Varieties of crowdsourcing legislation practices

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Abstract

Crowdsourcing experiences in the lawmaking cycle have grown significantly in the past fifteen years. Crowdsourcing legislation practices aim at engaging the public in lawmaking to improve the legislative process and its outcomes, as well as enhance legitimacy and transparency in the conventional legislative process. Different efforts have been made to map cases, identify core characteristics, and assess results. Despite these contributions, a more comprehensive understanding of the universe of crowdsourcing legislation practices and core components is still lacking. This paper provides a deeper look into this phenomenon through a review of crowdlaw classification criteria, influential attributes mentioned by the CrowdLaw initiative and others identified in e-participation and crowdsourcing literature. Finally, it proposes a taxonomy with key features of crowdsourcing legislation initiatives and their respective variables through which these initiatives can be analyzed and compared.

Keywords

Crowdlaw, crowdsourcing legislation, e-participation

1. Introduction

Technology offers numerous opportunities to democratize the lawmaking cycle. It promises to improve regulatory decisions and compliance, as well as decrease administrative burdens such as face-to-face meetings. Furthermore, it provides more possibilities and new forms of public participation, through which more effective, efficient and legitimate regulations, legislation, and constitutions can be created [1]. One such possibility is through crowdsourcing, "an online, distributed problem-solving and production model that leverages the collective intelligence of online communities to serve specific organizational goals" [2]. Crowdsourcers determine specific goals and tasks that the online crowd should undertake to achieve them. This outsourced problem-solving method is generally open to any person who is interested and has the means to participate. In crowdsourced policy and lawmaking, collective knowledge is gathered and applied to the policy and lawmaking process according to the crowdsourcers' filters.

The term "crowdlaw" combines the ideas of "crowdsourcing" and "law". It encompasses more institutionalized digitally enhanced initiatives which seek more than just opinions and aim at improving the quality of the lawmaking process and its outcomes [3]. The term was coined in the context of the CrowdLaw project led by Beth Noveck, the coordinator of the Governance Lab at New York University. The initiative aims at "supporting legislative bodies in investigating, designing, implementing, and testing crowdlaw initiatives"[2]. Noveck claims that to create comprehensive and impactful policies and laws that can effectively safeguard the public, foster innovation and job creation, and effectively address intricate concerns like climate change, it is necessary to access more information on the causes behind new and pressing challenges [4]. Examples of crowdlaw are government-led consultations that promote expertise or experience-based discussions to generate valuable input for future laws and constitutions.

[2] Source: https://crowd.law/crowdlaw-af1a9e1c9455

While crowdsourcing in public decision-making processes promises to convey economic, democratic, and epistemic value [5], there are several challenges e-participation initiatives face in lawmaking, from the stages of development and implementation to the processing of public input and the effective application of outputs to lawmaking. These include skepticism and resistance from government officials, the incompatibility of new technology with existing lawmaking practices and structure, securing the necessary human, financial and technological resources as well as collecting useful contributions for the law in question. Moreover, barriers to participation prevent those without internet access or required skills or knowledge from engaging, an even greater challenge in lawmaking since it often requires participants to know sufficient legal terminology.

Throughout the past years, crowdsourcing practices in lawmaking have become more popular. While some efforts were made to map, assort, and assess crowdsourcing experiences, the field would benefit from a closer look into the variety of their formats. This paper intends to make a contribution to this gap. In section 2, it identifies key elements and variables proposed by the CrowdLaw initiative in different publications and repositories. In section 3, these elements are supplemented by other relevant features identified in e-participation and crowdsourcing literature. Finally, in section 4, a taxonomy with the final criteria for the broader concept of crowdsourcing legislation is presented. The table is intended to be a useful tool to analyze and compare cases, determine typologies, and, in future research, identify influencing factors in crowdsourcing legislation processes and their results for future improvement.

2. Key crowdlaw features

2.1. Classification criteria adopted for crowdlaw cases

The CrowdLaw project made two efforts to map and classify crowdlaw cases: the CrowdLaw Repository[3] and the CrowdLaw Catalog[4]. The Repository, the first of the two, compiled twenty cases on Google sheets, while the Catalog contains over one hundred on its own webpage, displays links to more information on the cases, shares some details on the CrowdLaw initiative and the classification criteria used. The CrowdLaw Playbook[5] is a more recent publication with selected cases that are further described and analyzed. Some criteria used to classify cases is common to all three, while other elements were only used in one or two of these efforts.

The Repository, Catalog, and Playbook all provide basic information on the cases, such as the name of the initiative, its owner, and its location. They also classify cases according to three attributes: the implementation level (local, regional or national), the stage of the lawmaking cycle (agenda-setting/problem definition, proposal-making/solution identification, drafting, implementation or evaluation) and the participant task (ideas & proposals, expertise, opinions, actions and evidence & facts). The variables used, however, slightly differ, e.g., the repository uses "agenda-setting" while the other two distinguish between the "problem definition" phase and the "solution identification" one.

Both the Repository and Playbook classify the cases according to the type(s) of platform used, web, mobile and offline. Finally, the Repository assesses whether they were subject to a formal legal process (legal framework), while the Playbook includes the method implemented by each initiative. There are six methods attributed to cases: collaborative drafting, open innovation, AI-based insight generation, pairwise wikisurveys, online brainstorming, prize-backed challenges and social auditing.

A publication released by the CrowdLaw initiative highlights the importance of assessing some of these features in order to understand the impacts they may have on the results of crowdlaw practices [6]. The authors of the publication claim, for example, that the owner of the initiative is a key attribute because initiatives administrated by parliaments are already integrated into the workflow of the legislature and can thereby have improved outcomes. They also defend tracking the stage of lawmaking in which the crowdsourcing practice is being implemented to understand in which cases they engender more participation. While today crowdlaw takes place mainly at the proposal-making or drafting stage, Capone

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et al. hypothesize that more robust forms of participation may take place when the public monitors and evaluates the impact of legislation, for instance.

The publication also highlights the relevance of studying the impact of different participatory tasks in the crowdsourcing exercise to understand the ones that function better. Finally, regarding the criteria applied to classify crowdlaw cases, Capone et al. believe it is important to know which kind of platform, from web-based to SMS-based, are more often used and what results they have prompted so far.

There are no explanations or more details regarding the value in assessing the implementation level, legal framework or methods in these publications and repositories, although an important article by Alsina & Martí [3] defend that "(…) building a comparative analysis of the current CrowdLaw statutes—legislation institutionalizing and mandating the use of citizen engagement in lawmaking at the local, regional and national level can be the first step to (…) formalize a legal framework for CrowdLaw initiatives and promote their structural institutionalization."

2.2. Other important attributes according to the CrowdLaw initiative

The CrowdLaw initiative also defends the inclusion of other so-called "salient features of crowdlaw initiatives" in the analysis of cases [6]. They stress that the assessment of the audience, incentives, law type, topic, feedback, timing, and training can help draw generalizable conclusions linking participation formats to results and base this assumption on some hypotheses.

Firstly, they hypothesize that participation is mainly male and upper middle class if active measures to diversify the *audience* are not taken. Therefore, it is key to develop a form of assessing and connecting the demographics and features to the input of crowdlaw participants.

Uncovering the most effective *incentives* to engage the public in lawmaking is also crucial because guidance ("clearly defined rules of procedure"), relevance ("an understanding of the relevance of one's participation to the ultimate outcome"), and impact ("the ability to make a difference") can be key motivators for repeated engagement [6].

The *type of law* in question, whether it is a regulation, legislation or constitution, can also have distinct impacts. Capone et al. propose that the results of the same participatory tasks for different law types be compared.

The *topic* being discussed matters because more controversial themes can generate different levels and qualities of engagement. The authors also stress the relevance of identifying if and how the parliament provides *feedback* to participants and its impact on participation and repeated engagement. They hypothesize that the more responsive and interactive a government is, the more it will increase participation and frequency.

Timing, referring to the time available for participation and the number of phases, can also be linked to the results of participation. Finally, Capone et al. sustain that providing *training* before the participation exercise can increase the quality of participation and usefulness of inputs received from the public.

3. More design and process features of crowdsourcing legislation

Apart from the elements mentioned by the CrowdLaw initiative, I hypothesize that other design and process features can be relevant to a deeper understanding of the wide array of crowdsourcing legislation initiatives and their results. These are drawn from the literature on e-participation and crowdsourcing, and studies on crowdsourced policy and lawmaking cases.

First, the presence of crowdsourcing *partners* can impact participation and the legitimacy of the process. Partners can be government officials in bottom-up initiatives, or well-known and respected academic and civil society organizations, for example. The Center for Technology and Society (Fundação Getúlio Vargas), a well-known think tank in the field of Law and Technology, collaborated in a federal government-led consultation that drafted the bill for today's Brazilian Internet Bill of Rights and was key to promoting and involving more participants in the process [7].

The *frequency* of the initiative is potentially connected to its degree of institutionalization. Single cases tend to be experiences that often do not produce outcomes, while ongoing cases are more likely to do so. The vTaiwan initiative, for instance, an ongoing multistakeholder consultation process which promotes discussions between experts, government officials, stakeholders, and citizens to elaborate recommendations for national legislation, had an 80% responsiveness rate by 2018 [4].

Another important element is the presence of *moderation* during discussions. While active moderation can stimulate the debate and ensure respect and civility in online consultations [8], it can also be claimed to bar freedom of speech when excluding comments. Kies [9] also argues that moderation can sometimes limit the discussion of controversial topics and consequently diminish participation.

Like other participation practices, some promote discussions, while others do not include instances for deliberation. *Deliberative* formats can generate a series of benefits such as promoting epistemic gains for participants and crowdsourcers [10].

Crowdsourcing legislation practices can include one or more *channels* of participation. They are also sometimes connected, for example, to social networks, and frequently function as another source of participant contribution [11]. Having different channels of participation can increase participation.

Like other crowdsourcing projects, they can differ according to their *IT structure* [12], which can be either episodic or collaborative. In episodic forms of IT, participants often do not interact with each other for the crowdsourcer to collect their contribution, while in collaborative ones, they do. This element is often connected to whether they have deliberative formats or not, although the interaction between participants does not necessarily take place through the exchange of arguments.

Finally, crowdsourcing practices generally involve the collection of large quantities of data. The *processing method* involved, whether automatic, human or both, can have several implications, including whether the input is adopted by governments or not. In the crowdsourcing of the update to the Palo Alto city plan, Chen & Aitamurto find that civic data overload led the government to rely heavily on a human filter, the citizen advisory committee, to synthesize and absorb public input. They conclude that this hindered equality and inclusiveness in the process [13].

4. A taxonomy for crowdsourcing legislation initiatives

In order to propose a taxonomy of crowdsourcing legislation initiatives (Table 1), I first included the features applied in existing crowdlaw case classifications and those hypothesized as valuable by Capone et al. [6]. "Audience" was not included due to the diversity of variables it could contain, although the importance of assessing this feature is also recognized. I then proceeded to incorporate the new features proposed in section 3. In a third step, the variables for each feature were added or created according to the alternatives provided by the CrowdLaw initiative and/or pinpointed in the literature. Finally, additional variables were included by incorporating suitable ones from Participedia[6], a global crowdsourcing platform on public participation and democratic innovations. Apart from the proposed features and variables, the table also shows the source of the different features.

Table 1
A taxonomy of crowdsourcing legislation practices

Feature	Variable	Source
Owner	Government	The CrowdLaw Repository
	Civil Society	Catalog & Playbook
	Academic institution	
	Private sector	
	International organization	
Partner	None	
	Government	

Category	Values	Reference
	Civil Society Academic institution Private sector International organization	Case: the consultation on the Brazil Civil Rights Framework for the Internet (Silveiras, 2014)
Scope	Local Regional National Transnational	The CrowdLaw Repository Catalog & Playbook
Law type	Regulation Legislation Constitution	Capone et al., 2017a
Stage	Problem definition Solution definition Drafting Implementation Evaluation	The CrowdLaw Repository Catalog & Playbook
Task	Ideas & proposals Expertise Opinions Actions Evidence	The CrowdLaw Repository Catalog & Playbook
Participation exercise	Collaborative drafting Open innovation Pairwise wikisurveys Online brainstorming Prize-backed challenges AI-based insight generation Social auditing Other	The CrowdLaw Playbook
Deliberation	Yes No	Aitamurto, 2016
IT Structure	Episodic Collaborative	Prpić, 2015
Platform	Web Mobile Offline	The CrowdLaw Repository & Playbook
Channel(s)	Single Multiple	Capone, 2017b
Frequency	Single Multiple Ongoing	Case. vTaiwan (Noveck, 2018)
Legal framework	Yes No	The CrowdLaw Repository
Topic	Controversial Non-controversial	Capone et al., 2017a
Input processing method	Human Automatic Human & automatic	Case: Palo Alto city plan (Chen & Aitamurto, 2019)

Incentives	Guidance	Capone et al., 2017a
	Relevance	
	Impact	
Training	Yes	Capone et al., 2017a
	No	
Feedback	None	Capone et al., 2017a
	Generalized response	
	Specific	

5. Final remarks

While new challenges of technology for policy- and lawmaking are constantly emerging, crowdsourcing legislation projects are growing and diversifying their formats. The purpose of this paper was to advance the criteria to better identify and analyze them. Eighteen key attributes were identified.

The table includes features that can be contrasted amongst different initiatives within different contexts. The specific institutional, legislative context the initiative is inserted within of course affects its dynamics, as well as eventual external happenings.

The criteria proposed do not configure an exhaustive list of features nor variables. Several variables could also present other, hybrid, alternatives. This paper will be further developed to apply the taxonomy to an in-depth analysis of crowdsourcing legislation cases. Hopefully, this will lead to a larger variety and more precise features and variables.

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