

# Climate assemblies and the law: a research roadmap

Duvic-Paoli, Leslie-Anne <sup>1</sup>

<sup>1</sup> *The Dickson Poon School of Law, King's College London*

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## ABSTRACT

*The article is interested in the relationship between citizens' assemblies on climate change ('climate assemblies') and the law. It offers a research roadmap on the legal dimensions of climate assemblies with the view to advancing our knowledge of deliberative climate governance. The article explores six fundamental areas of inquiry on which legal scholarship can offer relevant insights. They relate to: i) understanding the outcomes of climate assemblies; ii) clarifying their role in the public law relationship between individuals and government; iii) gaining insights into the making of climate legislation and other rules; iv) exploring the societal authority of norms; v) illustrating the transnational governance of climate change, including the diffusion of its norms and vi) offering a testing ground for the design of legal systems that are more ecologically and socially just. The aim is to nudge legal scholars into exploring the richness of the questions raised by the emergence of climate assemblies and, in turn, to encourage other social science scholars to reflect on how the legal perspective might contribute to better understanding their object of study.*

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## 1. INTRODUCTION

Citizens' assemblies on climate change ('climate assemblies') have recently become a new tool of environmental governance. They are forums of deliberative democracy that bring together citizens representative of a country's society to formulate recommendations addressing the climate crisis. Nationwide climate assemblies have been gaining popularity since the first one was held in Ireland in 2017, with assemblies convened across Europe, including in France, the UK, Denmark, Scotland, Germany, Spain, Luxembourg and Austria. They operate on the premise that informed public deliberations can generate fair and effective proposals for responding to the climate emergency (Dryzek & Niemeyer, 2019; Willis et al., 2022).

Climate assemblies are a novel phenomenon, and, as such, they represent a new area of scholarly inquiry. The article explores how legal scholarship can contribute to understanding the deliberative wave facing climate governance. Are there distinct skills, methodologies and perspectives within legal studies that can enrich our comprehension of climate assemblies? Conversely, how might studying climate assemblies advance our understanding of law, including environmental law?

The investigation is motivated by two considerations. Firstly, climate assemblies and the law appear, at first sight, to be two distinct, and often dichotomous, realities. Climate assemblies usually operate at the periphery of conventional legal structures: as ad hoc, experimental, mechanisms, they generally have a limited or inexistent legal basis and no clear institutional role. At the same time, actors involved in the process (participants, organisers, commentators) regularly assume that law has a role in climate assemblies, but one that is rarely spelt out and often remains undetermined. In addition, the relationship between climate assemblies, on the one hand, and conventional forms of public participation and representative democracy, on the other hand, has so far remained unclear. Because they depart from traditional and hierarchical forms of governance, climate assemblies have had their relevance and legitimacy questioned (Duvic-Paoli, *fc*). Climate assemblies have even, at times, operated in conflict with conventional public law frameworks. For instance, President Macron's promise to put the outcomes of France's climate assembly directly to a referendum, executive decree or parliamentary act, was essentially constitutionally impossible to keep (Duvic-Paoli, 2022). Clarifying how climate assemblies relate to the law is thus essential to reflect on how they can complement existing legal frameworks, and to assess whether they

disrupt, or on the opposite reinforce, conventional, and legally protected, forms of public participation and democracy.

Secondly, environmental law scholarship has much to gain from the study of climate assemblies, as they offer an opportunity to interrogate the place and role of law in the governance of the climate crisis. This includes contributing to research into environmental legislation, which, in comparison with litigation, remains rather under-explored and under-conceptualised despite being a central piece of the sustainability transition puzzle (Scotford, 2021). It also offers a chance to explore legal responses to the fundamental question of how to increase the social acceptability of climate policies and to reflect on whether, and how, law can shape or protect public participation opportunities.

Highlighting a disciplinary contribution in an interdisciplinary journal may seem unconventional. Some might argue that defining the study of a phenomenon by its discipline is unnecessary: after all, what matters most is the development of knowledge about the object, irrespective of the discipline used. However, defining a disciplinary contribution is essential to place the legal discipline in the landscape of other disciplines that are often able to make more apparent contributions. This is an indispensable preliminary step for multi- and inter-disciplinary work: after all, one can only collaborate effectively with other disciplines if one is clear about the contributions, methods and limitations of one's own discipline. This article aims to strengthen the 'legal voice' on climate assemblies in future research projects, whether purely legal or as part of multidisciplinary endeavours. It thus targets a diverse readership, made of legal scholars who might be nudged into exploring the richness of the questions raised by the emergence of climate assemblies and, other social science scholars who might feel encouraged to reflect on how a legal lense might contribute to better understanding their object of study.

The scope of the paper is delimited as follows: firstly, it focuses on citizens' assemblies, defined as 'a specific type of deliberative minipublic that involves a lengthy process (over a series of weekends) gathering at least a hundred randomly selected citizens and producing detailed policy recommendations' (Vrydagh, 2023, p. 5). This means that other forms of deliberative mechanisms, such as citizens' juries, which are generally smaller, are not covered by the analysis. Secondly, the paper is interested in assemblies held at the national level, in contrast with local or regional levels, to concentrate on their ability to relate to

national legislation and policy. Finally, the emphasis is on climate assemblies, to the exclusion of other sustainability themes because they are the most common assemblies related to environmental protection. It is, however, acknowledged that the deliberative trend is now extending to other topics, such as biodiversity loss or marine protection. All in all, implications are likely to be replicable, or at least adaptable, beyond the scope of the paper defined here. However, for reasons of clarity and brevity, it is considered that they have important specificities -- be it in terms of size, governance level or thematic focus -- that carry unique opportunities for legal research. A final point of caution is that the article sees climate assemblies as an important phenomenon in climate governance to study but does not engage with the critical question of their adequacy, legitimacy or effectiveness.

The article is structured as follows. Section 2 provides a multi-disciplinary survey of the literature relevant to the study of climate assemblies. Section 3 develops a research roadmap: it explores six directions of legal inquiry to enhance our understanding of climate assemblies.

They relate to: i) understanding the outcomes of climate assemblies; ii) clarifying their role in the public law relationship between individuals and government; iii) gaining insights into the making of climate legislation and other rules; iv) exploring the societal authority of norms; v) illustrating the transnational governance of climate change, including the diffusion of its norms and vi) offering a testing ground for the design of legal systems that are more ecologically and socially just. Section 4 concludes.

## 2. THE STUDY OF CLIMATE ASSEMBLIES

Citizens' assemblies on climate change are a recent phenomenon. While the first citizens' assembly on climate change was held in Ireland in 2017, scholarly interest increased from 2020 onwards, following the organisation of climate assemblies in France and the United Kingdom, and the subsequent spread of the model across European countries. This section reviews the scholarship's engagement with this emerging governance trend.

The study of climate assemblies is rooted in the well-established tradition of deliberative theory that posits that a strong relationship exists between deliberative and ecological

democracy (e.g. Dryzek, 1990; Goodin, 1996). It finds its place within a rich literature on the theoretical promises of deliberative mini-publics in the context of climate change (e.g. Dryzek & Niemeyer, 2019; Hennig, et al., 2024; Niemeyer, 2019; Willis, et al., 2022).

Academic commentary has begun to evaluate the design of nationwide climate assemblies (Andrews et al., 2022; Ehs & Praprotnik, 2023; Elstub et al., 2021; Giraudet et al., 2022). Efforts to map, categorise and draw typologies of different issues are multiple (Andrew, 2022; Tilikete, 2022). Their impact on policy, law and in other forms, although still to be fully realised, has also attracted significant attention (Blanc & Granchamp, 2022; Boswell et al., 2023; Ejsing et al., 2023; Galván Labrador & Zografos, 2023; Stack & Griessler, 2022; Torney, 2021; Wells, 2022). In addition, transversal questions have been explored, including to evaluate their representativeness and legitimacy (Courant, 2022). The scholarship is divided on the democratic potential of such an innovation, with some praising it for renewing democratic participation (Landemore, 2020; Landemore & Fourniau, 2022) and others being more sceptical, or critical, about its democratic potential (Ejsing et al, 2023; Machin, 2023; Reber, 2020). Questions are asked about whether climate assemblies can consider the interests of future generations or nature (Harris, 2021; Kuhla et al., 2021). Methods applied to climate assemblies are varied, including comparative studies (Courant, 2020; Smith, 2022; Stack & Griessler, 2022), ethnographic observation (Courant, 2020), surveys (e.g. Apouey et al., 2022) and interviews (e.g. Stack & Griessler, 2022; Wells et al., 2022).

In addition, the scholarship is studying local assemblies and citizen juries on climate change. Like in the case of nationwide assemblies, they are examined in relation to their design and impact (Wells et al., 2022). Research pertains to both individual local assemblies (Kainuma et al., 2024; King & Wilson, 2022) and cross-cutting questions, including the motivations of policy-makers in establishing these assemblies (Lewis et al., 2023; Oross et al., 2021), their implications for environmental justice (Ross et al., 2021) and the dynamics of opinion change during the deliberations (Sandover et al., 2021).

Beyond the field of political science, climate assemblies have been studied by other disciplines: in communications, research has sought to understand the relationship between climate assemblies and the outside world (Devaney et al., 2020; Maia, 2023) and in psychology, the influence of emotions within climate assemblies has been examined

(Andrew, 2022). Other forms of contributions have also emerged, including grey literature commenting on various aspects of the climate assembly trend (e.g. Cherry et al., 2021; Smith, 2023) and reports commissioned to evaluate individual assemblies (e.g. Andrews et al., 2022; Paulis et al., 2024). Participant writings reflecting on their own experience also offer valuable insights (Fraty, 2021; Pech, 2021).

With regards to the law as a discipline, its contribution to the study of climate assemblies is nascent. Legal scholars have studied citizens' assemblies on topics such as electoral reform or same-sex marriage. There, the relationship with law is generally evident, as they have often resulted in major constitutional changes. Consequently, constitutional lawyers have notably been interested in how citizens' assemblies challenge conventional forms of law-making (Cahillane, 2020; Clarenne & Jadot, 2021; Pal, 2012; Sales, 2017). In addition, research has been carried out on the relationship between deliberation and constitutional law, to understand whether deliberation is necessary to produce legitimate constitutional law and, in turn, whether constitutional practices enhance democratic deliberation (Levy et al., 2018). The study of climate assemblies poses questions familiar to the legal scholarship, such as the making of legislation and regulation, the functioning of democratic institutions, the relationship between the state and the citizen, or the legal and political threats posed by climate change. However, the legal contribution to the study of citizens' assemblies, on any theme, tends to be under-represented: tellingly, the first edited volume aiming to offer a 'comprehensive analytical overview' of citizens' assemblies, the *Handbook on Citizens' Assemblies* (Reuchamps et al., 2023), does not cover their legal dimensions and implications.

To date, legal scholarship on climate assemblies has explored their positioning within participation models, their emergence within a broader environmental democracy trend and their comparison with participatory rights and other mechanisms (Buge, 2020; Fleury, 2020; Hedary, 2023; Plaza, 2022; Radiguet, 2020). In addition, research reflects on how climate assemblies fit within constitutional frameworks (Armeni, 2023; Delooz, 2020; Morio, 2020; Stirn, 2021) and analyses their internal operations (Buge, 2022; Duffy-Meunier & Paris, 2022). Legal scholarship also shares many research questions with political scientists, including in relation to their democratic legitimacy and representativity (Fleury, 2022; Schlütermann, 2024) and their impact on law and policy (Duvic-Paoli, 2021; Girard, 2021). Legal scholarship has also started to reflect on the experimental nature of climate assemblies (Rousseau, 2020) and how a lack of legal framing and protections lead to essential

uncertainties about their institutional place (Fatin-Rouge Stefanini & Geynet-Dussauze, 2022; Nikolaidis-Lefrançois, 2022). However, compared to research in the social sciences, the level of interest shown by legal scholarship for climate assemblies remains more subdued. And yet, the rest of this paper shows that it is difficult to fully understand climate assemblies without accounting for the legal dimensions at play.

### 3. CLIMATE ASSEMBLIES AND LEGAL RESEARCH

Identifying the legal space for climate assemblies is challenging: presented as novel experiments to accommodate the shortcomings of legal and institutional responses to the climate crisis, they appear, at first sight, free of any law packaging. Except in France's case, climate assemblies typically do not have a predefined role in the making of climate legislation and policy. Indeed, they are often organised with little clarity about how their outputs will feed into conventional decision-making processes. Moreover, law is generally silent about these novel mechanisms, as they have developed outside of any legal framing.

Other disciplines, particularly the political sciences, have comparatively more established theoretical and methodological foundations for studying them. Thirty different social science methods have notably been identified for studying citizens' assemblies (Erçan et al., 2022). Conversely, legal phenomena are not necessarily studied only, or even primarily, by legal studies: questions such as the relationship between law and democracy or the impacts of climate assemblies have been studied by political scientists and lawyers alike. Other disciplines will have valuable insights on these lines of inquiry, and this research agenda does not assume that only legal scholars can build knowledge on these.

The aim of this paper is to show that the legal discipline can make important contributions to the study of climate assemblies. Without such a legal lens, elements fundamental to the design or operation of climate assemblies risk being overlooked or misunderstood. Indeed, climate assemblies are intertwined with legal relations and institutions, even when these connections are not immediately apparent. Laurence Tubiana, the co-president of the

governing committee of France's climate assembly, illustrates how climate assemblies can be seen to permeate legal spaces (European Climate Foundation, 2021):

'There are, of course, more conventional political responses in terms of legislation or regulation. But there is also simply: let this society that wants to change, change, and give it the means to do it.'

Similarly, the presentation of the German climate assembly given by Ortwin Renn, chairman of the scientific board of experts (IASS, 2021), also identifies essential interactions between climate assemblies and legal institutions:

'Citizens' assemblies [...] represent the people whose lives and futures will be shaped by emerging policies and legislation. And what could be more natural than to discuss the consequences of different policy options with the citizens concerned and draw on our current understanding to develop policy recommendations that focus on the common good? This is not about citizens usurping parliament's decision-making powers; citizens' assemblies are a way of broadening the range of views that parliamentarians consider when forming their judgements and making their decisions.'

These reflections on climate assemblies emphasise the indirect presence of law in their processes. However, there is a need to make explicit the role that law plays in climate assemblies and to reflect on how legal studies can contribute to their study. Addressing these questions involves examining the specificity of law and legal reasoning, which varies depending on one's vision of legal scholarship, its contours and aims. Multiple promising intellectual avenues are available for legal scholars to explore. This paper proposes six lines of inquiry on which legal scholarship provides fruitful insights; it recognises that they are not exhaustive, but rather suggestions to expand legal explorations of climate assemblies.



## 3.1. CLIMATE ASSEMBLIES AND THEIR OUTCOMES

A fundamental question to which legal scholarship can contribute is to elucidate whether, and how, climate assemblies influence law and policy. The most evident legal dimension of climate assemblies thus pertains to their outcomes.

A doctrinal legal analysis, evaluating legal rules to construct a systematic statement of the law, can map and assess the citizens' recommendations against existing legal frameworks. The outcomes of climate assemblies generally take a textual form -- a report which varies from direct recommendations aimed at policy-makers (as in the case of France) to expressions of preferences among different policy options (as in the case of the UK). Assembly recommendations might not be legal projects per se but they are not isolated plans; they operate within a dense legal and institutional system. Integrating these recommendations into policy and law may involve amending existing laws or creating new regulations, which requires detailed knowledge of the existing legal landscape. This involves identifying ambiguities, interdependencies and implications arising from the recommendations. For instance, a recommendation to 'green' the constitution (e.g. Denmark's citizens' assembly on climate issues, 2021, recommendation 1.3.) raises fundamental constitutional law questions, while the proposal to 'introduce a Climate Change Business Bill' to require that 'all businesses to assess the carbon emissions of their business practices on climate change' (Scotland's Climate Assembly, 2021, p. 21) carries implications for corporate law.

At times, recommendations may take the form of broad preferences (for instance, 'changing food, farming and land use' -- Climate Assembly UK, 2021, p. 21): in this case, legal scholars can act as 'translators', determining how to transpose proposals into law, regulation and policies. In France's climate assembly, a legal committee was tasked with transposing the assembly's recommendations into legal proposals. However, this committee is an exception, and it is generally for legal commentators to reflect, outside of an assembly's process, on the feasibility and relevance of proposals.

## 3.2. CLIMATE ASSEMBLIES AND PUBLIC INSTITUTIONS

Understanding the impact of climate assemblies on law and policy also requires conceptualising their interactions with existing public institutions. These can vary significantly, depending on the mandate given to them, that can range from a purely consultative mandate to one with full legislative competence (see Boswell et al, 2023).

In essence, climate assemblies engage with essential questions about who makes decisions and how. What should be the role of climate assemblies vis-à-vis the State, or, more precisely, its public institutions and processes? A lack of conceptualisation of this role risks weakening the effectiveness of climate assemblies as well as representative institutions. Indeed, past experiences have shown that a lack of clarity about how the outcomes of a climate assembly feed into conventional democratic processes can lead to severe disappointments from assembly participants and wide societal criticisms against mandating entities (e.g. Baietto, 2020). Moreover, an innovation presented as 'democratic' but operating outside of legal frameworks can represent real risks for constitutional orders (e.g. Reber, 2020), as they put pressure on the rule of law by questioning stable and predictable rules and bypassing institutional frameworks.

Given the novelty represented by climate assemblies and the legal and institutional uncertainties that characterise them, a significant part of legal scholarship will necessarily be prospective. As environmental law becomes increasingly technical and technocratic (Armeni & Lee, 2021), climate assemblies offer opportunities to reflect on how best to include citizens and civil society in environmental policy and law-making. This includes conceptualising how the novel process can be formalised in law, for instance by exploring how to treat the recommendations of climate assemblies in legal terms and whether to institutionalise climate assemblies into permanent features (such as in the case of Brussels' permanent climate assembly).

Moreover, emphasising the institutional dimensions of climate assemblies opens the door to an inquiry into how they compare with other legal mechanisms. This is a central question to understand not only the characteristics of this new governance phenomenon but also how they can be best integrated into the existing institutional landscape. A comparison with

existing legislative processes, for instance, raises questions about how the internal procedures and working methods of climate assemblies differ from those of parliaments (see Fourniau, 2022). Another fundamental question relates to how to conceptualise the relationship between climate assemblies and public participation rights. Indeed, climate assemblies have emerged separately from legally protected forms of environmental democracy to, instead, be presented as ad hoc experiments operating outside of legal constraints and obligations. Whether climate assemblies could complement and enrich norms of environmental democracy remains to be determined: a new right to deliberation in environmental affairs might, for instance, bridge the legally protected concept of environmental democracy with the novel rationale of climate assemblies (Armeni, 2023).

Comparing climate assemblies with other mechanisms underpinned by the same rationale, namely giving decision-making power to lay citizens, can also be fruitful. For instance, climate assemblies can be viewed as the legislative counterpart to court juries that have been shown to share similarities in their decision-making with professional judges (Robbennolt, 2005), or to peoples' tribunals, that are also forums of social justice seeking to complement the state perceived to have fallen short of its obligations. Drawing on the knowledge from these mechanisms and engaging in comparative analysis can help draw out the specificities of climate assemblies.

### **3.3. CLIMATE ASSEMBLIES AND RULE-MAKING**

Climate assemblies offer an opportunity to study the process of rule-making, including laws, passed by parliaments, as well as other policies and decrees passed by the executive branch.

Depending on their mandate and design, climate assemblies relate to rule-making in varying degrees. Climate assemblies can have a direct, easily identifiable, impact on legislation. In this case, knowledge of existing laws is indispensable to understand how the deliberative process influenced rule-making -- for instance, a textual comparison between the recommendations of France's climate assembly and the Climate and Resilience Law adopted as a result (France, 2021) contribute to understanding the extent to which the climate assembly resulted in the adoption of new laws and policies. It is, however, more common

that climate assemblies only offer a set of recommendations and preferences for consideration by the policy-makers. Under these circumstances, climate assemblies operate on the same basis as other participatory processes, engaging citizens in a process of rule-making without giving them decision-making powers.

Irrespective of their formal status vis-à-vis rule-making, climate assemblies represent a microcosm of how legislation is made and decided: climate assemblies are a relatively transparent forum of decision-making that adopt similar working methods as legislatures (Buge, 2022). Both share the same challenge of seeking to find public policy solutions to a wicked governance problem. As such, lessons can be learnt from climate assemblies for the wider study of climate law-making. For instance, they give an opportunity to delve into how expertise, economic interests, and public preferences shape legal outcomes on climate change. Questions such as how climate assemblies make use of the facts and evidence presented to them, and how they are influenced by submissions from the public, can also offer important insights. The study of climate assemblies can thus contribute to understanding how decisions on climate change are taken and how laws are made, an essential question to understand their acceptance, implementation, and ultimate success.

A legal inquiry into climate assemblies and rule-making will also touch upon considerations of climate justice. While ethical considerations are secondary in domestic climate legislation (Brown & Taylor, 2015), climate assemblies explicitly engage with the concept of climate justice. The rationale of climate assemblies that requires participants to contemplate the interests and values of others in a deliberative process is essentially a manifestation of procedural justice (Dryzek & Tanasoca, 2021). In addition, the mandate of climate assemblies can explicitly position climate justice at the heart of deliberations: for instance, in Scotland, the assembly was asked to deliberate on how the climate emergency should be tackled in 'an effective and fair way' while in Germany, it was asked to consider how the country could implement the Paris Agreement 'with due consideration to social, economic, and environmental factors'. Finally, the deliberative methods used in climate assemblies can encourage participants to reflect on how different values might affect the outcomes of their climate project. In Scotland, for instance, assembly members were given a list of priorities that they were asked to rank from more important to least important for their climate project. These ranged from considering the needs of different local communities to avoiding negative impacts on developing countries, and encouraged participants to consider different

forms of climate justice (Scotland's Climate Assembly, 2021, pp. 91-2). To conclude, a legal exploration of climate assemblies can extend to their justice dimensions, providing valuable insights into how climate justice considerations integrate rule-making processes.

### **3.4. CLIMATE ASSEMBLIES AND THE SOCIETAL AUTHORITY OF NORMS**

This piece has shown that climate assemblies are matters of legal inquiry as they relate to texts, institutions and processes. In addition, they can act as case studies for at least three strands of legal research. This section explains how climate assemblies give researchers the chance to evaluate the societal authority of norms.

Climate assemblies ought to be studied as an element in the normative universe that we inhabit, and of which law is part. Climate assemblies shed light on assembly participants' subjective experiences with the law and thus can illustrate how lay citizens engage with legal processes and legal norms. An analysis of the outcomes of climate assemblies reveals that legal concepts are regularly mobilised by citizens, who see the law as a powerful instrument for their ideas and recommendations. Proposals of climate assemblies to amend the constitution to make it 'greener' (Denmark's citizens' assembly on climate issues, 2022, p. 51), to recognise a new crime of ecocide (Convention Citoyenne pour le Climat, 2020, p. 399), or to give nature rights (Gouvernement du Grand-Duché de Luxembourg, Klima-Biergerrot, 2022, p. 76), highlight how the symbolic role of law is amplified in citizens' assemblies, where the law is seen as instrumental in achieving a new societal project.

A clear illustration of participants' experiences with the law in the context of citizens' assemblies is found in the reflection of a participant in France's climate assembly (Fraty, 2021, p. 16, my translation):

'It's incredible, this world in which a pensioner, a pest control expert, a high-school student, an accounting assistant or a marketing executive is asked to

propose amending part of the Constitution or to produce a law'.

In his book narrating his experience, Fraty describes how assembly members were divided and uncertain about their law-making powers. Regarding deliberations on reforming the constitution to include a reference to climate protection, he recalls:

'Some citizens were completely disinterested in the topic, others considered that it was not relevant to us, that it was too complicated for us who didn't know anything about it. They ... were impressed by the risk and the scale that the modifications could take ... the citizens were feverish, inhibited by the challenge and its complexity' (p. 178-9, my translation).

Despite these challenges, assembly members refused to avoid questions deemed too 'legal', insisting that no themes be excluded or 'forbidden' based on their initial lack of expertise (Fraty, 2021, p. 187). Such an anecdote illustrates the intimidating power of law for citizens without legal training, that nevertheless perceive it as an influential source of change.

Citizens' assemblies serve as a powerful case study to understand how citizens perceive law, its operation and usefulness. Indeed, in climate assemblies, citizens can be tasked to make a choice about how various regulatory tools at their disposal (Tilikete, 2022), such as economic instruments (e.g. tax incentives, public investments), regulations (e.g. prohibitions, obligations, sanctions, technical norms) and informational approaches, can best meet their policy objectives. This resonates with, and offers new investigative routes for, the scholarship on how decision-makers select between the plethora of environmental policy instruments available to regulate environmental impacts (Richards & van Zeben, 2023).

Overall, a study of people's subjective experiences with the law in the context of climate assemblies carries the benefit of humanising environmental law by moving beyond the text to emphasise the individuals behind it. In doing so, a deeper understanding of the making of climate law is gained. Climate assemblies thus offer, to use the words of Affolder, 'a way of

bridging the gap between the bureaucratic language of law and its lived reality' (2019a, p. 463).

### **3.5. CITIZENS' ASSEMBLIES AND TRANSNATIONAL CLIMATE GOVERNANCE**

Another possible line of inquiry for legal research relates to how citizens' assemblies contribute to the governance of climate change. Indeed, climate assemblies illuminate the complex reality of legal systems as they relate to climate change. It is well-established that climate change defies established legal frameworks; few studies, however, have reflected on how it impacts the operation of citizens' assemblies (see Knops & Vrydagh, 2023). Overlooking this fact risks rendering invisible essential characteristics of climate assemblies.

One essential consideration here pertains to the territorial frame of law which climate assemblies must consider, namely how to mediate between the global nature of greenhouse gas emissions and their territoriality restricted mandate. Not only are nationwide climate assemblies only able to make recommendations applicable only within their jurisdiction, but their decision-making power is restricted by the multi-level nature of climate governance. For instance, France's climate assembly proposed to adopt a mandatory labelling system to 'inform consumers of the degree of processing of products' (Convention Citoyenne pour le Climat, 2021, proposal SN6.1.1.). However, the use of additives and processing aids is regulated by the European Union and any change could impact the fundamental principle of free movement of goods (p. 395). The recommendation could therefore not be adopted in domestic law.

At the same time, as a participatory model of governance that quickly spread transnationally, the concept of climate assemblies has reached beyond jurisdictional borders, encouraging a transnational exchange of legal ideas through emulation and replication of experiments (e.g. Hughes & Urpelainen, 2015; Affolder, 2019b). Indeed, the model of climate assemblies has travelled both vertically and horizontally. The vertical spread means that nationwide assemblies are held in parallel with local and regional assemblies: for instance, the Spanish government initiated a climate assembly in 2021-2022, which was followed by local assemblies, including in Barcelona, the Balearic Islands and Catalonia. Further understanding

of how national, global and local assemblies interrelate, and how together they might influence the legal framework is thus necessary to gain a less fragmented picture of the role of citizens' assemblies in climate governance.

As for the horizontal spread of climate assemblies across Europe, it offers opportunities to understand commonalities and assess differences between each individual assembly. Cross-border learning has been important: citizens' assemblies in Ireland, France and the UK have openly served as models for subsequent assemblies. In addition, the fact that the recommendations of climate assemblies are often translated into English evidences a willingness of the assembly to reach out to an audience much broader than the national demos. This transnationalisation of the climate assembly phenomenon has been encouraged by a global network of deliberative theorists and practitioners, as well as by international organisations calling on governments to enhance their participatory practices and sharing best practices on deliberative mechanisms (e.g. OECD, 2020; OECD, 2021). At the same time, questions remain about the conditions necessary to hold a climate assembly and whether they can be used in different contexts, such as in the Global South or in non-democratic settings.

Moreover, in addition to their vertical and horizontal outreach, climate assemblies have developed their own transnational narrative. For instance, the Austrian Climate Citizens' Assembly proposed to 'form and expand cross-border alliances for climate protection', including through an international meeting of climate assemblies to share best practices and advance common measures (Austrian Climate Citizens' Assembly, 2022, p. 59). Another example is the attendance of France's climate assembly at the COP 26 negotiations, resulting in the publication of a tribune calling the international community to act (Convention Citoyenne pour le Climat, 2021). Further research is necessary to understand how citizens' assemblies can best integrate in a multi-level system of governance that restricts their influence while maintaining a global outlook on the climate problem.

## **3.6. CLIMATE ASSEMBLIES AND THE REIMAGINATION OF ENVIRONMENTAL LAW**



A final contribution offered by the study of climate assemblies to legal research relates to the ability of legal systems to mitigate environmental degradation. Climate assemblies have, indeed, emerged as a solution supported by both public authorities and grassroots movements (like Extinction Rebellion) to overcome institutional inertia in addressing environmental crises.

Perspectives on how legal orders should be reformulated to offer more ecological and socially just solutions are divided, ranging from making adjustments to existing legal frameworks to radically transforming existing concepts and structures. By occupying a unique position between conventional environmental law and more radical legal practices, climate assemblies can facilitate a shift in legal reasoning and contribute to the reimagination and reconstruction of environmental law.

A core advantage of climate assemblies is that, as ad hoc institutions, they break free from legal and institutional constraints: they can thus offer means to empirically test new forms of law-making to remedy some of the current shortcomings of environmental law. One of those is the fact that climate law is struggling to account for future interests. Climate assemblies attempt to engage more efficiently with the future. Participants are often encouraged to envision a carbon-neutral future where future generations thrive. In Germany's climate assembly, a 'future workshop' was organised, where participants envisioned the country in 2035. In this imagined future, the economy operates as an ecological-social marketplace, where environmental consequences are priced transparently and sustainability is profitable. Energy is sourced from wind and solar power, agriculture is rewarded by fair prices, and factory farming is abolished. This future also encompasses a cultural shift towards modest living, reduced working hours, improved quality of life, and a celebration of solidarity and social cohesion (Bürgerrat Klima, 2021, p. 16). Although climate assemblies often leave the role of legal frameworks in shaping such futures unexplored, the scenarios developed by participants provide valuable opportunities for scholars to consider how environmental law can support these envisioned transformations.

Another common criticism of environmental law in its present form is that it does not account for non-human voices. One innovative way of remedying this has been the 'Parliament of Things' organised in the context of Germany's climate assembly. Assembly participants were asked to identify 20 terms -- things, concepts, or living beings -- that

should be considered throughout the citizens' assembly. This 'Parliament of Things' digitally attended all Citizens' Assembly meetings as silent, but still visible participants, periodically informing discussions and reminding attendees of the existence of other priorities and perspectives (Bürgerrat Klima, 2021, p. 27). In doing so, a new form of law-making emerges, one taking into consideration objects and subjects that are usually not given a voice in the process and whose interests are therefore not represented. As a result, climate legislation is not only the product of societal arbitrations between powerful interest groups but embodies deeper and more diverse values.

Climate assemblies thus offer a valuable case study that can usher environmental law into new territories. Moving beyond conventional conceptions of actors and norms, climate assemblies can help reimagine new legal standards. This proactive approach allows for the exploration and anticipation of legal scenarios, enabling the mediation of change through law and governance structures that are more attuned to the challenges of the Anthropocene.

## 4. CONCLUSION

The article offered a research roadmap to study the legal dimensions of climate assemblies. In doing so, it aimed to diversify the lenses used to study this recent phenomenon that has primarily been studied by deliberative theorists. In this context, the role of legal studies in the study of climate assemblies is not always evident because they exist at the edge of the legal space, straddling the boundary between law and non-law. This article has shown that law has much to contribute to research on climate assemblies and that doing so can offer valuable insights for environmental law scholarship and practice.

The article explored six fundamental lines of inquiry to which law might be capable of offering relevant insights. Based on these six thematic dimensions, a concise legal research agenda made of high-level research questions can thus be proposed as follows:

### *i) understanding the outcomes of climate assemblies*

- How do climate assemblies influence law and policy as well as the work of public institutions?

*ii) clarifying the role of climate assemblies in the public law relationship between individuals and government*

- What is the relationship between climate assemblies, the rule of law and populism?
- What is the place of climate assemblies in the environmental democracy landscape?
- What should be the role of climate assemblies vis-à-vis existing public institutions and processes?

*iii) gaining insights into the making of climate legislation and other rules*

- How is climate legislation made? How are legal outcomes shaped by experts, lobbies and public preferences?
- How are considerations of justice and fairness reflected in climate legislation?

*iv) exploring the societal understanding of norms*

- How do lay citizens understand the role of law in climate governance?
- How do assembly participants perceive their own decision-making role?

*v) illustrating the transnational governance of climate change*

- Should citizens' assemblies on climate change be considered, and studied, differently from assemblies on other topics?
- How does the specificity of climate governance affect the operation of citizens' assemblies on climate change?
- How has the practice of holding climate assemblies spread?

*vi) offering a testing ground for the design of more ecologically and socially just legal frameworks*

- How can legal experimentations like climate assemblies help reformulate environmental law to build more protective and fairer legal responses to environmental degradation?

The objective of this research agenda is not to offer a comprehensive mapping of how law can find interest in the study of climate assemblies; it is, rather, to give a preview of the

multiple and diverse contributions that law can make by proposing some high-level questions that might have the most impact for our understanding of climate assemblies. Legal scholars relying on different theories (doctrinal, socio-legal, critical...) and aiming to make different types of contributions (practical, empirical, theoretical...) should find engaging with the phenomenon of climate assemblies fruitful.

Now that the legal dimensions of climate assemblies have been set out, another question arises, namely how to connect with the production of knowledge by other disciplines. Indeed, such a research roadmap is to be integrated within a broader multi-disciplinary research agenda for the social sciences and humanities. Yet, 'it has in the past proved difficult for legal [environmental] scholarship to make a distinctive impact on high-level interdisciplinary debate' (Little, 2016, p. 65). There are risks of duplicating the work of other disciplines, or of being purely reactive to the actions of others (Little, 2016 p. 69). Identifying the legal dimensions of climate assemblies is an essential first step. It now needs to be followed by further reflection and clarity on how to design and run productive multi-disciplinary projects on climate assemblies.

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