

Can digital technology save representative democracy?

The example of online consultations about the bill of law on a “digital republic”

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Abstract:

In the autumn of 2015, we conducted a first “online consultation” on a text presented by the government: 30,000 cybernauts posted comments about the bill of law on a “digital republic”, and 90 modifications were made to the final text of a bill that would be passed unanimously. For the first time and thanks to an innovative digital platform, the government wagered on “collective intelligence” to make the bill more relevant and legitimate before its examination by the French parliament. This experiment has been deemed a success but has not yet been repeated. What does it tell us about the promises of “CivicTech” for renovating representative democracy? Under what conditions can it be repeated and extended to other phases in public decision-making?

The yellow vest movement has highlighted the lack of confidence in representative democracy. Many citizens feel so unrepresented by elected officials that they deem illegitimate a tax voted by parliament. For the first time in decades, a social movement has had the goal of changing democratic procedures, by, for example, demanding a “citizens’ referendum”.¹

Paradoxically, these events also shed light on an eagerness to participate in politics. Underlying them is a deeper trend in our society with its historically high level of education and access to information. With the advent of “CivicTech”, participatory democracy is taking a new, more direct turn toward contributions from citizens. New digital tools hold the promise that citizens may increasingly intervene in politics via, for instance, petitions and “participatory budgeting”.

Two possibilities emerge: on the one hand, a move toward a more direct democracy, organized variously — the imperative mandate, participatory budgeting (in the cities of Rennes, Paris and Grenoble), procedures for a “delegative (or liquid) democracy” inside parties (Five Star Movement, Pirate Party) — or, on the other hand, measures for enhancing representative democracy. In the latter case, elected officials continue having the final say but rely on procedures for more frequently and seriously consulting citizens than the mere appointment in a polling booth on election day. Examples of this are petitions by citizens and the co-drafting of a bill of law, as happened for France’s Digital Republic Act.²

¹This article has been translated from French by Noal Mellott (Omaha Beach, France).

² Act n°2016-1321 of 7 October 2016 for a “digital republic” available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746>.

In the autumn of 2015, we successfully experimented with a novel procedure: the preliminary draft of a bill of law introduced by the government was uploaded on line. This draft was a full version (but prior to sending it to the Council of State and submitting it to parliament). Citizens were asked for their proposals and modifications.

This purely consultative procedure offered participants the promise of directly influencing the government's orientations. It fit into France's strong commitment to the transparency of the actions conducted by public authorities and to new forms of collaboration with civil society, at a time when our country was preparing to preside the Open Government Partnership (OGP). Though touted as a successful example of digital democracy, this experiment has not yet been repeated for other bills of law introduced by the executive branch. How, and how much, did it make the process of drafting a bill of law and voting for it more democratic and efficient? Under what conditions can it be perpetuated?

The RepNum consultation procedure: Citizens have a say before sending a bill to parliament

The Digital Republic Act was officially published on 7 October 2016. A year earlier, the preliminary draft of the bill of law was uploaded for online consultation during three weeks in September and October 2015. The final draft was adopted during a cabinet meeting in December. The bill has three chapters for "*updating*" the motto of the French Republic to the digital era: "liberty" updated with "open data" and "open access"; "equality" updated with fair competition between economic agents and the protection of users' personal data; and "fraternity" updated with the availability of high-speed connections to the Internet throughout the country and the accessibility of digital technology to the disabled. The bill with its innovative contents was intended to be as innovative in the procedure for finalizing the draft.

By asking citizens to take part in drafting the bill, two major objectives were pursued:

- enhance the bill's contents via a "collective intelligence", namely gathering a much broader set of viewpoints and advice for informing the executive branch and creating the conditions for a useful comparison of ideas.
- enhance the law's legitimacy thanks to the full transparency of the draft and by collecting with as much transparency the opinions of the representatives of interest groups in order to bring to light the zones of influence and provisions that aroused strong resistance.

For this consultation, we used an online platform (<https://www.republique-numerique.fr/>) designed by the association Démocratie Ouverte and the startup Cap Collectif. Once the Prime Minister's office accepted the principle, the consultation itself could not have taken place in the allotted time had the appropriate technology and specialists not already existed. Although this technology did not resort to artificial intelligence (automated analytics of contributions), users had, beforehand, validated the tools to be used (features, interface design, and user-friendliness).

For our call for contributions to inspire confidence, it was necessary to make a clear promise to citizens, who legitimately wondered whether participating in this consultation would do any good, whether their voice would be heard. The settings for the online platform allowed for each participant to: vote for or against articles of the bill or to remain neutral; make comments about articles and propose amendments or new articles; and vote on the proposals or comments made by other participants. Parallel to these interactions with government officials, a horizontal democratic dialog took place directly among participants, thus providing a mirror of points of agreement and disagreement. The government promised to reply publically in writing to the proposals for which participants voted the most (more than 200 replies would be made), and to meet the contributors whose proposals received the most backing.

The #RepNum consultation was novel and significant in several ways:

- It was about the preliminary draft of a bill of law. It was not an “open question” like the consultations on bioethics (which was abandoned) or on food and the food supply (which had few effects). Nor was it a set of multiple choice questions like a public opinion poll (as during the Grand National Debate). It was about a specific text already written and ready for submission to parliament.
- The bill represented to a reform that figured among the government’s priorities, had been announced by the president and had been scheduled for examination by parliament. The bill of law would be deliberated in parliament, whereas a bill introduced by an MP is not sure to reach this phase.
- The consultation occurred early enough in the process to exercise influence on the government’s choices. It preceded the submission of the text to the Council of State.
- The consultation had safeguards for the independence and transparency of the procedure, but without going as far as the standards of an “independent administrative authority” (such as the Commission Nationale du Débat Public, which holds hearings on big infrastructure projects). The platform had been designed by an independent association without a moderator. For “moderating” posts, it had an “open trash can”, where deleted posts remained visible to all participants.

The benefits of the consultation: An act with improved contents and wider acceptability

The three weeks that the consultation lasted were flush with the participation of cybernauts: 137,725 persons visited the website, 31,000 accounts were created, 147,549 votes were cast, 8,490 contributions were made. The comportment of participants was very constructive — no “trolls”... and, above all, the consultation had a real impact on the drafting of the bill of law.

The first benefit of this consultation was that the original text was modified before submission to parliament. The modified bill was better written and hewed more closely to the country’s societal and economic aspirations: 90 modifications, some of them substantial, of the initial version were incorporated in the final version. For instance, the article on “open access” drew strong attention from the academic community, which requested and obtained a reduction of the period in commercial publishing after which researchers may freely upload their articles on line. This modification boosted the “open science” movement in France by making research easier to access. Yet another example: the article devoted to “open (public) data” (open access to data from public institutions) was bolstered by the addition of light sanctions (of a “name and shame” type), which the Commission of Access to Administrative Documents (CADA) is empowered to apply.

The consultation also brought to light causes of concern with which the preliminary draft had not adequately reckoned. The modification for making donations by SMS was popular, and perceived as positive for NGOs and their causes. By the way, the donations for rebuilding Notre Dame have in part been collected by SMS thanks to this modification. The consultation also brought into focus concerns about protecting the personal data of donators and of vulnerable individuals (including the agèd). As a consequence, the government revised the text by adding new safeguards and formulating more clearly those already foreseen. This dialog helped create a stronger consensus.

A few new topics emerged from suggestions made on the website, *e.g.*, the recognition of e-sports (online gaming matches, with overwhelming support from the community of gamers who wanted to be freed from the regulations forbidding lotteries and gambling) and the extension to private persons of the right to data-host their own data. This addition of new topics to the draft brings the consultation closer to being a sort of petition but with more chances for having an impact

since the new topics are grafted onto an already existing legislative text (which, in the case under discussion, was put to vote three months later). However this way of using the website was timid and lacking in imagination; participants who posted did not deviate far from the bounds originally set.

Nevertheless, the consultation was an occasion for citizens to undergo a learning experience, live and in real time, about democracy. Many participants stated that they had discovered the legislative process (and its subtleties) on this occasion. Interest group representatives also helped make the consultation a success by submitting transparently their proposals on the last days of the consultation. They modified their habitual lobbying methods. The civil servants involved in this project apparently found a new source of satisfaction in their work. They spontaneously offered to repeat this experiment for working out the French government's official response to a consultation by the European Commission on startups.

Among this consultation's noticeably positive effects, mention should be made of the improved quality of discussions in parliament. Since the preliminary draft of the bill had been posted early, contentious issues were detected much sooner. MPs had the time to become familiar with the text, and sometimes even organized public hearings with their constituents. The articles that André Chassaigne, MP, and the inhabitants of his constituency drafted about the obligations of a universal service of maintenance of the telephone network were incorporated in the bill. With all the cards laid out on the table from the very start, the quest to find a political compromise with the opposition (the majority in the Senate) went more smoothly, thus improving the operation of representative democracy.

An exercise with limitations

Despite this experiment's many and sometimes unexpected positive effects, it encountered major limitations that narrowed its scope.

A first limitation was on its capacity for attracting participants representative of the French population and, therefore, on obtaining contributions reflective of French society's diversity. As an examination of the data gathered from a survey of 4500 participants has shown, this sample had a higher level of education than average (62% a higher education); and a strong political consciousness (70% stated that they vote in all elections). A degree of diversity was not missing among these participants: 14% were less than 25 years old, and 15% did not have a high school education. Furthermore, the topic of online gaming attracted young cybernauts with little interest in politics. A consultation that is only on line and has a low public relations budget cannot attract citizens who have little interest in politics or live far outside big urban centers: 46% of connections on the RepNum platform were made from the Île-de-France Region (which includes Paris). Digital democracy cannot exist by itself. It has to be completed with discussions in person. FabLabs are well adapted for this (workshops for making the law with professors and students from law schools), as are, for example, multimedia libraries.

Another drawback of considerable importance: the ability of citizens to place new reforms on the agenda was limited. People were strongly mobilized around issues related to longstanding demands, such as the priority for public administrations to use freeware or the recognition of an "informational commons". Though receiving the most backing from cybernauts, these proposals were not retained. Despite our personal feelings, these ideas were too far from the positions initially worked out by the prime minister and his cabinet. Furthermore, several proposals made by cybernauts laid outside the purview of lawmakers under Article 34 of the Constitution and could not, therefore, be included as articles in a bill of law. A possibility would have been for a long legal and administrative followup, of an interministerial sort, for turning the most pertinent proposals into public policy options; but this was not foreseen, and no administration has been asked to do this. Whatever this consultation had that was transparent and participatory came to an end with the adoption of the law. It did not extend to the implementation of the law, which remained opaque

(except for a decree on public data services). In effect, this consultation focused on a single phase — drafting a bill of law — in the public decision-making chain without advancing into the phases of implementing the law or assessing the relevant public policies.

A final point: institutional resistance was very strong throughout this long process. Public administrations were skeptical and thus did not see the consultation as a priority and did not become very involved. This holds especially for administrations that did not feel directly concerned with digital technology or with the across-the-board approach adopted for the consultation — even though the text being drafted modified no fewer than seventeen law codes. True, this procedure, strongly supported by the prime minister’s cabinet, entailed an overload of work in a context with scant resources for addressing issues that were not all familiar. During each step of the consultation process, it was necessary to wage battle to obtain recognition of the legitimacy of this new way of drafting a bill of law: interventions by the prime minister’s office with various ministries before and after the consultation, requests for replies to the proposals that received the most votes, discussions with the representatives of interest groups and labor unions, the examination and validation of the text by the Council of State, post-vote objections, etc. This is the third and major limit of this process: all is yet to be done to make room for consultations in the ordinary operation of state institutions.

What are the conditions for making “legislative consultations” durable?

Since 2015, no other ministry has conducted a consultation of this sort. More timid experiments have been made with bills of law during the phase of examination by parliament, but with less clear promises about the effects and a much narrower scope. The Grand National Debate has been an unprecedented (in its format and scale) occasion for people to express their opinions. It has yielded an impression about the state of mind in parts of French society but without creating the conditions for a repeatable multiparty, democratic dialog.

Certain conditions have to be met for legislative consultations to become part of the institutional landscape and for maximizing their positive effects: an executive fully committed to this process who assumes the resulting political risks; a necessarily longer period for preparing a bill of law (after all, democracy takes time); efforts to educate people about the process; a strategy for involving, as early as possible in the process, the relevant public administrations and stakeholders; means allocated specifically for this purpose (a team of persons, a technology budget, leadership, an analysis of the proposals made, the preparation of replies to cybernauts); and a set of clearly, transparently, defined rules with a governance that represents neither the government nor civil society but serves as a broker for midwifing ideas.

Considering institutional practices under the Fifth Republic, these conditions cannot be fully satisfied. Besides, the national level might not be the best suited for conducting this sort of experiment. Digital democracy will probably make more natural strides in the coming years via the development of an innovative “municipalism” and the force drawn from a proximity with local areas.

Despite the obstacles encountered and its inherent limits, the RepNum consultation in 2015 yielded fertile results. It increased the credibility of using CivicTech by the government and has thus federated a nascent ecosystem and accelerated the recourse to technological solutions by elected officials and public administrations. Initiatives are proliferating for more systematically including a dimension of collective intelligence in the various phases of public decision-making: citizen juries, citizen proposals for laws, citizens’ questions to the government, etc. The RepNum consultation advanced in the direction of history. It opened the way toward recognizing the new power that digital technology confers on citizens.