The Role of Indigenous and Global Community in Developing National Law in France.

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Introduction

Indigenous peoples, or indigenous peoples, are "the descendants of those who lived in a country or geographical region at a time when population groups of different cultures or ethnic origins arrived and subsequently became predominant. by conquest, occupation, colonization or other means ".[1] Indigenous peoples represent about 370 million people worldwide, living in more than 70 countries. They form at least 5,000 different indigenous groups, and as many different cultures, speak more than 4,000 languages, most of which are in danger and are at risk of extinction by the end of the twenty-first century. Over the last 30 years, indigenous peoples have moved widely from their traditional lands to cities to seek employment but also because of human rights violations and abuses, including rights to their land and to cultural survival. In many countries, more than 50% live in urban areas. Other terms have sometimes been used to refer to them, as aboriginal, "first people", "root people", "first nation" or "native people", succeeding the pejorative term "primitive people", but all officially neglected for the benefit of indigenous people.[2]

This paper discusses the existence of Indigenous communities in France and their contribution in the construction of legal systems in Europe in general and the French Legal system in particular.

Understanding of Indigenous Community

There is no rigid definition of what makes a group Indigenous, but the United Nations and the International Labor Organization have outlined a few characteristics that usually define an Indigenous group. The term first appeared on the international stage in the 1920s, but became particularly prominent in the 1970s, led by militant organizations representing the colonized peoples of the old settler colonies in the Americas and the Pacific which had since become independent (the Amerindians of Canada and the United States, the Aborigines of Australia, and the Maori of New Zealand).[3] Although there is no internationally agreed definition of the notion of indigenous people, that proposed by José Martinez Cobo, Special Rapporteur of the Working Group on Indigenous Peoples of the Subcommittee on

[1] See Sanders, Douglas (1999). "Indigenous peoples: Issues of definition". *International Journal of Cultural Property*. **8**: 4–13.
[2] See Jean Malaurie, « La leçon des peuples premiers »,sur *monde-diplomatique.fr*.
[3] See Benoît Trépied, « A New Indigenous Question in France's Overseas Territories? », *Books and Ideas* , 13 June 2012. ISSN : 2105-3030.

Human Rights of the United Nations (UN Economic and Social Council), in 1987, is now widely used.[4] It is based on three basic criteria:[5]

A. Historical continuity of features such as:
    1. ancestral occupation or at least part of the present lands;
    2. common ancestry with the first occupants of these lands;
    3. culture in general or some of its manifestations;
B. language;
    1. implantation in some parts of the country or parts of the world;
C. Other relevant factors.
    1. Self-identification as an Aboriginal person

For an individual, belonging to an Aboriginal group, claimed by both the individual and the group to which he belongs. In the words of José Martínez Cobo, "Indigenous communities, peoples and nations are those that, linked by historical continuity with pre-invasion societies and pre-colonial societies that have developed in their territories, are distinct from other segments of society that now dominate their territories or parts thereof. They now constitute non-dominant segments of society and are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity, which constitute the basis of the continuity of their existence as peoples, in accordance with their own cultural models, their social institutions and their legal systems ".[6]

Indigenous people are people defined in international or national legislation as having a set of specific rights based on their historical ties to a particular territory, and their cultural or historical distinctiveness from other populations that are often politically dominant. The concept of indigenous people defines these groups as particularly vulnerable to exploitation, marginalization and oppression by nation states that may still be formed from the colonizing populations, or by politically dominant ethnic groups. As a result, a special set of political rights in accordance with international law have been set forth by international organizations such as the United Nations, the International Labour Organization and the World Bank.

Indigenous Community Vs. Traditional/Local Society

Traditional/local communities are make up of group of people living together who may not originally from that locality while indigenous people are people who are originally from a particular locality. Community base natural management had always been a bone of contention because most natural management project does not use decentralization. Traditional society refers to a society characterized by an orientation to the past, not the future, with a predominant role for custom and habit. Such societies are marked by a lack of distinction between family and business, with the division of labor influenced primarily by age, gender, and status.

[4] See Cf. Déclaration des droits des peuples autochtones
[5] see Fiche d'information No.9 (Rev.1) Les droits des peuples autochtones » Haut Commissaire aux droits de l'homme/Centre pour les droits de l'homme
[6] See Les peuples autochtones se font entendre. Instance permanente sur les questions autochtones des Nations unies, mai 2003

The Influence of Customs Over the French Law

Prior to the birth of the *Premiere Republique*, relations between the people, the forms of possession or use of the land, the feudal rights, the rights and prerogatives of the different communities in political matter, civil and criminal law, the right of elections and inheritance, the rights and obligations of marriage, water and forests, judicial proceedings, were indigenous communities and their customary laws. Local customs were the subject of collections in France (Auvergne, Berry, Bourgogne, Bretagne, Champagne, Maine et Anjou, Normandie, Orleanais, Paris, Nivernois, Poitou) then a codification, or even of reforms, published as patent letters after a public inquiry and the convening of a provincial assembly. In fact, only the right of persons and property was affected by these codifications (private law). This special status is mentioned in Article 75 of the Constitution and is called "personal status".

In French law, the adage *paterna paternis, materna maternis*, is a survival of a customary rule that a deceased person's property was to be returned to his family by blood. This reflected a desire to return the goods back to the family from which they came. Today we find this idea in the principle of the succession slot. Since the creation, from 1789, of constituent and legislative assemblies that have given themselves the power to make or change organic, civil and criminal laws, customary law has today only a rather limited place in the French legal system. However, it is still in force in New Caledonia, Wallis and Futuna and Mayotte.

In France, the influence of indigenous communities essentially began in medieval period that lasted under the Ancien Regime, when custom was the main source of law.[7] Before the Revolution of 1789, France was divided into provinces in which Roman law reigned exclusively, and in provinces whose populations were governed mainly by customs. Customary law is all these customs preserved and transmitted first by tradition and by jurisprudence, then fixed in writing under the control of the royal authority. These customs were abrogated, like the Roman law, by the article 7 of the law of 30 ventôse year XII. Nevertheless, it is still useful to know them, at least in their principal dispositions. A very large number of provisions of French civil law have a purely customary or mixed origin of customary law. The custom of Paris in particular was one of the main sources of the Code Napoleon.

The Rights of Indigenous Communities

Indigenous peoples are often under the cultural, economic, social, political domination of one or more other peoples, and represent only a minority in states that do not recognize them as distinct peoples. In the case of peoples living in remote areas, they are often heavily dependent on nourishing ecosystems (including intact forest landscapes and primary forests), possess their own socio-cultural systems and organizations, languages, and "marginal" lifestyles. Today, these peoples are organizing themselves and struggling to make themselves heard and ask for the right to live their difference, the respect of their social organizations and the end of exploitation (or overexploitation) of the natural resources located on their

[7] See The Medieval period of history lasted from 476 AD until around the beginning the 15th century. It started when the Western Roman Empire ended and merged into the Renaissance and Age of Discovery. The Medieval period is also known as the Middle Ages as it is right in the middle of the three traditional divisions of Western medieval history.

territories. The Declaration on the Rights of Indigenous Peoples was adopted on 13 September 2007 in New York by the United Nations General Assembly despite opposition from the United States, Canada, Australia and New Zealand.[8] This resolution is legally non-binding but represents real progress, it affirms the rights of these peoples to reparation and self-determination. On 27 August 2010, a UN report calls on the French government to ratify the International Labor Organization's Convention 169 on Indigenous and Tribal Peoples, the only binding international legal instrument on indigenous and tribal peoples, which recognizes their rights in particular. groups to the land and their right to self-determination.

Self Determination

The right of a people to **self-determination** is a cardinal principle in modern international law (commonly regarded as a *jus cogens* rule), binding, as such, on the United Nations as authoritative interpretation of the Charter's norms.[9] It states that a people, based on respect for the principle of equal rights and fair equality of opportunity, have the right to freely choose their sovereignty and international political status with no interference.[10]

Self-determination versus Territorial Integrity

National self-determination appears to challenge the principle of territorial integrity (or sovereignty) of states as it is the will of the people that makes a state legitimate. This implies a people should be free to choose their own state and its territorial boundaries. However, there are far more self-identified nations than there are existing states and there is no legal process to redraw state boundaries according to the will of these peoples.[11] According to the Helsinki Final Act of 1975, the UN, ICJ and international law experts, there is no contradiction between the principles of self-determination and territorial integrity, with the latter taking precedence.

Cases of Self Determination

1. Artsakh (Republic of Nagorno-Karabakh) in Azerbaijan;
2. Acaeh;
3. Azwad (Mali, Algeria, Niger);
4. Basque Country (between Spain and France);
5. Biafra in Nigeria;
6. Catalonia;
7. Chechnya in Russia;
8. Eastern Ukraine;
9. Falkland Island (in England);
10. Gibraltar (between UK and Spain),
11. Hong Kong;
12. Kashmir (between Pakistan and India);
13. Kurdistan (between Iraq, Turkey, Syria, and Iran);

[8] See Texte intégral - Déclaration des Nations unies sur les droits des peuples autochtones du 13 septembre 2007
[9] see United Nations General Assembly Resolution 1514 in Wikisource states
[10] see Chapter I - Purposes and Principles of Charter of the United Nations
[11] see Aleksandar Pavkovic and Peter Radan, In Pursuit of Sovereignty and Self-determination: Peoples, States and Secession in the International Order, Index of papers, Macquarie University Law Journal, 1, 2003.

The Construction of the Legal System in France

Baron de Montesquieu gives an account of how the French Legal System has evolved throughout the years in his book The Spirits of the Laws. He argues that France was governed by unwritten customs; and specific uses of each Lord formed the civil law. Each lordship had its civil law [...] Montesquieu contends that these customs were then stored in the memory of the elders; but gradually, some laws or written customs were formed. He goes on to say that in the beginning of the third race, the kings gave special charters, and even gave some generals: such were the establishment of Philip Augustus, and those that made St. Louis.

Montesquieu claims that similarly, the great vassals, together with the lords who held them, gave, in the foundations of their duchies or counties, certain charters or establishments, depending on the circumstances: such were the foundation of Geoffrey, Count of Brittany on the sharing of nobles customs of Normandy, granted by Duke Raoul; the customs of Champagne, given by King Thibaut, the laws of Simon, Count of Montfort, and others. Montesquieu observes that this produced some written laws, and even more general than those the French people had. He carries on to say that under the reign of St. Louis and beyond, skilled practitioners, such as Desfontaines, Beaumanoir, and others, drafted in writing the customs of their bailiwicks. He also asserts that the purpose of the skilled practitioners was rather to give a judicial practice. He remarks that although these particular authors had authority through the truth and the publicity of the things they were saying, there is no doubt they have very much contributed into the rebirth of the French law.

Montesquieu argues that such was, in those days, the French written customary law. Montesquieu also claims that Charles VII and his successors had the various local customs and prescribed formalities that had to be observed in their drafting written throughout the kingdom. Or, as this drafting was made by provinces, and that written or unwritten usages of each place in each Lordship were deposited in the general assembly of the province, we tried to make customs more general as far as possible without hurting the interests of individuals. Thus the French customs took three characters: they were written, they were more general, and they received the seal of royal authority, says Montesquieu. He concludes that many of these traditions having been written again, the French made several changes, either by removing everything that could not fit with the current jurisprudence, or by adding several things drawn from this jurisprudence. Another element that contributed in the formation of the legal system in Europe is the Code Napoleon, designation officially applied in 1807 to the code of French civil law originally enacted in March 1804 as the Code Civil des Français. The term applies to the entire body of French law, as contained in five codes dealing with civil, commercial, and criminal law, promulgated between 1804 and 1811. An initial draft completed in 1793, following the outbreak of the French Revolution, was a protest against the extreme diversity in the laws then in force in different parts of France. It was named in honor of Napoleon, emperor of France, who had participated in the formulation.

The Code Napoléon was a compromise between the customary law, basically Germanic, of the northern provinces of France, and the essentially Roman law of the southern and eastern regions of the country.. As a result of the Napoleonic conquests, the code was introduced into a number of European countries, notably Belgium, where it is still in force. It also became the model for the Netherlands, Italy, Spain. The Constitution of the Fifth Republic of France; the country's basic law is still the Code Napoléon, and the administrative

and judicial systems are essentially Napoleonic. Not only was the Code Napoleon a basis for legal systems throughout Europe but it served as a model to many legal systems in many parts of America namely civil codes of Québec Province, Canada, some Latin American republics, and the state of Louisiana.

Conclusion

French law is currently a right of civil law tradition governing the law applied in France but only in part.[12] The rupture resulting from the Revolution of 1789 and the institution of the Code Napoleon of 1804 marked a turning point in the history of the law in France, with the progressive suppression of many institutions of medieval and modern origin. Under the Old Regime. The legal system of the Ancien Régime, referred to as the "old law", was particularly marked by the coexistence of countries of customary law (sometimes partially codified: Custom of Paris, Normandy or Auvergne) and the country of written law. Today, the law in force in the territory of the French Republic is mainly a right of civil law tradition. This shows how both traditional and indigenous communities along with their customs matter to countries whose legal system has been imitated around the globe.

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[12] Dutheillet de Lamothe et Latournerie 2001.

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Cf. Déclaration des droits des peuples autochtones

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Chapter I - Purposes and Principles of Charter of the United Nations