, 1143; subsequently revised by *Loi Constitutionnelle n. 2007-237 du 23 février 2007* JO 24 February 2007, 3354.

^{VIII} On 8 November 1998, New Caledonian voters approved this Agreement in a referendum by 71.86 per cent (equaling 55,400 ‘Yes’ votes against 21,697 ‘No’ votes). The turnout was 74.23 per cent and, out of 106,698 registered voters, 79,202 cast a vote and 77,097 of the votes cast were valid.

^{IX} The authors rightly stress that ‘referendums are never just about the act of voting. They are also about contests of ideas and norms in the broader society. In that sense, the DPR [Deliberative Peace Referendum] is a distinct approach not just to peace referendums, but to peacemaking more broadly.’ (Levy et al. 2021: 221). In short, a DPR aims ‘to institutionalize a kind of deliberation centred around public values in order to reframe the issues germane to a conflict and to expose and encourage agreement among ordinary people. The DPR may also help to secure a lasting constitutional settlement by relying on what we coined “deliberative popular legitimation”.’ (Levy et al. 2021: 214).

^X *Loi Organique n. 99-209 du mars 1999* JO 21 March 1999, 4197.

^{XI} Under the Nouméa Agreement, France agreed to give up part of its sovereign powers: ‘The sharing of powers between the French government and New Caledonia shall signify shared sovereignty. It shall be gradual. Some powers shall be transferred on implementation of the new structure. Others shall be transferred according to a set timetable, which can be adjusted by the Congress, in accordance with the principle of self-organization. The transferred powers cannot be reclaimed by the French Government, and this shall reflect the principle of irreversibility governing these arrangements’.

^{XII} In 1999, the French Constitutional Council ruled that the Nouméa Agreement has constitutional nature. *Conseil Constitutionnel, décision n. 99-4409 DC, 15 mars 1999*, on New Caledonia. On the legal debate on the meaning and scope of the 1998 Nouméa Agreement see Beaud 2021.

^{XIII} The French Government, the Kanak independence movement *Front de Libération Nationale Kanak et Socialiste*



(FLNKS) and the conservative settler party *Rassemblement Pour la Calédonie dans la République* (RPCR).

^{xiv} [...] As long as the presence of a Kanak people alongside a French people persists in New Caledonia, we will *de facto* be in a colonial situation. The Matignon and then Nouméa Agreements have paved the way for a Caledonian people in the Kanak house. It is necessary to give time and opportunity for the communities that make up this country to create an “us” with the Kanak people. We are both close and very distant, but one certainty should impose itself on all: the opening of a *sliding* electoral body could only constitute an additional obstacle to the emergence of a Caledonian people. It is not impossible because the independence movement has put forward a new concept that is both promising and future-oriented. To maintain New Caledonia within France opposed to a Kanaky outside France, the perspective of a future state not within France but with France is now formulated. To forbid oneself from embarking on this path, to dismiss it with disdain with a flick of the hand, is to forbid oneself hope. If France wants to hold its head high in the Pacific, there is still time. If we want to perpetuate the lineage illustrated in our motto ‘land of speech, land of sharing’ which is grounded in ‘two colors, one people’, continues with Nainville-les-Roches and culminates with the handshake between Jean-Marie Tjibaou and Jacques Lafleur, there is still time. If we want a Caledonian people - and the Caledonian people without the Kanak does not exist - to live in peace and prosper on their homeland, the land of their fathers, there is still time.’

^{xv} *Projet de loi constitutionnelle n° 298, voté par les deux assemblées du Parlement en termes identiques, portant modification du corps électoral pour les élections au congrès et aux assemblées de province de la Nouvelle-Calédonie*. See <<https://www.senat.fr/dossier-legislatif/pjl23-291.html>> (accessed 10 June 2024).

^{xvi} *Décret n° 2024-436 du 15 mai 2024 portant application de la loi n° 55-385 du 3 avril 1955*: <<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000049537533>> (accessed 10 June 2024).

^{xvii} The *code de l'indigénat* – in force until 1946 – was passed by decree on 18 July 1887, and extended by the decrees of 12 March 1897, 23 March 1907, and 27 May 1917. The Melanesians were assigned to live on reserves, except if hired for work. The decisions of 14 September 1920 and 20 September 1934 regulated movement at night.

^{xviii} On Kanak customary law, see Cornut (2021).

^{xix} Mass immigration of French citizens was welcomed to avoid the danger of nationalist claims of Indigenous populations, as explicitly stated in a letter of the French Prime Minister Pierre Messmer to his Secretary of State for DOM-TOM on 19 July 1972. Letter quoted here: <<https://rebellyon.info/Kanaky-une-lettre-oubliee-de-Pierre-4142>> (accessed 30 April 2024). While it is difficult to give evidence whether immigration occurred as a direct result of the policy of the French Government, a clear nexus has emerged between Kanak populations and non-Kanak populations and New Caledonia’s political demography. In essence, New Caledonia is divided on both ethnic and political lines.

^{xx} The Customary Senate is composed of 16 members from eight traditional customary areas and holds consultative powers on all laws and deliberations regarding Kanak identity. In case of divergence between the text adopted by the Customary Senate and the deliberation of the Congress, the Congress is empowered to take the final decision on the matter.

^{xxi} In April 2014, a significant number of New Caledonia’s Kanak customary authorities adopted the ‘Charter of the Kanak People on the Common Foundation of Fundamental Values and Principles of the Kanak Civilisation’. It is the product of a year-long consultation process led by the Customary Senate. The Charter’s overall objective is to institute ‘cooperative and balanced legal pluralism’ (Preamble, 11) in an internally decolonised New Caledonia (Dickins Morrison 2016). See <<https://www.senat-coutumier.nc/>> (accessed 30 April 2024). On legal pluralism that marks a departure from republican principles enshrined in French constitutional law see Daly 2015.

^{xxii} The handshake between Jean-Marie Tjibaou, the pro-independence leader, and Jacques Lefleur, the loyalist movement leader, became the symbol for reconciliation.

^{xxiii} Its role and powers are defined by Part III, Chapter I of Organic Act no. 99-209 of 19 March 1999.

^{xxiv} Roch Wamytan, president of the Kanak and Socialist National Liberation Front (*Front de Libération Nationale Kanak et Socialiste*, FLNKS, founded in 1984) heads the Congress since 24 May 2019. The FLNKS was formed from several independence parties. Today, the two dominant parties of the “umbrella party” FLNKS are the Caledonian Union (UC) and the Kanak Liberation Party (PALIKA). Louis Mapou, a member of PALIKA, heads the Government since 8 July 2021.

^{xxv} Point five of the Nouméa Agreement’s policy document, ‘Evolution of New Caledonia’s Political Organisation’, reads: ‘For such time as the polls have not been in favour of the new political organization proposed, the political organization set up by the 1998 Agreement will remain in force, at its latest stage of evolution, without there being any possibility of reversal, such ‘irreversibility’ being constitutionally guaranteed.’

^{xxvi} The RPCR was formed in 1977 under the leadership of Jacques Lafleur, signatory to the 1988 and 1998



Agreements. It remained the dominant anti-independence political party until soon after signing the 1998 Nouméa Agreement.

xxvii *Loi Organique no. 2024-343 du 15 avril 2024* JORF n°0089 du 16 avril 2024. Article 1 reads: ‘Notwithstanding the first paragraph of article 187 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia, the next elections for members of the Congress and the Provincial Assemblies shall take place no later than 15 December 2024. The special electoral list and the annexed table mentioned in article 189 of the same Organic Law shall be updated no later than ten days before the date of the poll. The current mandates of the members of the Congress and the Provincial Assemblies end on the day of the first meeting of the newly elected Assemblies.’

xxviii See United Nations Human Rights Committee, Views under article 5, paragraph of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication no. 932/2000 of 26 July 2022; ECHR, 11 January 2005, *Mr. Py v. France*, Ref. no. 6289/01.

xxix Title XIII Transitional Provisions Pertaining to New Caledonia of the FrConst.

xxx Preamble of the Nouméa Agreement: ‘During this period, signs will be given of the gradual recognition of a citizenship of New Caledonia, which must express the chosen common destiny and be able, after the end of the period, to become a nationality, should it be so decided.’

xxxi It dates back to James Cook who named it in 1774. The main island of New Caledonia reminded Cook of the mountainous scenery of his native Scotland. Kanaky or Kanaky-New Caledonia is also in use, with the former being the name invoked by Jean-Marie Tjibaou in the early 1980s (Robertson 2018: 244-255).

xxxii If not otherwise specified, all data is from <<https://www.elections-nc.fr/>> (accessed 30 April 2024).

xxxiii *La liste électorale spéciale pour la consultation sur l’accession de la Nouvelle-Calédonie à la pleine souveraineté*

xxxiv Earlier, in June 2019, the newly elected Congress duly called for a second referendum with the necessary one-third support.

xxxv *Déclaration de M. Édouard Philippe, Premier ministre, sur l’organisation de l’avenir de la Nouvelle-Calédonie, à Paris le 10 octobre 2019*. See <<https://www.vie-publique.fr/discours/271226-edouard-philippe-10102019-nouvelle-caledonie-accord-de-noumea>> (accessed 30 April 2024).

xxxvi *Conseil d’État*, 2022, no. 459711

xxxvii New Caledonia has three electoral lists. All French nationals can register on the General Electoral List (LEG) to vote for the French presidency, National Assembly in Paris and municipal councils. French citizens with continuous residence from 1994 to 2014 in New Caledonia can vote in referendums on self-determination (LESC). But only those New Caledonian citizens resident before 8 November 1998 can register on the special electoral list for the three Provincial Assemblies and the Congress.

xxxviii See endnote xv.

xxxix So the yet official statement as stated here: <<https://www.vie-publique.fr/loi/292831-nouvelle-caledonie-projet-de-loi-corps-electoral-et-loi-du-15-avril-2024>> (accessed 10 June 2024).

xl See here <<https://www.youtube.com/watch?v=N3ARm9Ug0OA>> (accessed 10 June 2024).

xli *Déclaration du Président Emmanuel Macron depuis la Nouvelle-Calédonie*: <<https://www.youtube.com/watch?v=yy1nDs4AGgY>> (accessed 10 June 2024).

xlii To many observers, his assertion ‘New Caledonia is French because it has chosen to remain French’ was inaccurate given the ‘non-participation’ of the Kanak to the third referendum (Kowasch et al. 2022).

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