Crowdlaw
Online Public Participation in Lawmaking

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Preface

The goal of this paper is to help the Assembly of the Community of Madrid, the legislature governing one of the seventeen autonomous communities of Spain, and the 179 Ayuntamientos ("City Councils") within the Madrid region to develop the capacity design and use public engagement to improve the quality, effectiveness and legitimacy of the lawmaking process.[1]

The project was undertaken at the request of the leaders of Podemos — one of Spain's largest political parties with a track record for campaigning using open and participatory practices — who solicited the advice of the Governance Innovation Clinic at Yale Law School and the Governance Lab at New York University. Podemos as a political party was born of a two-month long Citizens' Assembly (*Vistalegre I*), "an unprecedented exercise in direct democracy," in which over 100,000 people took part online and offline in developing the party platform.[2,3] Supplemented by additional online platforms from *Plaza Podemos* to *Impulsa* to garner crowdsourced support, ideas, and funding over the past three years, Podemos has demonstrated the value and potential for online public engagement to help build a movement that has forever changed the face of Spain's political system. Yet despite the success of crowdsourced *campaigning*, online engagement in *governing* has often been less successful.

Having pioneered the use of campaigning tools in Spanish politics, Podemos now hopes to cement the rise of "citizen politics" in Spain and thus is seeking advice in connection with legal and technological strategies for the Community of Madrid's regional and 179 municipal governments (the Assembly and City Councils, respectively) to engage the public in lawmaking ("crowdlaw"). Under the guidance of Professor Beth Simone Noveck (Clinic Professor and Director of The GovLab), and with the support of independent advisors from Harvard University and GIGAPP, the team has developed this report in an effort to:

1. Articulate the value of crowdlaw for democracy.
2. Identify and analyze crowdlaw practices from around the world that might help guide further design and development of crowdlaw practices in Spain. These global case studies include both best practices and insights about what to avoid.
3. Draw on knowledge of current practices to offer a series of recommendations for the design of crowdlaw at each stage of the legislative process.
4. Research existing legal frameworks and, by combining knowledge of these laws with insights drawn from the case studies, to craft model legislation for public engagement.

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[1] For context, autonomous communities in Spain are akin to provinces and subdivided into municipalities. An ayuntamiento is the governing body of the municipalities.

[2] Bécquer Seguín and Sebastiaan Faber, "Can Podemos Win in Spain?," *The Nation*, January 14, 2015 accessed July 12, 2017, https://www.thenation.com/article/can-podemos-win-spain/

[3] Though no longer active, you can learn about Vistalegre II here.

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5. Craft a research agenda on crowdlaw, laying out the questions that need to be studied and the mechanisms for doing so in order to understand empirically the impact of crowdlaw on legislative institutions, the public and political culture.

During the Clinic's semester-long engagement Spring 2017, followed by The GovLab's continued work during Summer 2017, we drew upon learnings from three conferences on crowdlaw run by GovLab in 2015-16,[4] interviews with parliamentarians and platform creators conducted between 2015-2017, surveys of parliamentarians conducted at the ParlAmericas conference in Costa Rica in April 2017,[5] and extensive bench research on participatory democracy, public engagement, and online public participation. This research has led to a theoretical foundation, an initial taxonomy to use in analyzing crowdlaw practices and software platforms and, above all, the early formation of a community of researchers and practitioners interested in promoting and study the infusion of lawmaking with more participatory democracy.

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[4] "Crowdlaw Unconferences," *The Governance Lab* are gatherings of thinkers and practitioners in participatory lawmaking. Takeaways from the sessions are available here (Session 1), here (Session 2), and here (Session 3).

[5] For more on findings from the session organized for ParlAmericas Second Annual Gathering of the Open Parliament Network on April 2017 see *Appendix II: ParlAmericas Takeaways & Handouts*.

1. Introduction

This section introduces crowdlaw as a form of public engagement in lawmaking and provides a glimpse into how engagement efforts across the world are bringing the public into various stages of the legislative process. We also outline the goals of the report and provide a roadmap.

Over the past five years 75 countries have become participating members of the Open Government Partnership (OGP), which aims to "promote transparency, empower citizens, fight corruption, and harness new technologies to improve governance."[6] The global spread of Open Government — more transparent and participatory governing practices — accelerated by the advent of technology to facilitate online collaboration, has spawned interest in the overhaul of traditionally closed-door governing processes. There has been an increase in the number of public engagement platforms that repurpose existing social networking sites or use bespoke web platforms or mobile phone apps to enable electronic petitioning, open innovation, participatory budgeting and other forms of participation by executive and administrative agencies. Technology is making it possible to move beyond traditional town halls and other forms of face-to-face dialogue[7] to create more and more equitable opportunities for engagement that have the potential to improve the quality policymaking.

In parallel to the explosion of open government in the executive branch, legislative bodies have started exploring — and the public is demanding — new methods for tapping the intelligence and expertise of the public beyond the ballot box, including ways to improve legislative processes. Such participatory lawmaking is known as "crowdlaw."[8]

Crowdlaw offers an alternative to the traditional method of lawmaking, which is typically done by professional staff and politicians working behind closed doors. Around the world, it is common for political parties to hammer out legislation and legislative compromises in secret. To paraphrase recent newspaper commentary that could apply to all legislative bodies: in parliament, secrecy happens.[9]

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[6] "Open Government Partnership," *Open Government Partnership*, accessed May 11, 2017, http://www.opengovpartnership.org/sites/default/files/091116_OGP_Booklet_digital.pdf.

[7] Catherine Andrews, "The Future of Citizen Engagement: Five Trends Transforming Government," *GovLoop Guide, Washington, D.C.*, 2015, accessed May 11, 2017: https://www.govloop.com/resources/the-future-of-citizen-engagement-five-trends-transforming-government/.

[8] Crowdlaw is, to the best of our knowledge, our coinage and dates to a series of online convenings of practitioners of participatory lawmaking done by the GovLab in 2014, see http://www.thegovlab.org/project-crowdlaw.html. Crowdlaw is distinct from any and all form of online engagement in that it focuses primarily on legislative bodies.Crowdlaw can refer to the full gamut of lawmaking activity, including legislation, regulation, constitution and even policymaking although we focus in this paper on the work of legislatures.

[9] Alan Fram, "INSIDE WASHINGTON: Writing a bill in private not unusual," *Associated Press*, June 20, 2017, accessed June 21, 2017: http://hosted2.ap.org/APDEFAULT/89ae8247abe8493fae24405546e9a1aa/Article_2017-06-20-US-- Congress-Health%20Overhaul-Secrecy/id-579b09dc3d4f42cfa3e7bb882e978182

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Limited forms of offline public consultation in the form of public hearings is nothing new. However, new technology is dramatically expanding the use of participation in new venues and the roles people are asked to play. Now the public can, in many cases, go beyond contributing opinions and logging petitions online[10] to playing a more substantive role, including proposing legislation, drafting bills, critiquing legislation, and supplying missing data.[11] (Figure 1).

Collaborative law drafting

One of this agency's multiple participation opportunities includes *WikiLegis* for the public and representatives to collaboratively draft legislative text.

Citizen-driven problem-identification

An online platform which brings together French representatives and citizens to discuss policy issues and collaboratively draft laws. It uses a modular 3-5 step process sponsored by a representative that includes identifying key causes of the proposed problem.

Multi-pronged participation in policy

An online portal allowing Madrid residents to: submit proposals for draft legislation; vote on citizen proposals; partake in public dialogue; and engage in participatory budgeting. There are also "Citizen Service Offices" for in-person engagement.

Crowdsourcing constitution-making

Iceland drafted its constitution on the internet, and used crowdsourcing via (1) a National Forum of ~900 citizens (2) referenda and (3) a 12-stage commenting process on the draft open to the public. It is perhaps the most famous instance of crowdlaw.

Figure 1: Four examples of crowdlaw initiatives.

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Mi Senado - a mobile phone application which strives to "bring Colombian citizens closer to the legislature" via increased access to information, direct communication channels to senators, and real-time voting opportunities. Colombian citizens can react to and vote on parliamentary plenary sessions in real-time and receive push notifications to know when live plenary sessions are scheduled so that they can participate. Via the app, users also have access to attendance and voting records for elected representatives (Figure 2).

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[10] Early experiments with online petitioning of parliament include the Scottish Parliament's e-petitioning system (http://www.parliament.scot/gettinginvolved/petitions/) and the Bundestag's paltform in Germany (https://epetitionen.bundestag.de/). See Ipsos MORI, and C. Carman. 2009. Engaging the Public in the Scottish Parliament's Petitions Process. Research Study Conducted for the Scottish Parliament's Public Petitions Committee. http://www.scottish.parliament.uk/s3/committees/petitions/inquiries/petitionsProcess/Engagingthepublicinthepetitionsprocess.pdf.pdf and Lindner, R., Riehm, U.: Broadening participation through e-petitions? an empirical study of petitions to the german parliament. Policy & Internet 3(1), 1–23 (2011), 9 (http://www.psocommons.org/policyandinternet/vol3/iss1/art4 DOI: 10.2202/1944-2866.1083) (the advent of e-petitioning led to a dramatic increase in the number of petitions and the concomitant difficulty with managing and integrating the process).

[11] Please note that we frequently exchange "citizen engagement" for "public engagement" simply for stylistic diversity. We do not endorse any efforts to limit democratic engagement to those who hold formal citizenship but, to the contrary, believe that engagement should include the most vulnerable and voiceless, such as immigrants.

Figure 2: Mi Senado functionality includes: (1) showing draft laws being discussed in plenary, (2) enabling users to vote for or against and provide comments, (3) showing real time Senate, party, and citizen-submitted votes, and (4) tracking Senate attendance

[Parlement et Citoyens](#) - a platform that enables the French public to provide input for legislative drafting through a multi-step, online consultation process. On the platform, representatives can host a consultation consisting of three to five different participation opportunities (Figure 3). For instance, a representative poses a problem that citizens help define, and for which they then help generate solution and evaluate the proposed solutions. Citizens may also engage in video discussions with the representative. At the end of the process, a conclusory report explains whether, when, and how citizen input was incorporated into the resulting draft law. (Consultation processes, while sponsored by representatives who are present throughout the process, are actually managed by volunteers.)
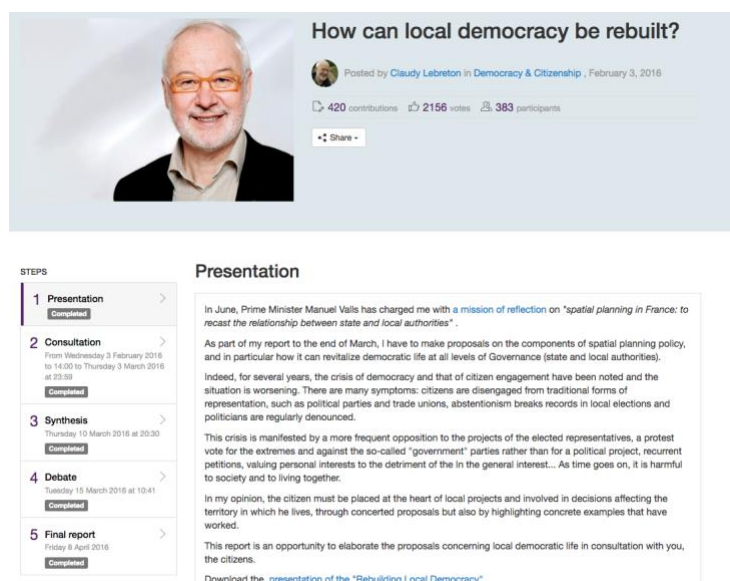

Figure 3: A 5-stage consultation sponsored by a representative.

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E-Democracia - a participation platform run by The Hacker Lab that provides the Brazilian public with three participation opportunities: (1) collaborative legislative drafting via *WikiLegis*, (2) engagement with deputies on a discussion board (*Expressão*), and (3) public audiences via online conferences with representatives. Through the various tools, *E-Democracia* enables citizens to propose and edit legislative text (Figure 4) with multiple opportunities for government response. Final reports ensure that citizens understand how and when their activity on the platform informed draft legislation.
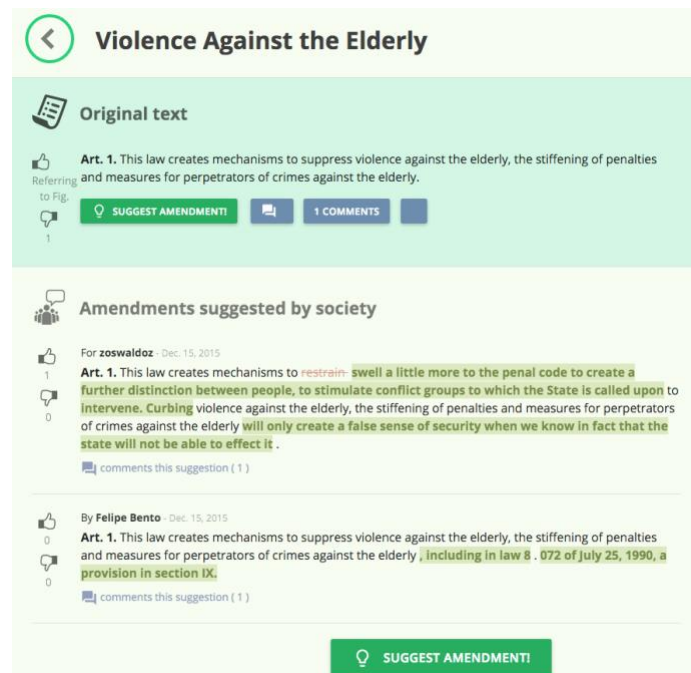

Figure 4. Collaborative bill drafting on WikiLegis

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Crowdlaw has the potential to improve the quality of lawmaking by creating opportunities for the public to supply expertise, information, and opinions in the pursuit of producing laws, regulations, and constitutions that are better informed and, at the same time, more legitimate because they have been crafted in the open. Through such processes, the public becomes collaborators and co-creators in the legislative process to the end of improving the quality of legislative outcomes and the effectiveness of governing.[12] Yet despite the promise and these exciting examples, however, crowdlaw is not well institutionalized in parliamentary practice. Parliamentarians and members of the public unfamiliar with the process may be skeptical. In fact, parliaments, like other public institutions, often resist public engagement, fearing that participation will be burdensome, at worst, and useless at best. Even where institutions offer an

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[12] See: Noveck, Beth Simone, *Wiki Government: How Technology Can Make Government Better, Democracy Stronger, and Citizens More Powerful*, Brookings Institution Press (2010).

opportunity to participate, the public is not always informed or eager to do so, suspecting that participation will not be relevant or incorporated into the result. The fears are not unfounded as many online participatory democracy projects whether legislative or executive side have ended up failing to yield the desired outcomes for institutions or individuals. For example:

- *Decide Madrid*, an initiative from the Madrid City Council that garnered 18,000 policy proposals favored by public participants, has resulted in only two of those proposals moving forward to be considered by the City Council.

- In 2009 the transition team of then-President-Elect Barack Obama asked the American people for policy proposals for the President's first hundred days in office. Although over 70,000 ideas were submitted to *The People's Briefing Book* and voted on by over half a million people, none of that information ever found its way into policy.[13]

Integrating Crowdlaw into the Legislative Process: Beyond the Petition

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In these early days of crowdlaw, participation opportunities are not well-enough integrated into legislative practice thereby leading to an explosion in the volume of information (suggestions, comments, petitions) within any concomitant improvement in the quality of legislative outcomes. The public's extensive knowledge and expertise does not find their way into decisionmaking at the appropriate time and in usable form. If designed without regard for the needs of both participating members of the public <u>and</u> parliamentary institutions, innovations in online participation will not enhance lawmaking but will lead only to frustration, dissatisfaction and fatigue.

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However, designed right, participation could help to improve both the legitimacy and effectiveness of the legislative process at each stage by introducing more data and diverse viewpoints, and by ensuring that legislation is better informed by real world conditions.

Around the world, successful public participation experiments in lawmaking are cropping up during each of the five basic stages of the legislative process. They are providing glimpses of how crowdlaw practices might be integrated into lawmaking in order to elicit public input for improved governance. Although articulated as "ideal types" with significant crossover between stages, the potential benefits at each stage (Figure 5) are:

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[13] For more about the limitations of the People's Briefing Book, see James Katz et al, *The Social Media President* (Palgrave 2013).
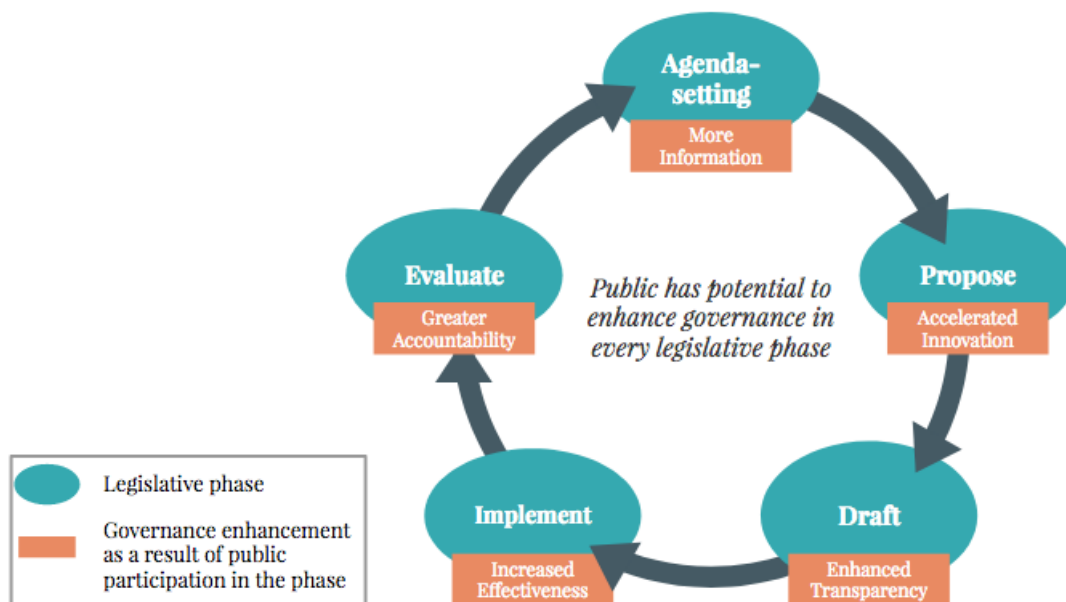
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Figure 5: Phases of the legislative process and the aspects of governance that the public can help to enhance for each

1) **Agenda-setting:** when parliaments decide what issues to take up and to legislate on. Many countries already have a well-established petitioning process.[14] Brought online and redesigning. this is potentially an opportunity to bring empiricism into the legislative process through public contribution of expertise and information by giving the public a chance to propose, prioritize, and critique problems to tackle. For example, Finland's Citizen's Initiative Act, allows members of the public to propose new legislation. The European Union has since adopted its own Citizen's Initiative Act. In Mexico's Ley 3de3 moved 634,000 to demand the release of politicians' financial information in order to combat corruption. The reforms proposed by Ley 3de3 comprised the first successful citizen initiative to be discussed and approved by Mexican Congress since a law was passed to allow citizen-proposed legislation achieving 120,000 signatures.[15,16] **At this stage, participation has the potential to enhance the level of information in the legislative process.**

2) **Proposal-making:** when legislative and regulatory bodies arrive at the substance of a solution to a problem. This presents a chance to identify innovative approaches by

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[14] See infra n. 8.

[15] Kerk Semple, "Grass-Roots Anticorruption Drive Puts Heat on Mexican Lawmakers," *The New York Times*, May 28, 2016, https://www.nytimes.com/2016/05/29/world/americas/grass-roots-anticorruption-drive-puts-heat-on-mexican-lawmakers.html?_r=0

[16] Maria Hermosilla, "A growing community of global #CrowdLaw practitioners," *The Governance Lab*, October 1, 2015, http://thegovlab.org/a-growing-community-of-global-crowdlaw-practitioners/

leveraging distributed expertise and to suggest, deliberate upon, and critique proposed approaches. Such approaches broaden public input beyond that available to legislators and their staffs through occasional hearings. For example, Parlement & Citoyens in France enables citizens to submit proposals on the causes and solutions to the problem posed by the representative. Citizens' proposals are then synthesized, debated, and incorporated into the resulting draft legislation. **At this stage, participation has the potential to enhance innovation.**

3) **Drafting:** when lawmaking bodies memorialize solutions through legislation, regulation, or constitution drafting. This provides an opportunity to draft collaboratively and to solicit comments on a draft in an effort to improve it. By increasing the accessibility of a core function of governing, collaborative drafting crates a radical impetus for more openness. For example, E-Democracia's WikiLegis enables Brazilians to edit draft legislative text in a manner analogous to collaboratively working in a Google Doc. **At this stage, participation has the potential to enhance transparency.**

4) **Implementation:** when legislatures delegate to administrative bodies or staff to turn law into practice. This often involves an additional step of crafting regulations based on the legislation and coming up with practical strategies for realizing the vision in practice. Such a rulemaking process presents another chance for participation. For example, the United States' eRulemaking platform provides an electronic mechanism for the public to comment on draft regulations. **At this stage, participation has the potential to the enhance effectiveness of legislation.**

5) **Evaluation**: when the public can help to oversee and monitor outcomes of legislation. Evaluating the downstream impact, including both cost and benefits, of legislation on people's lives provides an opportunity for engagement, such as asking the public how to measure impact and what data to use for that purpose. Alas, evaluation processes are lacking both in crowdlaw and traditional legislative contexts, but oversight and correction mechanisms signal a modest move towards harnessing the public eye and insight toward evaluating government institutions. For instance, Evidence and Fact Checks, used by the United Kingdom's Parliament, invites individuals and organizations to provide evidence underlying proposed policies on topics ranging from the gender wage gap to healthcare technology. Although the program sees low participation and has not published impact metrics, it can be a model for a very promising strategy to employ post-passage to assess implementation. A Promise Tracker campaign to monitor school lunch quality has achieved success by inviting citizens to use mobile phones to verify if lunches actually met program standards.[17] Randomized trials during which communities monitor healthcare provision and delivery indicate that "[c]ommunities who have [...] oversight of

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[17] "Initial findings from Pará," Promise Tracker, http://promisetracker.org/2017/05/23/initial-findings-from-para/

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implementation tend to be more effective at improving service delivery," when they are provided with adequate information. In other contexts, evidence-based conclusions are emerging that an informed, watchful community drives better results.[18] **At this stage, participation has the potential to enhance accountability.**

Report Roadmap

This report contains 10 actionable recommendations (Section 2) for implementing effective crowdlaw strategies and model legislation embodying those recommendations (Section 3). The legislation, in particular, describes what we called the "Open Assembly Lab," a small administrative unit with the ability and binding authority necessary to design, implement and test public engagement practices. In the subsequent section, we explain the context for the project at greater length, including the global and Spanish conditions of political distrust that are giving rise to the desire for these innovations (Section 4). Then we discuss the rationales behind public engagement in lawmaking (Section 5). The recommendations draw upon our analysis of 25 crowdlaw case studies laid out in detail (Sections 6 and 7). By assessing these participatory lawmaking methods, we endeavor to distill key lessons learned about crowdlaw and offer design recommendations for those parliamentary bodies interested in incorporating public engagement at one or more stages of the legislative process. The goal is to deepen our collective understanding of what works, what doesn't, how to assess impact, and accelerate the implementation of more participatory lawmaking practices. Thus, in Section 8, we describe the research agenda for crowdlaw and the role of the Open Assembly Lab and universities in advancing it.

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[18] Martina Björkman Nyqvist, Damien de Walque, and Jakob Svensson,"The power of information in community monitoring," (*J-PAL Policy Briefcase*, 2015).

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2. Summary of Recommendations: Designing Crowdlaw Processes to Enhance Legitimacy and Effectiveness

In this section we summarize ten recommendations for the thoughtful design of crowdlaw initiatives organized around: clarifying the demand for participation, increasing the supply of public participants and information, and experimenting with and improving on initiatives. The recommendations are relevant across all stages of the legislative process.

What distinguishes successful crowdlaw processes is not the choice of technology platform, but whether the process is well-integrated into the mechanics of lawmaking. Does participation go beyond mere suggestions to yield constructive participation? Is participation curated to foster meaningful engagement? Is work done by the people integrated into the workflow of professional staff? These ten recommendations summarize our key learnings about how best to design crowdlaw initiatives in order to ensure that crowdlaw enhances the legitimacy and effectiveness of lawmaking.

Clarify the demand for participation

1. **Optimize for institutional as well as public engagement.** Crowdlaw designers concentrate on making public input easy for individuals, but to be successful any process also needs to make input useful to institutions. Therefore, consider the needs of the government and public servants and create platforms and processes that account for obligatory and acculturated processes and the staff's capabilities. This principle does not rule out changes to legal procedures or the hiring of staff with relevant skills to enable public participation, but there must be a workflow that makes the inputs from participation usable. For example, of the 2 million petitions submitted on the White House's We the People e-petition platform, not one can be directly tied to a government action, arguably because a petition with no supporting documentation creates, rather than alleviates, work for public officials. Such a platform is not well-designed to enhance decision-making, nor does it create an established process for channeling the right information to the right policymakers.[19]

2. **Design to achieve the desired goal.** Public engagement has the potential to foster democratic legitimacy, build social cohesion, increase government accountability, and improve the quality of legislation. An engagement process that asks people how they feel about a draft bill accomplishes a different purpose from a process that asks them, for example, to supply data to inform the crafting of the bill, or that invites them to use

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[19] Beth Simone Noveck, "Smart Citizens, Smarter State," (Harvard University Press, 2015): 75-76.

cellphones to monitor its implementation. The choice of goal will dictate what constitutes a successful system and **the information or action that is sought from the public**. Thus, if the goal is to obtain implementable proposals, do not ask merely for ideas. Ask for ideas supported by evidence. In the case of Peer to Patent, which was engagement by an administrative agency not the legislative branch, the United States Patent Office asked participants to supply information that would help a patent examiner determine whether an invention met the criteria for a patent. They did not, however, ask for people's opinion about the patent, since that would have been legally irrelevant to the decisionmaking process.

3. **Identify who will manage the process.** One finding that consistently emerged from our analysis of global cases was that moderating the discussion during engagement is crucially important. Poor moderation can quickly derail the process and leave participants confused and frustrated. Although peer-to-peer community moderation can help to distribute the work by inviting the public to moderate one another, such as by upvoting and downvoting and flagging contributions as spam or abusive. The plan must also include a professional team to respond and explain how input will be used. This is an important part of the bridge connecting the public and government participants. For instance, LabHacker/E-Democracia in Brazil uses 200 volunteer legislative consultants to serve as "technical translators" between citizens and representatives and help to ensure that input meets legal requirements.[20] Similarly, the process on Parlement & Citoyens is facilitated by volunteers. The same directive applies to offline engagement: citizen assemblies coordinated by Ireland's We the Citizens ran successful regional meetings largely because of the role of skilled moderators.

4. **Plan for use, not only solicitation.** Public engagement without an institutional learning mechanism for taking outside contributions onboard and integrating them is frustrating for all involved. By analogy, government can open and publish its public procurement data, but such transparency does not in itself reduce corruption. Rather, public institutions have to learn how to use such data to change how they buy goods and services. Similarly, capacity must be built within legislatures to curate and use public input. This might require changes to the current processes by which legislation is proposed, drafted, negotiated, and implemented. As important as soliciting public input is, there must be a corresponding learning mechanism for redesigning how the parliament operates to make beneficial use of engagement.

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[20] Julie Simon, Theo Bass, Victoria Boelman, and Geoff Mulgan, "Digital Democracy: The tools transforming political engagement," Nesta, February 2017, accessed June 26, 2017, available at: http://www.nesta.org.uk/sites/default/files/digital_democracy.pdf.

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Increase the supply of public participants and information

5. **Focus on incentives. Ask: "why should a member of the public participate?" and get the answer by talking to and surveying potential users.** Crowdsourcing literature indicates that perceived meaningfulness and fairness are critical to the quality of contributions and the viability of crowdsourcing platforms.[21] The onus is on managers not only to design a process that can have meaningful impact on government, but to articulate for the public their potential for impact, while making it easy for them to do so. In other words, make the rationale for participation explicit and "sell" the reasons to participate through both good design and clear explanation. On Decide Madrid, a platform launched by the Madrid City Council for public participation in decision-making, the section where users can make proposals is much more popular than the discussion section because proposals are binding and have the potential to create change, whereas discussions are simply fora for more discussion. A survey of 482 users who had not registered for Decide Madrid found that 11% said participation was pointless, and 27% said they lacked time to participate—- the most common reason cited for non-participation.[22] If an individual cannot quickly engage on a platform, it will be very difficult to overcome that reluctance through other incentives.

6. **Explain clearly how to participate.** The legislative process is complex, with many more bills proposed than ever become law. Therefore, a successful public engagement must explain the process and what is being asked of the participant, including setting out thresholds for action, such as the number of signatures required or what it takes for a comment to be considered. Crowdsourcing literature indicates that when "average participants" are "asked to perform technical tasks with specific instructions and detailed job classifications, their performance is equal to or better than the performance of experts."[23] For instance, in the annual "Help Cut Red Tape" reports of British Columbia's GovTogetherBC, clearly explains what an engagement is about, how input will matter, and when to participate. The reports details popular ideas for streamlining government,

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[21] Helen K. Liu, "Crowdsourcing Government from Multiple Disciplines," (*Theory to Practice*, 2017). See also: Dana Chandler and Adam Kapelner, "Breaking Monotony with Meaning: Motivation in Crowdsourcing Markets," (*Journal of Economic Behavior & Organization*, 2013, 90): 123–33.
Nikolaus Franke, Peter Keinz and Katharina Klausberger, "Does This Sound Like a Fair Deal? Antecedents and Consequences of Fairness Expectations in the Individual's Decision to Participate in Firm Innovation," (*Organization Science*, 2013, 24:5): 1500.

[22] Investigación, marketing y opinión, "VALORACIÓN DE LA ACCIÓN DE GOBIERNO EN EL AYUNTAMIENTO DE MADRID," June 2016, accessed July 24, 2017, available at: https://ahoramadrid.org//wp-content/uploads/2016/06/Info-Ahora-Madrid.pdf

[23] Helen K. Liu, "Crowdsourcing Government from Multiple Disciplines," (*Theory to Practice*, 2017). See also: Tara S. Behrend, David J. Sharek, Adam W. Meade, and Eric N. Wiebe, "The Viability of Crowdsourcing for Survey Research" (*Behavior Research Methods* 43:3, 2011).
Alexis Comber Linda, et al., "Comparing the Quality of Crowdsourced Data Contributed by Expert and Non-Experts (*PLOS ONE* 8:7, 2013).

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statistics about the participation process, ideas submitted, and the government action taken on the issue (Figure 6). Such information helps participants understand in real time how their participation is transforming into government action. The Lisbon Participatory Budgeting process drove votes from 2,800 in 2008 to 29,000 in 2012 by increasing the presence and clarity of the process, such as adding a feature allowing citizens to track the state of implementation of successful proposals, setting up mobile participation booths, and even touring the city with a "Participatory Budgeting Bus."[24]

2016 Actions to Reduce Red Tape in B.C.[1]

Idea Submitted	Government Progress and Next Steps
Streamline community gaming grants application process	The Ministry of Community, Sport and Cultural Development has recently streamlined the grant application process. The process is described on the Gaming Grant Program website at: https://www.gaming.gov.bc.ca/grants/index.htm
Improve hazardous materials storage license process	The B.C. government has put a new Structured Application Process in place for the storage of hazardous materials. The Ministry of Environment has also started a review of the new policy, processes, and procedures for handling applications.
Provide clarity on hazardous waste applications	The Ministry of Environment recently completed a project to improve the process for managing hazardous waste applications. This project is now being rolled into the larger Environmental Management Act Applications project currently underway, and scheduled to conclude in spring 2016.
Modernize submission process for maps related to environmental permits	Applicants are encouraged to submit digital maps to streamline permit approvals, and further work is underway to modernize the application processes.
Increase public outreach in Environmental Assessment Office processes	A discussion with citizens and stakeholders about improving public consultation in the Environmental Assessment Office recently concluded, with an aim to identify opportunities for improved outreach, and enhance the quality of information that results from public consultation. Find out more about the project at: http://engage.gov.bc.ca/environmentalassessment/
Allow rural property owners to obtain their statement balance online	The Ministry of Finance is in the process of moving programs, such as online statements for rural property owners, to the new eTax system. The ministry also introduced online balances in January 2016.

Figure 6: GovTogetherBC's Help Cut Tape Report connects ideas submitted by citizens with specific government action on the topic

7. **Respect privacy and authenticate users when needed**. Although it is technically possible to certify residency or identity, decide whether and when such hurdles are necessary. For example, if the goal is to get the best ideas to solve a problem, does it matter where they come from? In order to direct opportunities to participate to people based on their interests, a voluntary request for information might be welcome where involuntary data collection on people's preferences may not. As an example of participant vetting Reykjavik's City Council is obliged to consider the 12-15 most popular proposals on the Better Reykjavik/Better Neighborhoods platform each month, so it authenticates participants using an electronic ID or password delivered through the citizen's online bank to ensure one-citizen-one-vote. As an example of more complex authentication, Decide Madrid has a three-tiered system that determines the actions a member of the public can take.

a. Unregistered users may browse site content.

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[24] Giovanni Allegretti and Sofia Antunes, "The Lisbon Participatory Budget: results and perspectives on an experience in slow but continuous transformation," *The journal of field actions: Field Actions Science Reports,* 11, 2014, accessed June 23, 2017, available at: https://factsreports.revues.org/3363#ftn1.

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b. Basic verified users — verified through residence data and a mobile phone number — can post in discussions as well as create and support proposals.

c. Completely verified users — verified in-person or via mail — can do all of those actions plus vote on proposals.

8. **Communicate the outcome of final decisions.** Public officials should respond to contributions and endeavor to communicate regularly about outcomes. Even if the public is invited only to participate in making proposals at the outset, create a mechanism to share final outcomes. For instance, participants of vTaiwan engage in on-going deliberations with each other and with representatives of relevant government ministries. Participants know that if consensus is reached, the Taiwanese government must either adopt the idea or provide a response as to why the idea is not feasible. GovTogetherBC publishes the results of every engagement. On the other hand, the Irekia system in Spain's Basque region lacks thresholds for when citizens' proposals receive a government response or are deemed actionable, creating ambiguity around what it takes for government to actually engage with a citizen proposal.

9. **Diversify engagement opportunities and diversify who participates.** Empirical research suggests that participation opportunities may be failing to attract diverse participation. Ensuring participation by diverse members of the public is hard work, including investment in campaigns to recruit and give voice to the voiceless. A study of the representativeness of 186 of the participants who contributed ideas to improving an off-road traffic law found that they were overwhelmingly male (86%), had formal education, and were between 35-54 years old (46%). They also had previous civic experience: 72% of participants had written on an online forum prior, 41% had contacted a representative, and 33% had written an op-ed before.[25]Attracting diverse participation was a common challenge for all case studies (detailed in the Discussion section). Causes of demographic imbalance include citizens' time or ability to the contribute, their awareness of the platform, or their facility with platform technology. Our draft law outlines specific opportunities for groups to participate in lawmaking on issues of special significance (e.g. targeting specific economic, social, environmental, cultural, gender, or territorial issues) as a critical step in actively bringing underrepresented populations into the participation process.[26] Thus, in addition to an online web portal that allows the public to submit proposals, participate in dialogue, and engage in participatory budgeting

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[25] Tanja Aitamurto, Hélène Landemore and Jorge Saldivar Galli, "Unmasking the crowd: participants' motivation factors, expectations, and profile in a crowdsourced law reform," (*Information, Communication & Society*, 2017, 20:8): 1239-1255. See also Huang, S.W., Suh, M.M., Hill, B.M., Hsieh, G.: How activists are both born and made: An analysis of users on change. org. In: Proceedings of the 33rd Annual ACM Conference on Human Factors in Computing Systems. pp. 211–220.

[26] This is the case for the popular initiatives mechanism. Consult Appendix III for an overview of the client's draft participation law.

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activities, the creators of Decide Madrid established 26 "Citizen Service Offices." These offices are dispersed throughout the city and allow residents the opportunity to voice their opinions in person, if they so choose, in addition or in place of engaging online. The redrafting of the South African Constitution included an extensive communication strategy that distributed four million copies of the draft constitution in the drafting phase, and seven million copies of the final document, including illustrated guides for non-literate portions of the population. (An early survey of areas disconnected from the redrafting campaign helped to find areas that needed such communiqués).[27]

<u>Experiment</u> and <u>improve</u>

10. **Test what works and iterate**. Crowdlaw is a new phenomenon. In order to accelerate adoption, more research is needed, necessitating that practitioners and researchers collaborate to design experiments. Research can involving natural experiments to observe how the platform works, who participates, and how. Simple analytical software can generate data that platform owners and others can use to study a crowdlaw initiative. Always ensure that such administrative data is open and available. In addition, consider running simple controlled trials by dividing participants into two groups and presenting them with alternative experiences, comparable to the A/B testing. An example of such testing is to try different ways of explaining how to participate or testing participation's relevance at different points in the legislative process. Surveys of participants provide information to improve the effectiveness of the platform and process. For instance, when redrafting its constitution, the South African government surveyed citizens in areas not being reached by the campaign. By learning the needs and motivations of excluded South Africans, the campaign was able to drive meaningful participation opportunities: for many South Africans, "it was the first time they were able to interact directly with their elected representatives. It elicited nearly 1.7 million submissions [...] and meetings reach[ed] approximately 95,000 people."

3. Model Legislation: Annotated

This section offers a draft of provisions of a public engagement statute with an explanation and rationale for each. We also compare these provisions to what was contained in the Podemos 2016 original draft.

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[27] Catherine Barnes and Eldred De Klerk, "South Africa's multi-party constitutional negotiation process," (*Conciliation Resources*, 2002): 33. Available at: http://www.c-r.org/accord/public-participation/south-africa-s-multi-party-constitutional-negotiation-process

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Building on our recommendations outlined above (Section 2), the analysis of 25 global case studies (*Appendix I: Case studies*), the draft of a public engagement law prepared by Podemos in 2016 (*Appendix III: Outline of Podemos's Draft Citizen Participation Law for the Autonomous Community of Madrid*), and comparative analysis of public engagement laws (*Appendix IV: Public engagement legal frameworks*),[28] we outline draft provisions of a legal framework designed to institutionalize <u>diverse yet manageable</u> participation opportunities <u>at every stage of lawmaking</u> while ensuring that such participation is <u>relevant</u> and <u>useful</u>.

This model is intended to jumpstart a consultation and drafting process for the Assembly and 179 City Councils of Madrid.

This new model draft shifts the emphasis from dictating and defining participation mechanisms a priori to creating the enabling conditions to catalyze participation.

By institutionalizing the *power to create, study, and evolve participation mechanisms* within the Lab, rather than specifically institutionalizing *the mechanisms themselves*, the Region can better assess and then adapt those mechanisms to the needs of the public and the government.[29] By focusing more on creating an infrastructure and culture for participation, the Region can implement existing practices or experiment with new ones yet to be developed. This provides the Region and City Councils more flexibility.

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[28] See Appendix IV. For full texts and supporting materials, please consult this folder (Spain; Bologna, Italy; the Republic of Croatia; the Republic of Finland; the Republic of South Africa; the Region of Tuscany, Italy; the United States of America; and the Autonomous Community of Valencia, Spain.)

[29] This generally follows the strategy pursued by the Region of Tuscany, which first instituted the principle of participation in the regional government through Law 69/2007. The law was created through an inclusive, deliberative process, but intentionally did not set out specific mechanisms. Then, Law 46/2013 built on Law 69 and created a permanent legal framework, outlining specific mechanisms for agencies to follow. However, the Lab would enable the Madrid Region to immediately start experimenting with participatory processes!
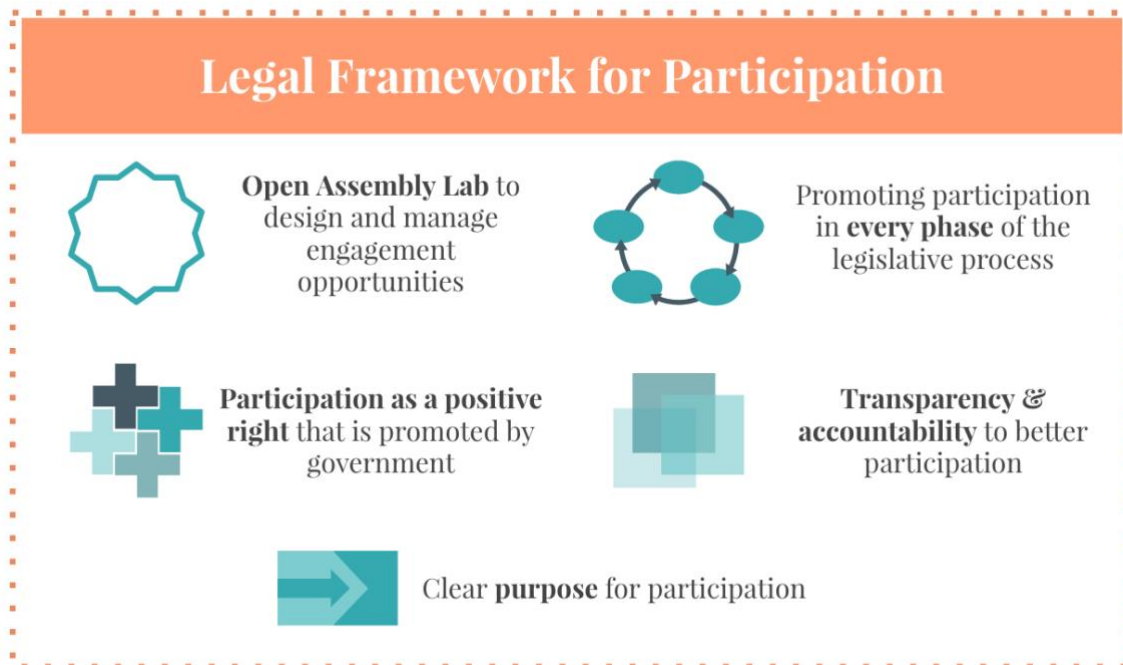
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Figure 7: Key elements of the proposed legal framework for public participation for the Region of Madrid

1. Establish the Open Assembly Lab

   This section establishes the Lab, sets out the duties of the Lab, discusses the metrics for its success, and creates the obligation to develop participation opportunities in consultation with both legislative staff and the public. Podemos's earlier draft outlined specific participation mechanisms: Public Policy Conferences, Participatory Discussion Processes, and Public Consultations. But none of those methods were designed with consideration of the needs of the legislative process or how to optimize for new technology. Therefore, rather than dictate the specific method to be employed, this new draft mandates creation of the Lab and the design of new methods for engagement at every stage as well as testing what works

   a. Lab Establishment — The Open Assembly Lab shall have the mandate and ability to pilot new and innovative modes of public engagement in lawmaking. The Lab shall comprise an appointed staff with expertise in the lawmaking practices of the Assembly, new technology, and its uses for public participation. The Lab shall also establish an advisory board comprising global experts, lawmakers and their staff, and a representative sample of the region's public to advise its work. In lieu of prescribing specific methodologies for public participation in the legislation, the bill should create this mechanism for designing, implementing measuring and improving engagement over time.

Why? The centerpiece of the proposed bill is the establishment of a unit within the Assembly -- the Open Assembly Lab -- which will be responsible for the design, implementation and evaluation of public engagement practices. The Lab concept builds on the Governing Body of Citizen Participation outlined in Section III (Article 62) of the 2016 draft law. But in contrast to the earlier draft, which defined specific (and outdated) methods for consultation, this bill would, instead, vest the Lab with the power and resources to design and implement new citizen engagement pilot programs and bind the legislature to use the platforms and practices it desings. This would allow new methods to be tried and tested, going beyond petitions to try out platforms and practices that might be better designed to improve legislation. The Lab would compromise a small full-time staff augmented by local and global know-how.

b. <u>Lab Authority to Bind the Legislature</u> - Following enactment, the Lab will codify the provisions of this bill into a set of draft operating procedures for the Lab to follow in designing and developing crowdlaw pilots, platforms and practices. The procedures will lay out, inter alia, requirements for human-centered design and public consultation, establish metrics and designate a pilot period for testing any crowdlaw practices. The procedures will be subject to public consultation and consultation with the Assembly's staff and elected members in order that the Assembly implement the engagement practices developed by the Lab during the pilot period.

Why? We want to create a learning process whereby the Assembly enhances the quality and accountability of its lawmaking, which will require committing to the use and evolution of public engagement processes over time. Thus there needs to be some language requiring a commitment on the part of the Assembly.

c. <u>Open Assembly Lab Activities</u> — The Lab shall:

   i. Have the power to bind the Assembly to use the mechanisms it develops as part of the conduct of formal lawmaking;
   ii. Develop mechanisms to solicit four types of contributions, including: 1) opinions, 2) facts and information, 3) ideas and proposals, and 4) actions and tasks. The Lab shall innovate in the development of consultation mechanisms designed to elicit, where useful, these different types of contributions.
   iii. One of those duties would be responsibility for moderating and facilitating engagement.

Why? One finding that consistently emerged from our case studies highlighted the crucial importance of moderating discussions during public engagements. Poor moderation can quickly derail the deliberative process and leave participants confused and frustrated. The need for moderation is equally important online and offline. Ireland's *We the Citizens* pilot ran successful regional meetings in large part because of the role of skilled moderators. *Parlement & Citoyens* in France also relied on staff moderators to lead consultations, which helped facilitate discussions. Although volunteer moderators and peer-to-peer moderation enabled by a software platform are also options, some form of facilitation must always be considered. Although Article 28 § 2 of the draft bill on Participatory Discussion Processes places the responsibility for facilitating discussions on the Public Administration themselves, it is unclear who is contemplated here. Such lack of precision raises the risk of poor facilitation, which should be the responsibility of the Lab to design.

      iv.   Design, procure, implement, and evaluate online and offline forms of exchange and communication between institutions and the community;

      v.   Develop the process for public engagement practices for every stage of the lawmaking process, as set forth in Section 7;

      vi.   Moderate and curate public engagement mechanisms to ensure high quality and civil participation opportunities;

      vii.   Conduct trainings and education of the public and lawmakers to improve the workings of public participation in lawmaking; and

      viii.   Openly publish its training materials and provide assistance to cities requesting advice on their own participatory processes.

Why? Different points in the lawmaking process call for additional information. At the outset ideas and proposals about what to include in the draft might be more useful, whereas factual information is needed to improve and validate the draft of a bill. Opinions might be desirable throughout. Finally, the Assembly might need people to go out and gather data about a law's impact post-passage. What is paramount is to go beyond petitions and "naked suggestions" to elicit input that is useful and manageable.

    d.   <u>Lab Commitment to Human-Centered Design</u> — When designing participation processes and platforms, whether digital or face-to-face, and whether designed to solicit opinions, ideas, or tasks at each stage of the legislative process, the Lab shall seek to maximize simplicity, clarity, and adaptability of use by the end user and by the Assembly. To ensure that processes and platforms address the needs, objectives, behavior, and capabilities of a wide range of end users, the Lab should conduct human-centered design and solicit the input of both the public and lawmakers to the end of designing participatory mechanisms that improve the

quality and efficiency of the lawmaking process The Lab shall produce a written impact assessment articulating the goals and assumptions underlying the final design of any public engagement processes.

Why? It is not enough to create an app or a website for engagement. Participation must be designed and managed to be both attractive for the public and useful to the institution of the Assembly. Therefore, there is need for a body with responsibility to manage public engagement and to integrate it into the workflow of the legislature. As Croatia's engagement law makes clear in Section 4, effectiveness is paramount: "In order to be effective, consultation with the interested public is initiated at a time when it is still possible to influence the drafting of laws, other regulations and acts, that is at the early stage of their drafting, when all options for their improvement and amendment are still open. The procedure for conducting consultations should maintain an acceptable balance between the need for effective enactment of laws and adoption of other regulations and acts, and the need for an appropriate contribution by the representatives of the interested public."

    e. <u>Metrics</u> — The Lab shall define metrics for the success of public engagement and shall evaluate its work against those metrics. Especially because the Lab will work to create more opportunities to participate that are tailored to people's interests and expertise, metrics shall not be limited to the number of people participating in any one process; metrics shall include measures of the impact of engagement on lawmaking as well as measures of the diversity of participation to ensure engagement by those from diverse socio-economic, gender, religious, ethnic, political, citizenship, and educational backgrounds. Metrics shall measure promotion of the inclusion of inadequately represented voices and interests. The Lab shall revise this non-exhaustive list of metrics regularly and set annual targets, recognizing that successful practices must be evolved and developed over time. The Lab shall be required to report online to the public and the Assembly progress against the principles outlined in the bill on a quarterly basis. It shall be required to publish anonymized aggregate data for download about online participation activities to enable research and improvement.

2. <u>Declare public participation as a right</u>

    Participation contributes to the strengthening of democracy and democratic institutions. Participation should promote processes whose design and implementation foster co-responsibility with the public and recognize that every member of the Spanish public has something to contribute.

Why? A clear statement of confidence in public's ability is consistent with the vision and goals of the party and helps set this proposal apart. In addition, however, any legislation could also include a general statement of principles, such as [Aragon's 2015 law on citizen engagement](#) or [Bologna's law on citizen collaboration and the urban commons.](#)

3. Articulate the purpose of participation

The purpose of participation is to tap the intelligence, expertise, and experience of the public, including individuals, civil society organizations, businesses, and civil servants by integrating useful participation into the lawmaking process at every stage to solve problems and improve lives.

Why? Participation can have many goals, ranging from fostering deliberation to creating consensus to strengthening social cohesion, thus it is important to articulate the core goal of enhancing governing in order that the law addresses how to integrate participation into lawmaking. Civil society organizations can already establish mechanisms for lobbying parliament and platform creators can launch apps to amplify public voice. Legislation is not needed in order to create a website or ask the public to participate. Rather, public engagement legislation is needed to address the role of the legislative body, ensuring that it adapts its practices to make engagement relevant. Case study research affirms that institutionalized crowdlaw initiatives — e.g. those managed in part by government, or that have guaranteed government review of public input, such as Brazil's HackerLab, Better Neighborhoods, and vTaiwan — are more successful in soliciting and reacting to public input because the crowdlaw initiative is aligned with existing processes.[30] Similarly, India's [MyGov](#) platform has mandated that any Ministry seeking public input must go through the platform (and has registered over 2 million users).[31]

4. Actively foster participation

The Assembly, via the Lab, shall actively take steps to foster engagement and participation by: 1) investing in training and education about how the Assembly makes decisions, its jurisdiction and lawmaking processes; 2) investing in training and education of the public, especially Spain's youth, about citizenship and public

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[30] Systems are institutionalized in different ways, and see different benefits as a result. Parlement & Citoyens's consultations are sponsored by representatives who set a narrow topic for the consultation, ensuring that public input is always on-topic. Better Neighborhoods in Reykjavik guarantees government review of the most popular proposals, and vTaiwan guarantees the review of proposals on which a consensus has been reached — bringing transparency and a rhythm into the process. As discussed, Law 69/2007 institutionalizes the government's commitment to public participation, laying the groundwork for more specific mechanisms.

[31] Ministry of Electronics & Information Technology (Meity), National Informatics Centre (NIC), "MyGov User Manual," accessed July 24, 2017, available at: https://www.mygov.in/sites/default/files/Help%20Document.pdf

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participation, especially in schools; 3) investing in training and education about the new public engagement law; and 4) taking proactive steps to promote engagement by a diverse public.

Why? The government will need to take steps to promote active participation, actively involving the public in developing and implementing law. Bologna's law on public engagement emphasizes training, including in schools, in Title V. Also Articles 60 and 62 of the old draft also called for promotion and outreach of the bill itself, but were thin when it comes to training people about the legislative process. Examples of outreach mechanisms are myriad; for example, in Lisbon, the city government traveled throughout the city with a *Participatory Budgeting Bus* to help promote PB and offer a chance to participate on the spot. Similarly, Ireland's *We the Citizens* program established regional meetings throughout the country to generate a geographically representative sample of participants.

5. Transparency and accountability

   a. Legislative Transparency and the Right to Know — Participation is not possible without understanding the process in which one is participating. The public has a right to know in plain language about the deliberations and decisions of the Assembly in connection with specific bills, what is adopted, the intended purpose of any enacted law, and who are the responsible persons (sponsors and signatories), with a clear, plain, accessible language accompanying a statement of the law's objectives and requirements. All information shall be public, complete, timely, and accessible, subject only to exceptions defined by the legislation in force.

Why? Without knowing how lawmaking works, it is impossible for people to participate meaningfully. In a democracy, people have a right to know how legislation is enacted and what is enacted, by whom and to what end to foster accountability. In contrast to Section 4, which addresses the need to train people in how a bill becomes a law in general terms, Section 5 addresses transparency in connection with specific bills. In a final draft, Sections 4 and 5 could be combined. Such provisions on transparency are not uncommon. See Article 6 of Aragon's 2015 law, for example.

   b. Online Publication — The Assembly's bills and enacted legislation, together with the responsible persons (sponsors and signatories), a summary of every bill, a statement of its intended purpose, and other metadata to be defined by Public Engagement Lab, shall be published online in machine-readable XML and in

human-readable form to enable both printing of formatted paper copies and the extraction and analysis of information.

Why? If published as open, machine-readable data, legislative information can be analyzed more effectively to enable, for example, finding every place that money is appropriated or every bill that touches on education, or to assess who is introducing the most and the least legislation. The data standards for what information must be included and its formatting should be established by the Lab in consultation with legislative staff, local and global experts and the public.

   c. <u>Publish a Calendar of Participation Opportunities</u> — To enable participation, the Assembly shall regularly publish a calendar of all opportunities to participate in machine- and human-readable form.

Why? People cannot participate if they do not know when and how to do so.

6. <u>Incorporate engagement at every phase of lawmaking</u>

   a. <u>Participation at Every Point in the Lifecycle of a Bill</u> — Participation shall become part of the standard practice of legislating. By offering efficient engagement opportunities at each stage, the public can contribute and the Assembly can receive useful input at the right time. The Lab shall design and test diverse, innovative, and efficient mechanisms for soliciting public input on:

      i. <u>Agenda-setting</u> — when the Assembly decides which issues to take up. This is an opportunity for the public to propose, prioritize and critique problems to tackle. Any process shall define thresholds for required consideration and mechanisms designed to ensure that the public defines problems and provides supporting evidence. Examples of agenda-setting mechanisms include town halls, open innovation, deliberation and ideation platforms, and e-petition mechanisms;

      ii. <u>Proposal-making</u> — when the legislative body arrives at the substance of a solution to a problem. This presents a chance to suggest, deliberate upon, and critique proposed approaches. Methods employed should enable citizens to submit solutions, defining practical approaches to problems. Examples of such methods include challenge and ideation processes. Recommended processes should define conditions under which the Assembly must respond to proposals that meet a set of published criteria;

iii.   Drafting — when lawmaking bodies memorialize solutions through the writing of legislation. This provides an opportunity to draft collaboratively and to solicit comments, questions, and critiques on a draft. Examples include collaborative drafting and annotation platforms;

iv.   Implementation — when legislatures delegate administrative bodies or staff the task of turning law into practice. This presents another chance for participation, where the public can help lay out concrete plans. Examples include co-creation and open innovation processes; and

v.   Evaluation — when parliaments determine the downstream impact, including both cost and benefits, of legislation on people's lives. This is an opportunity for engagement, soliciting ideas, for example, from the public about how to measure impact and what data to use for that purpose, as well as an opportunity for citizens to monitor the success of the implementation. Examples include monitoring and reporting apps and programs.

Why? Current crowdlaw practices generally mimic offline mechanisms such as petitions and referenda as is the case in Finland's system, which has legislated public initiatives only. Crowdlaw practices are clustered toward the beginning of the legislative process. The 2016 draft, for example, does not describe any engagement processes designed to inform the drafting and evolutions of bills only mechanisms to propose issues, identify solutions and propose new drafts.
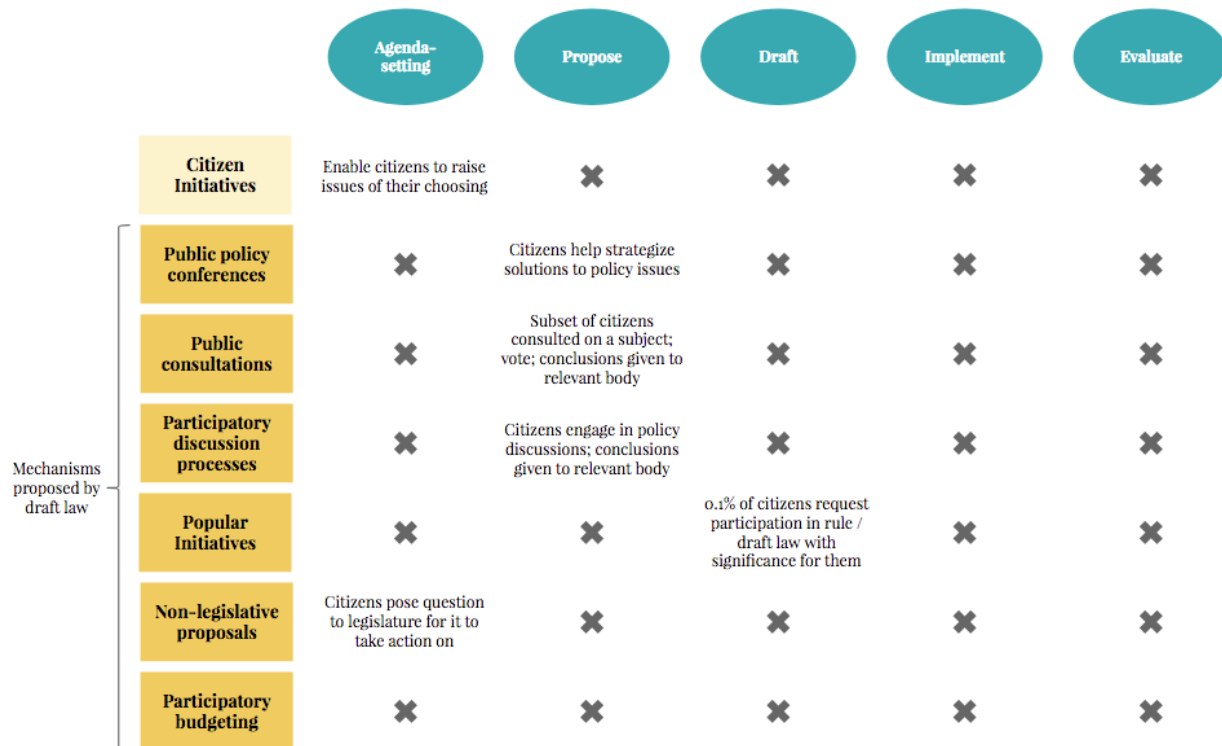
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Mechanisms proposed by draft law	Agenda-setting	Propose	Draft	Implement	Evaluate
Citizen Initiatives	Enable citizens to raise issues of their choosing	✖	✖	✖	✖
Public policy conferences	✖	Citizens help strategize solutions to policy issues	✖	✖	✖
Public consultations	✖	Subset of citizens consulted on a subject; vote; conclusions given to relevant body	✖	✖	✖
Participatory discussion processes	✖	Citizens engage in policy discussions; conclusions given to relevant body	✖	✖	✖
Popular Initiatives	✖	✖	0.1% of citizens request participation in rule / draft law with significance for them	✖	✖
Non-legislative proposals	Citizens pose question to legislature for it to take action on	✖	✖	✖	✖
Participatory budgeting	✖	✖	✖	✖	✖

Figure - *Crowdlaw mechanisms described by the Podemos 2016 draft*

b. <u>Offline Engagement</u> — At every stage of the lawmaking process, the Lab shall develop complementary offline as well as online engagement opportunities across a wide variety of channels to ensure inclusive participation. The Lab shall test and assess who is reached via which channels.

Why? Available channels for participation should be expanded without sacrificing efficiency. As was the case in British Columbia with the implementation of GovTogetherBC, allowing for participation through as many channels as possible — including phone, mail, email, online, and in person — provides participants with the opportunity to engage in a consultation through the medium most convenient to them. Thus, GovTogetherBC was able to solicit hundreds of thousands of total responses across hundreds of engagements. Similarly, the Participatory Budgeting laws in both Lisbon and Paris broadened the base of involved citizens by ensuring that one could fully participate in the process either through face-to-face meetings or online.

c. <u>Plain Language Instructions</u> — At every stage, the Lab shall publish clear and plain language directions for how to participate, any thresholds or deadlines, how the participation will be used, the timeline for participation, and the anticipated feedback mechanism. The role that the mechanism is meant to play in Madrid's legislative process must be clearly communicated at the outset of any

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consultation. The Lab shall also publish clear and plain language directions for the Assembly for how to take feedback on board.

Why? Although we have already set forth a requirement to explain how a bill becomes a law and to make the legislative agenda transparent, this provision deals with the requirement to provide instructions about how to participate. We have intentionally omitted the provision in Article 7 of the 2016 draft requiring that all forms of participation be open to all, because we recognize that the Assembly should be free, for example, to solicit the opinions of teachers on a draft bill about education or of residents of public housing for a bill on housing, while creating a separate channel for general input. As a general rule, successful crowdsourcing initiatives set criteria for who can participate. There is value to preserving flexibility for the Lab to design targeted crowdsourcing opportunities while ensuring nondiscrimination. In the UK Parliament's Public Reading Stage Pilot, for example, subsequent evaluation found that larger numbers of participants were more likely to reflect interest group involvement than public sentiment thus open engagement is not necessarily the way to guarantee democratic participation.[32] Second, Articles 18, 26, and 49 (related to Public Policy Conferences, Participatory Discussion Processes, and Popular Initiatives, respectively) of the 2016 draft specify that the support of at least 0.1% of the population is necessary to initiate a citizen engagement mechanism. Although such thresholds can help ensure that public funds are not expended on managing poorly attended consultations and that minorities cannot distort the process of democratic governing, experience also shows that such thresholds can have a chilling effect on citizen engagement. Tuscany's citizen engagement law, for instance, required that for large scale public works, the assent of 0.5% of the population was needed to trigger a consultation. This threshold was not conducive to consultations. In actuality, the first public consultation did not occur until 2016, following the enactment of Law 46/2013, which automatically initiated such processes for certain large scale public works.[33] Although the threshold in Podemos's draft law is smaller by a factor of five, it is also important to note that the Community of Madrid's population is approximately twice that of the Region of Tuscany's. In some circumstances, it will be advisable to establish thresholds to avoid plebiscitary governance but, in other circumstances, such as when specific information is needed, participation by small numbers of the right individuals will be preferable to mass engagement. Thus we have left this requirement flexible.

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[32] Lucy Petrie, Jessica Mulley, Evaluation of the Public Reading Stage Pilot, The Scrutiny Unit, UK Parliament, 2013, available at https://www.parliament.uk/documents/commons/Scrutiny/SU-PRS-Evaluation-FINAL-June-2013-JNM.PDF.

[33] "The Tuscany Regional Participation Policy, Italy," *Participedia*, last modified December 19, 2016, http://participedia.net/en/cases/tuscany-regional-participation-policy-italy#_ftnref1

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d. <u>Pilots and Experimentation</u> - Because participation must accomplish measurable benefits, the Assembly shall implement and the Lab shall test new participation practices during defined pilot periods that will be used to measure efficacy and improve practices.

Why? Given the novelty of online engagement, especially practices that go beyond familiar petitions and town hall meetings, it is important to test what works by piloting new practices as the Bundestag did when it moved the petition process from offline to on or as the British Parliament did when it testing online bill commenting. Experimentation was particularly important to the success of several case studies we examined. Lisbon's participatory budgeting program, for instance, grew in large part due its flexible design. Similarly, vTaiwan's independence enabled it to incorporate new and innovative technology into its consultation platform. Embodying a similarly experimental spirit into the Lab and its practices could help generate ideas and creative thinking
In contrast to the earlier draft, which mandated the practices to be used a priori, the Lab should be empowered to run short term pilots of engagement opportunities.

7. <u>Evaluation and testing</u>

a. <u>Surveys</u>. Following every participatory exercise, the Lab shall randomly survey public participants, Assembly members, staff, and those who did not participate to learn how to improve the process.

Why? The law should mandate ongoing surveys of participants in the various citizen engagement activities in order to assess the level of awareness in the community about the citizen engagement law, as well as the satisfaction levels of those who participate in the program. In addition and, where practicable, the Lab should survey Madrileños who do not participate as well to understand why. An excellent example of such a survey can be found in the *We the Citizens* pilot program that was initiated in Ireland: a thorough survey of participants was issued concurrently in order to understand how participants' attitudes changed over the course of the process.[34] In contrast, an observed weakness in Paris's participatory budgeting program is a lack of understanding as to who is participating, which would have helped the city understand whether or not they were successfully engaging with underserved communities.[35]

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[34] "Participatory democracy in action - a pilot," *We the Citizens* (December 2011): 30-32, http://www.atlanticphilanthropies.org/app/uploads/2015/09/We-the-Citizens-2011-FINAL.pdf

[35] Julie Simon, Theo Bass, Victoria Boelman, and Geoff Mulgan, "Digital Democracy: The tools transforming political engagement," Nesta, February 2017, accessed June 26, 2017, available at: http://www.nesta.org.uk/sites/default/files/digital_democracy.pdf

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b. <u>Research and Evaluation</u>. In order to design effective participation opportunities that benefit the public and the Assembly, research is needed to test innovative processes and platforms. The Lab shall collaborate with members of the research community to design and implement research experiments. Research may involve natural experiments to observe how platforms work, who participates, and how. In addition, the Lab shall, where appropriate and practicable, run randomized controlled trials (RCTs) by dividing participants into two groups and presenting them with alternative participation experiences. Such [A/B testing](#) could be used to measure different ways, for example, of explaining how to participate to the public to understand what works better. A/B testing and other research results shall be reported on a quarterly basis with upcoming experiments made transparent to the public and the research design published for public comment at least one quarter prior to the implementation of the experiment.

Why? A critical component of successful citizen engagement laws is the ability to iterate and experiment. The highly contextual nature of democratic participation means that there is no "one size fits all" solution for civic engagement that can be easily ported from one context to the next; while a range of potentially effective and ineffective designs are available, the precise nature of any system's implementation will necessarily require fine-tuning. To that end, testing and experimentation are critical to the sustained success of a citizen engagement program; indeed, comprehensive and ongoing evaluations are necessary to know if the law is successful in the first place. To this end, Articles 72 - 74 of the earlier draft provided for monitoring and assessment of participation activities, the creation of a "Public Participation Observatory" to oversee evaluations of the law, and comprehensive review of the program after five years have elapsed. Given the importance of ongoing evaluation and assessment, we have amended the draft in two ways. First, we outline a non-exhaustive set of metrics (currently listed in Section 2) to be collected from every public participation practice. Second, a five-year reporting timeline is much too long given the ability to do real-time and automated data collection from engagement platforms. Therefore, we propose the incorporation of A/B testing into the implementation of any public engagement practice.

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4. The political context in Spain and elsewhere

This section introduces Podemos and why this effort to institutionalize public engagement is taking place in Spain now.

Public trust in government is at an all-time low

In Europe and the United States, the public has become increasingly dissatisfied with government. According to recent Gallup Poll data, only 54 percent of people worldwide report having confidence in their national governments.[36] The 2017 Edelman Trust Barometer paints an even bleaker picture, asserting that "government is now distrusted in 75 percent of countries."[37]

In the U.S. alone, only 20% of citizens say they trust the federal government to do what is right and "[n]o more than about 30% have expressed trust in the government in Washington to do the right thing at any point over the last decade." In Europe, Dalia Research finds that anti-establishment parties are on the rise because Europeans are fed-up with their political class: barely a third trust politicians to do the right thing, with Eastern Europeans registering only 23% confidence in their leaders.[38]

This growing trust deficit, or "implosion of trust,"[39] is particularly concerning as it often leads to a self-perpetuating cycle — a "widespread belief that the system is broken increases a person's vulnerability to fear, ultimately causing deeper distrust in institutions."[40]

Declining tax revenues and deteriorating fiscal conditions, coupled with increasing volatility of state financial support, have put significant pressures on governments, often diminishing their ability to deliver those services they have traditionally provided — much less adapt to changing times. These operational challenges have been coupled with an equally difficult image problem: although public trust in government has eroded to all-time lows, paradoxically, public expectations of what government should deliver have risen.

[FORMAT PULL QUOTE]

As the saying goes, "trust takes years to build, seconds to break, and forever to repair." Thus, government urgently needs to do a better job. In order to identify and implement innovative

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[36] "Gallup World Poll," *Gallup*, 2016, http://www.gallup.com/services/170945/world-poll.aspx.

[37] "2017: Executive Summary," (Annual trust barometer survey, Edelman, 2017), available at: http://www.edelman.com/executive-summary/, 4.

[38] "Majority of Europeans Distrust Their Politicians," *Dalia Research*, April 26, 2016, accessed on June 25, 2017, https://daliaresearch.com/majority-of-europeans-distrust-their-politicians/.

[39] "2017: Executive Summary," 2.

[40] Ibid., 8.

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solutions to problems such as climate change, economic fluctuations, pandemics, and terrorism, public institutions need to change the way they work.

[/FORMAT]

One such change is to open up the lawmaking practices of governments to outside input and more collaborative decision-making. Our discussion thus far has highlighted lessons learned from public engagement efforts around the world. These examples show how the desire to increase engagement in the legislative and political arena is widely shared across many different countries and contexts. In this respect, the desire to bolster civic participation in the Autonomous Community of Madrid is not unique, but instead can be viewed as part of a broader trend of promoting civic participation around the world.

Over the past decade, citizen distrust in public institutions combined with the reverberations of financial crises have motivated increased civic participation, and use of digital democracy tools. The 2008 financial crisis spurred the "Kitchenware Revolution" in Iceland, the country's largest protests calling for representatives' resignations; it was in this context that Reykjavik's Better Neighborhoods platform emerged. Estonia's Citizens' Assembly was erected by the President "to make recommendations for democratic reforms" following a major corruption scandal. vTaiwan emerged following the Sunflower Student Movement, during which student protesters occupied the Taiwanese parliament in protest of a planned trade deal with China.[41]

However widely shared these goals may be, any successful public engagement program must be mindful of the particular economic, social, and political factors that define civic life in a given polity. Before returning our discussion to specific recommendations for Podemos, a brief overview of Spain's economic and political climate is in order.

Mistrust of government in Spain

Although Spain's electoral system operates under a form of imperfect proportional system of representation,[42,43] for much of the country's history as a democracy its electoral politics have

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[41] Julie Simon, Theo Bass, Victoria Boelman, and Geoff Mulgan, "Digital Democracy: The tools transforming political engagement," Nesta, February 2017, accessed June 26, 2017, available at:
http://www.nesta.org.uk/sites/default/files/digital_democracy.pdf
[42] Ángel J. Sánchez Navarro, "The Spanish System of Proportional REpresentation and its Limits, according to the Constitutional Court," paper prepared for *Unidem Seminar: European Standards of electoral Law in the Contemporary Constitutionalism*, Sofia, Bulgaria (May 28-29, 2004).
http://www.venice.coe.int/webforms/documents/?pdf=CDL-UD(2004)006-e
[43] "Understanding the d'Hondt method: Allocation of parliamentary seats and leadership positions," *European Parliament Briefing*, April 2016:
http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/580901/EPRS_BRI(2016)580901_EN.pdf

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been dominated by two parties: the PP (the center-right *Partido Popular*, or People's Party) and the PSOE (the center-left *Partido Socialista Obrera Español*, or Spanish Socialist Workers Party).[44] The same two parties tend to dominate at the regional level, albeit to a lesser extent. Particularly in communities with strong regional identities (such as in Basque Country or Catalonia), parties more deeply associated with that region tend to hold a majority of the seats in their respective legislatures.

A confluence of factors, though, recently began to unravel this established order. First, the economic crisis and the government's push for austerity measures galvanized a new opposition. This opposition was most pronounced in early 2015, when hundreds of thousands of Spaniards took to the streets around the country to protest austerity measures. Further compounding the discontentment with the government's response to the economic climate was a series of corruption scandals running up to the highest levels of government.[45] Such scandals have had a palpably corrosive effect on citizens' views of government. According to the OECD, only 30% of Spaniards felt in 2015 that they had confidence in the national government; this level had fallen by a staggering 20% from its 2007 figure.[46] Trust at the regional level seems to mirror that of the national government: according to a Eurobarometer and Gallup World Survey, only 20% of Spaniards indicated that they trusted their regional authorities.[47] For context, Spain ranks below every western European country except for Italy in Transparency International's Corruption Perception Index, with an overall ranking of 41 out of 176.[48] Perhaps not surprisingly, Spanish respondents to one survey have in the past few years consistently ranked corruption as the second most pressing problem facing Spain, only after unemployment; "politicians, political parties, and politics" has consistently ranked third or fourth.[49]

The Global Recession

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[44] "Current Senators. Distribution by Parliamentary Group," *Senado de España*, 2017, accessed June 25, 2017: http://www.senado.es/web/composicionorganizacion/senadores/composicionsenado/senadoresenactivo/consultagrupoparlamentario/index.html.
"Listing of Members by parliamentary groups," *Congreso de los deputados*, 2017, accessed June 25, 2017: http://www.congreso.es/portal/page/portal/Congreso/Congreso/Diputados/DipGrupParl.

[45] Tobias Buck, *Corruption scandals threaten Mariano Rajoy's future*, Financial Times, https://www.ft.com/content/1f98d546-d3e4-11e5-829b-8564e7528e54 (Feb. 15, 2016)

[46] *Trust and Public Policy: How Better Governance Can Help Rebuild Public Trust*, OECD, http://www.oecd-ilibrary.org/docserver/download/4217051e.pdf?expires=1492821633&id=id&accname=ocid177224&checksum=6C5097C12FAE130455255C94D249CA20 (Mar. 27, 2017)

[47] Ibid.

[48] Corruptions Perception Index," Transparency International, https://www.transparency.org/news/feature/corruption_perceptions_index_2016 (Jan. 25, 2017)

[49] *Encuestas de Opinión del Centro de Investigaciones Sociológicas*, www.cis.es/cis/export/sites/default/-Archivos/Indicadores/documentos_html/TresProblemas.html (accessed April 26, 2017)

Although few countries emerged unscathed from the global financial crisis in 2008, Spain was particularly hard hit, even compared to its similarly situated EU neighbors. A collapse in tax revenue rendered the existing government spending levels unsustainable, forcing massive public sector layoffs that had ripple effects throughout the Spanish economy. In 2009, Spanish output shrunk by nearly 4%, and with the exception of 2010 (in which GDP held steady), it was not until 2014 that the country experienced economic growth.[50] Unemployment in Spain skyrocketed, reaching a high of nearly 26%, and youth fared particularly poorly, with unemployment levels among jobseekers younger than 25 climbing as high as 50%. Though the Spanish economy has since begun to recover, only within the past year has the overall unemployment rate fallen below 20%, a level still significantly higher than neighboring Portugal and nearby Italy, which faced similar macroeconomic conditions.[51] Economic output has also experienced a recent uptick, with two consecutive years of approximately 3% growth, but the duration of Spain's economic crisis and the perceived inability of the government to adequately respond greatly diminished citizens' faith in the power political institutions to address pressing societal problems.

It is important as well to recognize the effect that this economic malaise had on individual Spaniards. By the beginning of 2013, Household Disposable Income had fallen by over 12% from its 2007 level, and household consumption had fallen by approximately 15%.[52] Young people's ability to start financially independent lives was severely inhibited: half or more of Spaniards under 30 remained living with their parents, and the average age of a youth's "emancipation" from their families continually tracked upwards. [53] This dearth of economic opportunity for Spain's youth has led to them being called the "lost generation."[54] Further, the concentrated effect of Spain's economic crisis on young people has engendered a particularly strong disdain for politics as usual, culminating in the unrest described below.

Podemos

The emergence of Podemos

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[50] "Spanish Annual GDP Growth," *World Bank*, 2017, accessed June 24, 2017, http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=ES.

[51] Peter Evais, "The Mystery of Spain's Perpetual Jobs Problem," *New York Times,* May 2, 2016, acessed June 24, 2017, https://www.nytimes.com/2016/05/03/upshot/spains-jobless-numbers-almost-look-like-misprints.html.

[52] Federico Giovannelli, "A dash of data: Spotlight on Spanish households," *OECD Insights,* Nov. 10, 2016, accessed June 24, 2017, http://oecdinsights.org/2016/11/10/a-dash-of-data-spotlight-on-spanish-households/

[53] Tobias Buck, "Spanish Youth in Crisis," *The Financial Times*, May 23, 2014, accessed June 24, 2017, https://www.ft.com/content/5908da36-db09-11e3-8273-00144feabdc0

[54] Laure Fillon, "Meet Spain's lost generation: The drop outs facing a bleak future," *The Local*, December 11, 2015, accessed June 24, 2017, https://www.thelocal.es/20151211/spains-lost-generation-the-drops-outs-facing-bleak-future-election.

Podemos is a new Spanish political party created in 2014 by Spanish leftist activists associated with the grassroots activism and protests linked to the "Indignados" (Indignants) Movement. This movement, also called 15-M (it began on the 15th of May) or Anti-Austerity Movement, started in May 2011 with demonstrations in 58 Spanish cities. Its origin can be traced to civilian digital platforms and associations.[55] Protests continued, albeit more sporadically and with smaller turnout, throughout subsequent years. It was from this activism — largely led by youth[56] — that the seeds for new political parties were sown.

Even though demonstrators formed a heterogeneous and ambiguous group, they shared a strong rejection of unemployment, welfare cuts, corruption in Spanish politics, and the current bipartisanism at that time between the PP and PSOE. Since Spain transitioned to democracy in the 1970s, only these two parties have governed the country and both have had a number of corruption scandals during their respective administrations. The street protests lasted from May into sporadically October of 2011, with officials estimating between 6.5 to 8 million protestors in all.

In 2014, although not claiming to be a direct result of this Movement, Podemos was founded by many of the same leaders of these protests to oppose the European Union austerity mandated and to demand radical change in Spanish politics. In the broader context of economic turmoil and austerity in Europe, Podemos was not a unique phenomenon. Economic hardship coupled with apathy towards elitist political institutions also gave rise to anti-establishment parties such as Syriza in Greece, as well as the Italy's Five Star Movement in Italy.[57]

It is against this backdrop of mistrust that Podemos found its roots as a party clamoring for change. The party established support particularly among young Spaniards seeking to upend the two-party political order and institute a more transparent, accessible, and left-leaning government. Relying on this groundswell of support, Podemos was in part responsible for a major political sea change that disrupted the longstanding balance of power in Spanish politics.[58] Podemos ("We can") was established as a political party in 2014.

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[55] "Tahrir Sqaure in Madrid: Spain's Lost Generation Finds its Voice," *Der Spiegel*, May 19, 2011, accessed June 24, 2017, http://www.spiegel.de/international/europe/tahrir-square-in-madrid-spain-s-lost-generation-finds-its-voice-a-763581.html.

[56] Diego Beas, "How Spain's 15-M movement is redefining politics," *The Guardian,* October 15, 2001, accessed June 25, 2017, https://www.theguardian.com/commentisfree/2011/oct/15/spain-15-m-movement-activism.

[57] Florian Hartleb, "Here to stay: anti-establishment parties in Europe," *European View* 14:1 (June 2015): 39-49. Available at: https://link.springer.com/article/10.1007/s12290-015-0348-4

[58] "Podemos: Spain anti-austerity party banging on doors of power," BBC, December 21, 2015, accessed April 24, 2017, http://www.bbc.com/news/world-europe-35150771

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The party quickly became known as a disruptor and innovator in Spanish politics and is now a major political party at the national and regional levels. Just four months after its founding, Podemos received 1.2 million votes, eight percent of the total in the 2014 European Parliament elections.[59] In the year of its founding Podemos also became second largest party in Spain in terms of membership.[60]

While many saw the success of these upstart parties as an encouraging sign of change, their electoral victories had an additional consequence: no party was able to capture a majority of seats in the national legislature, resulting in a state of political deadlock. Lacking a majority party or coalition that could form a working government, Spain suffered from a power vacuum, during which time a "caretaker government" was put in place to maintain some semblance of continuity. The political crisis was finally alleviated in 2016 when members of the PPOE agreed to abstain from a vote of confidence for Mariano Rajoy, thus allowing him to remain as Prime Minister. But though the political crisis may have come to an end, the ten-month ordeal has likely registered even more damage to citizens' faith in the ability of the major parties to put the country's interests above their own.[61]

In the Spanish General Election in December 2015, Podemos garnered 20% of the vote.[62] In the 2015 parliamentary elections, Podemos and another upstart political party named *Ciudadanos* cumulatively captured a third of the seats in the Congress of Deputies, effectively upending a nearly half-century tradition of two-party politics.[63]

In addition to Podemos's success at the national level, the party was also able to find its footing in various regional legislatures. The party was particularly successful that year in the Autonomous Community of Madrid, where it picked up 27 out of 129 available seats.[64] This victory placed Podemos — then a brand new party — as the third most represented party in Madrid's regional legislature, just behind PSOE, which secured 36 seats. Additionally, in the

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[59] "Results of the 2014 European elections," *European Parliament,* November 22, 2014, accessed June 25, 2017, http://www.europarl.europa.eu/elections2014-results/en/country-results-es-2014.html

[60] Gustavo Garcia, "Podemos ya tiene más 'militantes' que el PSOE," *El Boletin*, October 28, 2014, accessed June 25, 2017, http://www.elboletin.com/contraportada/106783/fisher-price-shakira-juguetes-bebes.html

[61] Sam Jones, "Mariano Rajoy sworn in as Spain's PM after deadlock broken," *The Guardian*, October 31, 2016, accessed July 24, 2017, https://www.theguardian.com/world/2016/oct/31/mariono-rajoy-to-be-sworn-in-as-spains-prime-minister

[62] "Podemos celebra con euforia sus 69 diputados," abc, December 21, 2015, accessed June 21, 2017, http://www.abc.es/espana/abci-podemos-celebra-euforia-diputados-4669698984001-20151221085000_video.html

[63] "Konservative sind Wahlsieger, verlieren aber Mehrheit," Spiegel Online, December 21, 2015, accessed June 21, 2017, http://www.spiegel.de/politik/ausland/spanien-die-ersten-hochrechnungen-zur-parlamentswahl-a-1068834.html

[64] "Distribución de escaños," Asamblea de Madrid, 2017, accessed June 9, 2017, http://www.asambleamadrid.es/ES/QueEsLaAsamblea/ComposiciondelaAsamblea/Distribuciondeescanos/default.aspx.

May 2015 Municipal elections Podemos, through affiliated local coalitions rather than directly, won the city councils of Barcelona and Madrid, as well as many smaller cities.

The "world's first Reddit party"

In response to past corruption scandals, austerity measures, and high unemployment levels following the European debt crisis,[65,66,67,68] Podemos seeks to improve trust by the public in government and increase its own popularity and standing by adopting the use of software platforms to create more open governing processes. To that end, Podemos has adopted what they dub a *people-centered* approach to politics. Called the "world's first Reddit party," Podemos has leveraged online platforms to host debates and referenda to craft the party's platform and structure.[69] The platforms that helped the party campaign successfully and build its political base include:

- **Plaza *Podemos*** (*Podemos* Square), a debating site that provides a space for political deliberation and participation for Podemos's followers. Plaza Podemos attracts between 10,000 and 20,000 followers per day.
- **Portal de Participatción** (Participation Portal), an online voting registration and authentication system and a crowdfunding platform to engage people to support Podemos and the initiatives it supports.
- **Iniciativas Ciudadanas** (Citizen Initiatives), an online tool hosted within the "Portal de Participación" website where citizens can post proposals for reforms within Podemos and other citizens can support the proposals or post their own.
- **Impulsa** (Boost/Impulse), an online political participation space for building, brainstorming, and implementing projects.
- **Banco de Talentos** (Talent Bank), a new tool that Podemos will use to identify and leverage the talent within its group of followers.[70]

Now that Podemos is governing rather than campaigning, however, it needs to design processes and platforms to tie participatory democracy to governing. Building on its success using

[65] Tobias Buck, "Spain: Political Stalemate in Madrid," *Financial Times*, February 10, 2016, accessed April 24, 2017, https://www.ft.com/content/27b93f7c-ce67-11e5-831d-09f7778e7377

[66] Tobias Buck, "No Right Turn for Spanish Politics," *Financial Times*, January 17, 2017, accessed April 24, 2017, https://www.ft.com/content/414246f6-dbe4-11e6-86ac-f253db7791c6

[67] Tobias Buck, "Spanish Politics: Podemos' populist surge," *Financial Times*, February 19, 2015, accessed April 24, 2017, https://www.ft.com/content/ecca8824-b7a3-11e4-981d-00144feab7de

[68] Raphael Minder and David Zucchino, "Spaniards, Exhausted by Politics, Warm to Life Without a Government," *New York Times*, October 2, 2016, accessed April 24, 2017, https://www.nytimes.com/2016/10/03/world/europe/spain-socialists-sanchez-rajoy.html?_r=2

[69] Jonathan Blitzer, "In Spain, Politics Via Reddit," *The New Yorker*, October 7, 2014, accessed April 24, 2017, http://www.newyorker.com/tech/elements/spain-politics-via-reddit

[70] Hannah Cutler, "People-Driven Governance: Spain's Podemos Party," The Governance Lab, June 25, 2015, accessed June 21, 2017, http://thegovlab.org/people-driven-governance-spains-podemos-party/

technology to craft the party's political agenda, it is only natural that it should want to bring its brand of bottom-up participatory politics to governing the country. But this is where it is struggling. Many people lack confidence in this inexperienced party's ability to govern, and whether the party can push government to be as open, transparent, and grassroots as the party's successful campaigns were.

In short, can Podemos redefine Spanish politics? And can it redefine governance by conforming to it or rejecting it? How can it relate to existing institutions and institutional processes? Crowdlaw can help clarify the answers to these questions, as a clear continuation of the principles exemplified through its campaigning.

Despite the recent economic and political hardships that Spain has endured, there is much reason to be optimistic about the potential of new citizen engagement efforts. For one, the worst of the economic crisis is over: as previously mentioned, Spain's economy has been experiencing consistent, positive growth, and unemployment has been meaningfully reduced as a consequence. Legislators might feel more willing to divert attention towards other issues, and among such issues, citizen engagement seems like a worthy and relevant cause.

Yet another reason to be optimistic is that numerous Spanish localities — including the City Council of Madrid — have already successfully taken up the mantle of citizen engagement. Many of these examples are included in our own analysis and guide our final recommendations. For instance, tens of thousands of Madrileños have voted on proposals, participated in debates, and offered ideas for how to allocate the city's budget through *Decide Madrid*. The Autonomous Community of Aragon has embraced civic participation as a constitutionally mandated goal; this directive has been used to support a wide variety of ad hoc engagement efforts that are uniquely tailored to the specific issue being addressed. The Basque government has deployed an online participation platform called *Irekia*, which has modeled some of the forms of online participation proposed by numerous authors referenced in our brief summary of the academic literature. And the City Council of Barcelona, through its *Decidim Barcelona* platform (which precedes Podemos), allows citizens to sponsor initiatives and review government proposals.

In sum, new and exciting citizen engagement measures can and have been implemented throughout Spain, and we hope that crowdlaw mechanisms for the Autonomous Community of Madrid will be next.

5. Why public engagement? Normative goals

This section explains the varied value propositions for public engagement and connects them to their origins in various strands of political theory.

While this paper is primarily concerned with *how* best to implement crowdlaw, as a threshold matter it is important to define *why* public engagement is something worth pursuing. Although government of, by, and for the people might seem self-evident, in fact there are multiple rationales for engagement in governing. A clear purpose is a precondition for designing both process and platform to achieve it.

A full review of the vast scholarly literature on engagement is beyond the scope of this paper, but it is nonetheless worth briefly discussing the dominant theories that undergird and justify public engagement. Specifically, we identify four distinct schools of thought regarding the potential benefits of public participation. The first three are the most often cited thus resulting in platforms and processes designed to optimize deliberation. Central to our argument is that crowdlaw practices have to improve the quality of legislation is they are to be efficiently used and adopted at scale. Thus, the fourth rationale, as we shall see, is arguably the most important.

- Improving civic literacy and democratic legitimacy by giving more people a voice in the process,
- Strengthening social capital and social cohesion and reducing partisanship,
- Improving democratic accountability by making governing more transparent,
- And, generating more effective governance by introducing more diverse ideas and insights from a distributed audience into governing.

The desired goal dictates the design of the platform and process. Each goal is described in brief in the following sections.

Improving civic literacy[71]

Democratic legitimacy refers to the idea that the outcomes of a political order are justified to those who live within it. Because the public perception of governmental institutions as legitimate depends, to some extent, on the belief that those institutions are acting for the greater good and not unduly out of concern for the interests either of the political elites or one segment of society,

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[71] Jürg Steiner, "The Foundations of Deliberative Democracy: Empirical Research and Normative Implications," (Cambridge University Press, 2012).

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ensuring that decision-making is transparent and provides equal opportunity for the public to make their voices heard can increase a government's perceived legitimacy.

Thus, the purpose of engagement is not directly to change the ultimate outcome of decisions but, rather, through the promotion of public discourse, to create an opportunity for the formation and refinement of public opinion. Best known among the theorists and practitioners of this Habermasian style of deliberative democracy, Stanford professor James Fishkin contends that deliberation can reassure the general public that political outcomes are a reflection of the people's political will. Fishkin tested his hypothesis through "deliberative polling," a process that combines attributes of both polling and debate by "exposing random samples [of people] to balanced information, encouraging them to weigh opposing arguments in discussion with heterogeneous interlocutors, and then harvesting their more considered opinions."[72] His design and analysis of multiple deliberative polling experiments found that participants not only changed their opinions as a result of partaking in the deliberative process, but also shifted the bases of their opinions to more "normatively desirable criteria." Similarly, John Gastil's analysis of the participants in the National Issues Forum, another deliberation method practiced since the early 1980s, showed that those who attended the program left with more sophisticated and coherent views of the issues that were discussed. Amy Gutmann and Dennis Thompson, in turn, argue that this increased knowledge of important issues strengthens faith in and perceived legitimacy of political institutions because citizens feel as though they can both contribute to and understand complex policy choices. Jürgen Habermas argues that deliberative democracy and an "energetic civil society" can restore the "public sphere" to its former status as a forum for meaningful dialogue between citizens, augmenting the flow of information in a political process currently dominated by mass media.

Strengthening social fabric

A second and related school of thought identifies the role that public engagement plays in civic and community life in addition to the political process. Robert Putnam's analysis of "social capital" — "[b]roadly understood as referring to the community relations that affect personal interactions"[73] — has shown that such engagement positively contributes to a host of social outcomes, including public health and safety, educational attainment, greater wealth, and of course trust in government institutions. In communities where social capital is low, then, introducing new opportunities for deliberation can help strengthen otherwise weak communal ties, an appealing prospect in communities riven by partisanship or class divides. Finally, Clare Chambers at Cambridge argues that deliberation can help diminish adversarial tendencies within a community and instead help foster a sense of interdependence. The act of deliberation can thus

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[72] Fishkin and Luskin, "Experimenting with A Democratic Ideal: Deliberative Polling and Public Opinion," (Acta Politica, 2005): 287.

[73] Steven N. Durlauf, "Chapter 26 - Social Capital," Handbook of Economic Growth, 1:B (2005): 1639.

help instill feelings of familiarity and strengthen social bonds within a community, an outcome that has positive effects both on communal life as well as the political process. Digital deliberation, even more than offline deliberation, quickly produces and disseminates data regarding citizen preferences, often in real-time.[74]

Making government more accountable

Engagement also plays a vital role in holding governments accountable, because the transparency necessary to enable the public to participate, in theory, reduces the risk of dirty tricks and backroom dealing. Traditionally, investigative journalism serves as this "instrument of institutional accountability, a means to hold the governors accountable… to the ideals and rules of the democratic polity itself."[75] Government watchdog groups also play a vital role in distilling complex information for other civil society and journalistic organizations. These watchdogs, referred to by Walter Lipmann as "political observatories," can exist both inside and outside the government, and engage with the public by "sponsor[ing] research, monitor[ing] governmental activity, and, as nonpartisan or as advocacy organizations, mak[ing] information about the political world available to journalists and directly to citizens."[76] But crowdlaw, by involving the public more directly in legislating, can fost transparency, which, in turn begets accountability. Michael Schudson argues that "[s]o long as information is publicly available, political actors have to behave as if someone in the public is paying attention."[77] Public engagement efforts that involve promoting accessible government information, as well as the organizations that make that information actionable, can thus help promote increased government accountability.

Improving governance

A fourth school of thought focuses on the potential impact new forms of civic engagement can have on the outcomes of governance. Beth Simone Noveck has written extensively on the ways in which public engagement can be leveraged to improve the quality of policy outcomes as well as the operation of government, with particular focus given to the role that technology can play in both generating and scaling civic participation.[78] Noveck's call for "collaborative democracy" moves beyond deliberative theorists' focus on discourse. Instead, collaborative democracy

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[74] "Evaluating Digital Citizen Engagement: A Practical Guide," *World Bank,* February 2016, accessed May 9, 2017, 22, https://openknowledge.worldbank.org/handle/10986/23752.

[75] James Ettema, "Journalism as Reason-Giving: Deliberative Democracy, Institutional Accountability, and the News Media's Mission," Political Communication, 24:2 (2007): 144.

[76] Michael Schudson, "Political observatories, databases & news in the emerging ecology of public information," Deadalus (Spring 2010): 100 - 109.

[77] Michael Schudson, "The Power of News," (Cambridge, MA: Harvard University Press, 1995): 25.

[78] Beth Simone Noveck, "Wiki Government: How Technology Can Make Government Better, Democracy Stronger, and Citizens More Powerful," (Brookings Institution Press, 2009.).

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involves shifting at least some or even all of the decisionmaking and implementation authority into the hands of citizen participants: rather than limit citizens' involvement to mere deliberation, citizens should instead be afforded the opportunity to collaborate on designing and building actual solutions to important problems. This collaborative model enables governments to draw directly on the collective expertise of the population in developing new and creative solutions, as opposed to presenting citizens with a discrete set of choices. It is a theory rooted in the belief that engagement is not simply a more legitimate process. Rather, if designed right, engagement should lead to high quality policies and better designed services.

From theory to practice

It bears explicit mention that many, if not most, engagement platforms to date have been designed to advance democratic legitimacy through deliberation rather than to improve governing outcomes. Thus many such digital democracy systems "inherit" the challenges and considerations of offline public engagement, namely bad design, partisan bickering, and, above all, irrelevance to governing.[79] In a vicious circle, platforms designed for deliberation but not necessarily to improve governance end up having little impact on the decisions or operations of institutions, diminishing relevance and depressing the incentive to engage on the part of both individuals and institutions.

In their meta-research, Dennis Friess and Christiane Eilders note that the majority of research into online engagement focuses on the effects of specific platform design on the individual (i.e., how the design affects the participation process: design-process).[80] However, they argue, there are relatively few studies that assess "how the process of deliberation shapes the outcomes of deliberation (process-results)," and fewer still that analyze all aspects of digital participation (i.e., from input, to deliberation, to output; design-process-results).[81] Echoing Friess and Eilders, Tiago Peixoto and Jonathan Fox point out that "while growing media coverage of ICT-enabled voice platforms is often enthusiastic, social science research on the dynamics and impacts of these initiatives lags far behind, and the limited existing evidence does not yet support unqualified optimism."[82] They argue that limited research has focused on tracing citizen inputs to

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[79] "Evaluating Digital Citizen Engagement," 23.

[80] Dennis Friess and Christiane Eilders, "A Systematic Review of Online Deliberation Research," *Policy and Internet* 7, no. 3 (2015): 319, DOI: 10.1002/po3.95.

[81] Friess and Eilders, "A Systematic Review of Online Deliberation Research," 319.

[82] Tiago Peixoto and Jonathan Fox, "When Does ICT-Enabled Citizen Voice Lead to Government Responsiveness," (Background Paper: Digital Dividends, World Development Report, 2016), 4, available at: http://pubdocs.worldbank.org/en/835741452530215528/WDR16-BP-When-Does-ICT-Enabled-Citizen-Voice-Peixoto-Fox.pdf.

legislative outputs, so there is no clear evidence as to whether these online systems have "teeth," other than in their ability to support government transparency.[83]

That said, there are many advantages to online engagement that might be enhanced with better design and greater integration into political and governance practices. Capella, Price, and Nir find, for example, "that participation in online discussion is likely to produce a greater repertoire of argument, including greater awareness of the reasons behind opposing views."[84] Furthermore, Davies et al. highlight the benefits of "asynchronous communication," which affords participants the opportunity to contribute to the discussion at the time that suits them best, thereby reducing barriers to entry and promoting more inclusive and diverse dialogue.[85] Janssen and Kies provide further support for asynchronous communication as a process that yields more thoughtful contributions (as opposed to instantaneous communication via chat rooms, where conversation is more likely to become derailed).[86] ICT-enabled public engagement "reduces the costs of participation by tapping into existing technology, reducing the need to be present at fixed times, (or) incur venue costs both for the citizens and the intervention."[87]

As we move from theory to practice, our recommendations for both legal framework and platform design explicitly seek to advance the use of public engagement to improve governing as a primary goal. Recognizing that others might have different objectives in mind or may not be confident in the ability to leverage engagement to improve outcomes, we recommend public discussion and debate about the purposes of engagement and the tradeoffs that come when designing for one goal over another.

For additional resources on both the theory and practice of engagement, please see the bibliography in *Appendix V*. The bibliography focuses on engagement in lawmaking and includes some additional general resources as well.

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[83] Peixoto and Fox, "When Does ICT-Enabled Citizen Voice Lead to Government Responsiveness," 5.

[84] Ibid., 332.; Joseph N. Cappella, Vincent Price, and Lilach Nir, "Argument Repertoire as a Reliable and Valid Measure of Opinion Quality: Electronic Dialogue During Campaign 2000," *Political Communication* 19, no. 1 (2002), DOI: 10.1080/105846002317246498.

[85] Friess and Eilders, "A Systematic Review of Online Deliberation Research," 325.; Todd Davies, Brendan O'Connor, Alex Cochran, Jonathan J. Effrat, Andrew Parker, Benjamin Newman, and Aaron Tam, " An Online Environment for Democratic Deliberation: Motivation, Principles, and Design," in *Online Deliberation: Design, Research and Practice*, ed. Todd Davies and Seeta Pena Gangadharan (CSLI Publications/University of Chicago Press: 2009), available at: https://arxiv.org/abs/1302.3912.

[86] Friess and Eilders, "A Systematic Review of Online Deliberation Research," 319.; Davy Janssen and Raphael Kies, "Online Forums and Deliberative Democracy," *Acta Politica* 40, no. 3 (2005), DOI: 10.1057/palgrave.ap.5500115.

[87] "Evaluating Digital Citizen Engagement," 22.

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6. Crowdlaw Case Studies

This section summarizes findings from analyzing 25 examples of public engagement in lawmaking using an original taxonomy. An expanded taxonomy is discussed in Section 8 and expanded case study descriptions are available in Appendix 1.

To identify relevant cases of crowdlaw in action, we solicited advice from Podemos regarding the cases they had reviewed in developing their draft law, as well as from our team of advisors. In addition, we drew upon existing knowledge bases, including the Open Government Partnership, Participedia and the GovLab blog. We reviewed dozens of cases from across the globe and selected 25 for in-depth analysis (Figure 9). Aggregate data about the cases is offered in this section, with extended summaries of the cases in *Appendix I*.
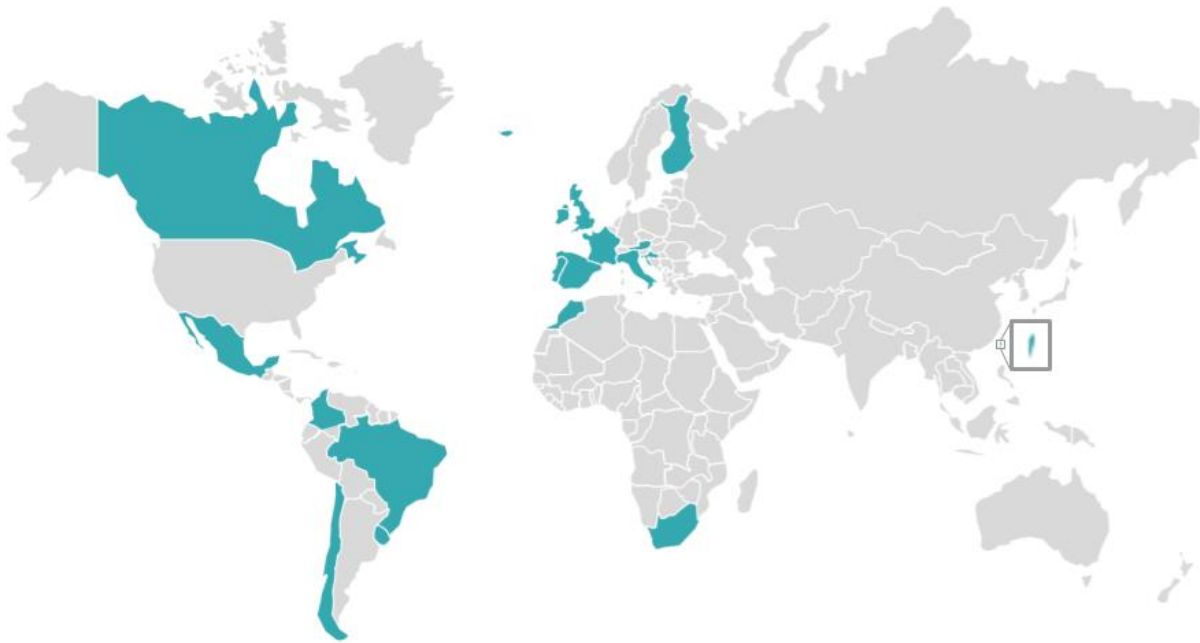
Figure 9: Mapping 25 case studies, which span 5 continents and 21 countries.

These case studies were chosen to provide a diverse survey of crowdlaw practices at different levels of government, including both municipal, regional or provincial, and national models. We also sought to profile systems where the public is asked to participate in different ways that range from commenting to drafting. Finally, we included some engagement examples that fall outside the narrower crowdlaw definition because they offer instructive lessons.

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Taxonomy overview

Throughout our research, we documented salient features of crowdlaw initiatives, cataloguing and comparing them based on six factors. (In Section 8, we describe an expanded 11-factor taxonomy to use for future, more in-depth research):

Factor	Inquiry	Answer types
Task	What is the participatory task?	ideas, proposals, expertise, opinions, actions, evidence and facts
Method	What does the process entail?	open call, consultation, discussion forum
Stage	At what stage of the lawmaking process is engagement sought?	agenda-setting, proposal-making, drafting (text, comments), implementation, evaluation
Platform	What kind of interactions does the platform enable?	web, platform, mobile
Legal framework	Is the process subject to a formal legal process?	yes / no
Evaluation	Is there an evaluation process for assessing the impact of the crowdlaw initiative?	yes / no

We have endeavored to comment on the successes and challenges for each model. These aggregated findings provide the basis for our recommendations in Section 2. We present organized information about the 25 case studies *Appendix I: Case studies* as well as in the *Case Study Repository*. We are continuously adding cases and updating information about existing cases and invite suggestions and corrections to these resources.

As crowdlaw initiatives proliferate and differentiate, we expect that a broader array of examples will become available for each phase of the legislative process. But for now, the activities in our 25 cases break down as follows:

1) Task: 23 out of 25 cases solicited ideas or proposals from participants. Six sought evidence or expertise in one form or another. Seven platforms allowed for drafting of

legislative text and only one process provided a specific action other than drafting for the public to do.

2) Methods: 18 cases held hosted consultations, in the sense that the government structured the crowdsourcing opportunity (e.g,. for a specific government purpose, like working on a consultation sponsored by a representative or seeking input for a constitution) or else narrowed the call thematically or in terms of subject focus. Nine platforms had an "open call" capacity where participant input did not respond to a specific platform request, and 12 platforms had standard discussion fora.

3) Stage: The majority of cases covered the *propose* and *comment* stages, 19 and 18 cases, respectively, whereas there were relatively fewer examples of citizen involvement in the *implement* and *evaluate* stages. Examples of citizen involvement in the *evaluate* stage were focused more on monitoring outcomes than on evaluating the impact and effectiveness of an implemented law.

4) Platform: 21 were websites, 2 were mobile applications, and 10 provided some form of offline engagement.

5) Legal framework: 6 cases had a law formally associated with the process.

6) Evaluation: We found no institutionalized practices for assessing the quality of laws developed with crowdlaw in contrast to those developed without public input.

7. Recommendations: supporting cases and further considerations

In this section we expand upon the recommendations in Section 2 by listing the case studies that contributed to each recommendation. We have endeavored to summarize lessons learned and translate those insights into design principles.

What follows is a shortened summary of the high-level recommendations, followed by detailed recommendations and considerations for each.

Clarify the <u>Demand</u> for Participation

1. Optimize for institutional as well as public engagement.
2. Design to achieve the desired goal.
3. Identify who will manage the process.
4. Plan for use, not only solicitation.

Increase the <u>Supply</u> of Public Participants and Information

5. Focus on incentives. Ask "why should a member of the public participate?" and get the answer by talking to and surveying potential users.
6. Explain clearly how to participate.
7. Respect privacy and authenticate users when needed.
8. Communicate the outcome of final decisions.
9. Diversify engagement opportunities and diversify who participates.

<u>Experiment</u> and <u>Improve</u>

10. Test what works and iterate.

Clarifying the demand for participation	
1. Optimize for institutional as well as public engagement.	Crowdlaw designers concentrate on making public input easy for individuals, but to be successful any process also needs to make input useful to institutions. Therefore, consider the needs of the government and public servants and create platforms and processes that account for obligatory and acculturated processes and the staff's capabilities. This principle does not rule out changes to legal procedures or the hiring of staff with relevant skills to enable public participation, but there must be a workflow that makes the inputs from participation usable.

Related considerations and examples

Facilitate use by government actors: Legislators and staff who understand the potential of crowdlaw for their work, relationship with citizens, and democratic governance may cooperate more with the process. Legislators are key stakeholders and should help to shape the system to complement institutional needs. If their participation remains lacking, despite this knowledge, system administrators can pinpoint possible improvements for making public participation more legislator-friendly.

- **Parlement & Citoyens**' consultations with citizens are sponsored by a representative inviting citizens to collaborate on a draft legislative proposal. The platform also offers 3-5 stages that are modular for each process. Facilitating the legislator's involvement on the platform by creating flexibility ensures encourages useful outputs.
- Of the two million petitions submitted on the White House's **We the People** e-petition platform, not one can be directly tied to a government action, arguably because a petition with no supporting documentation creates, rather than alleviates, work for public officials. Such a platform is not well-designed to enhance decision-making, nor does it create an established process for channeling the right information to the right policymakers.

Platform to institution pipeline: Whether government uses outputs from the crowdlaw process, and how, is integral to shaping an effective crowdlaw initiative — one that is actually useful! When government guarantees action on process outputs it not only boosts incentives for the public to participate (because they know they will be heard), but it also helps transform outputs into outcomes through the government's engagement with the public contributions.

- **vTaiwan** participants engage in a series of on-going deliberations with each other and with representatives. If consensus is reached on an idea, the government must either adopt the idea or provide a response as to why the idea is not feasible. Although the

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platform is independently-run, it coordinates consultations and it has been integrated into an institutional pipeline through the review process.

- The City Council of Reykjavik reviews the 12-15 most popular proposals from the **Better Reykjavik** platform every month. About 13% of the population is on the platform. As of 2016, the City Council had processed over 1,045 ideas.

Clarifying the demand for participation	
2. Design to achieve the desired goal.	Public engagement has the potential to foster democratic legitimacy, build social cohesion, increase government accountability, and improve the quality of legislation. An engagement process that asks people how they feel about a draft bill accomplishes a different purpose from a process that asks them, for example, to supply data to inform the crafting of the bill, or that invites them to use cellphones to monitor its implementation. The choice of goal will dictate what constitutes a successful system and the information or action that is sought from the public.

Related considerations and examples

Solicit ideas and more: Believing that participants can contribute only ideas limits the possibilities for a community's participatory culture. People can do more! Almost none of the cases reviewed had mechanisms for asking participants to perform a task or action (except to contribute draft text in some cases), or to contribute research or expertise on a subject. There are too few instances where citizens are encouraged to bring expertise or skills to the crowdlaw process.

- Only two cases clearly welcomed academic research or evidence. Participants on **Parlement & Citoyens** may submit academic research, and the **UK Parliament's Evidence Checks** explicitly call for evidence and research relevant to draft policies.
- The only example of requesting an action from participants, **Ley 3de3** tackled corruption by mobilizing over 200,000 Mexicans to ask representatives to make declarations about their assets, potential conflicts of interest, and taxes.

The goal should dictate "the ask": If the goal is to obtain implementable proposals, do not ask merely for ideas. Ask, for example, for ideas supported by evidence (especially if such evidence will be needed to determine the viability of the proposal).

- In the case of **Peer to Patent**, which was engagement by an administrative agency rather than the legislative branch, the United States Patent Office asked participants to supply

information that would help a patent examiner determine whether an invention met the criteria for a patent. They did not, however, ask for people's opinion about the patent, since that would have been legally irrelevant to the decisionmaking process.

Clarifying the demand for participation	
3. Identify who will manage the process.	One finding that consistently emerged from our analysis of global cases was that moderating the discussion during engagement is crucially important. Poor moderation can quickly derail the process and leave participants confused and frustrated. Although peer-to-peer community moderation can help to distribute the work by inviting the public to moderate one another, such as by upvoting and downvoting and flagging contributions as spam or abusive. The plan must also include a professional team to respond and explain how input will be used. This is an important part of the bridge connecting the public and government participants.

Related considerations and examples

Professional teams: Systems with dedicated professional teams can better aggregate the content generated by users, especially to streamline participation for subsequent participants as a platform scales. Additionally, such teams can accelerate the rate of government response.
- **LabHacker/E-Democracia** in Brazil uses 200 volunteer legislative consultants to serve as "technical translators" between citizens and representatives and ensure that input meets legal requirements.
- Similarly, the process on **Parlement & Citoyens** is facilitated by volunteers. The same directive applies to offline engagement: **Ireland's We the Citizens** public assemblies ran successful regional meetings in large part because of the role of skilled moderators.

Long-term viability: The multi-step process on **Parlement & Citoyens** is facilitated by volunteers, as is **vTaiwan**'s consultation process. Despite the success and reputation of these platforms, both face issues of sustainability and scalability given their dependence on volunteers. As of now, the most promising long-term model is institutionalization, both for the impact of the crowdlaw, and for the sustainability of the platform and process.
- When user traffic started increasing on the **Citizens Initiative platform in Finland**, the platform was passed from the NGO who had run it up to that point (Avoin Ministeriö) to the Ministry of Justice. This enabled the platform to scale.

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Clarifying the demand for participation	
4. Impact of public input	Public engagement without an institutional learning mechanism for taking outside contributions onboard and integrating them is frustrating for all involved. By analogy, government can open and publish its public procurement data, but such transparency does not in itself reduce corruption. Rather, public institutions have to learn how to use such data to change how they buy goods and services. Similarly, capacity must be built within legislatures to curate and use public input. This might require changes to the current processes by which legislation is proposed, drafted, negotiated, and implemented. As important as soliciting public input is, there must be a corresponding learning mechanism for redesigning how the parliament operates to make beneficial use of engagement.

Related considerations and examples

Plan for use: On Irekia, the Basque region's engagement portal, there is no standardized point at which a citizen proposal merits institutional response, nor is there a threshold to indicate whether a proposal is viable. This does more than create ambiguity around exactly what it takes for an institution to engage with a proposal — if there is no plan for how to utilize citizen input to impact the community, it risks the platform being more ornamental than impactful.

Impact Analysis: To ensure that participation has an impact on the quality or impact of a law or policy, that impact must be measured in some way. To our knowledge, none of the cases examined have built-in evaluation processes, although some are openly tracking and releasing metadata about the process (e.g., Legislation Lab's user statistics).
- Regulatory Impact Analysis (RIA) is a framework for assessing the impact of regulation and is a key approach for evidence-based policy-making.[88] Practices like RIA can inform the design of impactful crowdlaw initiatives, shedding light on the effects of (1) the solicitation of bringing the public participation, and (2) the laws resulting from crowdlaw processes. Many governments use RIA. The UK provides agencies with an impact assessment toolkit, and RIA is the first step of the Canadian regulatory development process.[89]

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[88] "Regulatory Impact Analysis," *OECD*, 2016, accessed June 26, 2017, http://www.oecd.org/gov/regulatory-policy/ria.htm.

[89] "Guide to the Federal Regulatory Development Process," *Government of Canada*, April 17, 2014, accessed June 26, 2017, https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/guide-federal-regulatory-development-process.html#t33.

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Increasing the supply of public participants and information	
5. Focus on incentives. Ask: "why should a member of the public participate?" and get the answer by talking to and surveying potential users.	Crowdsourcing literature indicates that perceived meaningfulness and fairness are critical to the quality of contributions and the viability of crowdsourcing platforms. The onus is on managers not only to design a process that can have meaningful impact on government, but to articulate for the public their potential for impact, while making it easy for them to do so. In other words, make the rationale for participation explicit and "sell" the reasons to participate through both good design and clear explanation.

Related considerations and examples

Ease of use: Processes that orient their users lower the barriers to participation while informing participants about how and why they should be involved. A best-in-class communication strategy, explaining how and why to participate, can overcome public reluctance to join the project.

- In South Africa, the newly established post-apartheid government explicitly mandated an inclusive constitution-drafting process (**CAPP**). Three months into the campaign to redraft its constitution, agencies conducted surveys to assess which areas needed more attention, resulting in a Constitutional Education Programme. For many South Africans, "it was the first time they were able to interact directly with their elected representatives. It elicited nearly 1.7 million submissions [...] and meetings reach[ed] approximately 95,000 people."
- Conducting surveys, as the City of Madrid does, can identify problem areas. A survey of 482 users who had not registered for **Decide Madrid** found that 11% said participation was pointless, and 27% said they lacked of time to participate - the most common reason cited for non-participation. Any platform and process should be easy to use. If an individual cannot quickly engage on a platform, it will be very difficult to overcome that reluctance through other incentives.

Inform citizens' decision to participate: Our research suggests that a clear plan and purpose for the process can at least allow participants to make the value judgement whether to participate or not. The public needs to be given sufficient information to decide whether participating is worth their time (hopefully it is). This may seem intuitive, but many platforms were not able to communicate the plan, purpose, or pipeline for participation.

<u>Identify and use effective incentives:</u> Crowdlaw literature, as well as research in public participation and crowd science, is beginning to rigorously explore incentives for participation.

- To start, three promising incentives to promote participation are:
    - Making a contribution the participant finds meaningful: Research indicates that meaningful work can incentivize participation. One study that asked 271 subjects to label tumor cells. 115 subjects ultimately participated. One group was given the context for the labeling task — to help cancer researchers — while the other was given no context. The study confirmed that providing context to users for their task made it more meaningful, and induced more participants to complete the task. (The quality of the work performed was not affected for either group.)[90]
    - Feeling a sense of belonging to a community: studies of three crowdsourcing platforms found that "community building is essential to sustain crowdsourcing platforms because participants contribute when they see themselves as community members and feel a sense of belonging through their meaningful contribution."[91]
    - Fairness as a consideration when participating: Franke, Keinz, and Klausberger found across two crowdsourcing simulations that "[i]t is still clear that individuals do not base their decision to participate in crowdsourcing solely on self-interest expectations; they also consider the fairness (or unfairness) of the system."[92]
- On the other hand, in **Portugal**, participants' perception that their voices or opinions were heard by government representatives was not found to be a driver of participation. The study of 260 Portuguese subjects found "no statistically significant association between political participation and the study participant's perception that government representatives heard ($p = 0.769$) or considered ($p = 0.810$) their opinions."[93]
- Further research should be done on the influence of a binding crowdlaw process versus a non-binding one as an incentive to participate. If citizens know their contribution will result in government response or action, participation may be more meaningful and impactful. On **Decide Madrid**, the section where users can make proposals is much more

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[90] Dana Chandler and Adam Kapelner, "Breaking Monotony with Meaning: Motivation in Crowdsourcing Markets," (*Journal of Economic Behavior & Organization*, 2013, 90): 123–33.

[91] Helen K. Liu, "Crowdsourcing Government from Multiple Disciplines," (*Theory to Practice*, 2017): 7. See also: Simone Ashby, Julian Hanna, Ian Oakley, Tatiana Vieira, Filipe Abreu and Pedro Campos, "Citizen X: Designing for Holistic Community Engagement," *Paper presented at the 11th Biannual Conference of the Italian Chapter of SIGCHI, Rome*, September 2015: 28–30.
Lisa Schmidthuber and Dennis Hilgers, "Unleashing Innovation beyond Organizational Boundaries: Exploring Citizensourcing Projects," (*International Journal of Public Administration*, 2017).
David Askay, "A Conceptual Framework for Investigating Organizational Control and Resistance in Crowd-Based Platforms," Paper presented at the 50th Hawaii International Conference on System Sciences, Waikoloa, HI, January 4–7.

[92] Nikolaus Franke, Peter Keinz and Katharina Klausberger, "Does This Sound Like a Fair Deal? Antecedents and Consequences of Fairness Expectations in the Individual's Decision to Participate in Firm Innovation," (*Organization Science*, 2013, 24:5): 1500.

[93] Vanda Carreira, João Reis Machado and Lia Vasconcelos, "Engaging Citizen Participation—A Result of Trusting Governmental Institutions and Politicians in the Portuguese Democracy" (*Social Studies*, 2016, 5:40): 3.

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popular than the discussion section because proposals are binding and have the potential to create change, whereas discussions are simply fora for (non-binding) discussion.

Increasing the supply of public participants and information	
6. Explain clearly how to participate.	The legislative process is complex, with many more bills proposed than ever become law. Therefore, a successful public engagement must explain the process and what is being asked of the participant, including setting out thresholds for action, such as the number of signatures required or what it takes for a comment to be considered. Crowdsourcing literature indicates that when "average participants" are "asked to perform technical tasks with specific instructions and detailed job classifications, their performance is equal to or better than the performance of experts."

Related considerations and examples

Targeted guidance: Provide information that helps participants understand how to participate, and to understand how that participation relates to government action (or inaction). They should understand how to use the platform, and understand the mechanics of the process. This will make the crowdlaw initiative more accessible, keep citizens from being disillusioned with or misled by the process, and make participants lives easier.

- In the annual "Help Cut Red Tape" reports of British Columbia's **GovTogetherBC,** the government clearly details popular ideas for streamlining government, statistics about the participation process, and ideas submitted along with the government action taken on the issue.
- **Lisbon Participatory Budgeting** process drove votes from 2,800 in 2008 to 29,000 in 2012 by increasing the presence and clarity of the process, such as adding a feature allowing citizens to track the state of implementation of successful proposals, setting up mobile participation booths, and even touring the city with a "Participatory Budgeting Bus."

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2016 Actions to Reduce Red Tape in B.C.¹

Idea Submitted	Government Progress and Next Steps
Streamline community gaming grants application process	*The Ministry of Community, Sport and Cultural Development has recently streamlined the grant application process. The process is described on the Gaming Grant Program website at: https://www.gaming.gov.bc.ca/grants/index.htm*
Improve hazardous materials storage license process	*The B.C. government has put a new Structured Application Process in place for the storage of hazardous materials. The Ministry of Environment has also started a review of the new policy, processes, and procedures for handling applications.*
Provide clarity on hazardous waste applications	*The Ministry of Environment recently completed a project to improve the process for managing hazardous waste applications. This project is now being rolled into the larger Environmental Management Act Applications project currently underway, and scheduled to conclude in spring 2016.*
Modernize submission process for maps related to environmental permits	*Applicants are encouraged to submit digital maps to streamline permit approvals, and further work is underway to modernize the application processes.*
Increase public outreach in Environmental Assessment Office processes	*A discussion with citizens and stakeholders about improving public consultation in the Environmental Assessment Office recently concluded, with an aim to identify opportunities for improved outreach, and enhance the quality of information that results from public consultation. Find out more about the project at: http://engage.gov.bc.ca/environ-mentalassessment/*
Allow rural property owners to obtain their statement balance online	*The Ministry of Finance is in the process of moving programs, such as online statements for rural property owners, to the new eTax system. The ministry also introduced online balances in January 2016.*

Figure: GovTogetherBC's Help Cut Tape Report connects ideas submitted by citizens with specific government action on the topic.

<u>Prep the public to participate</u>: When asked about challenges to citizen engagement in the legislative process, parliamentarians repeatedly worried that citizens would not understand the issues at hand nor the legislative mechanisms to address them.[94] For instance, one parliamentarian stated that if they could not get their head around complexities in the budgeting process, how could the public understand them to the point where they could contribute?[95] While it may not be necessary for a citizen to understand every intricacy, priming them to engage on an issue in an informed way benefits all. Overall, crowdlaw can do a better job of quickly and effectively priming citizens to engage, whether by generating excitement, quickly getting them up to date on an issue, or making real legislative mechanisms more comprehensible.

- Building engaging and effective civic education into the process is resource intensive, but research shows that it is worthwhile. As Bryer and Cooper note, "Low-quality participation may be attributable not to (or not only to) the capacities and ability of the citizen but to the design and implementation of the process itself."[96]
- **Aragon Participa,** the Spanish region's engagement platform, has a 3-phase process for consultations that begins with an initial information phase that educates citizens about the issue at hand in the consultation. This prepare citizens to partake in the debate and proposal phase, as well as the return phase in which they are told the outcome of the process.

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[94] ParlAmericas Takeaways - see Appendix II.

[95] Conversation with a delegation at the ParlAmericas conference. In Lisbon, citizens themselves recognize this potential issue. Citizens report dissatisfaction with the number of low quality proposals, the unguided online discussion, and perceived lack of transparency and feedback on rejected proposals. This specific feedback can be directly addressed through teaching.

[96] Thomas A. Bryer and Terry L. Cooper, "H. George Frederickson and the Dialogue on Citizenship in Public Administration" (Public Administration Review, 2012, 72): S111.

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- **Citizen Assemblies on Brexit,** held in the UK, will invite citizens to two public deliberations, and will provide experts and campaigners from both sides of the debate on contentious issues to help them better deliberate.[97]

Increasing the supply of public participants and information	
7. Respect privacy and authenticate users when needed	Although it is technically possible to certify residency or identity, decide whether and when such hurdles are necessary. For example, if the goal is to get the best ideas to solve a problem, does it matter where they come from? In order to direct opportunities to participate to people based on their interests, a voluntary request for information might be welcome where involuntary data collection on people's preferences may not.

Related considerations and examples

Anonymity and quality: Empirical evidence suggests that "the decision regarding identification or anonymity has to be balanced between discussion quality and quantity. Although anonymity is able to increase the quantity of participation, it simultaneously lowers the quality of the content." Citizen status is particularly relevant in driving participation when the output of a system is binding on government (e.g. if a crowdlaw process resembles voting or a referenda more so than a non-binding suggestion box for ideas).[98]

Binding processes call for more authentication: Some platforms use a tiered authentication system based on the nature of the participation (e.g., browsing proposals on the platform versus voting on a proposal with guaranteed government action).
- Because Reykjavik's City Council is obliged to consider the most popular proposals on **Better Reykjavik**, participants are authenticated using an electronic ID or password delivered through the citizen's online bank to ensure one-citizen-one-vote.[99]
- Tiered authentication can determine actions a **Decide Madrid** user can take.

[97] Sarah Allan, "The Citizens' Assembly on Brexit: Public to debate UK's exit terms," *Involve*, July 12, 2017, accessed July 25, 2017, http://www.involve.org.uk/2017/07/12/citizens-assembly-brexit-public-debate-uks-exit-terms/?utm_source=Involve+Newsletter&utm_campaign=44d3d31560-EMAIL_CAMPAIGN_2017_07_11&utm_medium=email&utm_term=0_712261e4e1-44d3d31560-6266&mc_cid=44d3d31560&mc_eid=9472823414

[98] Friess and Eilders, "A Systematic Review of Online Deliberation Research," 326.

[99] Elettra Bianchi Dennerlein and Francesca Bria, "Pilots in Iceland: boosting bottom-up municipal democracy," Nesta Blogs, December 19, 2014, accessed July 17, 2017: http://www.nesta.org.uk/blog/pilots-iceland-boosting-bottom-municipal-democracy

- ○ (1) Unregistered users may browse site content.
- ○ (2) Basic verified users — verified through residence data and a mobile phone number — can post in discussions as well as create and support proposals.
- ○ (3) Completely verified users — verified in-person or via mail — can do all of those actions plus vote on proposals.

User privacy and protection: Participants in a crowdlaw initiative should be able to securely transmit any and all information, be it personal data or a vote on a proposal, which blockchain can facilitate.[100] Governments are beginning to experiment with secure blockchain technologies in order to protect public information.[101] The Swedish, Estonian, Ukrainian, and Georgian governments are integrating blockchain into their land registry systems.[102]

Increasing the supply of public participants and information	
8. Communicate the outcome of final decisions.	Public officials should respond to contributions and endeavor to communicate regularly about outcomes. Even if the public is invited only to participate in making proposals at the outset, create a mechanism to share final outcomes.

Related considerations and examples

Triggering feedback: A public engagement system should be as responsive as possible. Junctures where feedback makes sense are starting to emerge from the case studies. Researchers highlight the importance of keeping users informed throughout the process regarding how their inputs are being utilized. They also urge prompt publication of results following the participatory process.[103]

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[100] For introductory blockchain resources see:
- Dan Tapscott and Alex Apscott, *Blockchain Revolution: How the Technology Behind Bitcoin Is Changing Money, Business, and the World*, (Penguin Group, 2016).
- Steve Cheng, Matthias Daub, Axel Domeyer, and Martin Lundqvist, "Using blockchain to improve data management in the public sector," *Digital McKinsey Insights*, February 2016, accessed June 25, 2017, http://www.mckinsey.com/business-functions/digital-mckinsey/our-insights/using-blockchain-to-improve-data-management-in-the-public-sector?cid=eml-web.
- "How blockchains could change the world," *Digital McKinsey Insights*, May 2016, accessed June 25, 2017, http://www.mckinsey.com/industries/high-tech/our-insights/how-blockchains-could-change-the-world.

[101] E.g. Alison DeNisco, "Why blockchain could be your next form of ID as a world citizen," *TechRepublic*, June 20, 2017, accessed on June 25, 2017, http://www.techrepublic.com/article/why-blockchain-could-be-your-next-form-of-id-as-a-world-citizen/.

[102] Gertrude Chavez-Dreyfuss, "Ukraine launches big blockchain deal with tech firm Bitfury," *Reuters*, April 19, 2017, accessed June 26, 2017, http://www.reuters.com/article/us-ukraine-bitfury-blockchain-idUSKBN17F0N2.

[103] OECD, *Promises and Problems of E-Democracy: Challenges of Online Citizen Engagement*.

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- **Parlement & Citoyens** publishes a final report at the conclusion of a consultation. By receiving a review of the process's outcome and implications, participants can understand how the process will move forward, as well as when and how their feedback was used.
- Although no longer operational, **ePart** stressed the importance of closing the process loop. The platform, which allowed users to submit comments and concerns on committee hearings topics about to reach the Knesset, reported back on the outcomes of hearing discussions, linking outcomes to specific user comments or trending hashtags where applicable. (See Appendix I for more information.)

Transparent practices: Participants of **vTaiwan** engage in *on-going* deliberations with each other and with representatives of relevant government ministries. Participants know that if consensus is reached, the Taiwanese government must either adopt the idea or provide a response why the idea is not feasible. **GovTogetherBC** publishes the results of every engagement. On the other hand, the **Irekia** system in Spain's Basque region lacks thresholds specifying when citizens' proposals receive a government response or are deemed actionable, creating ambiguity around what it takes for government to actually engage with a citizen proposal.

Increasing the supply of public participants and information	
9. Diversify engagement opportunities and diversify who participates.	Empirical research suggests that participation opportunities may be failing to attract diverse participation. Ensuring participation by diverse members of the public is hard work, including investment in campaigns to recruit and give voice to the voiceless.

Related considerations and examples

Diverse participation requires explicit action: Podemos's draft law outlines specific opportunities for groups to participate in lawmaking on issues of special significance (e.g., targeting specific economic, social, environmental, cultural, gender, or territorial issues). This is critical to bringing underrepresented populations into the process. Few systems we examined took active steps to target populations; the homogeneity in participants affirms that active steps are likely required.

Diversity is a common, but not insurmountable, challenge: Empirical research reflects the difficulty in attracting a broad range of the population. This is a particular concern given the broad nature of the processes reviewed; if a crowdlaw process aims to consult the expert public on a topic, it is intuitive that participants will be more homogenous. However, issues in representation in these general participation opportunities signal systemic issues for attracting

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diverse participants. The goal is typically to match the demographics of the participants with those of the affected jurisdiction, or to boost participation from marginalized groups.

- Citizen councils that consult with the local junta in Montevideo's participatory decentralization program are, perhaps unsurprisingly, mostly comprised of junta supporters, and lacking representation from the poor and uneducated.[104] A survey of 4,500 participants on Parlement & Citoyens showed that 77% were male, 82% had received higher education, and 25-34 was the most represented age group.
- On the other hand, Better Reykjavik sees a well-distributed age profile among ~16,000 participants (50% are 36-55, 30% are 16-35, and 20% are older than 56). This may be a result of Iceland's high technology adoption. Participant is biased towards university educated and with higher salaries. Other detailed demographics are unavailable.

Online and offline: 8 of the 26 case studies offered both online and offline engagement opportunities.

- **Madame Mayor, I have an Idea**, the Parisian participatory budgeting program, is increasingly seeing users vote offline rather than online. In the first round of voting in 2014, 60% of people voted online. By 2016, less than one-third of votes were cast electronically (suggesting a shift in *who* participated, as well). This is credited to "a huge number of offline workshops, groups and civil society-led activity which galvanises participation at a local level."[105]
- **Better Reykjavik** provides an example of running a platform when there is no digital gap: 70% of the population owns a mobile device and 93.5% of the population uses the Internet.[106] This simplifies user tracking and the communications strategy (all through social media and online). In a highly technically connected population, creating an accessible platform has different issues from the same goal in communities with lower rates of technology adoption.[107]
- In addition to an online web portal that allows the public to submit proposals, participate in dialogue, and engage in participatory budgeting activities, the creators of **Decide Madrid** established 26 Citizen Service Offices. These offices are dispersed throughout the city and allow residents the opportunity to voice their opinions in person, if they so choose, in addition to or instead of engaging online.

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[104] "Participatory Decentralization in Montevideo," *Participedia*, accessed July 26, 2017, http://participedia.net/en/cases/participatory-decentralization-montevideo#[6]

[105] Julie Simon, Theo Bass, Victoria Boelman, and Geoff Mulgan, "Digital Democracy: The tools transforming political engagement," Nesta, February 2017, accessed June 26, 2017, available at: http://www.nesta.org.uk/sites/default/files/digital_democracy.pdf.

[106] Laura M. Steckman, Marilyn J. Andrews, *Online around the World: A Geographic Encyclopedia of the Internet, Social Media, and Mobile Apps*, (ABC-CLIO, 2017): 93-94.

[107] "Smarter Crowdsourcing against Corruption — Session 3: Citizen Engagement," *The Governance Lab*, June 27, 2017.

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Communication and outreach strategies: Programs sometimes implement wide-reaching communication strategies that can help increase awareness of, and participation on, a crowdlaw platform.

- The redrafting of the **South African Constitution** included an extensive communication strategy that distributed four million copies of the draft constitution in the drafting phase, and seven million copies of the final document, including illustrated guides for non-literate portions of the population. (An early survey of areas disconnected from the redrafting campaign helped to find areas that needed such communiqués).

Outreach and trust: experiences and randomized-control trials demonstrate that the most effective way to engage with marginalized individuals and communities is to reach out to them through organizations already working with them. J-PAL has found that if the organization deploying a new tool or platform is not well-known or trusted by the community, it is not likely to succeed. Instead, partner with a local NGO or trusted community leader to deploy the program.[108]

Experiment and improve	
10. Test what works and iterate.	Crowdlaw is a new phenomenon. In order to accelerate adoption, more research is needed, necessitating that practitioners and researchers collaborate to design experiments. Research can involving natural experiments to observe how the platform works, who participates, and how. Simple analytical software can generate data that platform owners and others can use to study a crowdlaw initiative. Always ensure that such administrative data is open and available. In addition, consider running simple controlled trials by dividing participants into two groups and presenting them with alternative experiences.

Related considerations and examples

A/B testing: A/B testing can be used by managers of the crowdlaw initiative to try different ways, for example, of explaining how to participate or of testing participation's relevance at different points in the legislative process. Surveying participants provides information to develop an effective platform and process.

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[108] Discussions with J-PAL and timby.org as part of "Smarter Crowdsourcing against Corruption - Session 3: Citizen Engagement," *The Governance Lab*, June 27, 2017.

Quantifying changes: As noted above, **Lisbon** successfully increased participation in their participatory budgeting program more than tenfold thanks to a few strategic adjustments. Voting jumped from approximately 2,800 votes in 2008 to over 29,000 votes in 2012 on account of lowering barriers to participation and widely advertising the program, including by setting up mobile participation booths and touring the city with a "Participatory Budgeting Bus."

Iteration informed by data: **The Legislation Lab**, which runs a platform for collaborating on legislative texts, openly published statistics on participation in the process. The platform is still in development, but this feature is promising for understanding the contours of who is participating and generating the ideas on the system. It provides empirical information that can inform the design of the system. For instance, if the statistics turn up disparities in participation by gender, socioeconomic factors, or locality, they can inform concerted efforts to (a) bring excluded users into the process, and/or (b) ensure the process better caters to those users in subsequent iterations. **Decide Madrid** also makes such participation summary statistics readily available.[109]

8. Crowdlaw Research Agenda

In the final section, we highlight valuable directions for further research and experimentation in the crowdlaw space.

By exploiting technology to engage a broader and more diverse constituency in the process of proposing, drafting, editing and informing legislation, crowdlaw has the *potential* to enhance the effectiveness, legitimacy, and accountability of lawmaking practices and to transform fundamentally the source of authority undergirding the legislative process. Three broad hypotheses have informed our work:

- Lawmaking that is participatory is more effective because it brings more diverse ideas and information to bear.
- Lawmaking that is participatory is more legitimate because it engages broader groups of participants.
- Lawmaking that is participatory is more accountable because it subjects the process of crafting laws and regulations to greater scrutiny.

Yet as much as government of, by and for the people is an aspiration in a democracy and in every strand of participatory democratic theory, we have very little understanding of the actual impact of crowdlaw because tech-enabled engagement in parliamentary procedure is so new.

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[109] Making this information available to users may also enable them to take action on — or generate solutions to — problems with the crowdsourcing process itself!

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More specifically, we lack empirical evidence of how changes in process affect outcomes of the engagement and of how to design and use crowdlaw in order to enhance rather than denigrate the legislative process. More research is both feasible and needed, especially given the ability to run controlled trials by modifying the platforms used to run engagement processes.

Thus, in this section, we offer a sketch of a future research agenda on crowdlaw, some discussion of the methods for studying crowdlaw, and a suggested role that the Open Assembly Lab could play in supporting the research necessary to understand and evolve Spain's crowdlaw policies, platforms, and practices.

Crowdlaw: An Agenda for Research and Experimentation

Crowdlaw, of course, is based on the term *crowdsourcing*, coined in 2006.[110] Generally, crowdsourcing is the outsourcing of a function usually performed by employees of an organization to a "crowd" (people outside the organization) by means of an open call. There is a growing literature on crowdsourcing, open innovation, and the use of technology to enable group work. Scholars such as Karim Lakhani,[111] Kevin Boudreau,[112] Henry Chesbrough,[113] and John Prpic[114] and write about the role of the crowd in enabling business innovation. In its application to business and science, crowdsourcing has been shown in the management and social psychology literature, in particular, to have a demonstrable effect on the speed, accuracy, and diversity of ideas generated and on the ability to solve problems.

There are various styles of crowdsourcing, including challenges and contests, which articulate a problem, solicit many solutions and pick a winner among them. Such contests work well when it is not obvious what combination of skills or even which technical approach yield the best solution for a problem such as the TopCoder Immunogenics Challenge, which yielded 89 novel computational solutions to the stated problem in two weeks. 30 of those submissions exceeded the benchmark performance of the US National Institutes of Health and none were from academic or industrial computational biologists. But beyond spurring greater innovation through

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[110] Jeff Howe, "The Rise of Crowdsourcing," *Wired Magazine,* June 1, 2006, 1-4. Available at: https://www.wired.com/2006/06/crowds/

[111] Andrea Blasco, Olivia S. Jung, Karim R. Lakhani and Michael Menietti, "Motivating Effort in Contributing to Public Goods Inside Organizations: Field Experimental Evidence" (Working Paper No. 22189, National Bureau of Economic Research, April 2016). Available at: http://www.nber.org/papers/w22189

[112] Kevin J Boudreau and Karim R. Lakhani, "Using the Crowd as an Innovation Partner," *Harvard Business Review,* 91:4 (2013): 61–69. Available at: https://hbr.org/2013/04/using-the-crowd-as-an-innovation-partner

[113] Henry Chesbrough, Open Innovation: The New Imperative for Creating and Profiting from Technology, (Boston, MA: Harvard Business School Press, 2003).

[114] John Prpić, Prashant P. Shukla, Jan H. Kietzmann, and Ian P. McCarthy, "How to Work a Crowd: Developing Crowd Capital through Crowdsourcing," *Business Horizons* 58:1, 2015: 77-85. Available at: https://scholar.google.com/citations?view_op=view_citation&hl=en&user=yiueCGUAAAAJ&citation_for_view=yiueCGUAAAAJ:vV6vV6tmYwMC

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competition, crowdsourcing can also involve coordinating collaboration on a shared product such as Wikipedia, where the goal is to scale the number of people contributing. Finally, in addition to competition and collaboration, crowdsourcing can refer to asking a group to solve a problem to which many additive solutions are needed, such as the creation of multiple apps.

Now crowdsourcing has become part and parcel of standard practices in the public sector, too. Preliminary research shows that crowdsourcing, because it expands the number and diversity of problem-solvers, is also leading to positive outcomes in administrative decision-making, including the uses of crowdsourced information to improve the examination of patents, crowdsourced problem solving to tackle difficult questions posed by upwards of 750 federal agencies, and crowdsourcing of policy ideas.

For a robust and succinct review of government crowdsourcing initiatives we direct our readers to Helen Liu's "[Crowdsourcing Government: Lessons from Multiple Disciplines](.)"[115]

Since then other scholars have written extensively about technology-enabled engagement, most notably: Hélène Landemore,[116] Daren Brabham,[117,118] Tanja Aitamurto,[119] and Ines Mergel. The study of tech-enabled public engagement as it applies to lawmaking and the work of legislatures, however, is only in its infancy. Most notably, Cristiano Ferri produced an extensive monograph addressing the interaction between demographic underpinnings, technological innovation, and citizen participation.[120] Additionally, Landemore and Aitamurto have surveyed the process of crowdsourcing an off-road law in Finland, which provides a key assessment of participant motivations and impressions.[121]

In order to make sense of the evolving field of crowdlaw we need, as MIT professor Tom Malone et al. say about online collaboration generally, to "map the genome" of public

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[115] Helen K. Liu, "Crowdsourcing Government: Lessons from Multiple Disciplines," *Public Administration Review* (July 2017).

[116] Hélène Landemore, "Inclusive Constitution-Making: The Icelandic Experiment," Journal of Political Philosophy 23:2 (June, 2016): 166-191. Available at: https://www.researchgate.net/profile/Helene_Landemore/publication/264715817_Inclusive_Constitution-Making_The_Icelandic_Experiment/links/56ab7e4708ae8f386569b7d2.pdf

[117] Daren C. Brabham, "Motivations for Participation in a Crowdsourcing Application to Improve Public Engagement in Transit Planning," *Journal of Applied Communication Research* 40:3: 307–28.

[118] Daren C. Brabham, *Crowdsourcing in the Public Sector* (Washington, DC: Georgetown University Press, 2015).

[119] Tanja Aitamurto, "Crowdsourcing for Democracy: A New Era in Policy-Making," *Parliament of Finland, Committee for the Future* (2012). Available at: http://cddrl.fsi.stanford.edu/publications/crowdsourcing_for_democracy_new_era_in_policymaking

[120] Cristiano Ferri Soares de Faria, *The Open Parliament in the Age of the Internet: Can the People Now Collaborate with Legislatures in Lawmaking?* (Brasília: Câmara dos Deputados Edições Câmara, 2013). Available at: http://bd.camara.gov.br/bd/handle/bdcamara/12756.

[121] Tanja Aitamurto and Hélène Landemore, "Crowdsourced Deliberation: The Case of the Law on Off-Road Traffic in Finland," *Policy & Internet* 8:2 (June 2015): 174-196. Available at: http://onlinelibrary.wiley.com/doi/10.1002/poi3.115/abstract

participation in lawmaking practices.[122] That is to say, research is needed to catalog and organize systematically the different components of participatory lawmaking practices according to a common taxonomy that can be used to study them in much the same way as open innovation researchers have done for the study of crowdsourcing in business or that social psychologists have done when describing different forms of group work.[123] Given the traditionally deep distrust of groups endemic to the social psychology literature on "groupthink," which condemns the presumed tendency of groups to drift to extreme positions,[124] and the heretofore fairly poor design of engagement processes such as electronic petitions,[125] it is not self-evident that participatory lawmaking practices lead to improvement. Rather, there is a need to study them and assess whether, in fact, and under what circumstances crowdlaw impacts the lawmaking process. In this report, we have used a six-factor test for organizing and describing the case studies, but the taxonomy needs to be expanded and deepened.

Our case studies are organized by the task the crowd is asked to perform (e.g., comment or draft), the method (e.g., participatory budgeting or consensus council), the stage of the lawmaking process (e.g., agenda-setting, monitoring), the tech platform (e.g., mobile or web), the legal framework (e.g., institutionalized participation or ad hoc) and the impact (e.g., formal evaluations, if any).

As we expand our analysis of available cases and conduct more in-depth research, we would advocate looking at eleven factors in much greater detail. These would give us a more granular way to understand crowdsourcing practices and to study them. This taxonomy requires further consultation and deliberation with scholars and practitioners to refine.

[FORMAT: TABLE?]

We would propose looking at the following 11 attributes of crowdlaw:

1. **Owner:** We hypothesize that projects run and controlled by the parliament itself have better outcomes because they are integrated into the workflow of the legislature. So, we want to code each example based on who runs the process. Crowdlaw has been practiced by traditional legislatures but also by political parties and by activist groups, wanting to build a base of support for a particular piece of legislation.
2. **Audience:** We hypothesize that, in the absence of active steps to invite participation from diverse audiences, participation will be largely male and upper middle-class. Thus we

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[122] Thomas W. Malone, Robert Laubacher, and Chrysanthos Dellarocas, "Harnessing Crowds: Mapping the Genome of Collective Intelligence," (*MIT Center for Collective Intelligence Working Paper*, 2009).

[123] Richard Hackman, "A Normative Model of Work Team Effectiveness," (*Yale School of Management Research Program on Group Effectiveness, Technical Report #2,* November 1983).

[124] Richard Hackman and Nancy Katz, "Group Behavior and Performance," *Handbook of Social Psychology, Volume 2*, (Wiley: Hoboken, NJ), 2010: 1208-1252.

[125] Beth Simone Noveck, *Smarter Citizens, Smarter State*, (Harvard University Press: Boston, MA), 2015: 75-77.

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need to develop a way of describing the demographics and other attributes such as expertise of crowdlaw participants. This builds on earlier work done to 'unmask the crowd' studied a crowdsourced law-reform initiative in Finland and found that it mostly involved educated professional males.[126] A study of female participants on Change.org found that while female participation was higher than expected in "thin participation" (e.g. signing petitions) but underrepresented in "thick participation" (e.g. petition creation).[127]

3. **Incentives:** There is a great deal of social psychology and management literature on the relative value of extrinsic versus intrinsic incentives as a motivator for participating in online communities, generally, but nothing specific to the legislative process.[128,129,130] Thus, we want to know what are the most effective incentives to entice the public to engage in participatory lawmaking. To design participatory governing processes for the digital age, researchers must dig into the age-old question of human motivation. We hypothesize that clearly defined rules of procedure (guidance), an understanding of the relevance of one's participation to the ultimate outcome (relevance), and the ability to make a difference (impact) are primary motivators for repeated engagement.

4. **Task:** What is the participatory task? In some cases, the participating public is asked to propose legislation and in others to help with drafting. In other cases, legislation is written by professional staff by commented on and edited by the public. There no common understanding of the impact of task-type in a legislative crowdsourcing context. We need to understand which of these practices work better than others and the hallmarks of success and failure.

5. **Law type:** What is the type of law being produced? There are new participatory experiments involving the crafting of regulations, legislation, and constitutions, all of which have the binding force of law. We want to understand the impact of the type and political status of the law, such as comparing participatory constitution drafting with

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[126] Tanja Aitamurto, Hélène Landemore and Jorge Saldivar Galli, "Unmasking the crowd: participants' motivation factors, expectations, and profile in a Crowdsourced law reform" *Information, Communication & Society* 20:8 (2017): 1239-1260. Available at: http://www.tandfonline.com/doi/full/10.1080/1369118X.2016.1228993

[127] Jonathan Mellon, Hollie Russon Gilman, Fredrik M. Sjoberg and Tiago Peixoto, "Gender and Political Mobilization Online: Participation and Policy Success on a Global Petitioning Platform," *Harvard Kennedy School Ash Center Occasional Papers* (July 2017): 1-49. Available at: https://ash.harvard.edu/files/ash/files/gender_and_political_mobilization_online.pdf

[128] Lena Mamykina, Bella Manoim, Manas Mittal, George Hripcsak and Björn Hartmann, "Design Lessons from the Fastest Q&A Site in the West" (paper presented at Proceedings of the SIGCHI Conference on Human Factors in Computing Systems Proceedings, Vancouver, BC, Canada, May 7-12, 2011). Available at: https://people.eecs.berkeley.edu/~bjoern/papers/mamykina-stackoverflow-chi2011.pdf

[129] Kevin J. Boudreau, Nicola Lacetera and Karim R. Lakhani, "Incentives and Problem Uncertainty in Innovation Contests: An Empirical Analysis," *Management Science* 57:5 (May 2011): 843-863. Available at: http://www.hbs.edu/faculty/Pages/item.aspx?num=39248

[130] Al Mamunur Rashid, Kimberly Ling, Regina D Tassone, Paul Resnick, Robert Kraut and John Riedl, "Motivating Participation by Displaying the Value of Contribution" (paper presented at Proceedings of the SIGCHI Conference on Human Factors in Computing Systems, Montréal, Québec, Canada, April 22-28, 2006. Available at: http://presnick.people.si.umich.edu/papers/CHI06/rashidAl.pdf

participatory legislating. We should easily be able to flesh out the taxonomy to describe different types of lawmaking as well as to code for who introduced the legislation. It will be key to understand whether, when it comes to other factors such as task or audience or incentive, participatory constitution drafting holds much in common with participatory legislating.

6. **Topic:** What is the subject matter of the law being drafted? In many cases, crowdlaw processes are adopted in connection with the formulation of laws proposed by the executive and in others by those proposed by the legislative. Some are controversial bills and others quite apolitical. We can easily assess the level and quality of engagement when bills are highly contested and polarizing versus when they are not.

7. **Feedback:** What feedback is provided to participants? To understand the role that feedback plays by looking at whether and how the parliament provided feedback and the impact of such communication on whether people participate and whether they return.[131] Some crowdlaw processes have the public making contributions without a response from the institution; others involve generalized responses, and others specific feedback. The goal is to track what is taking place and which systems seem to create more incentives to join and to return, with the hypothesis that more government response and interaction will increase participation and frequency.

8. **Platform:** Tracking who is using what kind of platform, from web-based to SMS-based. We can also interview platform owners and designers to learn more about why, considering the diverse open free tools for crowdsourcing available, do some organizations prefer developing their own tool? What are the most common/effective crowdlaw' tools available? Are they based in open-source or proprietary technology? What kind of interactions have been used in crowdlaw experiments, and what results they bring about?

9. **Legislative stage:** Tracking the stage of the lawmaking process at which engagement is sought. At present, we know that most crowdlaw is taking place at the proposal-making or drafting stage. But, as more projects come online, are they occurring at other stages of the legislative lifecycle, such as monitoring or evaluation and which practices attract more and more robust participation. Although most crowdlaw practices today involve commenting on drafts, we hypothesize that unexplored territory -- namely, using the public to monitor and evaluate the impact of legislation and contribute information to developing legislative solutions prior to drafting -- are likely to be robust areas of opportunity.

10. **Timing:** How long was the opportunity to participate? What is the impact of shorter versus longer participation timeframes at different stages of the lawmaking process? For example, does having too long depress participation or does having too little time

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[131] Cliff Lampe and Erik Johnston, "Follow the (Slash)Dot: Effects of Feedback on New Members in an Online Community" (paper presented at Proceedings of the International ACM SIGgroup Conference on Supporting Group Work Proceedings, New York, NY, November 6-9, 2005). Available at: http://students.lti.cs.cmu.edu/11899/files/cp3a-p11-lampe.pdf

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increase frustration? Also, should participation be divided up into multiple phases? For example, the Ministry of the Environment and the Committee for the Future in the Finnish Parliament initiated a crowdsourced off-road traffic law reform in Finland in 2013. About 700 Finns participated in the law-reform process online by sharing their ideas, knowledge and perspectives about off-road traffic. The participants shared about 500 ideas, 4,000 comments and 19,000 votes in the crowdsourcing process. The process was divided into three phases.[132] More work is needed to compare single versus multi-stage processes.

11. **Training:** What is the impact of training? What is the impact of framing the issue of engagement prior to participation? Does providing a short tutorial on a topic increase the quality of public inputs? How can training accommodate varying learning processes and abilities? Training should not only be a consideration for citizens, but for public officials too, as they may need context to understand a crowdlaw platform or how best to make use of the crowdlaw initiative in their work. We hypothesize that training prior to engagement increases the quality of participation and usefulness of inputs received from the public.

An expanded research project will create an evidence base that can help us to understand the design elements of a crowdlaw process and to draw generalizable conclusions about when, where, and which practices produce results in line with the initiators' goals. These research results could enable legislatures to decide which forms of crowdlaw to adopt and scale.

We want to understand how to design an effective crowdlaw process and, at the same time, generate empirical insights to inform reflection about the impact of engagement on the legitimacy of lawmaking. There is always the risk that engagement exercises are mere "democracy theatre" that are employed to make institutions appear more legitimate. These kinds of participation are to real engagement as "Kabuki theatre is to human passions," writes the former general counsel of the Environmental Protection Agency (EPA), E. Donald Elliott. They are "a highly stylized process for displaying in a formal way the essence of something which in real life takes place in other venues."[133]

This so-called "crowd-washing" can be dispelled by generating meaningful insights about the effects of crowdlaw on both institutions and individuals. Do participants learn about lawmaking? Do they change their political views? Does it enhance participants' trust in politics and in government? Does it enhance public awareness of topics involved in policy discussions? Are there harmful results? Similar questions need to be asked and examined from an institutional perspective, inquiring whether institutions and those who work for them view participation as helping the effectiveness and efficiency of the system. In addition to such qualitative measures,

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[132] Tanja Aitamurto, Hélène Landemore, David Lee and Ashish Goel, "Seven Lessons from the Crowdsourced Law Reform in Finland," *The Governance Lab,* October 30, 2013. Available at: http://thegovlab.org/seven-lessons-from-the-crowdsourced-law-reform-in-finland/

[133] E. Donald Elliott, "Re- Inventing Rulemaking," Duke Law Journal 41(1992): 1490, 1492

we can, over the long run, also study the effectiveness of legislation created using crowdlaw and determine its value, using such measures as whether it was more or less subject to litigation and judicial review, whether it was eventually amended, and whether it, in fact, achieved its stated goals more effectively.

Methods for Studying Crowdlaw: *Research in the Wild*

To advance research into how real-world institutions such as legislatures could use technology to engage with the public, we need to accelerate the design and execution of experiments that will help us to understand whether, in fact, obtaining diverse public input through the Internet improves the legitimacy and efficacy of governing processes. Even more powerful forms of evaluation are possible, because these systems are run largely on digital tech-based platforms. Thus, it is possible to design experiments and instrument crowdlaw software to construct controlled trials. Technology makes is easier to accelerate the speed and scale of empirical observations and data collection.

We lack empirical evidence of how changes in process affect outcomes of the engagement and of how to design and use crowdlaw in order to enhance rather than denigrate the legislative process. **Randomized control trials (RCTs)** will shed empirical insight on how to design crowdlaw processes, practices, and policies. Scientific analytical methods from across a variety of fields, including the social sciences (especially what is called "crowd science"), data science, and systems modeling, will be used to draw insight from the collected data.

To understand how RCTs might be used in connection with crowdlaw, take a few examples. It is conceivable to have a platform that randomizes people into participation opportunities at different stages of the lawmaking process. Thus, I might be given the chance to comment on one law but elsewhere be invited to monitor implementation of the law. We could imagine testing different prompts by randomizing public participants into two groups - one that is encouraged to participate for the good of the country and another for the chance of winning a prize in an effort to understand incentives better. Take, as a third example, the question of the role that feedback plays in creating incentives to participate. We could easily imagine constructing an experiment whereby half the participants receive a reply from the parliament about how their feedback was used and half do not in an effort to measure whether such participants are more or less likely to participate again.

Previously spurned by the academic and public sector as potentially reckless, testing crowdlaw interventions using RCTs and other experimental designs, when done well and with ethical sensitivity, can help to forestall bad designs, wasted taxpayer dollars, and, perhaps worst of all, greater frustration and distrust of government.

There is sufficient innovation taking place around the world to enable more **natural experiments** during which researchers observe the differences between naturally occurring crowdlaw projects in different jurisdictions. Depth of participation differs between crowdlaw

projects, by design. For example, We the Citizens in Ireland, Participatory Decentralization in Montevideo, and the forthcoming Citizens Assemblies on Brexit in the UK all select citizens to partake in consultations, whereas other systems like GovTogetherBC in Canada, Barcelona Decidim, and Better Reykjavik have open calls to citizens. This diversity allows comparisons across projects. Of course, given the multivariate nature of crowdlaw, causation cannot be inferred with certainty in such cases. But they provide useful real-life case studies that avoid the challenges of simulating complex forms of engagement.

The Open Government Partnership and the National Democratic Institute are working across the Western Hemisphere to promote legislative transparency and openness, giving parliaments the tools, education, and support to do so.[134] OGP has generated 2800 commitments across 159 National Action Plans, which include promoting legislative openness and, increasingly, citizen engagement by parliaments.[135] Fundación Ciudadano Inteligente is managing ten transparency, accountability, and participation platforms across Chile and Brazil, including a platform under development that will enable participation in policy implementation in the local government context.[136] Additionally, organizations such as Directorio Legislativo are monitoring debates and information flows across 18 countries in Latin America, using consensus-building and partnership with advocacy organizations to increase data available on topics being legislated.

With tech-based engagement such as online engagement platforms, it also becomes easier to undertake qualitative experiments, including the dissemination of surveys and questionnaires to participants pre- and post-engagement to inquire about their motivations or to test their level of political and civic knowledge pre- and post-participation. It is also possible to inquire of participants who sign up but never participate or to ask questions of those who are more or less active participants.

As crowdlaw initiatives proliferate, it will become faster and easier to replicate these experiments at greater scale and frequency.

The Role of the Open Assembly Lab

To institutionalize crowdlaw in practice requires a parallel effort to undertake mixed-methods research to learn what works at each stage of the lawmaking process. Thus, we can envision, for example, testing myriad questions in practice as the Assembly begins to roll out new crowdlaw mechanisms. Effectively undertaking such research will require collaboration between the academy and government, to design experiments and implement them in practice.

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[134] "Legislative Openness," *The Open Governance Partnership*, 2017, accessed July 26, 2017, https://www.opengovpartnership.org/about/working-groups/legislative-openness-0

[135] "OGP Process Step 2: Develop an Action Plan," *The Open Governance Partnership*, January 2016, accessed July 26, 2017, https://www.opengovpartnership.org/resources/ogp-process-step-2-develop-action-plan

[136] Conversation with Pablo Collada, July 2017.

To advance research on crowdlaw and, in turn, assess and evolve its own crowdlaw practices, the Open Assembly Lab should therefore:

1) Create a global research advisory network to work with multidisciplinary researchers from law, political science, computer science, human-computer interaction, sociology, and other relevant fields to design ethical and implementable experiments in conjunction with the roll-out of crowdlaw practices.

2) Establish a data collection mechanism for accumulating the data thrown off by citizen engagement processes and, subject to privacy guarantees, open up that data to the research community to study.

3) Require all researchers using this data to, in turn, share their own data and results and make their methods transparent.

4) Work with the advisory network to establish data standards and a data dictionary to ensure that the resulting data can be compared.

5) Reach out to practitioners in other jurisdictions to encourage similar data standardization and sharing efforts and to catalyze research experiments across jurisdictions.

6) Create a research fellowship or grant program and invite proposals from those beyond the advisory network who wish to undertake advanced research on crowdlaw. Such opportunities should, in particular, target younger, more diverse, and interdisciplinary researchers and support collaboration between researchers and parliamentary staff.

7) Hire staff for the Assembly with training in research methods and train all staff in how and when to use RCTs and other experimental design methods so as to create a sensibility for and awareness of the value of research. Where academics cannot be brought into government, however, the Assembly should push questions and accompanying data out to them in the field.

8) Report data and relevant aggregate statistics from experiments at the Lab and other institutions to the Assembly and the Spanish public.

9) Develop and publish ethical guidelines for conducting research involving public participants. Rules on ethical but efficient administration of research need to be clarified.

10) Disclose all information collection and conduct research consistent with European and Spanish law and human rights values in order that participants know when they are participating in a research experiment.

In addition to its value for how we design democratic institutions, crowdlaw research will advance scholarship in legal academy by addressing the impact of technology on legislative processes. Second, by advancing our understanding of how and why groups collaborate online, crowdlaw will also represent a contribution to the empirical social sciences. This work is urgently needed because we know that crowdlaw practices, in many cases, do not seem to be working well and lack established criteria for evaluation. Thus, crowdsourcing in the legislative arena is a ripe and important area for research with the potential to advance and build a field of study and, at the same time, have contemporaneous impact for public institutions.

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Because of the potential to help institutions innovate at a time when the world is desperate for a re-imagining of democratic mechanisms, crowdlaw has the potential to transform lawmaking radically by injecting more and more diverse sources of ideas, information, and expertise into the lawmaking process at every stage. With rates of trust in government at all-time lows, the weakening legitimacy of traditional representative models of lawmaking, typically dominated by political party agendas and conducted by professional staff and politicians working behind closed doors, is called into question. There is frequent critique of the absence of democratic legitimacy in the lawmaking process, a concern which only grows with the delegation of power to unelected agencies to craft the rules that implement legislation.,

In the face of increasingly complex challenges, rapid social change and technological innovation, governments must find new ways to do more with less, innovating in how they work. Thus, it is not enough to experiment with new policies in the laboratory of democracy if we use the same beakers. We need to change the processes by which we make policy and deliver services for the public good. The explosion of crowdlaw initiatives has already created the opportunity for "when." Now, empirical yet agile research in the wild is the route to knowing "how."

About & Acknowledgements

We would also like to thank the following organizations for their support:

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Links to Appendices and Supporting Materials

[Link to Appendices](#)

[Link to Case Study Repository](#)