Overseas France and Minority and Indigenous Rights: Dream or Reality?

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Si les territoires d’outre-mer sont des collectivités territoriales de la République peuplées de citoyens français, le droit qui s’y applique ne confond pas en toutes occasions le pêcheur des îles Tuamotu et le conducteur du métro parisien.

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1. Introduction

To deal with something that does not exist is a perilous exercise. How to tackle something which appears elusive? Minorities do not appear in French positive law: the French legal order only recognizes the minority as opposed to the majority, as an arithmetic concept, in an electoral context, or applied to children under 18. The notion of minority as a group is ignored in French law.

The reasons for this ignorance are well known. The ignorance of minorities appears as a consequence of the individualist conception of the law and of human rights, which dominated at the time of the Revolution, and which deeply marked the French legal order. The total absence of the concept in the texts demonstrates not only the political refusal to recognize it but also the intellectual impossibility to legally ‘think’ of the notion of minority.

We no longer live completely with an individualistic conception of rights and some collective group rights have been recognized. Formerly the law only recognized equal individuals which were subjected to identical rules, however, today, the social body has been divided into categories subjected to distinct regimes.

French overseas territories provide an excellent example of how France has addressed the concept of cultural difference in France. Overseas territories are of an obvious interest for the jurist as they lead to the demonstration in concreto of the adaptability which the French model is capable of when confronted with indisputable cultural diversities. The populations of these territories, resulting from the colonization period, even if not officially recognized as such by France, appear to be treated as minorities and, on a case-by-case basis, enjoy special rights. The pragmatic management of their differences is institutionalized. This results in a situation of unstable equilibrium, which is characteristic of a transitional period.

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Despite the geographical distance and the apparently anecdotal character of these texts applied to only some thousands of persons, these realities deserve to be better known, because, beyond the typical overseas issues, they relate back to the foundation of the Republican pact to which they propose totally new responses.

Admittedly, the overseas French territories present common characteristics such as a colonial past, the distance from the continent, the insularity, the strategic and economic interest that they represent and their exoticism in the collective system of representation. But overseas France is definitely plural. Today, the ten local authorities composing it have different histories, geography and populations.

Taking into account all these parameters and specificities, the aim of this article is to explain the French legal approach to overseas populations’ rights and to question this approach in a ‘minority rights’ perspective. Do the special measures represent an implicit recognition of the overseas populations as minorities? If yes, can this appear as a first step towards an official recognition of group existence and rights inside the French Republic?

2. The French Constitutional Recognition of ‘the French People’ and ‘the Overseas Peoples’

2.1 People and Peoples

2.1.1 The French Perspective and Vocabulary in the Constitutional Texts

Today, French constitutional law is composed of three main texts: the 1958 Constitution, the preamble of the 1946 Constitution and the 1789 Declaration des Droits de l’Homme et du Citoyen. Since 1958, the fifth Republic’s Constitution has been reviewed several times. Many of these re-adaptations were related to the progressive decolonization and juggled the concept of ‘people’. These texts distinguish between ‘the French people’ or ‘the people’, ‘the peoples’, ‘the overseas peoples’ or ‘peoples of the overseas territories’ and finally ‘the overseas populations’. These