

DEMOCRACY IN PARADISE

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Judge Alexis de Tocqueville, who was born almost two centuries ago in 1805, pondered the fate of European societies which had for 40 years been free of political turmoil. The 1830 Revolution drove him to do research from a new point of view from which he could verify ideas, hypotheses, hopes and fear as gathered in his "always active thinking and in his willingly unsettled heart".¹ And so it was that he got an exploration job in the United States of America after which he resigned from the judiciary and published *Democracy in America* (1835 – 1840) which brought him immediate fame.²

Another time, another place. Today French Polynesia is fertile ground for reflection on democracy and, who knows, perhaps on some of the same conclusions as Tocqueville, that is to say:

- Total power, eventually tyranny of the majority, is a great danger for the future and for liberty".³

I seek to trace the novel features under which despotism may appear in the world. The first thing that strikes the observation is an innumerable multitude of men, all equal and alike, incessantly endeavouring to procure the petty and paltry pleasures with which they glut their lives ...

Above this race of men stands an immense and tutelary power, which takes upon itself alone to secure their gratifications and to watch over their fate. That power is absolute, minute, regular, provident, and mild. It would be like the authority of a parent if, like that authority, its object was to prepare men for manhood; but it seeks, on the contrary, to keep them in perpetual childhood: it is well content that the people should rejoice, provided they think of nothing but rejoicing. For their happiness such a government willingly labors, but

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1 J-J Chevallier *Les Grandes œuvres Politiques de Machiavel à nos Jours* (A Colin, 1996) 167.

2 B Ravaz, *Mémoire des Grandes œuvres Politiques* (Hachette 1999) 89.

3 A de Tocqueville, Part 2, Fourth Book, Ch VI, *Democracy in America* (Bradley ed, Alfred Knopf, New York, 1960) Vol 2, 318.

it chooses to be the sole agent and the only arbiter of that happiness; it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances: what remains, but to spare them all the care of thinking and all the trouble of living?

- A centralised system is the death of liberty (it is "in the local community that the – strength of free peoples resides. Communal institutions are to liberty what primary schools are to science; they put liberty within reach of the people, they give them a taste of the peaceful use of liberty and accustom them to its use").⁴

Religion serves liberty by helping it to combat within the very heart and soul of the citizen, the tiresome democratic tendencies of individualism: petty jealousy and a taste for the good life which are in the end degrading ("Despotism can exist without faith but liberty cannot").⁵

Seen in the context of French Polynesia, the theme of democracy can be dealt with in many ways.⁶ This paper will consider only "current issues", that is to say to questions which have most often been touched upon in the discussions which relate to the adoption of the new statute for French Polynesia.

I DEMOCRACY AND THE METHOD OF ADOPTION OF THE NEW STATUTE

From the point of view of democracy three main complaints have been made in respect of the manner of adoption of the laws to modify the statute of French Polynesia. The first relates to the lack of consultation with the electorate of French Polynesia, the second to consultation with local assemblies, and the third to the declaration of urgency.

The first complaint can be easily dealt with. Assuming that the provisions of the third paragraph of article 72-1 of the Constitution do apply ("When it is intended to create a territorial entity endowed with a particular status or to modify the organisation of such a territorial unit, legislation can require that the registered electors in the relevant entity should be consulted. A change of boundaries of territorial entities can also give rise to a consultation with electors in accordance with

4 *Democracy in America* Part 1, ch V.

5 *Democracy in America*, Part 1, Ch XVII.

6 For example « Une Démocratie en Perte de Vitesse », Les Nouvelles de Tahiti, 31 October 2001 (Présentation du Rapport de la Fédération Internationale des Droits de l'Homme Relatif à la Polynésie Française: "Situation des Droits et Libertés").

the conditions prescribed by legislation"), the decision to consult the electors of French Polynesia is in no case compulsory.

On the second point, it is necessary to begin by making clear that the consultation conducted by the economic, social and cultural council, however useful that might be (by reason particularly of the quality of the work of that assembly) is not made obligatory by the Constitution, which only requires such consultation of a deliberative assembly (article 74, paragraph 2).

As for the latest consultation, even though its conduct was somewhat chaotic,⁷ it did in fact take place. In this respect it is interesting to note that it has been considered that amendments made to a text which itself has been the object of a consultation does not have to be submitted for comment to a deliberative assembly. Thus it is quite easy to avoid any debate before a local assembly on a provision "with little popular support" (particularly if that concerns the method of appointment of members of that assembly) and to have the amendment adopted.

Finally, it is necessary to remember that "the declaration of urgency to meet by the government (of the Republic) allows the mixed commission a reading of the text in each assembly, which has for a direct effect the speeding up of the procedure, and as an indirect effect the limitation of the prerogatives of the assembly which is seized of the matter in second place".⁸

In respect of the speeding up of the procedure it is to be regretted that the reason for the urgency was not better explained. Urgency has indeed been presented at least in French Polynesia as warranted⁹ because the territorial authorities had been waiting since 1998 for a new statute. But it is necessary to note that the last statute dated only from two years earlier (!) and that legislation in principle is not intended to be amended within such very short timeframes ... As far as the indirect effect is concerned, the Senate, which was seized of the matter in first instance, is the parliamentary assembly elected by universal direct suffrage which has seen its prerogatives limited to the benefit of the parliamentary assembly elected by universal indirect suffrage. This fact, in terms of democracy, warrants further discussion.

II DEMOCRACY AND THE APPOINTMENT OF LOCAL GOVERNMENT ORGANISATIONS

The question of the place of democracy in relation to the designation of local government organisations has been raised not only in relation to the deliberative assembly but also in relation to the head of the executive arm of government.

7 *L'opposition Clashe sur le Débat Statutaire*, Les Nouvelles de Tahiti, 26 June 2003.

8 M de Villiers *Dictionnaire du droit constitutionnel* (A Colin, 2003) 239.

9 La Dépêche de Tahiti, 19 December 2003.

It has often been stated that the manner of appointment of members of the assembly of French Polynesia would not be democratic.

In democracy, the pluralism of political parties is basic. Since their role is to define objectives, to develop programmes of action and to propose those programmes to the voters, they must have the benefit of the greatest freedom possible. However even though pluralism is indispensable, too many parties competing with each other "confuses the game and nullifies the choice of the electors: two or three parties is enough".¹⁰ Furthermore, the voting method adopted is also determinative. Although proportional representation is unquestionably the most equitable (in the sense that it leads to the allocation of a number of seats proportionate to the number of votes obtained), a first-past-the-post system must be preferred because it is the sole system that has guaranteed efficacy (in the sense that it guarantees the emergence of a majority).

If this analysis is accepted it does not matter that the threshold, necessary for a list to be admitted at the sharing of seats in the assembly of French Polynesia during parliamentary debate from 10 per cent of the votes cast to 5 per cent of the voters then moves to 3 per cent of the votes cast. To the extent that none of these thresholds seems, by its nature, likely to result in a change of majority (presently held by Tahoera'a Huiraatia), what matters is that they may lead the opposition parties to unite. It is necessary therefore to see in this an intention, expressly announced in fact,¹¹ to clarify the political scene by optimising the competition for power and thereby facilitate its exercise.

The interest of the reduction of the number of political parties to two or three produces moreover a restriction in the presence of parties opposed to the governing regime.¹² According to a now classic view, it is necessary to distinguish parties which contest within the regime from those which contest about the regime. The former try to obtain power in order to exercise it in the interests of the voters that they represent, at the same time as maintaining the institutions and the existing laws. The latter believe that the interests of the voters that they represent cannot be satisfied within the framework of the established regime. They, therefore, wish to replace that regime with another one.

It is not totally unreasonable to think that Tavini Huiraatira, (an independent party which, in the opposition, would be the principal beneficiary of the reconfiguration of the political scene) fits the second category. Therefore the interest in encouraging the emergence of two or three political parties with a view to clarification and efficiency must be seen in a relative sense and re-examined in the light of the possible consequences for the maintenance of the present regime (consequences which mean that it is not possible to totally share the optimism of the Bignon, the Rapporteur of the

10 B Pactet *Institutions Politiques. Droit Constitutionnel* (A Colin, 2003) 86.

11 Les Nouvelles de Tahiti, 23 and 30 January 2004.

12 M Duverger *Introduction à la Politique* (Gallimard, 1964) 263-264.

Legislative Committee for National Assembly for whom this new statute marks a "safe anchorage for Polynesia within the Republic").¹³ This point, important as it may be, in itself has no direct relationship to the question concerning respect for democracy, unless it is proved that Tavini is not a democratic party.

To permit the head of the local executive, called the President of French Polynesia, not to be chosen from among the members of the Assembly of French Polynesia would not be democratic.

This matter, more technical than that of the appointment of members of the assembly of French Polynesia was less discussed because the practical political implications are less obvious. It however warrants attention if only because the provision envisaged is quite original.

Usually, the executive of a territorial government unit is in effect elected by universal indirect suffrage by and within a deliberative body. Thus a Mayor is not elected by the voters but by the Municipal Councillors, which means that the Mayor must first have been the subject of the universal direct suffrage and been elected as a Municipal Councillor. And it is the same for the President of the General Council and the President of the Regional Council and, until now, for the President of the Government of the territory of French Polynesia.

But the executive of a territorial government unit can be appointed according to other methods. The executive can be appointed by the central power (which was usually the case for Mayors before 1844, but also the case for the departmental executives before 1982, and at least partially the case for the Executive of the Territory of French Polynesia before 1984), elected by universal direct suffrage, or even by universal indirect suffrage or by, but from, outside the members of the deliberative government unit.

Universal direct suffrage of the type, claimed formerly by the present President of the Government of the Territory of French Polynesia, does not seem legally possible because the Constitution provides in article 3 that "suffrage can be direct or indirect depending on the conditions provided in the Constitution" and because the Constitution provides on this point in article 72 paragraph 3 that territorial government units "administer themselves freely through elected councils". It is moreover worth noting that at the time of the constitutional revision of 2003 no voice was raised to demand election by direct universal suffrage of either of the heads of local chief executives.

The election of the President of French Polynesia by the assembly of this Overseas Community (COM) but from outside the territorial councillors is certainly the least democratic of all the methods of appointment which occur at the election. This is the method which is most remote from

13 Les Nouvelles de Tahiti, 23 and 30 January 2004.

the voters. It may even be asked whether a nomination by the central power of an executive necessarily chosen from among the members of the French Polynesian assembly would not be more democratic than an election by the assembly of French Polynesia of an executive chosen from outside its members.

It is necessary to emphasise finally that the election of the Chief of Government by the Assembly from outside of itself is only a possibility. Nothing prevents the assembly from choosing the president of French Polynesia from among its members and the future will show what importance the assembly places on democracy. Why otherwise would provision have been made for this somewhat surprising "Polynesia specificity"? Perhaps because the "necessary passage by universal direct suffrage can prove difficult for the person who aspires to fulfil the job of Chief of the Local Executive ...".¹⁴

In conclusion, it seems that democracy is envisaged and put in place in an original manner for French Polynesia. It is possible to give an example of this idea. On 3 February 2004 Juppe stated on the 8 o'clock news of TF1: "In every democracy there is a principle that is called the double degree of jurisdiction". Now the provision for the putting in to operation of "specific jurisdictional control" provided by the new article 74 of the Constitution for overseas communities that have autonomy (the category to which French Polynesia belongs), which has just been approved by the Parliament for French Polynesia excludes the application of the principle called "legislation of the country".

Is it necessary therefore to conclude that democracy in the Western sense "is politically ill-adapted to South Pacific societies?"¹⁵ This has recently been suggested in the context of Fiji,¹⁶ Vanuatu,¹⁷ Solomon Islands,¹⁸ and even New Caledonia.¹⁹ It is also known that "Western style"

14 A Moyrand, Point de Vue "Droit" et "Politique": à Propos de l'Affaire de la Radiation des Listes Électorales du Président Flosse (2001) 7 RJP 761.

15 S Lawson Tradition versus Democracy in the Pacific. Fiji, Tonga and Western Samoa (Cambridge University Press, 1996) especially 165; PAD, L'Australien Greg Urwin (secrétaire général du Forum des Iles du Pacifique – FIP) prône démocratie et bonne gouvernance, à visage océanien, Les Nouvelles de Tahiti, 12 March 2004; Y-L Sage "Avant-propos: Quelques Observations sur la Contribution des Petits Etats Insulaires du Pacifique Sud à l'étude du Pluralisme Juridique" (2002) RJP NHS (Contemporary Challenges in the Pacific: Towards a New Consensus, Vol 2) i.

16 Fiji: Démocratie "à l'Occidentale", le Premier Ministre Rejette l'idée La Dépêche de Tahiti, 12 February 2002.

17 M K Tabani Les Pouvoirs de la Coutume à Vanuatu (L'harmattan, 2002) 72.

18 K Brown and J Corrin Care More on Democratic fundamentals in Solomon Islands: Minister for Provincial Government v Guadalcanal Provincial Assembly, (2001) RJP 653.

democracy is not always adapted or adaptable as the examples of Japan, Africa or Islam show.²⁰ It remains to say that it is difficult to see what type of democracy there may be other than which is described as "Western" unless one accepts the idea that democracy can have some meaning that is very different from that which its etymology requires: *demos* people, and *kratos* power, "government of the people".²¹

DECRET DU 2 AVRIL 2004

PORTANT DISSOLUTION DE L'ASSEMBLEE DE LA POLYNESIE FRANCAISE ET FIXANT LA DATE DES ELECTIONS EN VUE DE SON RENOUVELLEMENT – JO N° 80 DU 3 AVRIL 2004 PAGE 6535

Le Président de la République,

Sur le rapport du Premier ministre et de la ministre de l'outre-mer,

Vu le code électoral;

Vu la loi organique n° 2004-192 du 27 février 2004 portant statut d'autonomie de la Polynésie française, notamment ses articles 107 et 157;

Vu la délibération en date du 24 mars 2004 par laquelle le conseil des ministres de la Polynésie française a demandé la dissolution de l'assemblée de la Polynésie française;

Le conseil des ministres entendu,

Décète:

Article 1

L'assemblée de la Polynésie française est dissoute.

Article 2

Les électeurs de la Polynésie française sont convoqués pour le dimanche 23 mai 2004 en vue de procéder à l'élection des membres de l'assemblée de la Polynésie française.

19 J-Y Faberon, L'évolution du Droit de Vote en Nouvelle-Calédonie, (2001) RJP NHS (Contemporary Challenges in the Pacific: Towards a New Consensus, Vol 1) 91; O Gohin, La Constitution Française contre les droits de l'homme. Le Précédent de la Restriction du Suffrage en Nouvelle-Calédonie, (Mélanges P Pactet, Dalloz, 2003) 187.

20 B Chantebout Droit Constitutionnel et Science Politique (A Colin, 2000) 357 and following.

21 M de Villiers, above n 8, 86.

Article 3

Les listes de candidats doivent être déposées auprès des services du haut-commissaire au plus tard le 15 avril 2004, à midi.

Article 4

Les listes complètes peuvent être retirées au plus tard le 1er mai 2004, à midi.

Article 5

La campagne électorale est ouverte à partir du 16 avril 2004 et prend fin le samedi 22 mai 2004, à minuit.

Article 6

Le présent décret entre en vigueur le jour de sa publication au Journal officiel de la Polynésie française.

Article 7

Le Premier ministre et la ministre de l'outre-mer sont responsables, chacun en ce qui le concerne, de l'application du présent décret, qui sera publié au Journal officiel de la République française et au Journal officiel de la Polynésie française.

Fait à Paris, le 2 avril 2004. Par le Président de la République: Jacques Chirac. Le Premier ministre, Jean-Pierre Raffarin . La ministre de l'outre-mer, Brigitte Girardin