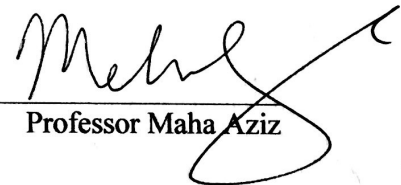# Improving Policy Legitimacy through Crowdsourcing Legislation

by

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DEDICATION

For Juliet and Romeo, my parents, for inspiring great efforts through their love and being the first and most outstanding teachers of my life.

(Para Julieta y Romeo, mis padres, por inspirar grandes esfuerzos con su amor y por ser mis primeros y más memorables maestros.)

To Romeo and Patricio for reminding me how life is full with the most beautiful surprises.

To Percival, for teaching me more in two years about friendship, love, commitment and life than any degree.

To my source of never ending inspiration, Lucía, Mariana, Florencia, Lorena, Inés, Ana, Karen, Itzamara, Aixchel, Adán.

To my home in New York: Miriam, Jazmina, Marina, Úrsula, Elisa, Andrea, María, Gosbinda, Sebastián.

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ABSTRACT

Crowdsourcing initiatives have been created in the past years with the specific objective of providing citizens with a platform to participate in policy and in lawmaking processes. It has been assumed that the incorporation of citizens in these processes should have as an outcome more legitimate policies. Nevertheless the connection between legitimate policies and crowdsourcing legislation has been the object of little research. Through three case studies of crowdsourcing legislation, research on the literature relevant to this emerging field, and an analysis of the three CrowdLaw conferences held at the GovLab, this thesis explains why the relation between crowdsourcing legislation and improvement of legitimacy attitudes needs to be considered from a normative and an empirical approach. From a normative approach crowdsourcing legislation improves the throughput legitimacy of policies. From an empirical approach, to test a change of political attitudes in participants of crowdlaw, surveys should be applied to participants during and after the crowdlaw projects take place. By analyzing previous crowdsourcing legislation projects a series of benefits, challenges and recommendations were identified.

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Introduction

On June 5th of 2009, 49 children died in a fire in a day care center in Mexico. The ABC day care center did not have the necessary safety mechanisms to evacuate the children when the fire started. Reports show that the authorities had requested the owners of the nursery to install bigger emergency exits. Despite this, the permit to operate the day care center was renewed each year. After this horrible and preventable tragedy took place we Mexicans protested on the streets and on social media demanding justice. Despite the social outrage not a single person has been charged up to this day. Sadly this is just one of many cases of corruption in Mexico.

Mexicans are sick of corruption, but we have decided that complaining isn't enough. This year a citizen law initiative was created in an effort to prevent and sanction cases of corruption. The law proposal *Ley3de3* was drafted by Mexican citizens and gathered more than half a million signatures needed to allow its discussion in Congress. All of this support was achieved by using social media and the Internet to inform and organize people.

Today we are facing many complex problems but citizens all over the world are using the Internet to design projects that try to solve them. In Haiti after the terrible earthquake of 2010, a system was created to send messages asking for help. This network of respondents would have been inconceivable to design in such a short notice without the Internet. This type of initiatives where a crowd of people responds to a particular task using the Internet is called crowdsourcing.

Crowdsourcing can also be used to allow citizens to participate in the process of creating laws and policies: laws that take into account the input of citizens like us.

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Policies that address the issues we care most deeply about. Several projects have been created in the past years that engage citizens in the creation of laws. In Finland a marriage law for same-sex couples was passed thanks to the support of more than 100,000 people.

Analyzing cases where laws and policies have been created using crowdsourcing prompts a series of recommendations for future projects, such as having a specific and small task for citizens to perform; or designing the projects so that they adapt to existing political timeframes. Another recommendation is to complement these kind of online interactions with face-to-face meetings.

Crowdsourcing legislation projects, also known as crowdlaw projects[1], attempt to create more legitimate laws and policies that benefit from the collective intelligence of crowds. Literature dedicated to analyze the incorporation of citizens into the policymaking process usually assumes that these new participatory mechanisms will help improve levels of legitimacy. Nevertheless, the relationship between a change in the levels of legitimacy attitudes and participation in this new type of civic engagement projects has rarely been researched.[2]

This thesis seeks to answer the following research questions:

H1. Does crowdsourcing legislation improve legitimacy?
    H1.2. *How* do we evaluate whether such an initiative has in fact improved legitimacy?

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[1] I am using the term crowdsourcing legislation and crowdlaw as synonyms in this thesis. Crowdlaw, which is a portmanteau of the terms crowdsourcing and law, is a term coined
[2] A notable exception to this is the article of Christensen, H. S., Karjalainen, M. and Nurminen, L. (2015), Does Crowdsourcing Legislation Increase Political Legitimacy? The Case of *Avoin Ministeriö* in Finland. Policy & Internet, 7: 25–45. doi: 10.1002/poi3.80

H3. Are there general recommendations that apply to crowdlaw cases regardless of the country where it originated?

To answer these research questions a normative and empirical methodology based on case studies will be used. In order to develop this approach it is important to establish a conceptual framework that will let analyze how it is possible to measure an improvement of legitimacy levels as a result of an implementation of a crowdlaw project and, more specifically, in the case of the studies presented. In the second part of this thesis I will define the concepts of crowdsourcing, legitimacy, and crowdsourcing legislation or crowdlaw.

The third part of this thesis will cover some of the political theories and movements behind this novel participatory mechanism. In this section the state of the field of the literature regarding crowdlaw will be presented. The next part of the thesis develops and explains an original framework to analyze crowdlaw cases. This framework was elaborated in an attempt to present a heuristic model of what elements need to be taken into consideration when designing or analyzing this kind of initiative. This framework will also help identify the differences between the case studies and why is so important to consider these differences when analyzing these projects.

In order to answer the research questions three case studies of crowdsourcing legislation projects will be analyzed. A case study from Mexico, one from Finland, and one from Iceland will be elaborated and analyzed. In order to answer the second part of the first research question the conceptual framework and the case studies will be used to analyze improvements of legitimacy. The case studies will also contribute to consider a series of benefits and challenges that stem from crowdlaw.

The final part of this thesis will answer the second research question and will develop concrete recommendations for future crowdlaw projects. I strongly believe that this type of participatory initiatives will continue to be created in the coming years despite failure in previous projects. In order to pave the wave for future crowdlaw projects I consider vital to set out a series of recommendations based on previous projects and the existing literature on crowdlaw.

Methodology

In order to answer the research questions of this thesis a conceptual framework was created to explain what is meant by crowdlaw and legitimacy and why is important to answer this question looking at the distinction between input, output and throughput legitimacy. An explanation of the differences between normative and empirical approaches will also be presented.

An analytical framework was also created, in order to categorize the case studies presented in this thesis. This analytical framework seeks to identify the key elements of every crowdlaw project. Recognizing the different elements in these participatory mechanisms helps establish similarities and differences between the case studies. This framework also facilitates the discussion of benefits and challenges of this new type of civic engagement process.

This thesis uses a case study methodology to answer the research questions. Three case studies were created in order to:

a) Prove the usefulness of the framework proposed;

b) Identify metrics of legitimacy in these projects;

c) Analyze improvement of legitimacy in these projects;

d) Obtain benefits, risks and recommendations from these projects;

Literature relevant to this new civic engagement mechanism was thoroughly researched. In order to provide recommendations for future crowdlaw projects the literature served an important role as well as the video material from the three CrowdLaw conferences organized by the GovLab. This material is online and available for anyone to see. [3] These conferences supplied semi-structured interviews with practitioners of crowdlaw projects. From these conferences and the growing literature of the field a series of recommendations were created.

Key Concepts

What is crowdsourcing?

The term crowdsourcing has a short and intense history. Jeff Howe coined the term "crowdsourcing" in his article "The rise of crowdsourcing" that appeared in the June 2006 issue of *Wired* magazine. Since this article was published it became a standard reference for people interested in the subject. As its author explained in this text the term is a portmanteau created from the combination of the concepts of "outsourcing" and "crowd" (for him the term crowd is conceived as an entity composed of problem-solvers)[4]. Jeff Howe wrote this article in order to explain a rising trend he observed among some Internet users, a trend that implied a more active collaboration between web

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[3] Session 3: http://thegovlab.org/a-growing-community-of-global-crowdlaw-practitioners/
Session 2: http://thegovlab.org/expanding-insights-crowdlaw-session-2-highlights-need-for-experimentation-collaboration/
Session 1: http://thegovlab.org/toward-more-inclusive-lawmaking-what-we-know-still-most-need-to-know-about-crowdlaw/
[4] Howe, J. (2006). The Rise of Crowdsourcing . *Wired 14.06: The Rise of Crowdsourcing*. Wired, 14 June 2006. Web. 30 Sept. 2014.

users and organizations. These organizations reached out to an unknown group of individuals through the Internet to see in which ways they could contribute to their specific goals.

Over the ten years of lifespan of this term there have been multiple definitions of what crowdsourcing means,[5] but Daren C. Brabham gives one of the most complete definitions: "I define crowdsourcing as an online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals. Online communities, also called crowds, are given the opportunity to respond to crowdsourcing activities promoted by the organization, and they are motivated to respond for a variety of reasons."[6]

In the above definition there are some of the key elements of every crowdsourcing project. First, there is an organization (public or private, for profit or non-profit, governmental or non-governmental) that has a specific problem or activity that needs to be undertaken. Then there is a conscious decision by the organization to have that problem or activity solved or performed by a crowd. This crowd communicates and delivers its output through specific channels of communication, some of which involve an online element, that are established by the organization in question. The type of activity the organization proposes to the crowd varies in complexity and in the kind of responses it expects from them. The organization will decide what type of crowd can

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[5] Estellés-Arolas, E., & González-Ladrón-De-Guevara, F. (2012). CLASIFICACIÓN DE ININCIATIVAS DE CROWDSOURCING BASADA EN TAREAS. (Spanish). *El Profesional De La Información, 21*(3), 283-291. doi:10.3145/epi.2012.may.09
Howe, J. (2008). *Crowdsourcing: Why the Power of the Crowd Is Driving the Future of Business*, Crown Publishing Group. Kindle Edition.
[6] Brabham, D. C. (2013). *Crowdsourcing*. (Kindle Locations 138-142) The MIT Press. Kindle Edition.

perform the activity: a crowdsourcing system could be designed to receive inputs and solutions from users all around the world, with diverse levels of qualifications and expertise, but it can also be designed to restrain the participation to people of certain characteristics. Geographic location, for example, could be used to delimit the boundaries of the participating crowd, allowing only people from a particular city, country or region to participate in the crowdsourcing venture. Citizenship and age can also function as restraining characteristics for a crowdsourcing project. In the case studies of this thesis, being over the minimum age to vote or having citizenship are factors that delimit the crowd that can participate in these projects.

Diverse typologies have been created in the past years by researchers due to the different types of crowdsourcing systems that can be created according to the kinds of activity, types of crowd, motivation for participation, and other series of defining categories that are chosen to design the tool[7]. Even though it is important to establish a theoretical framework for crowdsourcing, for the purposes of this thesis it is more important to consider the key elements that every crowdsourcing venture should consider in order to delimit the use of the term. From the analysis conducted, these are the following elements that a project needs to have in order to be considered as crowdsourcing:

(1) An organization, institution, government agency, or group of individuals that has a specific task or problem that needs to be performed or solved.

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[7] Estellés-Arolas, E., & González-Ladrón-De-Guevara, F. (2012). Clasificación de Iniciativas de Crowdsourcing Basada en Tareas. (Spanish). *El Profesional De La Información*, *21*(3), 283-291. doi:10.3145/epi.2012.may.09

(2) The organization wants the activity to be performed or solved by a crowd composed of multiple individuals, characterized by the heterogeneity of their abilities, knowledge, and backgrounds.

(3) The inputs received from the crowd should be submitted by channels of communication established by the organizing entity and should involve an online activity.

(4) These inputs must be organized or arranged by some guiding principle established by the organization.

(5) A benefit for both parties involved (organization and crowd) should be obtained.

According to Brabham not every type of online activity performed by a multitude of people can be considered crowdsourcing. For him the important element to determine what is crowdsourcing and from what is not is that the locus of control of the process should reside between the organizers and the participants.[8] Brabham's definition of what constitutes crowdsourcing is narrow in this sense. According to his definition common based peer production projects like Wikipedia are not considered crowdsourcing, since there is no "top-down" direction of what articles should be written and what those articles should contain.[9] If we follow his definition one of the cases of this thesis, the case of the Ley3de3, might not be defined as a crowdsourcing endeavor. Nevertheless, I consider that the important element to determine a crowdsourcing project is the leverage of collective intelligence applied to a specific endeavor that is achieved by the organizing efforts of an institution and that makes use of some type of online platform. In the case of

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[8] Brabham, Daren C. (2013-05-10). Crowdsourcing (MIT Press Essential Knowledge) (Kindle Locations 223-234). The MIT Press. Kindle Edition.
[9] Brabham (2013), Kindle Location 248.

the Ley3de3, during the first phase of the project it was the use of social media that allowed the organizers of the project to inform citizens of the content of the law initiative and let them know of the calls for action to gather the required signatures. The crowd of citizens that supported this initiative acted as promoters and organizers of events where signatures could be collected. Mexicans that live abroad organized themselves in order to gather more signatures to support this project. Now that the law initiative is currently discussed in Congress the activity expected from the crowd is to request the support for this initiative from Senators through Twitter, Facebook, email or phone[10]. The platform of the project and their diverse social media platforms serve an important role of informing citizens of the status of the project.

Although Brabham's crowdsourcing definition is unnecessarily narrow, it is important for the purposes of this thesis to keep the distinction between crowdsourcing and crowdfunding that Brabham makes in his book *Crowdsourcing*: "Crowdfunding describes a funding model whereby individuals use the Internet to contribute relatively small amounts of money to support the creation of a specific product or the investment in a specific business idea."[11] Crowdfunding has gained prominence in the past couple of years as a funding method for projects. Several crowdfunding platforms (Kickstarter, GlobalGiving, Indiegogo) have been created specifically with the purpose of helping individuals and organizations promote their projects to gather money. This type of funding initiatives can also be used for public projects. Nonetheless, the confusion that can arise between gathering money for a public project and crowdsourcing used to

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[10] The platform of the project has been iterated to adapt itself to the necessities of this new phase. The information to contact a Senator through Twitter, Facebook, email or phone can be found in the webpage directly: http://ley3de3.mx/
[11] Brabham, Daren C. (2013), Kindle Locations 598-599.

engage citizens in the legislative process is too risky to consider crowdfunding as a type of crowdsourcing project.

What is legitimacy?

Legitimacy is an evasive term, its evasiveness arise when one attempts to define what constitutes legitimacy and its sources. Despite the evasiveness and complexity of the concept it is a core concept in political theory: "The concept of political legitimacy is central to virtually all of political science because it pertains to how power may be used in ways that citizens consciously accept."[12] Given its importance, multiple researchers have tried to define the concept, provide an historical and cultural account of it and provide a series of indicators that could measure the perception of legitimacy among citizens. If we analyze the research history of the concept we find normative and empirical approaches to this concept, among others.

Normative approaches to legitimacy consider the elements that are required in order to ascribe legitimacy to a regime or state. The normative approach considers elements in a vacuum and abstract way, in an attempt to lay the conceptual foundations of what constitutes the rightful exercise of power. Empirical approaches to legitimacy seek to measure attitudes or actions of individuals in an attempt to establish levels of legitimacy based on testable and quantifiable evidence.

Despite the heterogeneous and multiple lines of research that focus on legitimacy, we can identify a recurrent topic of inquiry in these theories: the justification of rightful authority and power by citizens. Some of the elements that differentiate these theories are the focus on a particular object of legitimacy, and the criteria used to understand the

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[12] Gilley (2006), p. 499.

subjective and communal granting of the rightful exercise of power. Some objects of legitimacy that have been studied are: the state, constitutions, the government, political institutions, the president, the congress, the police, etc.[13] The criterion that one considers when analyzing legitimacy depends on the theoretical differences explained above. The criterions used to define legitimacy are closely related to the approach used to analyze this term. If one takes a normative approach, different elements would be considered than when one takes an empirical approach.

To answer the research questions a normative and an empirical approach to legitimacy will be considered. It is extremely important to understand the differences between both approaches when answering these questions. A normative approach can explain why, from a theoretical point of view, one can conclude that involving citizens in the decision-making processes leads to an increment in legitimacy. Empirical approaches allow us to design questionnaires and mechanisms that measure changes of attitudes and beliefs in the participants of crowdlaw projects.

When analyzing the research question from an empirical approach, quantitative indicators of legitimacy will be considered. Indicators similar to the ones that Bruce Gilley adopts in "The meaning and measure of state legitimacy: Results for 72 countries." This empirical approach will be useful when discussing the need of measuring changes of attitudes in participants of crowdsourcing legislation projects. More specifically, this perspective will help determine which indicators need to be measured in participants of crowdlaw projects, during the time of the participation and after the legislative process

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[13] Gilley (2006), p. 501.

has ended, in order to determine any improvement of legitimacy attitudes as a result of the participation in these mechanisms.

Alongside the difference between these two approaches to legitimacy it is important to consider other concepts when analyzing legitimacy improvement as a potential consequence of crowdlaw projects. Like the concept of **policy legitimacy** as it is explained in Alexander George's article "Domestic Constraints on Regime Change in the U.S. Foreign Policy: The Need for Policy Legitimacy." and in the article of Richard Smoke "On the Importance of Policy Legitimacy". The concept of policy legitimacy offers an excellent starting point to analyze cases of crowdlaw. This concept focuses the study of legitimacy on the policymaking process and establishes an analytical framework to understand the various elements that should be considered when seeking the legitimacy of a certain policy. Instead of focusing on legitimacy of the state or legitimacy of government it is important to restrict our subject of inquiry to policy legitimacy.

According to Alexander George, national interest and bipartisanship do not endow a policy with legitimacy. For him, a policy has legitimacy when two criteria are satisfied by policymakers. First, they need to convince the public that "the objectives and goals of the policy are desirable and worth pursuing".[14] Second they need to convince people they know how to achieve the objectives of the policy.[15] George focuses his research on long-term foreign policy, but Smoke makes an interpretation of this concept so that his approach to policy can be extended to the realm of domestic policy.[16]

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[14] George, (1980), p. 235.
[15] Ídem.
[16] Smoke (1994), p. 98.

Another series of concepts needed to answer the research questions are the concepts of **input, output and throughput legitimacy** as are explained and discussed in the article "Democracy and Legitimacy in the European Union Revisited: Input, Output *and* Throughput" by Vivien A. Schmidt. This distinction is also used in the article "Does Crowdsourcing Legislation Increase Political Legitimacy? The case of *Avoin Ministeriö* in Finland", these articles establish an excellent conceptual framework to identify the different types of legitimacy attitudes involved in the various phases of the policymaking process.

Input legitimacy "refers to the participatory quality of the process leading to laws and rules."[17] Throughput legitimacy is defined by Schmidt as the governance process that is involved in every policy making process. Throughput legitimacy considers policy making processes "in terms of their efficacy, accountability, transparency, inclusiveness and openness to interest consultation."[18] Output legitimacy can be defined as the effectiveness and problem solving quality of a policy.[19]

Another element that could also be considered when analyzing cases of crowdlaw created in countries with different political regimes is the difference in cultural approaches to legitimacy that exist in each country. Nevertheless, for the purposes of this thesis a unified vision of legitimacy will be adopted and considerations of possible cultural biases, which could affect the concept of legitimacy between each country, would not be taken into account.[20]

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[17] Schmidt (2013), p. 4.
[18] Schmidt (2013), p. 2.
[19] Christensen, et. al. (2015), p. 27.
[20] Conflict and Fragility The States Legitimacy in Fragile Situations: Unpacking Complexity Edition complète - ISBN 9789264083882 - Fr. à paraître.

Crowdsourcing initiatives have been created in the past years with the specific objective of providing citizens with a platform to participate in policy and in lawmaking processes. These projects harness the power of the Internet and allow individuals to participate in the creation or revision of a certain policy or legislation. Any project that uses crowdsourcing as a tool to involve citizens in the creation or revision of legislation and policies can be classified as a crowdlaw project. The term crowdlaw is a term coined by Beth Noveck, cofounder and director of the Governance Lab. Noveck is a pioneer in the open government movement and a civic innovator that has designed and managed a series of citizen engagement projects that seek to transform the way governments work. As she defines it, crowdlaw refers to "online legislative drafting purposes".[21]

The incorporation of crowdsourcing in these projects allows for people that live in different geographical places to participate in a coordinated manner on a communal task. It also enables participants to engage with these projects in an asynchronous manner.[22] The Internet allows citizens to participate in these platforms without taking into consideration their location or the time they decide to participate, providing them with a digital space to harness their collective intelligence, particular expertise, and points of view.

The platforms and projects of crowdlaw that have been created up to this day vary in size, in the level at which they were implemented (local level, national level), in the

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(2010). *SourceOCDE Développement*, *2010*(3), 1.This report of the OECD about legitimacy makes an excellent case in trying to differentiate cultural approaches to legitimacy between countries.

[21] Noveck, B. (2015), p. 13.

[22] Fries, et. al. (2010), p. 325.

type of activity they asked citizens to perform (sign a petition, define the problem, comment a draft), and in the entity that organized the effort (citizens, civil society, government). Despite all of these differences all of these projects share the use of crowdsourcing as a medium to engage individuals in the policy and legislation making processes.

Some platforms have been created specifically for projects of crowdlaw like the *Avoin Minesteriö*[23] platform or the *Madison*[24] platform, nevertheless some projects, like *La Constitución de Todos*[25], have used existing platforms like *Legislation Lab,*[26]platforms that have been created with the specific purpose of facilitating crowdlaw initiatives. Other projects use social media platforms like Facebook and Twitter to engage citizens. In order to analyze what has worked and not worked in crowdlaw projects, and in order to make a series of recommendations for future projects it is important to understand the differences and similarities of some instances of crowdlaw. The analytical framework of this thesis aims to establish a heuristic model to understand these differences and similarities.

The theories behind crowdsourcing legislation projects

The idea of involving citizens in the policymaking and legislative processes can be tracked in several theoretical and political traditions. In political theory we can identify justification for civic engagement in policymaking processes in participatory democracy theory, in direct democracy theory, and in deliberative democracy theory.

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[23] https://www.avoinministerio.fi/
[24] http://opengovfoundation.org/the-madison-project/
[25] http://laconstituciondetodos.cl/
[26] http://legislationlab.org/en/

If we talk of political movements we can identify the open government movement as a cornerstone in the involvement of citizens in the processes of policy creation and decision-making. Although there is not a universally accepted definition of what constitutes an open government,[27] there is a consensus around the elements that every open government should have in place. The open government movement seeks to increase the transparency of government related activities in an effort to inform citizens of the processes behind political decisions. It also seeks to enable participation of citizens in the decision-making processes and in the production of public services.[28] This movement believes that when citizens have information of government procedures, they are able to hold public officials to account.

In an effort to create a multilateral organization that promotes the objectives of the open government movement, in 2011, the Open Government Partnership (OGP) was created. The OGP has as a mission: "that governments become sustainably more transparent, more accountable, and more responsive to their own citizens, with the ultimate goal of improving the quality of governance, as well as the quality of services that citizens receive."[29] The emphasis that the OGP alliance puts on involving citizens in the policy making process has led to the creation of the OpeningParliament.org forum. This forum seeks to create a space for dialog and collaboration between Parliamentary Monitoring Organizations (PMO), organizations that aim to publish information about

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[27] http://thegovlab.org/open-government-whats-in-a-name/
[28] "Building an open and innovative Government for better policies and service delivery." Paris: OECD, 8-9 June 2010
[29] Open Government Partnership Mission and Strategy
http://www.opengovpartnership.org/about/mission-and-strategy#sthash.1iki4XT8.dpuf

the work of Parliaments all around the world and to strengthen and support the process of civic participation in legislative processes.[30]

How can crowdsourcing legislation improve policy legitimacy?

Is there a connection between projects that use crowdsourcing to involve citizens in the legislative process and more legitimate legislation?[31] If so, how can this be tested? To answer these questions let's consider them from the two approaches mentioned before: the normative and empirical approaches. From a normative perspective, if legitimacy involves the rightful holding of power and authority of the state then, conceptually, crowdlaw initiatives contribute to a change in the perception of citizens of the rightful holding and exercise of power. In which particular object of legitimacy the analysis focus will be critical to undertake the first question. It is not the same to say that legitimacy of the state is improved by these participatory mechanisms than to say that these mechanisms improve policy legitimacy. As mentioned above, for the purposes of this thesis the question will try and answer whether crowdlaw contributes in improving policy legitimacy.

On the other hand it is important to consider the empirical approach to this question. While crowdlaw projects have been created with the intention of improving legitimacy levels, little empirical research has been done to prove if these projects actually transform attitudes of legitimacy in citizens. In order to test this, a series of quantitative indicators of legitimacy should be measured on participants of these projects. A remarkable example of this type of research is the work conducted by Christensen,

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[30] http://openingparliament.s3.amazonaws.com/docs/declaration/1.0/english.pdf p. i
[31] Noveck (2015), p. 144.

Karjalainen, and Nurminen, regarding changes of political attitudes in participants of a crowdlaw project to ban fur farming in Finland. Before explaining more about this empirical approach to the second part of the research question it is important to establish an analytical framework for the case studies of crowdlaw.

Analytical framework for cases of crowdsourcing legislation/crowdlaw

The idea of using crowdsourcing to incorporate citizens in the policy-making and legislative processes has a short history. Nevertheless, in this short timeframe several projects have been created to engage citizens in the legislative process.[32] Due to the novelty of this type of participatory mechanism there is a lack of an analytical framework that allows individuals to conceptually grasp the multiplicity of possible cases of crowdsourcing legislation that could be designed. In order to fill this gap, this framework was created to classify projects of crowdlaw and to educate individuals about the key elements that need to be considered when analyzing or developing a crowdlaw project.

The idea of this analytical framework originated when writing an unpublished report for the third CrowdLaw conference of the GovLab. "The Governance Lab is an action-research center based in New York that focuses on deepening our understanding of how to govern more effectively and legitimately using technology."[33] The GovLab has hosted three online conferences dedicated exclusively to the emerging field of crowdlaw.

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[32] For a list of different projects of crowdlaw see these blogs from the GovLab:
Session 3: http://thegovlab.org/a-growing-community-of-global-crowdlaw-practitioners/
Session 2: http://thegovlab.org/expanding-insights-crowdlaw-session-2-highlights-need-for-experimentation-collaboration/
Session 1: http://thegovlab.org/toward-more-inclusive-lawmaking-what-we-know-still-most-need-to-know-about-crowdlaw/

[33] http://www.thegovlab.org/about.html

These conferences had as an objective to connect experts and practitioners of crowdlaw to learn from each other and understand what has worked and not worked in these projects.

The idea behind this framework originated after considering the diversity of cases that can be categorized as crowdlaw. The projects that were hosted in the third crowdlaw conference[34] were as diverse from one another that it seemed impossible to formulate recommendations and map the current state of the field with such heterogeneous projects. After analyzing the different cases, an organized schema that allowed understanding the diversity of cases and formulating possible recommendations was designed. To do this different projects were analyzed abstracting from them the elements that constituted each one of them. The first element was to consider that every project had a different legislative product as its object. Some of these projects were designed towards obtaining citizen input for a new or an existing constitution; others solicited input for a change in a specific law; others asked for input in a specific regulation, and others asked for input regarding a public policy. The importance of recognizing the different legislative products was an idea from Beth Noveck, who highlighted the importance of considering the different outcomes of these projects.

Here is a completed and revised version of the original analytical framework that I started to create for the unpublished report. The framework was designed around three elements: the **type of activity** that is expected from the crowd, the **stage of the legislative process** where crowdsourcing is incorporated, and the **legislative product**

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[34] Here is a list of all the projects that participated in the GovLab's third CrowdLaw conference: http://thegovlab.org/globalonlineconferencesept24/

that is crowdsourced. This framework helps create a map of the type of crowdsourcing legislation projects that have been developed so far and gives practitioners a heuristic model to design future crowdlaw projects.

In a crowdlaw project individuals are asked to perform a certain task with the objective of contributing to the elaboration of legislation. The activity that the crowd is asked to do is an indispensable part of the design of every crowdlaw project. Participants in a crowdlaw project could be asked to perform one or several of the following activities:

- Generate
    - Individuals can be asked to brainstorm ideas regarding new policies.

- Evaluate
    - Individuals can be asked to evaluate the ideas or proposals that other citizens submit. This helps lessen the burden of the evaluation process by the organizing team.
    - Individuals can be asked to evaluate drafts of policies or legislation.
    - Participants can be asked to evaluate current legislation or policies.
    - Participants can be asked to evaluate the implementation of the legislation.

- Vote or rate
    - Citizens can be asked to show their preference for a certain law proposal or initiative.
    - They could rate the participation of other citizens. This method would help reduce the burden of work from the organizers of the crowdsourcing legislation project.

- **Comment/Discuss**
    - Citizens can add their opinions into existing legislation or drafts of legislation proposals.
    - Individuals can discuss the ideas or proposals submitted by other member of the crowd.
- **Share**
    - Individuals can be asked to share relevant information regarding the discussion of the legislation.
    - Participants can be asked to share the project with their acquaintances.
- **Draft**
    - Individuals can be asked to write proposals for new legislation.
- **Ask**
    - Citizens could ask questions to their representatives regarding legislation proposals.
    - Participants could ask questions to the organizers of the crowdlaw initiative.
    - Participants could ask each other questions regarding their contribution in the crowdlaw platform.
- **Learn/Acquire skills**
    - Citizens can be asked to acquire certain skills in order to participate in the crowdlaw project.
- **Support/Sign**
    - Citizens can be asked to support a legislation draft that needs signatures in order to be discussed or analyzed in Congress.

Creating legislation follows a cycle that involves several stages. The whole legislative process is complex due to the involvement of several actors in each stage and the consensus needed to move the political process from one phase to the other.[35] Despite its complexity, crowdlaw projects have achieved to incorporate citizens in this policy cycle in several phases. Crowdsourcing can be incorporated in one or several of the following stages of the legislative process:[36]

- Problem Identification and Definition
    - Ask participants to identify which problem a policy should address.
    - Request citizens to contribute in defining the problem that the legislation should tackle.

- Agenda Setting
    - Ask citizens to sign a petition to set an issue in congress to be discussed or analyzed.

- Design and Drafting
    - Invite participants to help design a specific policy or legislation to address a specific problem.
    - Invite participants to help draft the designed policy or legislation.

- Policy Implementation

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[35] Aitamurto (2016), p. 2781.

[36] I am following the classification created by Prpić, J., Taeihagh, A. and Melton, J., in the article: "The Fundamentals of Policy Crowdsourcing". I am following their categorization in an effort to construct this framework on previous work done on the subject and to create continuity between researches dedicated to this emerging field.

- o   Ask participants to contribute in following up the needed steps to implement an enacted policy.

- **Policy Enforcement**

  - o   Participants verify that the existing legislation is being enforced.

- **Policy Evaluation**

  - o   Invite participants to determine and measure the outcome of a given policy.

As was mentioned above, one of the differentiating elements between crowdlaw projects is the type of legislative product that is open for civic participation. Although this could seem a minor distinction it is important to compare successes and setbacks of crowdlaw cases according to their specific legislative outcome. A crowdlaw project that seeks to create a new constitution has different challenges than a project that involves citizens in the elaboration of a regulation that only affects people that live in a specific region or area. The products that could be the object of crowdlaw are the following:

- Constitution
- Laws
- Regulations
- Public Policies

Having this framework helps identify with more precision the type of activity that is expected from the crowd in a project; the specific stages in which crowdsourcing has been incorporated and the different products that emerged from each initiative. This framework was developed with the objective of letting people identify in a clear and precise way which projects have developed solutions for each type of participation

process. By establishing this analytical framework a map of the current state of crowdlaw can be established. The utility of the framework can be tested if different projects of crowdlaw are analyzed using the framework. In this thesis I will only analyze three case studies using this framework.

Here is an example of the framework analysis applied to the case studies of this thesis:

Ley3de3 (Law) **L3d3**

Avoin Ministeriö (Law) **AM**

Iceland Constitution Reform process (Constitution) **IC**

	Agenda Setting	Problem Definition	Design	Implementation	Enforcement	Evaluation
Generate		IC	IC			
Evaluate		IC				
Vote/ Rate		IC				
Comment / Discuss	L3d3		IC			
Draft		AM IC	AM IC			
Share	L3d3		L3de3 AM			
Ask	L3d3		AM IC			
Support/ Sign	L3d3 AM					
Learn/ Acquire Skills	AM IC		AM IC			

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Case Studies

<p align="center">***Ley3de3***</p>

Ley3de3 is the name of the citizen initiative law that was created by a group of Mexican citizens in order to sanction, correct and prevent cases of corruption. This citizen initiative started in 2015 and is currently being discussed in congress.

1. Background

"Corruption is a complex social, political and economic phenomenon that affects all countries."[37] Although corruption is present in every country, the magnitude and the consequences of corruption vary from country to country. The size of corruption in Mexico is colossal: 9% of the GDP according to the World Bank. Transparency International ranks Mexico in the 95th position of 168 countries in its Corruption Perceptions Index. This index that gives a score to each country "on a scale of 0 (highly corrupt) to 100 (very clean)"[38] gives Mexico a 35.[39] According to Transparencia Mexicana, the Mexican chapter of Transparency International, in 2010 a Mexican household spent 14% of its revenue on bribes.[40]

The night of September 26th, of 2014 a group of 43 students from a rural school in Ayotzinapa, Guerrero, was kidnapped after a confrontation with police officers. Federal and municipal police officers of the state of Guerrero were responsible for the abduction

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[37] https://www.unodc.org/unodc/en/corruption/index.html?ref=menuside
[38] http://www.transparency.org/cpi2015#results-table
[39] http://www.transparency.org/country/#MEX
[40] http://www.tm.org.mx/wp-content/uploads/2013/05/01-INCBG-2010-Informe-Ejecutivo1.pdf

of the students. The following day the body of one of the kidnapped students was found with evident signs of torture. Several days later, human rests were found in a dumpster in the state of Guerrero, forensic studies concluded that a fraction of one of the bones that was found belonged to one of the missing students. After several public demonstrations of anger and outrage of great sectors of the population, the General Attorney decided to take over the case. The initial investigation concluded that the 43 students were murdered. Nevertheless, until this day just the rests of one of the 43 missing students has been identified, and the definite list of individuals involved in the murder of the students is still unfinished.[41]

In November 2014, an extensive journalistic investigation conducted by Aristegui Noticias,[42] a Mexican news portal, brought to light that the house of the current Mexican President, Enrique Peña Nieto, and his wife, Angélica Rivera, is a property of Grupo Higa, a consortium of companies that won several procurement processes in the State of Mexico, the state were Peña Nieto was Governor before becoming President of Mexico. The journalistic research also showed that the Chair of Grupo Higa, Juan Armando Hinojosa Cantú, was a close friend of the President. This journalistic research brought to light a potential case of conflict of interests from behalf of the President. A few months after this investigation was published the radio program of the journalist in charge of the article, Carmen Aristegui, was cancelled.

#3de3

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[41] https://news.vice.com/article/ayotzinapa-a-timeline-of-the-mass-disappearance-that-has-shaken-mexico

[42] http://aristeguinoticias.com/0911/mexico/la-casa-blanca-de-enrique-pena-nieto/

In 2014, two Mexican civil society organizations, Transparencia Mexicana and the Mexican Institute of Competitiveness (IMCO), launched *#3de3* [43] a crowdsourcing platform designed to allow Mexican citizens to request their representatives to publish three declarations:

1) Declaration of assets. A declaration of income and properties of public officials and their close relatives. This information should be published at the beginning and the end of a public appointment to help citizens verify that politicians are not obtaining personal gains from the power entrusted in them[44].

2) Declaration of potential conflicts of interests. A list of interests that sprout from professional and entrepreneurial activities of public servants and their close relatives. If this information is public citizens can identify possible conflicts of interest during their public appointments.

3) Tax statements of the three last years. Proof of payment of taxes of the last three years. Although it would seem logical that politicians are up to date in the payment of their taxes, there is no way for citizens to prove this.

The *#3de3* platform has a list of representatives (deputies, senators, governors, majors, and members of the federal cabinet), arranged by state, appointment, and political party. After locating a particular representative one can use the platform to send a Tweet to the public official asking to publish their 3 declarations. The organizers of this project

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[43] This project is still ongoing and can be found here: http://tresdetres.mx/#/
[44]http://www.transparency.org/news/feature/holding_politicians_to_account_asset_declarations

chose Twitter as the channel of communication with representatives because they saw that the majority of them use this social media platform.[45]

The organizers of the project used the mid elections of 2015 to promote this project. Despite a broad citizen participation in the platform, a minority of public officials decided to publish their declarations in the platform, only 430 public officials have published their declarations in the website.[46]

1.1 Citizen participation laws in the country

After a constitutional reform in 2014, Mexican citizens can propose law initiatives to congress if they are backed by at least 0.13% of registered electors.[47] This constitutional right allows citizens access to legislative processes without the need of being backed by a member of congress. In order for a citizen initiative to be discussed in Congress the number required of handwritten signatures must be delivered to the National Institute of Elections, INE (acronym in Spanish), the autonomous and public organism in charge of organizing and coordinating elections in Mexico. After the INE performs a random test to the signatures, to verify the authenticity of the information and signatures, the citizen initiative should be discussed and voted in Congress like any other law proposal.

2. Project description of the CrowdLaw project

Ley3de3 is the name of the citizen law proposal and platform designed by a group of Mexican experts on anticorruption efforts. Three lawyers (Josefina Cortés Campos, Max

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[45] Interview with Eduardo Bohórquez and Rafael García of Transparencia Mexicana.
[46] http://tresdetres.mx/#/
[47] http://www.dof.gob.mx/nota_detalle.php?codigo=5345226&fecha=20/05/2014

Kaiser Aranda, and José Roldán Xopa) wrote the legislative text and 15 experts from academia and civil society were consulted during the whole drafting process. *Ley3de3* is a General Law of Administrative Responsibilities and is one of two secondary pieces of legislation needed to implement the Anticorruption National System approved by the Mexican congress last year[48].

The *Ley3de3* project created a specific platform through which individuals can consult the proposed legislation and find the closest delivery point for signatures. In the first phase of the project citizens were asked to sign the initiative and to raise awareness regarding its importance with relatives and acquaintances. Now that the number of signatures has been surpassed, the platform has been redesigned to include a feature that lets citizens ask the support of Senators through Twitter.

3. Impact

More than half a million Mexicans (634,143) signed and backed this initiative during a month and a half period. Signatures started to be gathered by the end of January 2015 and the total signatures were delivered to the Mexican Senate on March 17th of this year.

4. Challenges

Despite the initial success of *Ley3de3* of surpassing the number of required signatures this project still faces several challenges. First, it must be said that although Mexican law requires signatures for citizens' initiatives to be handwritten, having this requisite was an impediment to receive more signatures. Another important challenge that this initiative

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[48] http://dof.gob.mx/nota_detalle.php?codigo=5394003&fecha=27/05/2015

faced was that no commentaries were received to the legislative text. It is true that the window of opportunity to submit this law proposal to Senate was narrow, given the deadlines established by Congress to create the secondary legislation for the anticorruption reform. Nevertheless, after the success of this citizen initiative a political discussion around the option of incorporating digital identification systems to citizen initiatives should be promoted.

Another challenge is the general lack of national awareness around the project. A recent poll by "Parametría", a Mexican enterprise dedicated to opinion research and analysis, revealed that only 7% of Mexicans knew of the project *Ley3de3*. This poll also revealed that 74% of citizens were in favor of making mandatory that public officials publish the three declarations. Another data that was showcased is that people were misguided about the organizers of this effort since 53% thought that the government was behind this initiative[49].

5. Legitimacy metrics

The project has not added any type of survey to measure the political attitudes of participants before and/or after the initiative is discussed.

6. Status of the project

At the moment of writing this thesis the project had delivered the more than 600,000 signatures to the Senate. The Mexican Electoral Institute validated the identity of the signers that backed this proposal, which opened up the political process of presenting this

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[49] http://www.animalpolitico.com/2016/03/iniciativa-ley3de3-llego-al-congreso-pero-solo-la-conoce-el-7-de-los-mexicanos-parametria/

initiative to be discussed and analyzed in congress. The platform of Ley3de3 has been iterated to include the option of requesting Senators to back up the citizen initiative mimicking the effort of the platform *#3de3*. The organizers of the project have asked the Senate to apply the guidelines of open parliament in the discussion of the initiative.[50] Now that the discussion is under way, the platform of the project serves as a news portal regarding the fate of the citizen initiative.

Avoin Ministeriö

1. Background

Finland has two important cases of crowdsourcing legislation: one is the portal of *Avoin Minsteriö* or Open Ministry in English, and another one is the project regarding Off-Road Traffic Law in Finland[51]. What makes these projects stand out from other crowdlaw cases is that both projects have conducted extensive research regarding the outcomes of citizen participation in these processes.

1. 1 Citizen participation laws in the country

Finland has a citizen initiative law, the Citizens' Initiative Act (CI-Act), which allows citizens of voting age to propose a new law or bill to parliament. The CI-Act was passed on June 5th of 2012,[52] one month before the European Union discussed to have a Citizen Initiative enacted in Europe. This act originates from the Citizen Participation Policy

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[50] https://www.facebook.com/ley3de3/posts/250899011921768
[51] In this Thesis I will only analyze the case of the *Avoin Ministeriö* platform, for a detail account of the crowdsourced Off-Road Traffic law in Finland the webpage: http://thefinnishexperiment.com/ has a collection of research written on this project.
[52] http://openministry.info/finnish-citizens-initiative

Program, a program created in 2003 with the intention of improving participation rates in electoral processes in Finland.[53]

The CI-Act is a formidable example of a citizen initiative law for various reasons. First of all, because unlike other laws of citizen engagement in legislative processes, the Finnish law incorporated the possibility of accepting electronic signatures to back any proposal, while retaining the option of delivering signatures in paper form. The only requisite to accept electronic signatures is that they are processed through an electronic network approved by the Finnish Communications Regulatory Authority Information System[54]. This law requires that more than 50,000 citizens of voting age support the law by signing it in order for the initiative to be discussed in parliament.

Another remarkable element of this law is that any citizen initiative that surpasses the 50,000 signatures threshold must be discussed in parliament, just like any other initiative proposed by any Member of Parliament. This gives citizen initiatives an equal weight to the ones created inside Parliament.[55] The CI-Act establishes a six-month period to collect the needed signatures backing any given proposal. It also determines that any given person or group of people entitled to vote under Finnish law can initiate a citizen initiative.[56]

2. Project description

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[53] Heikka (2015) p. 269.
[54] Ibid.
[55] Heikka (2015) pp. 269-270.
[56] http://translate.google.com/translate?sl=fi&tl=en&js=n&prev=_t&hl=en&ie=UTF-8&layout=2&eotf=1&u=http%3A%2F%2Fwww.finlex.fi%2Ffi%2Flaki%2Falkup%2F2012%2F20120012

Avoin Ministeriö is a non-profit organization that was created in 2012 with the objective of providing Finnish citizens with the online tools needed to discuss and draft legislative proposals. The *Avoin Ministeriö* portal was created after the CI-Act was enacted in an effort to give assistance to citizens and civil society groups that wanted to make use of crowdsourcing to create a bill proposal. Six moths later, the Ministry of Justice of Finland created their own platform: www.kansalaisaloite.fi, so that citizens could electronically sign and upload any citizen participation initiative. This government portal represents a big political achievement for the Finnish people since the licenses to operate signature identification programs are extremely expensive.[57] Although having a government platform is a great step forward in promoting crowdlaw, it is important to highlight that the *Avoin Ministeriö* webpage allows citizens to comment and draft legislation, which is a feature that the Ministry of Justice platform does not have. Given the fact that citizen initiatives could be posted on both platforms, the digital signature mechanism, that both platforms had in place, verified that a person could only sign a petition once on any given platform.[58]

The *Avoin Ministeriö* platform was designed according to the different stages of the creation of a citizen initiative in Finland. The first feature of the platform was designed to receive ideas for new law proposals from participants. The idea generation section was designed so that any idea submitted by a registered user could be commented on. The second feature of the platform allowed citizens to comment on drafts of a proposed idea. One of the most remarkable characteristics of *Avoin Ministeriö* is that it

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[57] http://blogs.oii.ox.ac.uk/policy/do-finlands-digitally-crowdsourced-laws-show-a-way-to-resolve-democracys-legitimacy-crisis/
[58] Heikka (2015), p. 270.

asked volunteers to work as legal aides and voluntary experts in the creation of these drafts. Individuals interested in helping or learning from other people on how to draft legislation could register to become part of the legal support team of *Avoin Ministeriö*.

Another feature of the platform was designed to receive electronic signatures of completed draft proposals. This feature also allowed users to upload the complete text of the proposed bill so that participants could read the entire legislation online and decide whether to support it. *Avoin Ministeriö* also contains a newsletter, and a Twitter timeline to inform users of upcoming news and events. The platform also counted with a geo location feature to let users identify the locations where they could sign any given petition by hand.

There are two law initiatives that were discussed and signed through the *Avoin Ministeriö* platform worth commenting: the same sex marriage law proposal and a proposal to ban fur farming. The same sex marriage law proposal was uploaded to *Avoin Ministeriö* and the Ministry of Justice platforms on March 19, 2013.[59] This law initiative requested an amendment of the Marriage Act to remove gender references from the Finnish marriage act. This amendment would allow same-sex couples to marry under the Finnish law and would provide Finland with a Marriage act with gender neutrality.

The same day that the citizen initiative on equal marriage was uploaded to the Open Ministry platform it achieved to surpass the 50,000 signatures threshold required to discuss this initiative in Parliament. By the end of the signature gathering period the

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[59] http://blogs.oii.ox.ac.uk/policy/finnish-decision-to-allow-same-sex-marriage-shows-the-power-of-citizen-initiatives/

initiative obtained 166,851 signatures backing it.[60] On November 28th, 2014 after a heated debate in Parliament the Equal Marriage Act was enacted.[61]

The initiative to ban fur farming is a citizen initiative that also managed to be discussed in Parliament thanks to the support of *Avoin Ministeriö*. Fur farming, the breeding of animals for the commercialization of their furs, is a lucrative activity in some regions of Finland. According to some reports this industry alone employs 4,000 people directly.[62] Nevertheless, animal protection groups exposed cruelty treatment towards the foxes and minks that live in these fur farms. The proposal to ban fur farming achieved to gather 70,000 signatures and managed to reach the floor of the Finnish Parliament for discussion and voting on June 19, 2013.[63] Unlike the equal marriage proposal, this citizen initiative was rejected in a vote in Parliament, with 146 of 200 Members of Parliament voting against it.

3. Impact

5 of the 6 citizen initiatives that achieved to surpass the 50,000 signature threshold were posted through the *Avoin Ministeriö* platform. Of these 5 initiatives, only 1 has been enacted by Parliament: the Equal Marriage Act. This citizen initiative achieved to gather more than 170,000 signatures in just one day.

4. Challenges

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[60] https://www.kansalaisaloite.fi/fi/aloite/192
[61] http://yle.fi/uutiset/finnish_parliament_approves_same-sex_marriage/7657759
[62] http://yle.fi/uutiset/parliament_will_not_ban_fur_farming/6684109
[63] Christensen, et. al., (2015) p. 29.

The main challenge is the lack of funding for the project. A*voin Ministeriö* had to shut down its platforms because of this. As was mentioned before, the software programs required to identify a person through online banking passwords are extremely expensive, which was one of the reasons why the platform stopped operating. Also only 1 initiative of the 6 law proposals that have surpassed the 50,000 signatures has been enacted by Parliament.[64]The other proposals have been rejected by parliament.

5. Legitimacy metrics

Christensen, Karjalainen and Nurminen conducted thorough research regarding the change of attitudes in the participants of the anti fur farming initiative posted on *Avoin Ministeriö*. To do so, they administered a survey with questions about the perception of participants towards the following political institutions: parliaments, politicians, political parties, the president, and the government. They also included questions regarding the public debate that participants perceived was generated around the topic of fur farming. Two questions about satisfaction with democracy and internal political efficacy were also included.[65] The final part of this survey measured some socio-demographic characteristics of participants like age, gender, home municipality, and level of education.

The researchers applied this survey twice, first during the time of the participation in the platform and then after parliament had rejected the citizen initiative.[66] To measure improvement of political attitudes they used the same types of legitimacy mentioned

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[64] Heikka (2015), p. 268.
[65] Christensen (2015), p. 36.
[66] Ibid., p. 30.

before: input, throughput and output legitimacy. Their results showed that some participants experienced a rise in their levels of trust towards parliament and towards the president. Nevertheless, the majority of the participants showed a diminishing level of trust in the second questionnaire regarding the different political institutions. What is striking is that satisfaction with democracy levels and internal political efficacy levels were higher in the second survey in almost every participant.[67]

6. Status of the project

Although the Open Ministry platform is no longer active, the platform is still available online as a historical register of the ideas that were proposed through the platform and of the legislative drafts that were uploaded. The project has also a webpage in English[68] that works as an excellent source of upcoming events related to crowdsourcing legislation.

Constitution Reform in Iceland

1. Background

Iceland is the country with the oldest legislative assembly democracy in the world.[69] In 2008, Iceland experienced a deep economic crisis as a consequence of lack of governmental regulation over the financial activities of banks. Over the course of a few days four national banks declared bankruptcy, having as a result a debt of $25 billion dollars.[70] This crisis left thousands of Icelanders without their savings overnight and with

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[67] Christensen (2015), p. 36.
[68] http://openministry.info/
[69] https://www.cia.gov/library/publications/the-world-factbook/geos/ic.html
[70] Castells, Manuel (2015-06-04). Networks of Outrage and Hope: Social Movements in the Internet Age (p. 33). Wiley. Kindle Edition.

a broken economy due to the irresponsible procedures of bankers and public officials. Iceland's population organized a series of demonstrations in October 2008. In January of 2009, despite the cold winter characteristic of Iceland, people went out to the streets with pans and kitchenware utensils to make a loud statement and ask for the resignation of the entire government. These social demonstrations are now known as the "kitchenware revolution" or the "pots and pans revolution".[71] Thanks to the social pressure of the kitchenware revolution, early parliamentarian elections were held and the Prime Minister of Iceland during the crisis, Geir Haarde, announced that he would not run for a second term.

In these early held elections the two ruling conservative parties lost the majority in Parliament. A coalition of social democrats took power in February 2009, and Jóhanna Sigurðardóttir, leader of the coalition, was elected Prime Minister.[72] In November of 2009, a series of citizens and civil society organizations formed a group called "the Anthill" with the purpose of organizing a National Forum. This first National Forum took place on November 14, of 2009 and gathered 1500 people that were randomly selected from the National Population Register. The National Forum had as an objective to discuss the following question: "What values should be our guiding principle in the development of our society?"[73] From this first National Forum a series of values were gathered around 9 topics. On June 16 of 2010, the newly elected Parliament passed a bill to organize a new constitutional assembly that had as its mission to rewrite the Constitution.[74] With this act a Constitutional Committee composed of 7 individuals was appointed by

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[71] Landemore (2015), p. 168.
[72] Castells (2015) p. 34.
[73] http://www.thjodfundur2009.is/thjodfundur/um_thjodfundinn/
[74] http://participedia.net/en/cases/icelandic-national-forum-2010

Parliament, a committee created to supervise the process.[75] With help of the Anthill and the recently created Constitutional Committee, a new National Forum was held on November 6, 2010. This National Forum was established by randomly selecting 950 individuals from the National Population Register.[76]

This second National Forum had as an objetctive to gather the values, themes and recommendations that Icelanders wanted to be incorporated into the new Constitution. After the National Forum took place, a 700 page report was written with the outcomes of the process, which also included recommendations and opinions from experts and from the Committee itself. This report was the founding block of the work done by the Constitutional Assembly.

1. 1 Citizen participation laws in the country

Although Iceland did not have a citizen participation law that allowed citizens to contribute in the legislative process, the Icelandic Parliament drafted a bill to allow citizen participation in the constitutional writing process. The Constitutional Act was passed on June 16 of 2010, and it established that any person eligible to run for elections in Parliament could be chosen as part of the Constitutional Assembly. This act also specified that the President, members of Parliament and cabinet members could not be eligible as candidates for the assembly.[77]

2. Project description

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[75] https://acampadabcninternacional.wordpress.com/2013/01/12/chronology-of-the-aftermath-of-the-icelandic-economic-collapse-idlenomore-rbnews/
[76] http://participedia.net/en/cases/icelandic-national-forum-2010
[77] http://webcache.googleusercontent.com/search?q=cache:http://www.thjodfundur2010.is/other_files/2010/doc/Act-on-a-Constitutional-Assembly.pdf Article 6.

In November 2010, the Constitutional Committee appointed 25 members that would form the Constitutional Assembly. This assembly would be in charge of drafting the new constitutional text. The 25 members were chosen from a "pool of 522 people who decided to run for elections, a pool from which it is worth noting, parliamentarians and other professional politicians in function were officially excluded (by law)."[78] The requisite of having non-politicians drafting the new constitutional text was a consequence of the grave distrust that Icelanders felt towards their government after the economic crisis. Although the Committee tried to assemble a representative group, the Constitutional Assembly lacked geographic and socio-economic representativeness. From the 25 members of the assembly, 10 were women, 15 were men, but 22 of the members were from the capital, Reykjavik. None of the members was part of the working class.[79]

According to the Constitutional Act, the Assembly had three months to write the draft of the new Constitution with the possibility of extending that period for another month.[80] The actual crowdsourcing element of this process took place when the Constitutional Assembly began its work of drafting a new constitutional text. In an effort to be as transparent and inclusive as possible, the assembly created a Facebook, Twitter, Flickr, and YouTube accounts.[81] The assembly used social media to incorporate citizens in the process of writing the constitution. During the process, 12 drafts were posted online so that citizens could comment on the legislative process. In total, the assembly

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[78] Landemore (2015) p. 178.

[79] Ibíd., p. 179.

[80] http://webcache.googleusercontent.com/search?q=cache:http://www.thjodfundur2010.is/other_files/2010/doc/Act-on-a-Constitutional-Assembly.pdf Article 2.

[81] http://participedia.net/en/cases/icelandic-constitutional-council-2011#Official_Project_Links

received 16,000 citizen suggestions, from online and offline channels of communication, to be included in the Constitution.[82] Of theses comments, 3,600 were posted through Facebook.[83]

Lawyers were consulted in the final stages of the drafting process in order to provide jurisdictional coherence between the constitutional draft and the international treaties that Iceland has signed.[84] With unanimous vote the Constitutional Assembly approved the draft, which consisted of 114 articles organized in 9 chapters. This proposal was submitted to parliament on July 29, 2011. After the Constitution's final draft was delivered to Parliament a non-binding national referendum was organized to seek national support for the constitutional text. This national referendum took place on October 20, 2012, and had a high participation rate: half of the registered electorate voted in this referendum and two thirds of voters approved the draft as the basis for the new constitution.[85]

3. Impact

The first National Forum, where citizens discussed the priorities "that should guide the renewal of government and public administration",[86] consisted of 1500 individuals. The second National Forum, which discussed the values that the new Constitution should consider, was comprised of 950 individuals. The constitutional assembly that was in charge of drafting the constitution was made up of 25 people. The Facebook page were

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[82] Castells (2015) p. 34.
[83] Landemore (2015), p. 182.
[84] Ibid., p. 187.
[85] Landemore (2015), p. 169.
[86] Ibid., p. 169.

the Constitutional Assembly posted 12 drafts of the constitution received 3,600 comments. From these comments 360 suggestions were taken into consideration for the drafting of the constitutional text. In the non-binding referendum that took place in 2012, to obtain approval for the new drafted constitution, 235,000 individuals participated. Given that the population of Iceland is of 330,000 people approximately, the project received considerable input from society.

4. Challenges

The process faced several challenges during its whole duration. From the start the rightist coalition, which ruled Finland before the economic crisis, opposed citizen participation in the creation of the new constitution. Given the fact that the social coalition won the early elections, they did not need to negotiate the involvement of citizens in the creation of the new Constitution. This opposition was a central problem when the draft needed to be approved by Parliament. When the rightist coalition returned to power, they filed the draft and rejected the opportunity of enacting the first Constitution written by citizens. If an early negotiation had took place from the start and some members of the rightist coalition were convinced of the importance of incorporating citizens in the process, the whole process might have had a different end result.

Another challenge that this project faced came from a lack of prevision in establishing clear political timeframes. After the 25 members of the Constitutional Assembly were elected, the Supreme Court decided to invalidate the election due to irregularities in the election process.[87] This decision was ignored by Parliament who

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[87] Landemore (2015), p. 186.

decided to reelect each of the appointed members by direct appointment. This political move diminished legitimacy to the whole process. A manifestation of this was the rejection of one of the first elected members to participate in the assembly after the decision of the Supreme Court.

5. Legitimacy metrics

Diversity in the participants throughout the process was a requirement to provide the exercise with legitimacy. Although the participants of the "National Forum" were randomly chosen, there was a lack of socio-demographic representativeness in the Constitutional Council itself, having the majority of the Council residing in Reykjavik and with high education backgrounds. One of the elements considered a token of legitimacy of the process was the prohibition of having public officials as members of the Constitutional Council. It could be considered that having the final draft of the constitution approved in a national referendum is an indicator of policy legitimacy. Nonetheless, since the approved draft was not enacted, all the efforts to provide legitimacy to the process seem futile.

6. Status of the project

According to the legislation of Iceland, the draft of the constitution needed to be voted twice by parliament in order to be approved.[88] Elections were held between the two votes and as a result a rightist coalition regained control of parliament. This coalition had

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[88] Castells (2015), p. 43.

opposed the constitutional modification project from the beginning, which led them to reject the constitutional project.

Analyses and discussion

<u>Improvement of policy legitimacy through crowdlaw</u>

<mark>Can crowdlaw projects improve policy legitimacy?</mark> It depends. Although the problem of legitimacy is a very complex problem to be solved by just one civic participatory mechanism, crowdlaw can contribute to change attitudes of participants involved in these processes and by doing so it improves the legitimacy of certain policies. It does so by providing citizens with tools that contribute to enhance the transparency, accountability, inclusiveness and openness of the policy making process. In this sense crowdlaw projects contribute to improve throughput legitimacy. This is said from a normative approach by analyzing the conditions that need to be met in order to improve throughput legitimacy according to its definition.

From an empirical approach, we can answer the second part of this research question. *How* do we evaluate whether such an initiative has in fact improved legitimacy? By designing and applying surveys that measure the change of attitudes of participants of crowdlaw projects. Surveys that measure changes of attitudes towards certain political institutions and that capture some of the socio-demographic characteristics of the participants.[89] Like the survey designed and applied to the anti fur farming case posted on *Avoin Ministeriö*. This case shows that there are ways to measure a change in political attitudes of participants in crowdlaw cases. This semi-experimental approach should be

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[89] Christensen. Et. Al. (2015), p. 44.

applied in future cases of crowdlaw. We need to have more data to measure actual changes of attitudes and beliefs of participants of crowdlaw projects and to see how much these variations are determined by the outcome of the legislation that is open for citizen participation (whether it is approved or rejected by congress).

Two of the previous case studies were chosen due to the amount of research that has been conducted on them. The *Ley3de3* case is still in process but due to the amount of sources available, I considered important to conduct the first case study regarding this citizen initiative project. The following section will analyze some of the benefits and challenges that arise from CrowdLaw.

Benefits of crowdlaw

Although this type of participatory mechanism has a short lifespan, there are a number of benefits that result from organizing crowdlaw projects. One of the most evident benefits of incorporating citizens in the legislative process is the pedagogical aspect of these initiatives. Crowdlaw projects are ideal opportunities to educate citizens about the elements and cycles that are involved in the process of creating a policy or law. Many citizens do not have the knowledge of all the elements involved in creating a policy or legislation, this ignorance can be attributed to several causes, among them a lack of interest in legislative processes and a tendency of parliaments around the world of conducting political decision-making processes behind closed doors.

The use of crowdsourcing in the elaboration of legislation allows citizens to participate in these political processes lowering the barrier for participation.[90] The

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[90] Brabham (2013), Kindle Locations 336-337.

Internet allows the participation of many individuals regardless of their location and their time availability. Internet-enabled projects, including crowdlaw, enlarge the number of potential users of platforms designed to engage citizens in policymaking processes. The same cannot be said of traditional political participation mechanisms: attending a town-hall meeting, or contacting a representative regarding a policy issue are activities that require the physical presence of citizens and a major time allotment to these activities.

Another benefit of crowdlaw projects is that they harness the collective intelligence of crowds into the policymaking process. Each individual has a particular set of experiences, knowledge and perspectives that can be invaluable input for the design of better legislation. One of the main benefits of crowdsourcing is that it provides a platform so that people can incorporate their own expertise in the creation of policies.

Crowdlaw projects also help raise public awareness about certain policies and important issues in public debates. In the quasi-empirical study that Christensen et. al. elaborated regarding participants of the *Avoin Ministeriö* platform one on the conclusions from their research is that the majority of participants agreed that these type of civic engagement initiatives contributed in pushing certain policies in the public and private debates.[91] Rising public awareness of topics involved in policies discussions is a major important contribution to this kind of initiatives. This is not a minor achievement, if more citizens are involved in policy-making processes these individuals act as spokespersons of a specific policy, raising public awareness to topics that traditional media does not cover.

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[91] Christensen, et. al. (2015) p. 38.

<u>Challenges of crowdlaw</u>

The idea of incorporating citizens' input into policy and lawmaking processes is an exciting and promising one. Participatory democracy theories that sustain that incorporating citizens in government's decision-making processes has as a result an improvement of legitimacy levels have found in this type of projects a perfect match. Nevertheless, these civic engagement projects do not come without challenges. In order to create effective and productive crowdlaw projects these challenges should be taken into consideration and incorporated as much as possible in the design of these participatory mechanisms.

Crowdlaw can be used as a political window-dressing mechanism. The use of crowdlaw to give the illusion of civic engagement without really taking into consideration the input of citizens is called "crowdwashing". As governments strife to maintain their political power and to improve their legitimacy levels they can implement participatory mechanisms to signal citizens of a political commitment of becoming more receptive and responsive to citizens needs. Nevertheless, if these mechanisms are only used with a marketing intention, these initiatives can even be harmful for democratic legitimacy.[92]

Another of the major challenges for crowdlaw projects is the digital divide that exists in many developing countries between people that have access to the Internet and people who don't. These civic engagement mechanisms rely heavily on Internet connectivity and on digital literacy skills that are not equally distributed among citizens. In 2015, 46.4% of the world population had access to Internet, according to the Internet

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[92] Christensen et. al. (2015) p. 39.

World Stats.[93] This figure hides contrasting differences of Internet penetration between regions and countries. In Africa only 28.6% of the population has Internet connectivity, while in North America this figure rises to 87.9%. These numbers show the great challenge that crowdlaw projects face. Nevertheless, these participatory mechanisms can be designed in a way to bypass these digital gaps, for example by installing kiosks equipped with computers and connectivity in order to promote participation or including the option to participate through text messages.

Crowdlaw projects are not cost-effective. Despite what can be initially thought of these mechanisms and the use of input from a crowd of participants that decide to participate for free, the fact is that organizing a crowdlaw project can be extremely expensive and time consuming. The costs are usually borne by the organization that creates and supervises these projects. This was one of the challenges that *Avoin Ministeriö* faced. Without a constant funding mechanism they could not afford the high cost of paying for the program to identify the signers of the citizen initiatives.

Also as Tanja Aitamurto correctly identified[94], there are several problems in having massive input from crowds of citizens incorporated into policymaking processes. One of these problems is the diversity in the quality of input from the crowd. In crowdlaw cases where citizens are asked to contribute to draft legislation or generate ideas to be incorporated into a specific policy, hundreds or thousands of ideas and comments can be received. As she analyzed in a crowdlaw case of an off-road traffic law

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[93] http://www.internetworldstats.com/stats.htm
[94] Aitamurto, T. (2016). "Collective Intelligence in Law Reforms: When the Logic of the Crowds and the Logic of Policymaking Collide", 49th Hawaii International Conference on System Sciences, retrieved from: http://thefinnishexperiment.com/2016/01/04/collective-intelligence-in-law-reforms-when-the-logic-of-the-crowds-and-the-logic-of-policymaking-collide/, p. 2785

in Finland, the difference in the quality of input was a major challenge when aggregating all the comments.

Recommendations

After analyzing these three case studies and hearing the recommendations that practitioners and researchers of crowdlaw make[95] the second research question of this thesis will be answered. Are there general recommendations that apply to a crowdlaw case regardless of the country where it takes place? Yes, there are a number of recommendations that can be formulated for crowdlaw cases. These recommendations stem from interviews with practitioners of crowdlaw projects and from the growing literature regarding this emerging field regardless of the country were these projects had been created. Nevertheless, these recommendations need to be gauged and adapted to the particular circumstances of every crowdlaw project. Despite this cautionary comment, the following recommendations can help a project of crowdlaw increase its possibilities of success:

1. **Identify and define the problem that the particular policy or legislation addresses.**

   Every crowdlaw project should first identify the problem behind the policy or legislation that will receive citizens' input. Having a clear idea of what problem this policy and legislation is addressing helps in the design of the whole crowdlaw project.

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[95] I am using the three CrowdLaw conferences of the GovLab as the source of information regarding practitioners of crowdlaw.

2. **Identify the stage of the legislative process in which you can interfere.**

As I mentioned on the description of the analytical framework for crowdlaw projects, it is important to consider the different stages of the legislative cycle when designing a crowdlaw project. Having clarity of the whole process allows the organization to design a project that has a clear picture of where it seeks to create incidence and of the different steps needed to do so.

3. **Identify what activity you expect from the crowd.**

Another element that is important to have clearly identified from the start is the type of activity you expect from citizens. Do you want them to contribute and draft the legislation, or comment on existing legislation, or rate and vote regarding certain policy proposals, etc.? Thinking of the action that you expect from the crowd will allow you to design your platform accordingly or to choose from existing crowdlaw platforms.

4. **Design the crowdlaw project around specific milestones and deadlines and publicize them.**

Think of milestones when designing a crowdlaw project, milestones that are determined by what you expect from the crowd and by existing political processes into your project is embedded.

5. **Embed your project in the networks or platforms that people use on a daily basis.**

People think that designing a successful crowdlaw project depends on building the most sophisticated platform. Although this can contribute to the project overall, it is important to use the platforms that people normally use: Facebook, Twitter,

YouTube, Flickr, etc. This will increase the visibility of the project and allow users to be updated of the status of the project without having to visit a special platform.

6. **Upload the current or draft legislation that needs to be discussed or signed.**

   In order to encourage discussion around legislation that seeks input from the crowd you have to provide citizens with an easy access to the proposed legislation that will be discussed.

7. **Give feedback to the crowd of their participation;**

   A great incentive in this type of participatory mechanisms is when people feel that their contributions matter. Providing feedback to the contribution of the crowd creates an incentive while helping in the moderation of the crowdlaw project in general.

8. **Diversify the channels of communication;**

   In order to lower the barrier of entry to any crowdlaw project, multiple channels of communication must be in place between the organizing institution and the crowd of participants. Email, telephone, and social media should be considered as channels of communication.

9. **Offer both online engagement and face-to-face meetings;**

   The Internet allows for asynchronous interactions that do not require of physical presence to take place. Nevertheless, face-to-face meetings complement this type of initiatives by providing participants with an added incentive to participate and with a forum to ask questions.

10. **Use traditional media (radio, television and newspapers) to promote the initiative**;

    As with any campaign that requires the participation of a multitude of people, crowdlaw campaigns need to seek as much publicity as possible in order to increase the number of potential participants. This is achieved by using traditional media as well as social media to publicize the project.

11. **Obtain the support of legislators sympathetic to your project.**

    A key element for the success of a crowdlaw project is to have a legislator that advocates for your project in congress. This helps smooth the distrust that some conservative members of congress may have towards incorporating citizens in policymaking processes. Having a coalition of supporting legislators in your crowdlaw project contributes to create the needed political consensus so that the citizen proposal can be enacted or incorporated into legislation.

Conclusions

Many countries are experiencing a legitimacy crisis, a crisis that is the result of a lack of trust of citizens towards their governments. This crisis is taking its toll by affecting voter turnout rates and by fueling social protest movements that recur to violence. There is a gap between the decision-making processes of governments and the needs of citizens. Despite this, coalitions and political movements around the world have been created in an effort to demand governments to become more open and transparent. What was once thought as a pervasive characteristic of citizens around the world, their lack of

commitment to get involved in political processes, is challenged each day. Citizens are organizing themselves to let governments hear their needs and demands. One way in which they do so is by harnessing the power of new technologies, like crowdsourcing.

This thesis dealt with the relationship between CrowdLaw projects and improvement of legitimacy levels. Some political movements like the open government and opening parliaments movements, assume that incorporating citizens in the policy and legislation-making processes will result in an improvement of legitimacy. Nevertheless, this has been rarely tested or demonstrated. In order to do so it is necessary to understand what we understand by legitimacy and the diverse types of legitimacy that are encompassed in this discussion. The diversity of legitimacy types comes to light when one analyzes the distinct objects of legitimacy at stake: the state, the government, the congress, policy, etc. In order to make a reasoned argument in favor of using crowdlaw to improve legitimacy it is precise to narrow the focus of research to policy legitimacy.

The relationship between CrowdLaw projects and an increase in legitimacy levels was analyzed from a normative approach and an empirical approach. From a normative approach, CrowdLaw projects help to improve throughput legitimacy by increasing the transparency, accountability, inclusiveness and openness of the policymaking process.

If we consider this question from an empirical approach, quantitative evidence should be considered. In order to obtain evidence of an improvement of policy legitimacy as a result of CrowdLaw, surveys should be applied to participants in these projects to measure changes of legitimacy and trust attitudes towards policy legitimacy and other objects of legitimacy. Designing these surveys to include socio-demographic questions also helps to have a better understanding of who participates in this type of participatory

mechanism and if their socio-economic characteristics play a role in the change of political attitudes.

Although this type of participatory mechanisms has a short lifespan, several projects have been created over the past years in an effort to involve citizens in the complex process of creating laws and policies. There is a lot to be learned from these projects, like the benefits and challenges that arise from them. Some of the benefits that stem from the case studies, the literature of this emerging field, and the three CrowdLaw conferences are the following: education of citizens of what the lawmaking process entails; lowering of political participation barriers thanks to the Internet; harnessing the collective intelligence of crowds; and how these projects help to raise public awareness of certain topics in the public debate. Among the challenges are the following: "crowdwashing" or the use of CrowdLaw to increase policy legitimacy without taking into consideration the input of the crowd; the digital divide that exists in many countries, which leaves many people without the opportunity of participating in CrowdLaw; that these projects are usually not cost-effective; the challenge of aggregating massive amounts of such a diverse input into a single initiative. Having more information of these benefits and challenges will help create better crowdlaw projects in the future.

An original analytical framework was presented in order to better conceptualize the different elements that constitute a CrowdLaw project. This framework was designed around the **activity** asked from the crowd, the **stage of the lawmaking process** into which crowdsourcing is incorporated, and the **product of legislation** that results from CrowdLaw. A further research suggestion is to test this framework with more cases of

CrowdLaw in order to obtain tailored recommendations to each different type of CrowdLaw project.

When analyzing the recommendations that practitioners of CrowdLaw make, a pattern of similar recommendations arises regardless of the place where these projects were created. A list of 11 recommendations was produced for future CrowdLaw projects.

Technology is changing the way we live but we decide how to change it. While technology can be used to evade taxes and manipulate elections it can also be used to change the way we govern and to create projects that transform the lives of many people. Instead of building walls that divide us, let's use technology to harness the collective intelligence of our communities to design better laws.

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