



The Citizenship Dilemma in Decolonising New Caledonia

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Abstract

A “citizenship of New Caledonia” has proven to be one of the most significant yet polarising aspects of the 1998 Nouméa Accord. Citizenship of New Caledonia restricted who could vote in provincial elections and for the Congress but also shaped efforts to promote local employment. In the Accord, it is the political and moral basis for New Caledonia’s common destiny and endeavours to transcend pro- and anti-independence divisions. This chapter outlines the historical roots of the notion of citizenship within New Caledonia and how it has emerged within competing understandings of decolonisation and self-determination. Citizenship of New Caledonia rejects the universal assumptions of French decolonisation in favour of a new political community with the Kanak people at its centre. This chapter highlights the difficulties of agreeing to boundaries of citizenship due in part to citizenship’s role as a political mechanism to achieve balance between the two opposing forces.

Keywords

Citizenship · New Caledonia · Nouméa Accord · Electoral list · Referendums · Kanak independence · Victims of history

20.1 Introduction

New Caledonia’s place within the French Republic, or its legally recognised “autonomy”, has evolved over time, often in accordance with the prevailing metropolitan French politics of the day. However, following the signing of the 1998

Nouméa Accord, New Caledonia became a *sui generis* territorial community of the French Republic,¹ bestowing on it a unique status and allowing the gradual and irreversible acquisition of sovereign powers in line with the wishes of local, democratically elected representatives. This highly complex and politicised debate on New Caledonia’s legal status has mirrored the sociological differentiation between “New Caledonians” and the rest of the Republic’s *body politic*.

The creation of a “citizenship of New Caledonia” under the Nouméa Accord emerged as one of the most polarising issues and continues to be so despite the consultations of 4 November 2018 and 5 October 2020 that marginally rejected independence. For this reason, it has been the subject of considerable scholarly interest, though heavily dominated by legal scholars (see Chauchat 2008; Chauchat and Cogliati-Bantz 2008; Garde 2011; Faberon 2013). The matter of citizenship, like much political and geographical division in New Caledonia, has its roots in the colonial experience (Christnacht 2009). This chapter examines these historical origins of the citizenship question, before considering its formal appearance as a key element of the Nouméa Accord. The historical, social and cultural dimensions of citizenship in New Caledonia have challenged the highly territorial notion of French nationhood and citizenship as the “one and indivisible Republic”. It is argued that citizenship in New Caledonia cannot be understood without grasping the difficulties associated with New Caledonian decolonisation and the contested boundaries of the political community. Despite its strong rhetorical connection to the “common destiny” theme that many political leaders appeal to, citizenship’s manipulation as a political tool has undermined its potential to be a unifying concept beyond the pro-/anti-independence divide.

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¹In French, a *collectivité d’outre-mer sui generis*.

20.2 Theoretical Approaches to Citizenship

Ideas and practices associated with citizenship are often tied to the sovereign nation-state. Although the seeds of modern citizenship emerged in Ancient Greece and Rome, citizenship appears a far more real and tangible idea in the present day largely because state borders also appear more real than ever. States can mobilise an array of technologies and forces to regulate the comings and goings of citizens and non-citizens, their behaviour and the means by which foreigners accede to full or partial membership of the political community in another country. For example, for many people, citizenship becomes much more real when they present their passport or are required to present identity papers at a border crossing or try to access services in a new country. Citizenship grants membership of the state and emerges as a key basis for claiming rights, seeking protection and regulating various social norms and practices (Isin and Wood 1995).

While there is little doubt that the state is the primary basis for citizenship in the contemporary world, our understanding of it has evolved considerably in recent times in response to the phenomenon widely called globalisation (see Isin and Turner 2002). The interaction between our local and global context is constantly shifting as we travel, work and live in territories other than those in which we were born. The legal regimes that mediate states and citizens reflect, in part, various external influences. We have seen the emergence of the European Union and the complex layers of rights and responsibilities that regulate the behaviour of its member states including the departure of the UK in 2020. International human rights have continued to play a critical role by imbuing a sense of human connectedness beyond state citizenship and adopting a language of global citizenship in response to major issues such as climate change, health security and economic justice (Benhabib 2016).

In its simplest form, citizenship can be viewed as a legal status bestowing particular rights and responsibilities upon the individual, though these vary greatly from place to place. Though we tend to think of citizenship status as a universal phenomenon – i.e. we are all citizens of somewhere – it is also true that the lived experience of citizenship is by no means universal. While citizenship might enable people in France or Australia access to the welfare state, public health-care and free education, in many parts of the world, this is simply not the case. Moreover, as history has proven time and time again, legal citizenship does not necessarily ensure that human beings are treated as equals by the government or by their co-citizens (Brubaker 2010). It is certainly true that some people might not think their citizenship means much at all. But there can be little doubt as to its importance as an organising principle for nation-states, especially evident in the recent refugee crises arising from conflicts in Syria, sub-

Saharan Africa and Eastern Europe. For the millions of people around the world who are officially “stateless” and denied membership by sovereign states, citizenship can be a matter of life and death. It is for this reason, Article 15 for the Universal Declaration of Human Rights declares a “right to a nationality” for all people.

In Western political thought, much of the conversation on citizenship has been between liberal and communitarian conceptions. Liberals have tended to emphasise individual liberty and expressed caution toward according any rights to distinct social groups within a political community (Kymlicka 1995). Communitarian theories of citizenship became increasingly popular in response to the end of the Cold War and proliferation of ethnic conflicts in Africa and Eastern Europe. But they also emerged in part due to identity political movements, such as the US civil rights movement, indigenous and feminist activism, among others, which rejected the exclusion of particular marginalised groups in liberal societies (see Balibar 1988). Communitarians view individuals as inherently constituted by their place within social groupings, and citizenship is understood through the lens of belonging to such groups. Communitarians favour the recognition of the layering of human identity through such groups as essential to human flourishing and citizenship. In one of the most well-known critiques of liberal conceptions of citizenship, Iris Marion Young (1989) argued that liberal views of citizenship, in attempting to promote equality by ignoring social differences, tended to exacerbate inequality. Individuals, Young argued, must be viewed as embedded within particular groups. A “differentiated citizenship” has to take into account how identification with the political community is mediated by these various social groupings. While many liberal scholars recognise the importance of social groups, they are wary of undermining the social cohesion deemed necessary for a democratic nation-state to flourish, and they express concern about the potential for a contagious identity politics to emerge that erodes national identity (Carens 2000, p. 193). One of the most common objections to, for example, recognising specific indigenous rights in Western societies, has been that it reinforces social divisions between indigenous and non-indigenous peoples and fails to address disadvantage.

We will not enter into these debates in any detail here, but it is important to situate the New Caledonian case within the broader politics of citizenship, particularly in France and its evolution over time. In particular, the politics of identity and the decolonisation process in New Caledonia has collided with the strong republican ideology that has driven French nationalism since the French Revolution. This ideology overrode various sub-national and regional political claims, often in defence of the “one and indivisible” Republic enshrined in the various iterations of its Constitution. Thus, France has

historically expressed reservations in the ratification of, for example, the 1992 European Charter for Regional or Minority Languages and the 2007 UN Declaration on the Rights of Indigenous People. In response to multiple pressures, however, France has become more flexible since the 1980s in its recognition of its internal pluralism, including in the organisation of its overseas territories, collectively referred to as the *Outre-mer* (Gohin 2002; Palayret 2004).²

Much of the national debate in France on citizenship and national identity has oriented towards the question of migration, given its extensive population from former French colonies (see Cooper 2005; Cooper and Stoler 1997). The *Outre-mer* has tended to occupy a more obscure place in the national debate, despite a population of around 2 million people (Trépiéd 2011).

The New Caledonian context exhibits many of the global challenges of citizenship. In particular, how does equal citizenship permit the recognition of difference within the same political community? This a key question in relation to New Caledonia's possible future independence. The Kanak independence cause rejects the assumption often voiced by its anti-independence opponents that only France is capable of integrating such a diverse population. Pro-independence leaders have emphasised the importance of placing the Kanak *au centre du dispositif*, or re-imagining the political community in light of the Kanak right to self-determination. Most anti-independence voices remain sceptical of the pluralist potential of Kanak independence and see in it an exclusive form of ethno-nationalism.

20.3 A History of Decolonisation

Citizenship as legal status versus lived experience (Rawlings 2012) has featured as an important historical and contemporary dimension of New Caledonian decolonisation. From 1887, the French colonial administration governed the territory through the *Code de l'indigénat*, a legal regime that restricted the indigenous Kanak population to reserves, subjected the population to a head tax and forced labour, and enabled the administration to nominate their own chiefs (Merle 2002). In addition to Kanak subjects, New Caledonia received thousands of Asian indentured labourers whose legal position was determined by their work contracts, the large majority of whom were excluded from legal citizenship (Merle and Muckle 2019).

²The *Outre-mer*, or Overseas, refers to various former colonies, distinct from the French mainland ("the Metropole"), integrated into the Republic following the Second World War. They are defined in Titles XII and XIII of the French Constitution (XIII defines the transitional arrangements for New Caledonia), today referred to constitutionally as *territorial collectivities*.

When the French State granted the Indigenous Kanak people formal citizenship in 1946, just as they did in other parts of the Empire to other Indigenous, colonised peoples, it was framed as a universal horizon to which all mankind should aspire. Many Frenchmen viewed this as the fulfilment of the French civilising mission, legitimising the supposedly virtuous presence of France as a colonial power. But it opened up many questions and conflicts, especially as former colonised subjects began to demand full equality and full recognition for their respective customs and cultures. How could the Jacobin Republic, famous for its assimilationist ideals, integrate an Empire of "100 million citizens" (Cooper 2005, p. 100)?

This tension was lived out in the early life of the Fourth Republic (1946–1958) through the creation of the French Union. The end of colonial subjection gave way to an inherently political problem. Most French political leaders recognised the critical role played by the colonies in supporting the war effort against both Nazi Germany and the collaborationist Vichy regime, both in terms of its manpower and its resources. It was at the famous meeting at Brazzaville in the Congo in 1944 where the Free French government under the leadership of Charles de Gaulle, leading the Resistance from London, committed to reforming the Empire's governance and extending citizenship to colonial subjects (though rebuffed any talk of independence) (Yacono 1985, p. 54). However, many metropolitan French political leaders and the small settler communities living throughout the Empire perceived the immediate granting of universal suffrage as a threat to their power.

The French Fourth Republic (1946–1958) was plagued with debates on what full and equal citizenship meant for the relationship between metropole and the colonies that became overseas departments, territories and associated states of the French Union. The post-war democratic institutions of France reinforced metropolitan power and failed to put ex-colonial representatives on an equal footing. In certain settler colonies such as Algeria and New Caledonia, the French government sanctioned the reconfiguration of electoral boundaries to ensure that minority settler populations remained in power. Failure to resolve the inherent contradiction between full legal citizenship and inferior political rights for many indigenous populations undermined the integrity of the French Union from the outset and in part led to its demise towards the end of the Fourth Republic.

French law maintained a distinction derived from the colonial era between ordinary citizens whose civil status remained under common law and certain Indigenous populations who retained a personal status, allowing them to remain subject to their "traditional" customs and institutions. In New Caledonia and elsewhere, the French government was petitioned by indigenous leaders to ensure that their "traditional" power

structures were recognised and valorised (Kurtovitch 2000a, pp. 118–122), a policy supported by the local Communist Party that briefly succeeded in gaining traction among the clans (Kurtovitch 2000b). Recognition of the roles of chiefs and legal enforcement of the inalienability of customary lands aroused the anger of settlers who persistently expressed the distorted view that the indigenous populations were privileged.

Even though only Guinea voted for independence in the 1958 referendum on the new Constitution of the Fifth Republic, much of the once vast French Empire whittled away by 1960 (Aldrich and Connell 1992). The exception was the island, overseas departments and territories, or “DOM-TOMs”, which remained in the Republic. In the Pacific region, New Caledonia and French Polynesia (formerly known as the *Etablissement français d’Océanie* or EFO) became overseas territories. In 1962, Wallis and Futuna voted to cease its protectorate status and become an overseas territory, and in doing so received French citizenship. The Condominium of New Hebrides, which France co-administered with the United Kingdom, remained excluded from much of these changes (and its indigenous population unable to obtain French citizenship) until its independence in 1980 as Vanuatu (Rawlings 2012). New Caledonia’s status of overseas territory permitted a degree of political autonomy within France, but this remained essentially subject to French control and at the whims of the government of the day. Following the introduction of the Constitution of the Fifth Republic under President Charles de Gaulle in 1958, the French government gradually removed some of the territory’s autonomy against most local political leaders’ wishes. This proved to be one of the underlying causes of the emergence of the independence struggle in the territory (Le Borgne 2005).

20.4 The Emergence of Kanak Independence

New Caledonia already possessed a highly diverse population in 1946 (Kurtovitch 2000a). However, French colonisation depended on significant social segregation, especially between the Kanak and non-Kanak populations. Political changes (namely, the end of the *Code de l’indigénat* and an end to Kanak isolation in reserves) and economic changes (a large increase in French government funds for economic development and the expansion of the nickel industry) saw a large number of Kanak move to the Nouméa agglomeration and other small urban centres, which had hitherto been barred to Kanak.

Even though the Kanak people had become *de jure* citizens of the Republic in 1946, they remained heavily marginalised socially, economically and politically in the post-war

period. The increasing presence of Kanak in Nouméa and the towns only accentuated these inequalities (Barbançon 1992, p. 37). For the first two decades following the war, the majority of Kanak supported the *Union Calédonienne* (UC), a political party formed in the early 1950s mostly from church-affiliated associations and union organisations (Trépiéd 2010). Those Europeans in the UC tended to support New Caledonian autonomy within France and challenged the economic dominance of the large family-owned corporate interests. The UC, whose motto was “two colours, one people”, strongly promoted improved welfare, access to infrastructure and economic development of Kanak communities. While some customary chiefs and individuals who had gained important positions in the churches had attained some prominence in the party, political power in the Territorial Assembly remained largely in the hands of Europeans. The economic marginalisation of the Kanak became more evident in the wake of the territory’s “nickel boom” (1967–1972), which brought an unprecedented level of wealth to the territory as global nickel prices rose.

By the end of the 1960s, disenchantment with the status quo among Kanak had already led to the emergence of new political parties, such as the *Union Multiraciale de la Nouvelle-Calédonie* led by Yann Celenei Uregei. Young Kanak students, the first to receive university education, returned from France and brought with them various ideological influences borne out of the student protest movements that characterised France during the period, above all May ’68 (Chappell 2014).

Arguably the most significant impact of the boom was the sudden surge in the numbers of migrants from France and French territories in the Pacific. Many Wallisians and Futunians, who only became citizens in 1962, allowing them to circulate freely across the Republic, moved to New Caledonia *en masse*, quickly becoming the third largest ethnic community in the territory. The Kanak population declined as an overall population from 51.1% in 1956 to 42% in 1976 (ISEE 2018; Kowasch 2010, p. 63; Vivier 2009, p. 22). Seeing the seeds of Kanak discontent grow at a time where France faced challenges from other indigenous populations and independence movements within the Republic, not to mention international pressure to decolonise, the French government actively encouraged and weaponised migration as a means of “drowning” the Kanak electorate. In May 1972, French Prime Minister Pierre Messmer penned a letter to his Secretary of State for the Overseas, Xavier Deniau, in which he noted that:

New Caledonia, colony of settlement, although destined to be a multiracial melting pot, is probably the last non-independent tropical territory where a developed country may send its nationals...In the short and medium term, the massive emigration of French citizens must allow the avoidance of the danger of the pro-independence cause through the maintaining and improving

of the numerical balance of the communities. In the long-term, the indigenous nationalist cause will only be avoided if the non-indigenous communities represent a democratic majority mass. (cited in Besset 1998, p. 76)

This policy was supported by many in the business community as a means of attracting the skills and expertise required for the economic development of the territory, but rejected by the UC as a threat to local jobs. Simultaneously, the French government retracted elements of New Caledonia's post-war autonomy through a series of laws, including in the important area of nickel (Le Borgne 2005, p. 395).

While we might question the extent to which immigration occurred as a direct result of government policy, a clear nexus had emerged between New Caledonia's demography, namely, the balance between the Kanak and non-Kanak populations and local politics. This has continued to cast a shadow over New Caledonian political life beyond the emergence of the independence movement and into the Nouméa Accord period.

20.5 Migration and the Victims of History

When the Kanak independence movement emerged during the mid-1970s, opposition to immigration from France and other territories in the Pacific was a major political issue. However, there was no legal distinction between French citizens and New Caledonian locals, and no legal barriers preventing or hindering the movement of French metropolitans, Wallisians, Futunians and Polynesians with French citizenship to the territory.

The principle of democratic self-determination that framed decolonisation in much of the world and had become enshrined in a growing body of international law presented a dilemma in the New Caledonian case. For the *Front Indépendantiste* (FI), the indigenous Kanak people alone had the right to self-determination. But this excluded the majority of the population, including the European community whose descendants had lived in the territory for several generations. For the French government and loyalist parties such as the *Rassemblement pour la Calédonie dans la République* (RPCR),³ depriving a section of French citizens from democratic participation contravened the political rights guaranteed by the 1789 Declaration of the Rights of Man and the Citizen. However, it should be noted that in the referendums of self-determination in both the cases of the French Territory of the Afars and the Issas (1974, now Djibouti) and the Comoros Islands (1975), voting was restricted to the popula-

tions intéressées (Aldrich and Connell 1992, p. 70); i.e. those with a minimum of 3 years local residence, which excluded temporary French public servants on rotation in the respective territory. Therefore, what were the boundaries of self-determination in the New Caledonian case?

In July 1983, the French socialist government convened a roundtable at the French town of Nainville-les-Roches, bringing together leaders from both the FI, the RPCR and a moderate party, the *Federation pour une Nouvelle Société Calédonienne* (FNSC), which formed a coalition government with the FI in 1982 (Barbançon 2008). Georges Lemoine, the Secretary of State for the Overseas, hoped to strike a political agreement between the two intransigent positions held by the FI and the RPCR. The meeting failed to produce a consensus, with the RPCR rejecting the final declaration. However, the FI and the FNSC agreed in principle to self-determination that included both the Kanak people and those labelled the "victims of history", referring to non-Kanak with a deep historical connection to New Caledonia (the term "victim" evoking the experience of Frenchmen who arrived as part of French colonisation, either as convicts or labourers).

What this translated to in terms of a referendum of self-determination nevertheless remained problematic. The various elements of the FI, which in 1984 formed a loose coalition known as the *Front de Libération Nationale Kanak et Socialiste* (FLNKS),⁴ considered that this should restrict participation to those with at least one parent born in New Caledonia. The RPCR rejected the very idea of "victims of history" as an insult and a denial of French legitimacy and identity. The FLNKS found little support outside the indigenous Kanak population for such a significant restriction of the right to vote for the referendum. On 13 September 1987, when the conservative French government organised a referendum of self-determination, it put in place a 3-year residency requirement, far short of what was demanded by the FLNKS, leading to their boycott and a 98.3% vote in favour of remaining in the Republic.

It was not until the 1988 Matignon-Oudinot Accords that an agreement was finally struck on who could participate in the referendum of self-determination forecast for 1998, but subsequently postponed until 2014 and 2018 following the Nouméa Accord. The text stipulated that only those residents in New Caledonia at the time of the referendum approving the Matignon-Oudinot Accords (i.e. 6 November 1988) would be eligible; in other words, a residency requirement of approximately 10 years. The Nouméa Accord would ultimately extend the residency requirement to a minimum of 20 years.

³Formed in 1977 under the leadership of Jacques Lafleur, it remained the dominant anti-independence or loyalist political party in New Caledonia until soon after the signing of the 1998 Nouméa Accord (see page 9).

⁴The FLNKS, proclaimed on 24 September 1984, was formed from several independence parties. Today, the two dominant parties of the "umbrella party" FLNKS are the UC and the *Parti de libération kanak* (PALIKA).

20.6 The Nouméa Accord

On 5 May 1998, the FLNKS, the RPCR and the French government signed the Nouméa Accord. One of the central elements of the agreement was the creation of a “citizenship of New Caledonia” – an electoral body with the exclusive right to vote in the elections for the provincial assemblies and the Congress.

The idea of a distinct body of citizens of New Caledonia (the text refers to a citizenship of New Caledonia, not a New Caledonian citizenship) within the French Nation emerged a decade earlier during the negotiations for the Matignon-Oudinot Accords but did not see the light of day, deemed to be too sensitive at the time and likely to undermine commitment to a consensual solution (Christnacht 2009, p. 112). The historical and political reasons for this new citizenship were articulated in the delicately worded Preamble to the Accord:

[Section 4] “It is today necessary to establish the foundations for a citizenship of New Caledonia, permitting the original people to form a human community with the men and women who live there, affirming its common destiny”.

Citizenship of New Caledonia responded to the historical questions of legitimacy and belonging that emerged out of its colonial past. Affirming their exclusive right to self-determination, the FLNKS in turn recognised the legitimacy of certain sections of the non-Kanak population as fellow members of the political community. The Nouméa Accord should therefore be viewed as a continuation of the debate that began at Nainville-les-Roches in 1983.

Section 5 of the Accord equally states that:

During this period, symbols will gradually recognise a citizenship of New Caledonia translating the chosen community of destiny, and able to transform into a nationality at the end of the period, if that is what is decided.

The noted distinction between “citizenship”, on the one hand, and “nationality”, on the other, speaks to ongoing sensitivities surrounding the language used in New Caledonian identity politics (Chauchat and Cogliati-Bantz 2008; Faberon 2013). The Nouméa Accord does not refer to a New Caledonian “nation” and avoids any perceived erosion of the “one and indivisible” nature of the French Nation.⁵ New Caledonia can only become a nation, with its own distinct nationality, in the event that they accede to independence and break away from the French Republic.

Even though the Accord introduced a distinction between citizens of New Caledonia and other French nationals (though New Caledonians remain French nationals), this distinction is limited to the right to vote for provincial elections and the Congress and provisions promoting local employ-

ment. Otherwise, there is virtually no formal differentiation between them, despite the efforts to expand its scope beyond those two areas identified in the Nouméa Accord. Despite the political furore around migration, the Accord did not put in place any restrictions on the numbers of French citizens entering the country, though the promotion of local employment is undoubtedly a disincentive to prospective migrants. For the FLNKS and other pro-independence parties, citizenship is and remains a critical mechanism for protecting its electoral weight from being undermined by people they see as illegitimate. Further, it constitutes the centrepiece of a new political community, placing the Kanak at the centre, and reconstructs their relations with non-Kanak communities from this perspective, rather than shared French citizenship. Most political leaders accept the principle of local citizenship, often noting that New Caledonia’s small population and landmass, and the limited scale of its economy render some sort of restriction justifiable (as noted in Section 4 of the Preamble to the Nouméa Accord). However, the traditional anti-independence parties have vociferously opposed the more severe restrictions on voting rights and local employment (see next section) as contrary to the spirit of the Accord and damaging to the economy.

Nevertheless, some parties successfully mobilised citizenship as a discursive means of distinguishing themselves and challenge the *Rassemblement* movement that had hitherto dominated New Caledonia’s anti-independence politics under the leadership of Jacques Lafleur. During the 2004 provincial elections, RPCR dissidents formed *Avenir Ensemble*, which succeeded in toppling the RPCR as the largest anti-independence party in the Congress, with Marie-Noëlle Thémereau elected as President of the New Caledonian Government. In her maiden speech, Thémereau invoked citizenship as an important mechanism for realising the common destiny and suggested certain policy initiatives that would lend it greater significance (Thémereau, 17 August 2004). *Calédonie Ensemble*,⁶ led by Philippe Gomès, became the largest party in the Congress following the 2014 provincial elections, mobilising citizenship as a central theme of its political discourse. Gomès has unashamedly referred to New Caledonia’s place within France as a “small nation in a large nation”, crossing a threshold (i.e. referring to New Caledonia as a nation) previously considered anathema by many anti-independence actors (Robertson 2018, pp. 148–149). The resonance of a strong “multi-ethnic New Caledonian identity within France” might in part explain the success of *Calédonie Ensemble* in recent years.⁷

⁶Formed in 2009, mostly from *Avenir Ensemble* and *Rassemblement* dissidents.

⁷Soon after this article’s submission, *Calédonie Ensemble* experienced a considerable defeat in the May 2019 provincial elections, losing its dominance to the more traditional anti-independence coalition, currently known as the *Républicains* (*Avenir en confiance*).

⁵Note that the word “nation” is capitalized in French when referring to France, *la Nation*.

Apart from the matter of voting rights, the politics of citizenship has been most visible in disagreements over the adoption of new symbols to represent the country. While New Caledonia has adopted a new anthem, banknote designs and a motto,⁸ political leaders have failed to reach consensus on changes to two of arguably the most significant symbols identified in the Accord: the flag and the country name (Robertson 2018, pp. 244–255). To this day, New Caledonia flies two flags: the French tricolour and the flag of the FLNKS. The recognition of the FLNKS flag in 2011, the result of a surprising move by the anti-independence *Rassemblement-UMP* to symbolise the “Melanesian identity” of the territory was roundly opposed by *Calédonie Ensemble* and other anti-independence parties but supported by both the FLNKS and then President Nicolas Sarkozy (Lindenmann 2004, pp. 11–15). Unlike the other French territories of the Pacific, French Polynesia and Wallis and Futuna, New Caledonians have failed to rally around a single flag marking their identity. Political leaders have largely sidelined the matter of the country name, despite some pro-independence leaders referring to “Kanaky” or “Kanaky-New Caledonia”, the former being the name invoked by Jean-Marie Tjibaou in the early 1980s.

20.7 The Right to Vote

The stakes surrounding the referendum on self-determination only reinforced the importance of voting rights. Kanak pro-independence parties have sought the exclusion of more recently arrived French nationals in order to counterbalance non-Kanak dominance at the ballot box. The French law officially forbade any deprivation of citizens’ rights, especially democratic equality. For this reason, the FLNKS has often appealed to international law to aide their cause, especially UN General Assembly resolutions 1514 and 1541 on the right to self-determination for colonised peoples. The crux of the question remained “who” held such a right to self-determination and how this determined the parameters of suffrage, a question finally resolved by the 1988 Matignon-Oudinot Accords.

In rendering New Caledonia *sui generis*, the Nouméa Accord paved the way for expanding suffrage restrictions beyond the referendum alone. The Constitutional Bylaw of 15 March 1999⁹ enumerated enrolment criteria for the special electoral list of citizens of New Caledonia, including continuous residence in New Caledonia prior to 8 November

1998 (i.e. the date of the Nouméa Accord referendum).¹⁰ Those who did not have the minimum residency period were placed on an auxiliary roll¹¹ until they reached 10 years of continuous residency. Exceptions were granted to those whose residence was interrupted for valid educational, professional or medical reasons. The date on which residency in New Caledonia commenced was not the date of arrival *per se* but the date on which the individual enrolled on the general electoral list at their local municipal town hall – a point that would become problematic for certain metropolitan French who arrived in New Caledonia but failed to take the necessary steps to change their enrolment details.

The seemingly innocuous creation of the auxiliary roll produced major political division. On 19 March 1999, France’s highest legal body, the Constitutional Council, determined that the auxiliary roll would be renewed for each election. This interpretation of the Constitutional Bylaw meant that any person would be eligible to enrol on the special electoral list of New Caledonian citizens as long as they had 10 years’ continuous residency, regardless of their arrival date (see Clinchamps 2008; Chauchat 2008, 2012). According to the FLNKS, this contravened the underlying intent of New Caledonian citizenship, which was to prevent new arrivals from having an undue influence in the balance of power in the provincial assemblies and Congress. Instead, they demanded the auxiliary roll be fixed, meaning that only persons who had arrived in New Caledonia prior to 8 November 1998 “and” had 10 years of residence would be eligible and individual who arrived after this date excluded. Predictably, anti-independence leaders considered the permanent exclusion of new arrivals as the deprivation of democratic rights associated with French citizenship and contrary to the spirit of the Nouméa Accord.

The French government at the time, led by Prime Minister Lionel Jospin, criticised the Constitutional Council for its interpretation, supporting the FLNKS view that the negotiations had favoured a reading in favour of a “frozen electorate” (Maclellan 1999, p. 249). The conservative President Jacques Chirac committed to revise the Constitution in line with FLNKS views (Maclellan 2010), while anti-independence political leaders lobbied their political allies in Paris in a bid to maintain the more open definition of New Caledonian citizenship.

Chirac convened a Congress¹² of the French Parliament in February 2007, which overwhelmingly adopted a revision of the Constitutional Bylaw of 15 March 1999. New Caledonia’s two deputies in the National Assembly and the single senate

⁸The New Caledonian Government organized a local competition in 2007 to determine a shortlist for the anthem, bank notes and country motto.

⁹Fr. *la loi organique du 15 mars 1999*.

¹⁰The various criteria render the voting rights matter very complex. For the sake of brevity, the author has simplified it considerably. For more detailed analyses by legal scholars, see Chauchat and Cogliati-Bantz (2008) and Clinchamps (2008); see also Robertson (2018).

¹¹Fr. *Tableau annexe*.

¹²A joint sitting of the French National Assembly and the Senate.

Table 20.1 Electoral list figures

Year	1998	2014	2019
General list	112,946	175,989	210,105
Provincial	104,078	152,462	169,635
Auxiliary register	8868 (7.8%)	23,527 (13.4%)	24,335 (13.4%)

representative (all from the RPCR) voted against the measures. The alteration of the text froze the special electoral list, meaning that any individual who arrived in New Caledonia after 8 November 1998 would be excluded from voting in elections for the provincial assemblies and the Congress until the Nouméa Accord period ended (Table 20.1).

Despite the overwhelming adoption of the revised text in the Congress, citizenship remained as polarising as ever in New Caledonia, due in large part to its importance for determining the balance of power in the Congress and its favouring of Kanak populations (and therefore the pro-independence vote). Despite the changes, the FLNKS did not succeed in obtaining a majority in the legislature in both the 2009 and 2014 provincial elections, even though its results did improve marginally over this period (23 seats in 1999; 18 in 2004; 23 in 2009; 25 in 2014).

The makeup of the special electoral list, distinct from the general electoral list of all French citizens, became an intensely bitter point of contention, fought out in the courts, especially in the lead up to the 2014 provincial elections. From 2010, pro-independence parties appealed on numerous occasions to have certain individuals removed from the special electoral list who they suspected did not have the requisite residency requirements. Anti-independence parties in turn committed resources to assisting voters to defend themselves in the courts. The FLNKS lay considerable blame on municipal governments responsible for admitting individuals on to both the general and special electoral lists for circumventing the enrolment criteria (Chauchat 2016).¹³ The issue became so important that in 2016 then Prime Minister Manuel Valls commissioned legal expert Félix Mélin-Soucramanien to investigate the true extent of the number of *les indûment inscrit* (“unduly enrolled”) persons (Premier Ministre 2016). Political leaders eventually agreed to Mélin-Soucramanien’s recommendation to re-examine some 1062 cases and that the matter of enrolment on the special list was “politically closed”, though his report failed to restore trust in the electoral enrolment process among most pro-

¹³Each of the municipalities has a special administrative commission that oversees the revision of electoral lists. In New Caledonia, these commissions consist of a five-person panel: The representative of the mayor, a magistrate, a representative of the State and two representatives from each of the main political parties. The FLNKS considers that in Greater Nouméa’s municipalities the bias of mayoral delegate and the State would mean their delegate’s views would be rejected out of hand, likely three against two.

independence leaders and court disputes on persons incorrectly admitted to the list continued (Robertson 2018, pp. 189–190).

The creation of the special electoral list had the unintended side effect of excluding a considerable number of Kanak voters as well (see Pantz and Robertson 2018; Robertson 2018, pp. 180–186). Since enrolment on the special electoral list was not automatic and required submitting the relevant paperwork proving the residency required, many Kanak did not undertake these steps. Alternatively, considerable numbers originally from the Loyalty Islands who moved to the urban agglomeration of Nouméa did not update their enrolment details, meaning they were excluded in their commune of residence (Pantz 2015; Robertson 2018, pp. 180–186). For certain Kanak living in “squat” communities in Nouméa, it was often difficult to find the necessary paperwork enabling their enrolment. Maximising Kanak participation in the South Province was a political necessity for the FLNKS. Dominant in the North and the Islands due to Kanak demographic dominance, the FLNKS considered that it could greatly improve its overall representation in the Congress should the increasing Kanak population in the South turn out in sufficient numbers. The FLNKS *Commission* recognised this and sought to reach out to Kanak voters to encourage everyone to verify their enrolment. Despite their efforts, right up until the 2018 referendum, pro-independence parties have maintained that thousands of Kanak remain excluded from voting, both in the provincial elections and in the referendum itself. Any significant absence of Kanak voters could certainly undermine the democratic legitimacy of a political settlement between pro and anti-independence parties.

The battle in the courts concerning New Caledonian citizenship created a similar debate on the 2018 referendum. While it is beyond the scope of this article to deal directly with the referendum (see Chap. 18 by Fisher in this book), there are noteworthy parallels between the two different electorates, even if the criteria for voting in the referendum are slightly different.¹⁴ To qualify for the special electoral list for the referendum, an individual needed to have had continuous residency in New Caledonia since 1994 or a parent who satisfied this criterion. Additional provisions allowed for some who are born in New Caledonia and could demonstrate a durable attachment to the territory to also be enrolled. In both cases, legitimacy and belonging resulted in competing notions of who should and should not be eligible to vote.

For these reasons, New Caledonia’s political leaders have deliberated at length on which categories of persons, if any, should be automatically enrolled on the special electoral list

¹⁴For a full discussion on the legal cases dealing with this issue see Chauchat (2016).

for the referendum – an issue that dominated both the 2016 and 2017 Committee of Signatories meetings. The FLNKS originally maintained that only persons of “customary status”, essentially the Kanak, should be automatically enrolled. However, following anti-independence opposition to the idea of elevating one segment of the population above another, a compromise agreement was achieved on both Kanak and those born in New Caledonia. The enrolment debate continued beyond the 2018 consultation and remains a key point of discord in the lead up to the second consultation, scheduled for 4 October 2020.¹⁵

The ongoing sensitivity of the definition of citizenship, with all its political consequences, prompted France to eventually accept the FLNKS demand for United Nations oversight over the enrolment process. Since 2016, the UN Special Committee for Decolonisation has sent teams of experts to observe the special administrative commissions, as well as the conduct of the 2018 referendum. The yearly reports submitted by the UN thus far have highlighted the inconsistent approaches within and across the special administrative commissions, though arguably not to the extent claimed by the FLNKS (UN 2014, 2016, 2017).

20.8 Employment and Social Rights

Local employment restrictions have been another important, though less salient, dimension of citizenship in New Caledonia. The Nouméa Accord prescribed that citizenship of New Caledonia would, in addition to the right to vote, serve as a basis for the promotion of local employment. In other words, the Accord recognised the importance of finding some mechanism to lend an advantage to “New Caledonians” in the labour market. Demands for protecting local employment against foreign workers had existed in New Caledonia since the colonial period. For example, following the Second World War and the granting of French citizenship, local settlers demanded the repatriation of Asian and Pacific Islander indentured labourers who arrived in New Caledonia on private work contracts (see Adi 2014; Kobayashi 1992; Merle 1995, p. 203). Similarly, following the nickel boom (1967–1972) local labour unions mobilised against efforts by large businesses to encourage skilled migration to the territory (Barbançon 1992, p. 195).

As New Caledonia entered the twenty-first century, it remained highly dependent on the economic prosperity brought both by its nickel industry, not to mention French state investment. The nickel industry, historically dominated by French state-owned companies such as *Société le Nickel*

(SLN), transformed from the late 1990s, largely in response to local political pressure from pro-independence groups to break up the monopoly of the French giant Eramet (the parent company of SLN). Multinational companies including Falconbridge (Canada), Inco (Canada), Xstrata (Switzerland), Glencore (Switzerland), and Vale (Brazil), invested in new and existing mining projects Nickel prices rose considerably once more at the turn of the new millennium in response to China’s growing demand, and with it, increased attraction for both French metropolitans and foreigners alike to move there. New Caledonia’s increasing exposure to the free market and its requirement for the free movement of labour juxtaposed with its strong orientation towards local protectionism.

Through introducing a legal distinction between local citizens and non-citizens, the Nouméa Accord paved the way for stronger protections of New Caledonia’s labour market. Section 4 of the Preamble to the Accord states that “the size of New Caledonia, its economic and social balance do not permit a significant opening of the labour market and justifies measures of local employment protection”. And further, “in order to take into account the tightness of the labour market, mechanisms will be defined in order to prioritise access to local employment for persons durably settled in New Caledonia”. This text recognised New Caledonia’s geographical position as an island with a small population and the economic and social consequences associated with migration. However, the underlying disagreement on the boundaries of New Caledonian citizenship hindered any political consensus to implement the local employment agenda, while some anti-independence leaders opposed in principle any discrimination in the labour market and emphasised the importance of an open market in order to attract those with the best skills.

The first attempts at passing a law protecting local employment occurred in 2005 under the *Avenir Ensemble* government of Marie-Noëlle Thémereau, who came to power in 2004 after splitting with the RPCR. However, her government’s proposed law, limited to the public sector, failed to pass through France’s *Conseil d’Etat* because it was ruled to overstep the parameters pertaining to New Caledonian citizenship in the Constitutional Bylaw of 15 March 1999 (Gavard 2013).

It was not until 2012 when political leaders passed a bill on protecting local employment in the private sector (Gavard 2013). A separate law was created in 2016 for the public sector. Neither law made New Caledonian citizenship, strictly speaking, the basis for local employment. Instead, the private sector law created a mechanism that favoured those with longer durations of residence. The government publishes a detailed table of professions and attaches a mandatory duration of residence required to fill a position in the role, with the maximum duration required

¹⁵This chapter was originally submitted prior to the 2018 referendum, and subsequently revised in early 2020. The evolution of the voting rights debate beyond 2020 is not detailed here.

for a profession being ten years.¹⁶ The greater the difficulty of filling the role locally, the lower the duration of residence required and, conversely, the easier a role can be filled by local labour, the higher the residency threshold. In effect, the mechanism sought to ensure that in the hypothetical scenario of two individuals with equal skills, qualifications and experience, the individual with the greater duration of residency would fill the role. Reflecting the political divisions on the issue, it struck a middle ground between demands for the protection of local employment, especially from unions, and concerns over preventing higher skilled individuals from coming to New Caledonia (Robertson 2018, pp. 198–221).

To oversee and enforce the mechanism, the legislation created a special committee, known as the *Comité paritaire d'emploi local* or CPEL, half consisting of union representatives and the other half, employer organisations, which deliberated on contentious cases brought by aggrieved parties. However, it is widely acknowledged that the lack of enforcement powers of the CPEL has enabled most companies to sidestep the laws (Robertson 2018, pp. 205–206).

A separate law in 2016 introduced local employment preferences in the New Caledonian public service, working according to a similar principle to the private sector. The delay in passing this law, despite the first attempt occurring ten years beforehand, was in part due to the courts cautioning the need to stay within the confines of the 1789 Declaration of the Rights of Man and the Citizen, which guarantees French citizens equal access to the public service.

In neither the private nor public sector laws protecting and promoting local employment did citizenship of New Caledonia as defined in the Constitutional Bylaw of 15 March 1999 become the basis for defining locals and non-locals. Rather, local employment continues to reflect the multiple and contested notions of citizenship, not to mention the kind of economic model New Caledonia should pursue and how it engages with the global economy.

20.9 Turning to the Future

On 4 November 2018 and 5 October 2020, New Caledonians went to the ballot box to vote on the following question:

Do you wish for New Caledonia to become fully sovereign and become independent?¹⁷

¹⁶The table, referred to as the *tableau des activités professionnelles* can be found at: https://dtenc.gouv.nc/sites/default/files/documents/emploi_local/tableau_des_activites_professionnelles.pdf

¹⁷“Voulez-vous que la Nouvelle-Calédonie accède à la pleine souveraineté et devienne indépendante?”.

In the first referendum, 56% of the population rejected independence, which proved a closer result than polls expected. In the second referendum, the result was even closer, with 53% of voters rejecting independence. A final third consultation is possible under the Nouméa Accord. The higher than expected vote for independence demonstrated the potential of the Kanak electorate, which participated in greater numbers than ever before, and has given supporters of independence some hope that victory is possible in the next ballots (see Pantz and Robertson 2018).

The surprising closeness of the result will only add to the importance of citizenship and voting rights. Indeed, the continued exclusion of certain French citizens from voting in local elections gathered renewed following the second referendum. The Nouméa Accord foresaw these referendums as the “exit” (fr. *la sortie*) from the period of transition and will address the full transfer of sovereign powers to New Caledonia, the transformation of citizenship into nationality and the accession to a full international status. In short, in the event of a “yes” vote, New Caledonia will become an independent state. With this in mind, three key dimensions of the citizenship question should be considered. What would happen to French citizenship/nationality? Who would be a New Caledonian citizen? Finally, what would happen to other parts of the French Pacific and their relations to New Caledonia?

The problem confronting voters is the lack of certainty in the event of a vote for or against independence. The French government has expressed its openness to respect New Caledonians’ democratic decision and work with them to implement a way forward.

No French political leader has explicitly stated that New Caledonians would lose their French nationality in the event of independence, and France remains a country where dual nationality is possible. Even pro-independence leaders have accepted that an ongoing link to France is possible. For example, the UC *projet de société* articulating their vision of what an independent New Caledonia looks like for the 2018 referendum suggests that a form of double nationality would be desirable if France agreed (UC 2017, p. 12). They state that French nationals who do not qualify for or want to acquire New Caledonian nationality are permitted to remain according to the conditions of the law. It is important to highlight that this is very different to the much more rigid approach taken by the independence movement in, for example, the 1987 FLNKS Constitution of Kanaky, which rejects dual nationality (FLNKS 1987). This may suggest that at least some pro-independence leaders are more favourable to an ongoing partnership of sorts with France in the long-term. It might be possible to introduce some form of free circulation of citizens, similar to that which existed in the aftermath of the 1962 Evian Accords with the newly independent Algeria, though the details would likely need to be worked

out, as would the consequences for the population's European citizenship enjoyed by virtue of their belonging to France.

There is certainly no shortage of examples in the Pacific that could inspire New Caledonia's path forward, ranging from Cook Islands' self-government in free association with New Zealand or the Micronesian states' compacts with the United States. While the resident population of the Cook Islands are New Zealand citizens, this is not the case in the United States compact states, although the resident populations possess various legal privileges around living and working in the United States. This willingness to maintain links between France and New Caledonia, even in the event of independence, has not prevented some sections of the anti-independence camp from stating that independence would mean the deprivation of French nationality. Is it possible to guarantee that France, which is facing its own economic difficulties amidst the COVID-19 pandemic, would commit to ongoing forms of economic assistance or free access to an independent New Caledonia.¹⁸

Arguably the biggest challenge in regard to citizenship is simply that there remains no internal political agreement on its boundaries. The 2007 revision of the Constitutional Bylaw defining citizenship of New Caledonia remains very much contested. Indeed, France's Constitutional Council noted that New Caledonia's provincial electoral lists can only remain "frozen" until the end of the Nouméa Accord period, since it would be constitutionally difficult to justify permanent exclusion of French citizens from the right to vote (ECHR 2005). This view of course assumes that the two referendums thus far, or the third referendum that may follow, marks the end of the decolonisation process and a moral and legal justification for a restricted electorate. New Caledonia's anti-independence parties, especially those affiliated to *Les Républicains calédoniens*, have often repeated that the conditions for acquiring citizenship need to be changed. The approximately 13% of the local population without New Caledonian citizenship at present is likely to be unsustainable long-term.

Any new status would also need to take into account the relationship between New Caledonia and the rest of the French Pacific, especially Wallis and Futuna (Robertson 2018, pp. 155–160). More than 10% of the New Caledonian population identifies as Wallisian or Futunian, and there continue to be important customary, economic and religious links between the two countries. New Caledonia remains a primary destination for Wallisians and Futunians seeking more advanced health treatment, with a special arrangement

existing between the French Government, New Caledonia's major hospital and Wallis and Futuna. Historically, most of the Wallisian and Futunian community has supported anti-independence parties and helped ensure their democratic majority in the Congress. As the "third community" of New Caledonia, their support has been important for anti-independence parties maintaining a democratic majority. For the provincial elections in May 2019, a new political party, *L'Éveil océanien*, secured 8.56% of the South Province vote, and three seats in the Congress (four in the South Province Assembly) (see Chap. 18 by Fisher in this book). With an agenda focused squarely on supporting the needs and aspirations of the Wallisian and Futunian communities in New Caledonia, *L'Éveil océanien* reinforced the political importance of the Wallisian and Futunian community as "king-makers" in New Caledonian politics. Despite its anti-independence platform, the party surprised many when it threw its support behind UC-FLNKS leader Roch Wamytan for Congress president, demonstrating its willingness to assert its own interests (Vili 2019).

The different views of citizenship among New Caledonia's political leaders and the population at large are a reflection of competing notions of decolonisation. For many Kanak people with sympathetic views on independence, citizenship is primarily a vehicle for re-affirming their primacy within New Caledonia and ensuring they are not victims of any future demographic and democratic marginalisation. Some anti-independence parties view citizenship of New Caledonia as a political necessity. Further, citizenship lends legitimacy to the non-Kanak population as co-citizens of the political community. Perhaps the sole point of agreement is that citizenship is a language in which realise the "common destiny". Indeed, New Caledonian citizenship invites a re-thinking of what it means both to belong to both New Caledonia and to France and endeavours to reconcile New Caledonia's multi-ethnic character with the particular claims of the Kanak people to constitute the basis of a self-determining political community. Whether it survives the Nouméa Accord process remains to be seen.

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¹⁸As this chapter is being readied for publication, the coronavirus pandemic (COVID-19) has created enormous human health and economic damage, especially in France, the long-term consequences of which are uncertain.

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