

Deciding Together

The Citizens' Convention on Climate and the Democratic Challenge

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From October 2019 to May 2020, 150 French citizens have been involved in a participatory democracy experiment, and defining measures to fight against climate change. But how, and through which legal process, can the citizens' proposals be implemented?

On June 21, the 150 citizens drawn to participate in the Citizens' Convention on Climate (CCC) concluded their work after one last working session. In this last meeting, they took two important decisions: first, they finalized the list of 150 proposals that they decided to transmit to the executive branch and to the French people. Secondly, they decided through which legal process—regulatory, parliamentary or referendum—many of these proposals ought to be implemented.

These avenues are not mutually exclusive: they can be used together to transform the proposals into new legal norms. From the members' point of view, each of these avenues has advantages and disadvantages, to which we shall return later. However, from a democratic point of view, it seems to us that the referendum route would provide an historic opportunity to close this unprecedented moment of deliberative democracy with a process of direct democracy, in which all citizens could take up the issues of climate and social justice.

The decision to hold a referendum, however, says nothing about the form of the referendum or the questions that would actually be on the ballot. A referendum can be a decision, when it has a normative scope and leads to the adoption of a new bill. A referendum may also be consultative, when it has no binding value and intends to provide information about the voters' opinion. Moreover, a referendum may ask a single question, as it has always been the case in France so far, or ask several questions simultaneously, as it has often been the case in the United States and as it is legally possible to do in France. To meet the democratic expectations of the Convention, the "ideal" referendum mechanism would be a decision-making referendum on several proposals at once. In this text, we explain why.

The coming months will therefore be decisive for democracy and the ecological transition in France. The success of this democratic innovation and the possibility of setting a precedent that could be renewed and institutionalised in the future will depend on the follow-up to the Convention's work and the implementation of its proposals. Also at stake is the ability to demonstrate that the use of advanced democratic practices is the best way to ensure the success of ambitious environmental policies, against the advocates of so-called green authoritarianism.

All of the actors who want a way out of the Covid-19 crisis without returning to the "pre-Covid normal" should grasp the importance of this political moment. Indeed, the CCC's proposals are in line with the dozens of forums and other appeals published in recent weeks by certain unions, NGOs, parliamentarians, parties, companies, scientists and intellectuals, urging us to change our patterns of development and make them more sustainable.

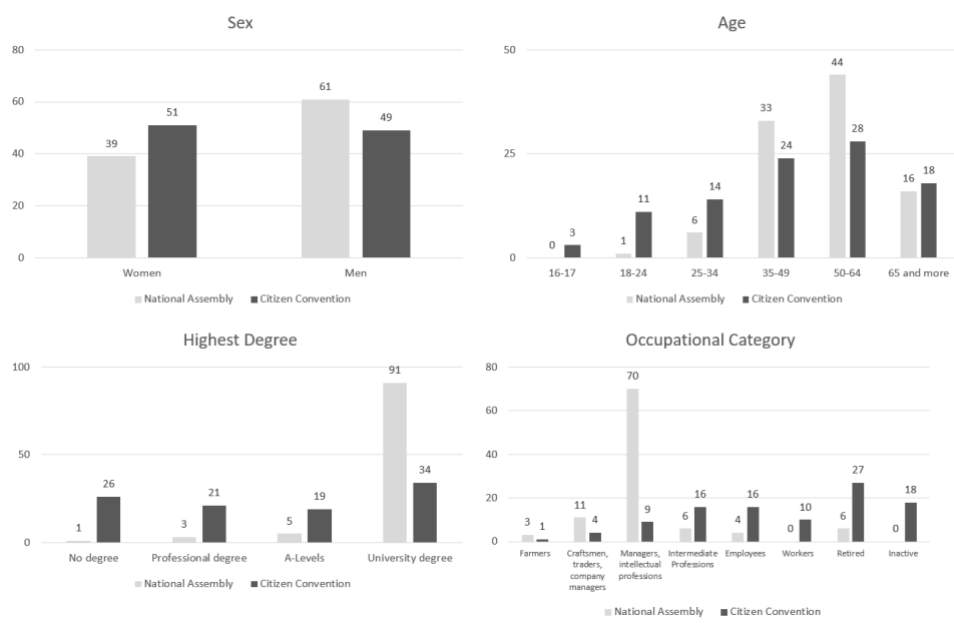
How a democratic innovation lands politically

The Citizens' Convention on Climate is a deliberative democracy mechanism never seen before in France. In October 2019, 150 citizens were entrusted with the mission to "define structural measures to achieve, in a spirit of social justice, a reduction in greenhouse gas emissions of at least 40% by 2030 compared to 1990 levels", a project they have been working on since then.

The CCC is one of the latest in a series of more or less successful experiments by juries, mini-publics, conventions or citizens' panels. These new arenas have sought to give concrete expression to the principles of deliberative democracy in the making of law and public policy. Between 2008 and 2009, for example, a "national forum" of 950 randomly selected individuals worked on constitutional reform in Iceland, while in Ireland the deliberations of three citizens' assemblies drawn between 2012 and 2015 led to the legalization of same-sex marriage and abortion. To ensure the success and democratic quality of these processes, two mechanisms are of great importance: sortation of participants and respect for certain deliberative principles. These mechanisms have been at the heart of the CCC, whose work was accompanied by a governance committee comprising several theorists and specialists in deliberative and participatory democracy.

The selection procedure of the CCC's participants', based on a random draw, allows for an assembly that includes the diversity of the French population. By comparing the social composition of the CCC with that of the National Assembly, Graph 1 below shows how this procedure makes it possible to represent social groups that are either absent from the National Assembly or clearly under-represented. This is primarily the case of women, who make up half of the CCC as opposed to just over a third of the National Assembly. Then there are the under-34s, who are the most concerned by the coming ecological crises: they represent more than a quarter of the people randomly selected for the CCC, while they are practically absent from the French parliament. This is also the case for the lower classes (blue-collar workers, employees and part of the intermediate professions), who are much better represented in the CCC. The National Assembly is dominated by the higher classes (managers, intellectual professions)—70% of the deputies come from these categories. Finally, citizens without higher education only form 9% of the French deputies, compared with 66% in the CCC and 70% in the population of voting age. In other words, the Citizens' Climate Convention corresponds much better to the ideal of descriptive representation, in which the members of the assembly speak best on behalf of citizens because they share various social, cultural or geographic characteristics.

Chart 1. Comparison of the composition of the National Assembly (deputies elected in 2017) and of the Citizens' Climate Convention by sex, age, level of education and socio-professional category



Sources: National Assembly; Citizen's Climate Convention; Le Monde (The composition of the National Assembly in terms of level of education covers the 443 deputies (out of 577) for whom journalists were able to gather sufficient information.)

Moreover, the methods of discussion and decision-making within the CCC followed ambitious deliberative principles: (1) sharing of information and knowledge; (2) presentation of contradictory arguments, attested by the diversity of the auditioned personalities, a list of which is available on the Convention's website; (3) time devoted to exchange and group discussion, with eight meetings over a nine-month period. By allowing citizens to express differences, to seek a balanced compromise and to develop informed opinions, these principles lead to better decisions.

The list of proposals that has emerged from the Convention is therefore a manifesto of great democratic value. Thinking about the best way to ensure its transformation into law is essential so that the proposals that emerge from it do not remain a dead letter, joining thousands of proposals made by the various committees or commissions that have marked the history of the Fifth Republic. Such a failure would be a severe blow to this democratic innovation. However, the citizens of the CCC have many assets to transform these proposals into concrete measures. The first of these assets is to be found in the words of the President of the Republic, Emmanuel Macron, who has repeatedly pledged to submit these proposals "without filter", whether in the form of direct regulatory application, bills or referendum.

Hierarchy of standards and operationality of the measures

Any reflection on the best way to apply the proposals stemming from the Convention “without filter” must recall that the hierarchy of norms and France’s membership of the European Union, which produces a large part of environmental law, are not without consequences. Some of the proposed measures do not relate to national law and their implementation is rendered uncertain by the simple fact that it will depend on European negotiations that are already struggling to reach the most favourable compromise for environmental protection. The competences falling within the remit of local and regional authorities raise similar questions, even though the scope of local competences and their legal framework may be modified by law or by the Constitution.

That being said, it can be expected that, regardless of the hierarchy of norms, the implementation of the ambitious CCC proposals will permeate discussions on environmental policy at these levels of government. Indeed, the legitimacy derived from such a democratic process will be an important resource in supra- or sub-national negotiations on climate issues. Indeed, other countries in Europe have set such Conventions in place, starting with Spain and the United Kingdom.

A second point seems central, whatever the chosen validation route. To ensure that a proposal is adopted “without filter”, the measure in question must be formulated in a precise manner and in accordance with the law, so as to make it directly operational. Conversely, the transcription into law of an imprecise proposal, leaving room for interpretation by the actors who will take over from the Convention, can more easily alter the content of the measure. This is why an expert support group as well as a legislative committee has accompanied the citizens.

Articulating the referendum, decrees and the law

Without calling into question the centrality of the referendum, it is possible, and no doubt necessary, to articulate the modalities of application of the many proposals resulting from the work of the Convention. Depending on their number and content, some measures could go through a referendum, others through legislation or regulations.

The regulatory process (the signing of a decree by the President of the Republic or the Prime Minister, or an order by an independent authority) is the most direct option for all proposals that do not fall within the scope of the law or the Constitution. This process would have the advantage of involving few actors, but the disadvantage of depending on the respect of the executive's commitment to implement the proposed measures without distorting them. The regulatory route therefore seems more appropriate for measures on which there is a consensus within the Convention. By its very design, the Convention is supposed to reflect the divisions existing in French society. This hypothesis was moreover confirmed in the Irish experience, since the results of the referendums following the Citizens' Conventions were similar to the adoption rates during the debates within the Convention. A broad consensus within the Convention would indicate that external opposition is likely to be low, or at least mitigated by the publicity of the reasons why the Convention reached this consensus. Conversely, it is more likely that the decision-making process be lengthened and/or the proposal altered through regulatory channels if it is highly divisive in the Convention discussions already.

The parliamentary route is the traditional choice under the Fifth Republic to adopt proposals that amend the law or the Constitution. The main advantage of this channel, like the regulatory channel, is that it can deal with several dozen measures at the same time. Its major disadvantage is the risk of altering the proposals made. Indeed, the parliamentary procedure is the one that involves the most actors in the decision-making process. This may leave (more or less) room for renegotiating the compromises reached at the Convention, and open the door to the intervention of public, but also private and well-organised actors, whose influence has hitherto been limited by the citizens' assembly process. The fate of some of the important decisions taken after the "Grenelle de l'Environnement" shows how decisions considered legitimate at the time were forgotten.

Another limitation of the parliamentary route is the symbolic legitimacy of decisions. Adopting the Convention's proposals by a vote of the two assemblies would not give these proposals a different weight from the dozens of laws passed each year. The general principle of the delegation of popular sovereignty to elected institutions, for a time counterbalanced by the exercise of deliberative democracy that the Convention will have constituted, would regain the upper hand. The referendum, on the contrary, would have the advantage of closing a novel process of deliberative democracy with an equally novel exercise of direct democracy. However, certain

conditions must be met in order to curb the potentially pernicious effects of the referendum.

The potential risks of the referendum

Brought back to the forefront by the mobilisation of the Yellow Vests, the referendum is an option that appears risky in the eyes of several political actors, because of the plebiscitary practices that have historically accompanied it. Whether under the Second Empire of Louis-Napoléon Bonaparte or under the presidency of Charles de Gaulle at the beginning of the Fifth Republic, referendums were, for the holders of executive power, generally conceived as a way to test the people's trust in them, as much as a consultation of the people on the direction of the nation's policy. The way in which Charles de Gaulle put his political responsibility at stake in each referendum he called (to the point of resigning when the "no" won in 1969) anchored this plebiscitary use of the referendum in the imagination of French politicians. A referendum is, they say, as much about answering the question as it is about answering the questioner. The risk of a "no" vote in a referendum is therefore all the greater as the President is unpopular—a characteristic that has become the norm for the Presidents of the Fifth Republic.

The second risk is that of a negative vote by the population, which would bury the proposals put forward by the Convention and further delay the taking of much-needed actions on climate issues. This risk of a "no" vote is inherent in any democratic procedure: if democracy is indeed the government of the people, by the people and for the people, then one must accept the decisions of the sovereign people. Indeed, the problem lies less in the risk of a negative vote on proposals rather than the risk of a negative vote for reasons other than the content of the proposals.

The third risk is that of a purely consultative referendum, which would give the executive a wide degree of latitude in the application of the measures. Such a mechanism is currently non-existent in French law. It would increase the chances that the measures subject to a referendum would never be applied, or would be applied in a weakened version. Furthermore, a referendum that is only consultative would have deleterious effects on voter turnout—why go to the polls when the opinion expressed at the ballot box may not be acted upon? The vicissitudes of the local referendum on

the Notre-Dame-des-Landes' airport in 2016 provide an example of the caricature of direct democracy that a consultative referendum can be.

A legally binding referendum

A successful referendum would be a referendum with the approval of the sovereign people on the proposals submitted, with a high voter turnout. It would also be a referendum in which the policies pursued would correspond to the mission statement (to reduce our emissions by at least 40% by 2030 compared to 1990). Finally, it would be a referendum preceded by a period of informed and balanced public debate on the different dimensions of the ecological transition, in which the members of the Convention and the actors who participated in its work would play an important role, and which would serve as a democratic launching pad for this transition.

In order to achieve these objectives, the ideal referendum mechanism would be a referendum submitting to a popular vote several proposals, which would be legally binding, precise, carefully selected, on the choice of which the President of the Republic should have a limited view.

The pitfalls of symbolic and (too) consensual proposals

Proposal(s) most consensual within the Convention and therefore probably within society—we are thinking of incentive or symbolic proposals—would have the best chance of being adopted by referendum. Such proposals, however, have limited concrete effects on the transition and/or are likely to be revised downwards in the future. Indeed, the Prime Minister's mission letter does indeed refer to “structuring measures” and sets a target date of 2030.

Works on environmental policies has shown that symbolic measures or commitments to very long-term objectives (achieving carbon neutrality by 2050, etc.) have minimal effects on the reality of climate change. France has a precedent, since the

Environmental Charter has been an integral part of the constitutional block since 2005. The Environmental Charter introduces strong principles of environmental law into the Constitution, such as the principles of prevention, participation, and the polluter-pays principle. Yet, its effect on the content of environmental policies remains limited to a few exceptions, such as the recent decision of the Constitutional Council according to which “environmental protection” can justify “infringements on the freedom of enterprise.” Nevertheless, a proposal to amend the Constitution to give greater prominence to the climate emergency is likely to meet with strong popular approval and will further strengthen the legal arsenal.

Proposals with long-term objectives are often consensual as well. The reason for this consensus is that they leave a lot of room for future interpretation, which reduces the level of opposition. In practice, these targets are sometimes, but not always, revised downwards, as illustrated by the case of the national low-carbon strategy, whose ambitions in terms of renewable energy have recently been reduced. Moreover, when they are not accompanied by ambitious short-term measures, which is often the case, these long-term measures do not allow for transition trajectories in line with the objectives set—this is the case with all French energy bills up to now.

The effect of such proposals on the real trajectory of the transition should not therefore be overestimated, even though they have the undeniable advantage of generating broad approval and strengthening a legislative arsenal that is already substantial in terms of symbols and long-term objectives.

One referendum, many questions

A multiple-question referendum (from a formal point of view, these would be simultaneous referendums) would have several advantages. On the one hand, it would improve the quality of the debate on the Convention's proposals. Indeed, as mentioned above, a referendum on a single question increases the risk of a sanction vote against the power in place. Submitting several questions to citizens would limit this kind of dynamics in favour of case-by-case debate and position-taking.

A vote on a comprehensive bill, including a large number of proposals in a single question, presents the risk of polarisation on certain controversial proposals that

could lead to the rejection of the entire text. In such a situation, actors hostile to certain provisions may manage to focus media and public attention on them, at the risk of swaying an electorate that is in favour of most of the other proposals. The cases of secularism or maximum working hours, which received disproportionate attention during the debates on the European Constitutional Treaty, when compared with their importance in the text, are a good example of this.

Putting to the vote a list of five to ten separate proposals, some symbolic or consensual, others more operational or conflicting, would therefore seem to be the best way to proceed, if the Convention wishes to maximise both the chances of success of the referendum, the effectiveness of the proposals voted on and the quality of the democratic debate.

What about the initiative? Inventing a new way of thinking about the referendum

The Citizens' Climate Convention cannot initiate a referendum, in the legal sense of the term. Indeed, this initiative is the responsibility of the President of the Republic, based on the government's proposal (in practice, the President often decides alone), or, since 2015, based on the proposal of one fifth of the members of Parliament, supported by one tenth of the electorate -- a path that would considerably delay the adoption of the measures resulting from the Convention. That being said, the President may have more or less latitude with regard to proposals emanating from the Convention. And he can make commitments not to change the content of the decisions—to take them “without filter,” as Emmanuel Macron himself promised.

The President could therefore agree to submit to a referendum the question(s) formulated by the Convention without modification, provided that the members of the Convention so request and that the proposals are formulated in a legally operational manner. In this way, the people would no longer answer to the President but to the 150 randomly selected people, thus breaking with the plebiscitary tradition associated with referendums in France.

Consideration should be given to the formulation of the questions submitted to the referendum. The referendum must relate to one—or more—bills. From this point

of view, as with the legislative and referendum options, it is desirable that the level of legal formalisation of the proposals should be fairly complete at the end of the Convention. At the same time, it seems essential to us that the proposals be expressed in the words of the members of the Convention so that they can be understood by all citizens. There is a point of balance to be found here and a real requirement for lawyers.

Ultimately, the choice of how to validate the Convention's proposals is a political choice. It depends on the preferences of several actors—the citizens who make up the Convention and the President, of course, but also the Prime Minister, his government and the members of parliament—and on the ability of these actors to reach agreement. It is indeed a matter of creating a new instrument for democratic decision-making.

A decision-making referendum on several questions, which would be put directly by the Convention, would in our view be the most innovative and would give the decisions the greatest democratic and legal legitimacy. Under the conditions that we have detailed, the use of a referendum would be the best way to bring French public policy, and society as a whole, onto a transition path compatible with the Convention's mission statement.

Addendum

Since the first publication of our article on *La Vie des Idées*, "Décider ensemble" on May 29, 2020, the Citizens' Climate Convention has transmitted its proposals to the government, in line with its mission statement. Its 149 proposals are now set out in a [460-page document available online](#). On Monday 29 June, the day after a second round of municipal elections marked by a [green wave in France's major cities](#), President of the Republic Emmanuel Macron received CCC members at the Elysée Palace and outlined his own roadmap.

In this addendum, we build on the CCC's democratic experience and discuss the political landing strips that the President of the Republic mentioned. We thus confirm that the organization of a decision-making referendum that would simultaneously address several CCC proposals remains the best way to engage the entire French population in a path towards the ecological transition.

The effects of democratic deliberation

In our initial article “Décider ensemble,” we discussed the virtues of collective deliberation in a democratic system. In the introduction to their report to the government, the citizens of CCC have confirmed, in their own way, what research on deliberation has already shown time and time again. “We have learned to be more attentive and tolerant of each other's opinions while respecting our diversity. Finding an agreement was sometimes complicated by our differences in opinions, lifestyles, culture and social backgrounds. This Convention was therefore a lesson in democratic and participatory life. We worked intensely, with conviction and desire.”

From an ecological point of view, the report is also quite telling. “What we have experienced is a true awareness regarding the climate emergency: the Earth can live without us, but we cannot live without it. For example, heat waves above 50°C in the shade, which will become more frequent, will be deadly in certain regions of the world where humidity-saturated air prevents sweat from evaporating. So let's open our eyes and get moving!”

In fact, several of the Convention's proposals are ambitious and may seem, at first sight, highly conflicting to a public that is little or not informed of the underlying issues: reduction of the maximum speed limit on motorways from 130 to 110 km/h, banning billboards in outdoor public spaces and advertising for products with a high carbon footprint, etc. Yet they won the support of a majority of the 150 citizens, who were not experts in the field. More than ever before, the challenge today is to engage every French person in a path towards ecological transition—in other words, to open up the debate of the 150 to a very large-scale debate.

Known methods for adopting the Convention's proposals

At the end of their work, the citizens requested that three of their proposals be submitted to a referendum: (1) amending the preamble to the Constitution to add a reference to the preservation of the environment as the common heritage of mankind—a preservation that can not be compromised by fundamental rights and freedoms; (2) amending article 1 of the Constitution to place the preservation of the environment among the objectives of the Republic; (3) making ecocide a crime in the French criminal system. By default, the other proposals could be validated either by

regulation or by legislation. The recourse to referendum was thus limited to constitutional questions of a symbolic nature, a pitfall that we identified in our article.

Emmanuel Macron had committed to take up and transmit the CCC proposals “without filter.” He almost kept his promise, but at the last minute he used a trump card to dismiss three proposals: the modification of the preamble of the Constitution, the speed limit on motorways at 110 km/h and the 4% tax on dividends for companies that distribute more than 10M annually to fund the ecological transition. This presidential veto on 3 of the proposals resulting from the Convention is a reminder of the extent to which the functioning of this unprecedented institutional mechanism has been and remains malleable, depending on the way in which the main players (citizens, governance committee, President of the Republic, members of the government and parliament, etc.) deal with it. Moreover, from the point of view of a democratic theory which would assume that the power to decide ultimately belongs to the people, it would obviously have been expected that these proposals would have been among those submitted to a referendum.

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Further reading

- Delannoi, Gil, *Le tirage au sort. Comment l'utiliser ?*, Presses de Sciences Po, 2019
- Fishkin, James, Mansbridge, Jane (eds.) « The Prospects and Limits of Deliberative Democracy », *Daedalus, Journal of the American Academy of Arts and Sciences*, 2017.
- Morel, Laurence, *La question du référendum*, Presses de Sciences Po, 2019
- Reuchamps, Min et Suiter, Jane (dir.), *Constitutional Deliberative Democracy in Europe*, ECPR Press, 2016
- Sintomer, Yves, *Petite histoire de l'expérimentation démocratique. Tirage au sort et politique d'Athènes à nos jours*, La Découverte, 2011.

