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# Digital agoras: democratic legitimacy, online participation and the case of Uber-petitions

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## ABSTRACT



This article discusses the impact of social media and new technologies of participation on citizen participation in law-making. This article focuses on electronic petitioning and examines how Uber, a controversial ride-sharing digital platform, has maximized the impact of petitions for lobbying purposes. Despite the claims that Uber is bypassing multiple regulations including tax and labour law regulations, the petitions initiated by this platform have mobilised thousands of citizens. Considering the self-selection bias that characterises these petitions, it remains unclear how these and other online petitions should be evaluated from the point of view of their democratic legitimacy. Drawing on the analysis of a number of recent Uber petitions initiated in the United States and the review of the legal and social science literature, I argue that the use of technology has shaped not only the quantity but also the quality of civic engagement: online mobilisation occurs at a faster pace, involves citizens that would otherwise not be inclined to participate, and addresses atypical topics. In addition, the digitalisation of civic engagement has promoted political and legal discussions in apolitical platforms and facilitated the access to more information at lower costs. I suggest that technology has nonetheless not solved the democratic deficits of online petitioning, partially due to its limited influence and the leadership of participatory initiatives.

**KEYWORDS** Online participation; petitions; sharing economy; e-government; democratic legitimacy; citizen participation

## 1. Introduction

Since Ancient times, there have been formal and informal platforms for citizen participation in local affairs. In Ancient Greece, the agora, that is, the ancient marketplace where citizens would gather to discuss local political, cultural or economic affairs, was the most important forum for citizen

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participation.<sup>1</sup> In 2016, an array of digital platforms allows citizens to share their knowledge with local governments. Digital platforms are electronic platforms (websites and smartphone applications, including social media) that support the sharing of written and visual information. In the last five years, digital discussion forums, social media, electronic petition ('e-petition') websites, and several other technologies of participation have been praised for their potential to close the gap between citizens and politics, increase citizen participation in the legislative process, and respond to the perceived crisis in representative democracy.<sup>2</sup> Digital platforms enable citizens connected to the Internet and with minimal digital skills to take a stand for or against legislative proposals that affect their rights, mobilise, and participate directly in the making of new laws and local budgets.<sup>3</sup> The so-called 'connective action' has allowed thousands of citizens to participate in political protests and engage with law-making initiatives throughout the world (e.g. Arab Spring, the 2011 *indignados* movement in Spain, the 'protests of June 2013' in Brazil, the Icelandic crowdsourcing of a new constitution).<sup>4</sup> However, as this article explains, in the wake of the social media or 'app-era', civic engagement has also been extended to an array of other less grave subjects such as the regulation of sharing-economy platforms.

Despite the growing popularity of e-petitioning, several questions regarding the effectiveness, influence, the democratic legitimacy, and the added value of these digital engagement initiatives remain unanswered. Notwithstanding their innovative character, technologies of participation such as e-petitioning raise both old and new problems. As a commentator of the *Financial Times* recently explained: these participatory instruments might as well be 'feudal megaphones for raising popular grievances' and 'supplicate favours to a higher authority'.<sup>5</sup> Although petitions have existed for several centuries, I argue in this article that the shape of these 'megaphones' has altered the attitude of citizens towards participation and raised a set of new digital challenges, in particular in the context of internet activism and political consumerism.<sup>6</sup>

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<sup>1</sup>Kevin Souza and Aksay Bhagwatwar, 'Technology-enabled Participatory Platforms for Civic Engagement: The Case of U.S. Cities' (2014) 21(4) *Journal of Urban Technology* 25.

<sup>2</sup>Scott Wright, 'Success' and Online Participation: The Case of Downing Street E-Petitions' (2016) 19(6) *Information, Communication & Society* 843.

<sup>3</sup>See, for example, Beth Simone Noveck, *Wiki Government: How Technology Can Make Government Better, Democracy Stronger and Citizens More Powerful* (Brookings Institutions 2010); Caroline W. Lee, *Do-It-Yourself Democracy: The Rise of Public Engagement* (Oxford University Press, 2015).

<sup>4</sup>W. Lance Bennett and Alexandra Segerburg, 'The Logic of Connective Action' (2012) 15(5) *Information, Communication & Society* 739; Eva Anduiza, Camilo Cristancho, Jose M. Sabucedo, 'Mobilization Through Online Social Networks: the Political Protest of the Indignados in Spain' (2014) 17(6) *Information, Communication & Society* 750; Juliano Zaiden Benvindo, 'The Seeds of Popular Change: Popular Protests as Constitutional Moments' (2015) 99(2) *Marquette Law Review* 363.

<sup>5</sup>Ludovic Hunter-Tilney, 'Uber Wants You to Change the World without Leaving Home' *Financial Times*, 1 October 2015, available at <http://www.ft.com/cms/s/0/3b311720-6830-11e5-a57f-21b88f7d973f.html#axzz4Kn51ldaf> (accessed 12 September 2016).

<sup>6</sup>See, for example, W. Mark Ormrod, Gwilym Dodd, Anthony Musson (eds), *Medieval Petitions: Grace and Grievance* (Boydell & Brewer 2009).

In this article, I argue that while technology might not entirely solve the democratic deficits of law-making (for example, the transparency of the legislative process) or limit the power of special interest groups, it has facilitated civic engagement in different ways. To illustrate, the emergence of interactive digital platforms has lowered information costs; second, it has expanded and diversified the fields of action (e.g. consumer activism); third, it has created new and apolitical spaces of discussion and deliberation; fourth, it has the potential to promote faster and broader civic engagement and include citizens that would otherwise not participate in the law-making procedure. In other words, technology is changing the attitude of citizens toward participation and determining who speaks, about what, and whether that person is heard.

I inquire into the democratic deficits of civic engagement practices initiated by digital agoras, in particular online petitions. I study the case of Uber's efforts to mobilise passengers to sign e-petitions and participate in the local, state, and sometimes national legislative and regulatory processes.<sup>7</sup> Uber, a digital platform that offers ride-sharing services, has been a controversial player in the context of the so-called sharing economy.<sup>8</sup> Uber connects passengers with licensed and unlicensed drivers who provide on-demand private transportation services, often disregarding local taxi-licensing regulations.<sup>9</sup> In the last five years, Uber has made a serious effort to convince local and national lawmakers that existing taxi regulations should not apply to its services. Uber contends that the disruptive nature of its service is only compatible with more permissive rules such as the licenses imposed by New York City. Besides its internal lobbying policy, Uber has developed a strong e-petition system that invites its passengers to sign e-petitions aimed at influencing the national or local legislative process in its favour.

While Uber riders often feel that they are actively participating in the law-making process and standing up for their rights, it is uncertain whether this form of digital participation indeed enhances the democratic legitimacy of such rules or whether it simply is an inexpensive form of lobbying.<sup>10</sup> This platform has been selected to illustrate some of the controversies of civic engagement since Uber has successfully organised petitions in multiple cities in different continents, triggering civic engagement in the regulation of private transportation, a rather unusual field of political participation. In

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<sup>7</sup>For an analysis of the interaction between sharing-economy platforms and local regulators, see Michele Finck and Sofia Ranchordás, 'Sharing and the City' (2016) 49 *Vanderbilt Journal of Transnational Law* 1299.

<sup>8</sup>See, for example, Brishen Rogers, 'The Social Costs of Uber' (2015) 82 *University of Chicago Law Review Dialogue* 85.

<sup>9</sup>Sofia Ranchordás, 'Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy' (2015) 16 *Minnesota Journal of Law, Science & Technology* 413, 459.

<sup>10</sup>Brian E. Adams, *Citizens Lobbyists: Local Efforts to Influence Public Policy* (Temple University Press, 2007); For the specific case of Uber, see Jordan M. Barry and Elizabeth Pollman, 'Regulatory Entrepreneurship' (2017) 90 *Southern California Law Review* (forthcoming).

addition, Uber petitions do not operate by themselves. Citizens are often informed of other digital forms of civic engagement: for example, citizens are provided with contact details of government officials they should send emails to, or their Twitter accounts. Moreover, Uber relies heavily on social media, inviting its passengers to write positive reviews of its services and advocate on its behalf for more favourable rules. Uber has therefore created a community of civic supporters and uses 'connective action' to raise the popularity of the ride-sharing platform and its acceptance by lawmakers.

Technologies of participation and democratic experiments promote participation and allow citizens and governments 'to climb the ladder of participation' either by influencing the legislature or performing a deliberative role.<sup>11</sup> It is nonetheless worth inquiring to what extent our modern 'digital agoras' are primarily gathering information for the sake of specific public or private actors rather than stimulating a constructive conversation between lawmakers and citizens. In other words, are our digital agoras promoting a new, more effective and democratic form of citizen participation or are they simply serving old wine in new bottles?

In this article I examine the role of participation platforms in the promotion of civic engagement and in the reinforcement of democratic legitimacy. Contrary to the other articles in this special issue, this paper does not delve into crowdsourced legislation in the traditional sense; that is, legislation that is 'drafted by the people'. Instead, this article adopts a broader perspective and sheds light on how digital platforms are being used to promote citizen participation and mobilisation through online petitions. Although online petitions might not always result in legislative change, they involve citizens directly and they have been in the past an important catalyst for change. This is illustrated by the petitions organised by Uber, which have gathered thousands of signatures, increased the popularity of this ride-sharing digital platform, and attracted the attention of local regulators throughout the world.

This article makes three central contributions to the legal literature: first, this article studies how professional digital platforms promote civic engagement and at times employ online petitions to lobby lawmakers. Second, it examines the role of technology in the promotion of citizen participation. Third, it discusses the interaction between participatory and representative democracy in the context of e-participation.

The remainder of this article is organised as follows. The second section analyses the case of the recent online petitions organised by Uber and how this platform has been able to mobilise its customers to influence the law-making process. The third section briefly situates Uber's participation initiatives in the broader literature on open government, crowdsourcing, and citizen

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<sup>11</sup>Sherry Arnstein, 'A Ladder of Citizen Participation' (1969) 35 (4) *Journal of the American Institute of Planners* 216.

science. Section 4 discusses the democratic deficits of the notion of ‘do-it-yourself democracy’ and online participatory initiatives, in particular in light of the described petitions organised by Uber. Section 5 concludes with a discussion of the key findings and identifies a number of unanswered questions for future research.

## 2. Uber-participation

Social media websites have played an important mobilisation role in the last few years: for example, in the aftermath of terrorist attacks in France and Belgium in 2015 and 2016, Facebook quickly invited its members to show solidarity for the victims and change their profile pictures. Several thousand did so in a couple of hours. It is also on social networks that several protests (for example in the context of the Arab Spring) have been organised and young citizens who would otherwise not have had access to political information were kept updated on new developments.<sup>12</sup> Social media has become one of the most important sources of information since news is either filtered by someone the user knows and trusts or it catches her attention because it appears to fit her interests as it has been selected by algorithms that have a large amount of information about the user.<sup>13</sup> In addition, these platforms create a sense of community among users that would otherwise not have met but that suddenly find themselves posting comments on the same news and pictures.<sup>14</sup> In other words, while in the old days, civic engagement would tend to be explained by social ties to family, associations, and neighbourhoods, nowadays young citizens in particular tend to be mobilised by what they read on social media or what their Facebook, Twitter or Instagram networks do.<sup>15</sup>

Empirical research has shown that online participation has become more popular than offline participation as citizens are more inclined to contact their representatives digitally than through traditional communications means such as the telephone.<sup>16</sup> It would be easy to assume that citizens will be more eager to participate in the law-making process when civic engagement is convenient and only one-click away. Nevertheless, the differences between offline and online participation might be more comprehensive.

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<sup>12</sup>Theodor Tudoroiu, ‘Social Media and Revolutionary Waves: The Case of the Arab Spring’ (2014) 36(3) *New Political Science* 346–348.

<sup>13</sup>According to Pew Research, 62% of adults read news on social media, see Pew Research Center, ‘News across Social Media Platforms 2016’ (Pew Research Center, 2016), summary available at <http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/>

<sup>14</sup>Sara Vissers and Dietlind Stolle, ‘The Internet and New Modes of Political Participation: Online versus Offline Participation’ (2014) 17(8) *Information, Communication & Society* 937, 940.

<sup>15</sup>Brian D. Loader, Ariadne Vromen, Michael A. Xenos, ‘The Networked Young Citizen: Social Media, Political Participation and Civic Engagement’ (2014) 17(2) *Information, Communication & Society* 143.

<sup>16</sup>Samuel Best and Brian Krueger, ‘Analyzing the Representativeness of Internet Political Participation’ (2005) 27(2) *Political Behavior* 183.

Although there is a great resemblance between offline and online participation mechanisms, recent literature has found that technology has opened new participatory roads to a group that (i) would not have access to sufficient information; (ii) would not be mobilised to participate, (iii) would not have the opportunity to provide low-threshold input such as ‘friending/liking’ a political representative or a company (for example, Uber) they would like to support; and (iv) would not be inclined to participate in regulatory subjects such as the regulatory permissibility of Uber.<sup>17</sup> Considering these benefits of technology, it is important to understand whether these findings mean that technology has made participatory initiatives more inclusive in practice or simply augmented the influence of the interest groups behind them.

### 2.1. *Uber petitions*

The first step in the process of understanding potential differences between online and offline participation is to map how online petitions are formulated, how citizens are convinced to sign them, and their social and political impact. In the last three years, Uber has initiated multiple petitions aimed at involving citizens in the regulation of ride-sharing throughout the United States and Canada. The digital platform has created a special platform (‘Uber Action’) where Uber supporters can react to legislative proposals and lobby lawmakers.<sup>18</sup>

The case of Uber petitions provides us with a glimpse into the complex world of e-petitioning. This controversial company, which primarily has commercial goals, has been successful at gathering thousands of signatures to convince lawmakers to enact more permissive regulations. In addition, several citizens will gladly become voluntary advocates for Uber, even though the platform has been accused of practising low wages and violating the privacy of its users.<sup>19</sup>

Loved and hated by many citizens and criticised by taxi drivers, Uber has used different platforms to mobilise citizens but, despite the support of thousands, this platform’s petitions and lobbying efforts did not succeed in a number of cities, including Austin, Texas; Brussels; Berlin or Frankfurt. Still, Uber’s lobbying policy remains active and it has been supported by thousands of its passengers. This raises once again an often posed question in the literature: why do people engage?

Although Uber is currently facing legal challenges in several countries, this platform has been able to gather citizen support in a matter of hours thanks to

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<sup>17</sup>Sara Vissers and Dietlind Stolle, ‘The Internet and New Modes of Political Participation: Online versus Offline Participation’ (2014) 17(8) *Information, Communication & Society* 937, 950.

<sup>18</sup>More information on the Uber online petition in Chicago can be found at <https://action.uber.org/uberxchicago/>

<sup>19</sup>See Jack Balkin, ‘Information Fiduciaries and the First Amendment’ (2016) 49(1) *UC Davis Law Review* 1185.

its network of passengers and the effective use of social media, in particular Twitter and Facebook. To illustrate, in Hong Kong, following the 2015 police raids that resulted in the arrest of multiple taxi drivers, 50,000 citizens signed a petition expressing their support for Uber. The petition greatly benefited from the promotion made by public figures and lawmakers who shared the petition on social media: in only one hour, 10,000 signatures were gathered and less than 24 hours later, 40,000 signatures could be counted.<sup>20</sup>

The impact of online petitions is not limited to numbers. Rather, other interesting aspects regarding Uber's petitions involve the information provided, the wording used to mobilise citizens, their user-friendly character, their Uber's ability to use GPS tracking in order to locate users in a specific area, a broad network of users that registered with their emails even if only to try Uber once, as well as social media. In addition, contrary to a general lobby group initiative, the supporters are given the idea that Uber is providing a more 'sustainable' and 'community-friendly' service that would benefit them and their community. The petition is formulated in such terms as to convince citizens that the initiative is not exclusively or mainly designed to favour Uber, but rather citizens.

The formulation of most online petitions initiated by Uber is similar: the petitions state the advantages that Uber is providing to the local community (for example, economic growth, lower transportation prices) and explain how existing or proposed legislation can deprive residents from these benefits. As the following section shows, Uber petitions are more comprehensive than a conventional petition that invites citizens to sign their names, include their identification and add a short comment. Rather, Uber's petitions also adopt the form of template emails that citizens also can send to their representatives in order to influence them to continue the legislative debate. In addition, Uber's petitions rely heavily on social networks such as Facebook and Twitter to promote the recruiting of supporters. However, Uber petitions are also becoming a victim of their own success. Opponents of Uber have been using the exact same mechanism to ask governments to ban the platform. In the following section, I describe the modus operandi of Uber petitions in light of three recent examples.

### 2.1.1. *Uber in Virginia*

In June 2014, the Virginia's Department of Motor Vehicles sent a cease-and-desist order to Uber: the platform was offering illegal transportation services to residents as Uber drivers were not licensed chauffeurs or taxi drivers. Uber decided to mobilise citizens to reverse this decision.<sup>21</sup> While, in the old days,

<sup>20</sup>Hongkongers rally to Uber's Cause Nearly 50,000 Sign Petition in Favour of Continued Service after Arrests', South China Morning Post, 14 August 2015, available at <http://www.scmp.com/tech/enterprises/article/1849493/hongkongers-rally-ubers-cause-nearly-50000-sign-petition-favour>

<sup>21</sup>Rosalind S. Helderman, 'Uber Pressures Regulators by Mobilizing Riders and Hiring Vast Lobbying Network', Washington Post, 13 December 2014, available at [https://www.washingtonpost.com/politics/uber-presents-regulators-by-mobilizing-riders-and-hiring-vast-lobbying-network/2014/12/13/3f4395c6-7f2a-11e4-9f38-95a187e4c1f7\\_story.html](https://www.washingtonpost.com/politics/uber-presents-regulators-by-mobilizing-riders-and-hiring-vast-lobbying-network/2014/12/13/3f4395c6-7f2a-11e4-9f38-95a187e4c1f7_story.html)



reaching out to a large number of people implied a door-to-door action, for Uber, such an initiative was only one click away: the platform had the email addresses of thousands of citizens who had registered to use its services and could track the location of frequent Uber riders living in Virginia. Uber sent an email, which included the contact details of DMV (Department of Motor Vehicles) officials, and asked riders to stand up for their rights. Many riders did so, and flooded the DMV with requests to change its policy and regulations. This was only one of several challenges faced by the controversial platform that connects passengers seeking a ride with the closest driver and offers services provided by both licensed (UberTaxi) and unlicensed drivers (UberX/UberPOP or UberXL).

### *2.1.2. Uber action in Chicago*

In Chicago, Uber has tried to lobby against the recent ordinance proposed by Alderman Anthony Beale that would require UberX drivers to obtain professional licenses which, according to the platform, should only be demanded for full-time drivers. Uber sent emails to its riders in the region of Chicago inviting them to sign a petition against this ordinance on the following grounds:

Since launching in Chicago, Uber has reshaped the way we think about transportation in the Windy City. Riders are finding a more reliable and affordable way to get to where they're going, taking millions of trips across the city. And drivers in underserved communities are benefitting from flexible income opportunities, taking home millions of dollars on the Uber platform, and in turn, helping boost the city's economy. But unfortunately, Alderman Anthony Beale has proposed an ordinance that threatens to take all these benefits away from Chicagoans. Beale's plan would force uberX driver-partners to get chauffeur's licenses that are designed for full-time, professional drivers. This would put an end to uberX in Chicago and the affordable ride Chicagoans have come to expect.

Uber's formulation of the reason why mobilisation should occur is an important aspect of this analysis. As with other attempts to mobilise citizens, we observe here that communication plays a fundamental role. Uber attempts to convince riders that they can change the status quo. In addition, the user-friendly character of the online petition system facilitates mobilisation: participants are only required to enter their first and last names, email address, postal code, and sometimes state a reason why they support Uber. Furthermore, 'Action.uber.org' promotes further mobilisation by allowing citizens to share their signature with their Facebook and Instagram networks. While the signature process of these online petitions resembles that of traditional petitions, the interconnected character of social media and participatory platforms promote the rapid promotion of 'word of mouth'.

### 2.1.3. *Florida needs Uber*

In Florida, Uber provides not only a platform for online petitions to the Florida House of Representatives, but it also offers a template that citizens can sign so as to ask the Senate to discuss a bill before the end of the legislative session. The template includes a clear message of support for Uber ('As a resident of Florida and a supporter of Uber, I urge you to finish what was started, and take up HB 509 this session'), lists the specific and objective benefits of Uber ('reductions in drunk driving incidents, expanded access to safe, affordable transportation options, more interconnected neighbourhoods, and flexible work opportunities for thousands of residents'), and refers to widespread global practices that Florida's representatives would not want to isolate themselves from ('cities around the world are embracing the benefits that ridesharing brings to communities [...] Florida still has a chance to permanently secure these benefits').<sup>22</sup>

Uber has popularised Florida's petition along with other advocacy strategies on Twitter and Facebook. An analysis of Uber Florida's profile on Twitter helps us to further understand the popularity of these petitions and efforts to advocate for a more favourable regulation of Uber. Multiple Uber drivers and riders have posted comments on this Twitter page, where the sense of 'contributing to the community' is often present and passed on to other Twitter's users.<sup>23</sup> Evidentiary support for the petition is provided here through different testimonials which are meant to support Uber's claim that the platform is helping reduce unemployment and improve accessibility at the local level.

### 2.1.4. *Ban Uber petitions*

Uber is however not the only one 'crowdsourcing' efforts to influence citizens. In London, an online petition in the opposite direction was organised to ask the British Government to 'ban Uber'. 'Change.org' invited citizens to sign an online petition in order to 'stop an American owned company ruining the livelihoods of hard working taxi drivers throughout the UK'.<sup>24</sup> In addition, in Canada and in the United States, there have been petitions to ask the government to ban Uber.<sup>25</sup> While Uber's unlicensed services, in particular UberX or UberPOP have indeed been sanctioned and even prohibited in multiple cities around the world (for example, Berlin, Brussels and Amsterdam), this

<sup>22</sup>'Florida Needs Uber', available at <https://action.uber.org/florida/> A similar formulation was employed in the case of 'Uber Moves Hawaii', see <https://action.uber.org/hawaii/>

<sup>23</sup>Comments on Uber Florida's Twitter page include, for example, the following narratives: 'I feel a sense of satisfaction knowing I am providing a great service for my community' – Miguel, driver-partner #KeepUberInHillsborough or 'Today I urged the PTC to reject anti-consumer rules designed to force #ridesharing out of Tampa, because #TampaBay deserves better. #FlaPol, '@Uber\_Florida' (last accessed on 15 September 2016).

<sup>24</sup>Change.org, petition text available at <https://www.change.org/p/the-british-government-ban-uber>

<sup>25</sup>'Stop Uber in Canada' petition, text available at <https://www.change.org/p/justin-trudeau-stop-uber-in-canada>

appears to have resulted more from the pressure exerted by taxi lobbies and unfavourable court decisions rather than from citizen actions.

Although the data might not be fully comparable, it is worth noting, merely as anecdotal evidence, that petitions to ban Uber, such as those organised on ‘Change.Org’ or the petition ‘Ban Uber from London’ submitted to the UK Government and Parliament in March 2015, gathered a much more reduced number of signatures than those obtained in support of Uber: while the first and the second were respectively signed by about 17,573 citizens and 330 citizens; the latter was supported by 206,350 citizens.<sup>26</sup> Since these numbers could only be fully understood by evaluating a large number of variables involved in the process, this article limits its analysis to the study of the complexities of this new form of citizen participation, which mobilises citizens to embrace commercial practices that in practice violate existing laws and regulations. It is important to question whether this fits within the goals of e-participation that aim to promote democratic dialogue and the enhanced legitimacy of legislation, or whether this is a renewed form of lobbying.

### 3. Citizen participation and technologies of participation

In the last decade, the concept of ‘collaborative democracy’ has been heard in different contexts and the number of websites that promote a closer interaction between citizens and government has increased.<sup>27</sup> However, are instruments promoted by public and private digital platforms such as ‘We the People’ in the United States, ‘Petition.Parliament.UK’ and ‘Change.org’ giving more power to the people or only to a small part of it? In this section, I place Uber’s online petitions in the broader context of the literature on citizen participation and technologies of participation.

Technology now makes direct citizen legislation possible and makes it more attractive for citizens to participate in the legislative process.<sup>28</sup> Both crowdsourcing initiatives and e-petitions contribute to an improved dialogue between civil society and elected representatives and to an empowering of the represented.<sup>29</sup> In the words of Sherry Arnstein:

Citizen participation is citizen power.<sup>30</sup>

<sup>26</sup>Data gathered from <https://action.uber.org/tfl/>, <https://www.change.org/p/the-british-government-ban-uber>, <https://petition.parliament.uk/archived/petitions/64950> (last accessed 15 September 2016).

<sup>27</sup>See Beth Simone Noveck, *Wiki Government: How Technology Can Make Government Better, Democracy Stronger, and Citizens More Powerful* (Brookings Institution Press, 2010).

<sup>28</sup>Corien Prins and Wim Voermans, ‘A Brave New Government’ in Simone van der Hof and Marga M. Groothuis (eds), *Innovating Government: Normative, Policy and Technological Dimensions of Modern Government* (Springer, 2011) 455, 456.

<sup>29</sup>See Brian Loader and Dan Mercea, *Social Media and Democracy: Innovations in Participatory Politics* (Routledge, 2012).

<sup>30</sup>Sherry Arnstein, ‘A Ladder of Citizen Participation’ (1969) 35 (4) *Journal of the American Institute of Planners* 216.

As Arnstein explained, this power can be exercised in different ways. Technology has made many of these possibilities a reality: citizens can not only petition government as described in the previous section, but they can also crowdsource efforts and draft the legal text themselves.

### 3.1. Participatory initiatives

Online petitions, social media and other digital platforms (e.g., Whatsapp) have been employed in the last few years both by the government and private actors to allow citizens to share their experiences and/or improve the evidence-base and overall democratic legitimacy of the law-making process.<sup>31</sup> As Wikipedia and multiple commons initiatives have shown in the last years, knowledge is unevenly dispersed among the members of our society. Therefore, lawmakers can in theory benefit both from the crowdsourcing of information, the gathering of citizen narratives, public consultations, and expert knowledge.<sup>32</sup>

Citizen participation initiatives thus have the potential to enrich new legislative proposals and improve the quality and trust in the government.<sup>33</sup> In addition, the ability to mobilise young and networked citizens to participate has been facilitated by the technological features of social media and the development of a sharing or participatory mentality.<sup>34</sup> In the digital world, citizens are encouraged to give their opinion on a wide variety of subjects and obtain an immediate response from another member of the community. This is for example visible in the ‘311 apps’ that allow citizens to report non-urgent public problems such as graffiti (for example, ‘SF311’ in the city of San Francisco), and in online petitions platforms such as ‘openPetitions.de’ in Germany.

Participatory initiatives that directly involve the crowd in the drafting of the text of a new law or gather popular efforts to solve a public problem (crowdsourcing) differ from initiatives such as e-petitioning where citizens participate directly but have a more passive role in the drafting of the text and are more easily influenced by the original formulation of the petition.

#### 3.1.1. Crowdsourcing legislation

In the last few years, crowdsourcing has been employed in different fields in order to delegate a complex task to a large network of people. Such tasks may

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<sup>31</sup>See Hélène Landemore and Jon Elster (eds), *Collective Wisdom: Principles and Mechanisms* (Cambridge University Press, 2012).

<sup>32</sup>Friedrich Hayek, ‘The Use of Knowledge in Society’ (1945) 35(4) *American Economic Review* 529; Cynthia Farina, Dmitry Epstein, Joshua Heidt, Mary Newhart, ‘Knowledge in the People: Rethinking “Value” in Public Rulemaking Participation’ (2012) 47 *Wake Forest Law Review* 1185; Cass R. Sunstein, *Infotopia: How Many Minds Produce Knowledge* (Oxford University Press, 2006).

<sup>33</sup>Ramona McNeal, Kathleen Hale and Lisa Dotterweich, ‘Citizen Government Interaction and the Internet: Expectations and Accomplishments in Contact, Quality, and Trust’ (2008) 5(2) *Journal of Information, Technology & Politics* 213.

<sup>34</sup>Brian D. Loader, Ariadne Vromen and Michael A. Xenos, ‘The Networked Young Citizen: Social Media, Political Participation and Civic Engagement’ (2014) 17(2) *Information, Communication & Society* 143.

range from the solution of a complex scientific problem to the drafting of a constitution (for example, in Iceland). While there are multiple definitions of crowdsourcing, this term unequivocally refers to two elements: (i) the existence of a complex problem; and (ii) the willingness of a community of people (crowd) to participate in the solution of this problem.<sup>35</sup>

The term ‘crowd’ is difficult to define and quantify, in particular in the digital world. While this term traditionally referred to a disorganised, irrational mass of individuals that would come together in great numbers,<sup>36</sup> nowadays this term has been used to qualify multiple organised sharing practices that allow citizens to come together for a productive end.<sup>37</sup> The ‘law of the crowds’ offers a new framework to law-making, one based on both creative and destructive processes, which suggests a new way of thinking about the question of democracy based on direct participation of the masses rather than on elected representatives and experts.<sup>38</sup>

Crowdsourcing consists of the distributed problem solving and production model that leverages the collective intelligence of online communities for specific purposes set forth by a crowdsourcing organisation, which can be a corporation, the government, or a non-governmental organisation.<sup>39</sup>

Crowdsourcing legislation is precisely one of the many forms of engaging citizens directly in public decision making, more specifically in the process of enacting statutes. Crowdsourcing turns ordinary citizens into lawmakers, allowing legislative bodies to cooperate closely with citizens so as to develop innovative pieces of legislation inspired by citizens’ narratives and knowledge.<sup>40</sup>

Crowdsourcing can potentially improve different policy areas such as labour, contracts, criminal enforcement and urban planning because it gathers the knowledge of a large number of individuals.<sup>41</sup> Crowdsourcing legislation also humanises the process of law-making by taking into account personal experiences and narratives that could otherwise be forgotten in a purely economic approach to legislation.<sup>42</sup> In addition, the knowledge offered by the crowd is different from the one provided by experts,

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<sup>35</sup>Enrique Estelles-Arolas and Fernando Gonzalez-Ladron-de-Guevara, ‘Towards an Integrated Crowdsourcing Definition’ (2012) 38(2) *Journal of Information Science* 189; Mark S. Reed, ‘Stakeholder Participation for Environmental Management: A Literature Review’ (2008) 141 *Biological Conservation* 2417, 2422.

<sup>36</sup>Christian Borch, ‘Body to Body: On the Political Anatomy of Crowds; (2009) 27(3) *Social Theory* 271; see also G. Le Bon, *The Crowd: A Study of the Popular Mind* (Fisher Unwin, 1903) 42–43.

<sup>37</sup>Illan rua Wall, ‘The Law of Crowds’ (2016) 36(3) *Legal Studies* 395, 396.

<sup>38</sup>Illan rua Wall, ‘The Law of Crowds’ (2016) 36(3) *Legal Studies* 395, 414.

<sup>39</sup>See generally on this topic Daren C. Brabham, *Crowdsourcing* (MIT Press, 2013).

<sup>40</sup>Henrik Serup Christensen, Maija Karjalainen and Laura Nurminen, ‘Does Crowdsourcing Legislation Increase Political Legitimacy? The Case of Avoim Ministeriö in Finland’ (2015) 7 *Policy and Internet* 25.

<sup>41</sup>Illan rua Wall, ‘The Law of Crowds’ (2016) 36(3) *Legal Studies* 395; Laverne Jacobs, ‘Humanizing Disability Law: Citizen Participation in the Development of Accessibility Regulations in Canada’ in Irene Bouhadana, William Gilles and Russell Weaver (eds), *Citizen Participation and Collaboration in Promoting Open Government* (Carolina Academic Press, 2017).

<sup>42</sup>Cass Sunstein, *Valuing Life: Humanizing the Regulatory State* (University of Chicago Press, 2014).

scientifically randomised experiments, *ex ante* evaluations, and consultations.<sup>43</sup> Crowdsourced legislation enables the legislature to take into account the different experiences of citizens and transforms the participatory experience into a deliberative moment where opposing views are merged.

Crowdsourcing legislation is often operated together with petitions. By using the Internet as well as other appealing technologies such as user-friendly smartphone applications, it is possible to involve a greater number of citizens in the drafting process, and thus engage more people directly than any other offline mechanism would be able to.<sup>44</sup> Moreover, online crowdsourcing of knowledge could allegedly improve the quality of legislation and enhance its 'output legitimacy' ('government for the people') and 'throughput legitimacy' (quality of the decision-making process).<sup>45</sup>

The impact of crowdsourcing legislation on political legitimacy depends, however, on the response by Parliament and the representativeness of the crowdsourced contribution. In the old days of printed paper, much would be lost during the different steps of the legislative process, but in the digital age, technology has reshaped law-making, promoting the exchange of information and accelerating the pace of the legislative process.<sup>46</sup>

In other words, the value of crowdsourcing in policy and law-making depends on whether the legislature will use the information and suggestions put forward by the crowd and whether these data are a good representation of what the people in general want.<sup>47</sup> Contrary to 'mini-publics', such as the Belgium or the Dutch G1000s, crowdsourcing does not imply random selection or physical presence. While 'mini-publics' are small discussion forums, usually organised by law- or policy-makers, where a representative number of citizens with different viewpoints come together to discuss or deliberate on a certain topic, no independent selection of positions takes place in crowdsourcing. Rather, the democratic deliberation implied in crowdsourcing takes place online, is often anonymous, and is operated on the grounds of self-selection. There is therefore an interest bias as the participants might have a special interest in contributing to the research and drafting of that particular piece of legislation. Given this self-selection bias and the

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<sup>43</sup>Cynthia Farina, Dmitry Epstein et al., 'Knowledge in the People: Rethinking the Value in Public Rulemaking Participation' (2012) 47 *Wake Forest Law Review* 1185.

<sup>44</sup>Henrik Serup Christensen, Maija Karjalainen and Laura Nurminen, 'Does Crowdsourcing Legislation Increase Political Legitimacy? The Case of Avoim Ministeriö in Finland' (2015) 7 *Policy and Internet* 25, 26.

<sup>45</sup>Henrik Serup Christensen, Maija Karjalainen and Laura Nurminen, 'Does Crowdsourcing Legislation Increase Political Legitimacy? The Case of Avoim Ministeriö in Finland' (2015) 7 *Policy and Internet* 25, 26.

<sup>46</sup>See Hans-Martien ten Napel, Wim Voermans et al., *Legislative Processes in Transition. Comparative Study of the Legislative Processes in Finland, Slovenia and the United Kingdom as a Source of Inspiration for Enhancing the Efficiency of the Dutch Legislative Process* (WODC/Ministry of Security and Justice, 2012).

<sup>47</sup>Tanja Aitamurto, 'Crowdsourced Democratic Deliberation in Open Policymaking: Definition, Promises, Challenges' in Karin Hansson, Tanja Aitamurto, Thomas Ludwig and Michael Muller (eds), *International Reports on Socio-Informatics (IRSI). Proceedings of the CSCW 2016 – Workshop: Toward a Typology of Participation in Crowdwork* 13(1) (2016) 79, 85.

large amounts of information provided by the crowd, it is difficult to guarantee that the result of the participatory process retains its popular appeal and will be considered by lawmakers.<sup>48</sup> Notwithstanding these caveats, crowdsourcing is a more active participatory instrument than online petitions as the participants in the former can shape the content of the participatory initiative and deliberate by themselves. In the case of online petitions, participants subscribe to an already circumscribed input and are only able to add some comments to their signatures, often to justify their motivation or the importance of the subject.

### 3.1.2. *Online petitions*

Online petitions are a straightforward participatory instrument that is widely used in e-democracy by both official and non-official actors.<sup>49</sup> The right of citizens to petition their parliaments and governments is a well-established form of political participation in most Western democracies, and which is in several cases protected by national constitutions (e.g. Article 17 of the German Basic Law, Article 5 of the Dutch Constitution). Petitions are bottom-up, informal instruments that can mobilise thousands of citizens determined to support parliamentary debate on a specific topic.<sup>50</sup> Petitions are therefore organised not only to express opinions but also to foster necessary policy or legislative change.<sup>51</sup>

Depending on the defined threshold in each country, an official response might have to be given to a petition that gathered a sufficient number of signatures. Although petitions are far from being a recent participatory instrument, their popularity has increased in the last decade with the creation of digital platforms that enable citizens to submit topics for policy consideration.<sup>52</sup>

E-petitions are nowadays no longer reserved to the expression of grievances, pleas for mercy or reactions to major social problems. Rather, they are employed for a number of other reasons, as the case of Uber's petitions as well as thousands of petitions with diverse topics on governmental websites show. The popularity of petitions and their ultimate success depends not only on the subject and its acceptance for debate at parliamentary level, but also on the linguistics and semantics of the petition. The urgency of the legislative

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<sup>48</sup>Henrik Serup Christensen, Maija Karjalainen and Laura Nurminen, 'Does Crowdsourcing Legislation Increase Political Legitimacy? The Case of Avoin Ministeriö in Finland' (2015) 7 *Policy and Internet* 25, 39.

<sup>49</sup>Scott Wright, 'Assessing (e-)Democratic Innovations: "Democratic Goods" and Downing Street E-Petitions' (2012) 9 *Journal of Information Technology & Politics* 453, 454.

<sup>50</sup>Ralf Lindner and Ulrich Riem, 'Broadening Participation through E-Petitions? An Empirical Study to the German Parliament' (2011) 3(1) *Policy & Internet* 1.

<sup>51</sup>Ralf Lindner and Ulrich Riem, 'Broadening Participation through E-Petitions? An Empirical Study to the German Parliament' (2011) 3(1) *Policy & Internet* 1, 2–3.

<sup>52</sup>See Thomas Hirsch, *Das parlamentarische Petitionswesen: Recht und Praxis in den Deutschen Landesparlamenten* (Berlin, 2007).



change, the use of persuasive and intensive language ('crucial', 'essential') play a decisive role on the popularity of the petition and the consequent recruitment of more signatures.<sup>53</sup> In addition, research has also shown that petitions that provide access to further evidentiary information by including testimonials that can be read on the Internet are also perceived as being more persuasive. As described in Section 2, Uber petitions attract supporters not only by relying on their broad network of passengers but also by employing convincing language and making a structured use of social media platforms such as Twitter and Facebook. The employment of social-media platforms shaping civic engagement has also assisted petitioners in building trust among people in institutions and their requests.<sup>54</sup>

Citizens can either initiate their own petition on platforms such as the government-sponsored website 'We the People' or sign existing e-petitions such as the ones launched by other individuals and companies. Petitions fulfil different political and democratic functions: while their influence on legislative change as well as their impact on the individual level are very limited, petitions perform an important communicative function by delivering information from the represented citizens to their representatives.<sup>55</sup> E-petitions are hence an important channel of communication between citizens and the elected representatives.

Although representatives do not always take into account the petitions submitted to them, citizens have remained motivated to engage and have been driven by a multitude of reasons such as socio-economic reasons.<sup>56</sup> Research has offered different explanations for the underlying motivations of citizens but we now know that the grievances that traditionally motivated the majority of medieval petitions, are not the only motivation driving citizens.<sup>57</sup> Rather, citizens' attitudes have been influenced by the development of technology that facilitates the exchange of information and favours collective – and connected – actions. Civic engagement also occurs more easily in the age of social media as its users are often exposed to mobilising information, even if they do not seek actively for political news. Technology has also created 'third spaces of mobilisation', that is, apolitical websites (e.g. NetMoms) where citizens can leave comments about news or participate on social events. Although these platforms do not have a primary

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<sup>53</sup>Loni Hager et al., 'E-Petition Popularity: Do Linguistic and Semantic Factors Matter?' (2016) *Government Information Quarterly* (forthcoming).

<sup>54</sup>Anne Marie Warren, Airin Sulaiman and Noor Ismawati, 'Social Media Effects on Fostering Online Civic Engagement and Building Citizen Trust and Trust in Institutions' (2014) 31(2) *Governmental Information Quarterly* 291.

<sup>55</sup>Ralf Lindner and Ulrich Riem, 'Broadening Participation through E-Petitions? An Empirical Study to the German Parliament' (2011) 3(1) *Policy & Internet* 1, 5.

<sup>56</sup>Fons Wijnhoven, Michel Ehrenhard and Johannes Kuhn, 'Open Government Objectives and Participation Motivations' (2015) 32 (1) *Government Quarterly* 30.

<sup>57</sup>See Steven Buechler, *Social Movements in Advanced Capitalism: The Political Economy and Cultural Construction of Social Activism* (Oxford University Press, 2000).



political function, they have been used as such since they provide information and a forum for interactive discussion. In addition, social media websites, their connections and sponsors will filter the news that will be read, targeting users in a more effective way.<sup>58</sup>

Citizens remain motivated to participate when they are convinced that the institution, which processes the suggestions, will carefully examine their petition and give precise feedback on why certain ideas or parts cannot be implemented.<sup>59</sup>

### 3.2. Technology and participation platforms

Since the Ancient times there have been formal and informal platforms for citizen participation in local affairs. While, in Ancient Greece, the agora was the offline forum for citizen participation, in 2016 an array of digital platforms allows citizens to share their knowledge with national and local governments.<sup>60</sup> To illustrate, online social media and other technologies of participation were employed to promote the celebrated crowdsourcing of the Icelandic constitution. All meetings of the Constitutional Council were live streamed on its website and all the changes were swiftly reported on its Facebook page.<sup>61</sup>

Despite mixed findings on the impact of the Internet on civic engagement, research has shown that the Internet and digitalisation in general have had a positive impact on different forms of citizen participation, namely those enabled by digital platforms supported by social media.<sup>62</sup>

Digital platforms are electronic platforms including websites, social media (e.g. Facebook, Instagram), smartphone applications, and group messaging platforms (e.g. Whatsapp) that support the sharing of written and visual information. Platforms have become 'discursive resting points' that allow citizens to use networks to effectively communicate and share their knowledge with public officials.<sup>63</sup> Contrary to the first means of e-government, new technologies of participation allow for effective two-way communications among large groups. There are multiple examples of digital platforms that promote

<sup>58</sup>Josh Pasek, Eian More and Daniel Romer, 'Realizing the Social Internet? Online Social Networking Meets Offline Civic Engagement' (2009) 6 (3) *Journal of Information, Technology & Politics* 197; Shelley Boulianne, 'Social Media Use and Participation: A Meta-Analysis of Current Research' (2015) 18(5) *Information, Communication & Society* 524, 525.

<sup>59</sup>Fons Wijnhoven, Michel Ehrenhard and Johannes Kuhn, 'Open Government Objectives and Participation Motivations' (2015) 32 (1) *Government Quarterly* 30.

<sup>60</sup>Kevin Desouza and Aksay Bhagwatwar, 'Technology-enabled Participatory Platforms for Civic Engagement: The Case of U.S. Cities' (2014) 21(4) *Journal of Urban Technology* 25.

<sup>61</sup>Katrin Oddsdottir, 'Iceland: The Birth of the World's First Crowd-sourced Constitution?' (2014) 3(4) *Cambridge Journal of International and Comparative Law* 1207, 1215; Hélène Landemore, 'Inclusive Constitution Making: The Icelandic Experiment' (2015) 23(2) *Journal of Political Philosophy* 166.

<sup>62</sup>Shelley Boulianne, 'Does Internet Use Affect Engagement? A Meta-Analysis of Research' (2009) 26(2) *Political Communication* 193, 205.

<sup>63</sup>Tarleton Gillespie, 'The Politics of Platforms' (2010) 12(3) *New Media & Society* 347.

different forms of civic participation, ranging from grassroots e-petitioning to citizen feedback or voting on a pre-selected number of solutions.<sup>64</sup>

Interactive technologies make a number of interactive and effective two-way communications possible. Whereas some initiatives regard citizen participation as a mere source of information, others involve citizens closely in the deliberation process. The dimensions of this new trend of involving citizens in the law-making process are visible in the concepts of 'open government', 'e-government' and, more notoriously, the concept of 'crowdlaw'.

E-participation is not a novel concept but with the advent of Web 2.0, digital platforms have created two-way discussion fora.<sup>65</sup> These concepts reflect a new model of open participation that allows citizens and governments to collaborate more closely. However, one of the most important steps in the direction of broader digital participation might have been the development of a different participation consciousness and sense of community that has encouraged anonymous citizens to share their knowledge with public authorities instead of waiting for the experts to take action.<sup>66</sup>

Technology plays a decisive role in both crowdsourcing and online petitions since it facilitates and accelerates the process of recruitment of participants, the gathering of information, and it influences the impact of the initiative. In the specific case of crowdsourcing, technology also guarantees the anonymity of participants, online deliberation and the collaborative drafting of parts of a bill. In brief, technology enhances crowdsourcing's potential to increase throughput legitimacy by creating a more trustworthy, deliberative and broader decision-making process. Crowdsourcing remains nonetheless a burdensome process that leaves the crowdsourcer with large amounts of unstructured data and opinions that cannot always be integrated in the law-making process. Online petitions, despite being a more passive instrument, emerge in this context as a less complex and a more popular instrument.

Platform participation is shifting existing regulatory and policy frameworks. The expansion of civic engagement initiatives allows citizens to become actively involved in rulemaking and legal enforcement in an unprecedented way.<sup>67</sup> This, however, raises the risk of excessive and unregulated privatisation of public tasks, predominantly reactive participation, oversimplification of participatory issues to 'yes/no' answers and uneven outcomes, resulting from the different incentives driving citizens and public

<sup>64</sup>Scott Wright, 'Populism and Downing Street E-petitions: Connective Action, Hybridity, and the Changing Nature of Organizing' (2015) 32(3) *Political Communication* 414.

<sup>65</sup>Cary Coglianese, 'Assessing Consensus: The Promise and Performance of Negotiated Rulemaking' (1997) 46 *Duke Law Journal* 1255.

<sup>66</sup>Maarit Mäkinen, 'Digital Empowerment as a Process for Enhancing Citizen's Participation' (2006) 3(3) *E-Learning* 381.

<sup>67</sup>Rodrigo Davies, 'Three Provocations for Civic Crowdfunding' (2015) 18(3) *Information, Communication & Society* 342.

actors.<sup>68</sup> In addition, technologies of participation might also have other shortcomings related to potential privacy and security problems associated with data collection and sharing of personal information. National and local governments engaged in e-government necessarily process a voluminous amount of data, which should be treated as confidential.<sup>69</sup> Nevertheless, governments often do not have the technological capacity to safeguard the secure treatment of the data involved in these participatory initiatives (for example, names, signatures, date of birth, social media profiles).

In conclusion, although participatory initiatives and, in particular, petitions have existed since ancient times, technology has shaped the dimensions and content of civic engagement. Younger citizens that would otherwise not be informed or involved in political debates are more willing to participate in low-threshold initiatives and are influenced by social media news or postings that are endorsed by their community. In addition, the popularity and impact of e-petitions have also been altered by the internet which has facilitated the mobilisation of citizens.

Technology has also made the process of participation at the same time more transparent and more opaque: while, in the case of petitions, supporters of a particular cause as well as the petitioner can reveal their identity either by publishing their name or social media profile, in the case of crowdsourcing, participation can be anonymous when it comes to the identity of the participants, even though the contributions will be available online. The internet also facilitates free, convenient and user-friendly civic engagement as citizens can sign a petition and read supporting evidence in a matter of minutes without being bothered by a door-to-door request.

The Internet and social media did not ‘invent the wheel’ of citizen participation, but it is fair to argue that technology has provided a much faster mechanism for the mobilisation of individuals. As Section 2 has described, this wheel is being turned by digital platforms such as Uber that use political and apolitical digital platforms to promote petitions favourable to their interests.

Technologies of participation have expanded the scope, content, and impact of citizen participation. This is a positive response to the deepening legitimacy deficits of representative democracy and the increasing distance between the political elites and the people.<sup>70</sup> However, the question that remains is whether petitions promoted by businesses are imbued with sufficient democratic legitimacy. As the example of Uber shows, one of the

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<sup>68</sup>Rodrigo Davies, ‘Three Provocations for Civic Crowdfunding’ (2015) 18(3) *Information, Communication & Society* 342, 344–345; William Landes and Richard Posner, ‘The Private Enforcement of Law’ (1975) 4 *Journal of Legal Studies* 1.

<sup>69</sup>Christopher Baker and Stephen Cirell, ‘E-government: Opportunity or Liability?’ (2003) 6(6) *Journal of Local Government Law* 123, 125–126.

<sup>70</sup>Archon Fung, ‘Putting the Public Back into Governance: The Challenges of Citizen Participation and its Future’ (2015) 75 (4) *Public Administration Review* 513.

modern challenges of leadership in participatory innovation is the conversion of e-petitioning into an advocacy instrument that is shaped by powerful actors that confuse democratic participation with lobbying.<sup>71</sup>

#### 4. Digital agoras and democratic legitimacy

In the last two decades, multiple Western countries have sought to increase citizen participation in the law-making process: from popular assemblies in New England town meetings to participatory budgeting in Porto Alegre (Brazil), to referendums, and the mini-publics that promote deliberative democracy (for example, G1000 in the Netherlands).<sup>72</sup> More sophisticated forms of participation have emerged in Finland where a number of crowd-sourcing initiatives have been organised in an attempt to increase the political legitimacy of its legislation.<sup>73</sup> It remains unclear whether law-making is a task that should be converted into a ‘do-it-yourself business’ or whether it should be restricted to professional representatives who are subject to some degree of public accountability.<sup>74</sup> Moreover, there are also many unanswered questions regarding the democratic legitimacy of online participation, notably in the case of e-petitions organised by businesses such as Uber.

In this section, I first discuss the concept of the ‘do-it-yourself democracy’, which appears to challenge the idea of legitimacy inherent not only in the democratic election of accountable representatives but also the legitimacy that is derived from their expertise. Secondly, I address the democratic deficits of technologies of participation.

##### 4.1. Do-it-yourself democracy

Participatory initiatives reduce the separation between politics and civil society, the elected and voters but they also reduce the gap between experts and anonymous citizens by acknowledging that anyone can contribute to the quality and validity of a new law or policy.<sup>75</sup> From a broader perspective, crowdsourcing legislation and online petitions are only two of several examples of a growing trend of de-professionalisation in our economy,

<sup>71</sup> Archon Fung, ‘Putting the Public Back into Governance: The Challenges of Citizen Participation and its Future’ (2015) 75 (4) *Public Administration Review* 513, 520.

<sup>72</sup> Graham Smith, *Democratic Institutions. Designing Institutions for Citizen Participation* (Cambridge University Press, 2009); Geerten Boogaard, Ank Michels et al. (eds), *G1000 Ervaringen met burgertoppen* (Boombestuurkunde, 2016). Hervé Pourtois, ‘Mini-publics et démocratie délibérative’ (2013) 32(1) *Politique et Sociétés* 21.

<sup>73</sup> Henrik Serup Christensen, Maija Karjalainen and Laura Nurminen, ‘Does Crowdsourcing Legislation Increase Political Legitimacy? The Case of Avoim Ministeriö in Finland’ (2015) 7(1) *Policy & Internet* 25.

<sup>74</sup> Del Dickson, *The People’s Government: An Introduction to Democracy* (Cambridge University Press, 2014) 39.

<sup>75</sup> Tanja Aitamurto, ‘Crowdsourcing for Democracy: A New Era in Policy-Making’, *Publications of the Committee for the Future, Parliament of Finland 1/2012* (Helsinki 2012).

society, and politics. This ‘do-it-yourself’ tendency that promotes the replacement of experts by ordinary people has been facilitated by rising levels of public schooling, digitalisation, globalisation, and the growing interest of citizens in the sharing of their knowledge and participation in the public realm.<sup>76</sup> Both businesses and governments have, however, sought to explore this movement of anonymous citizens performing the role of journalists, commentators (e.g. bloggers), and other once professional knowledge-based tasks: while businesses have developed rather controversial sharing-economy platforms such as TaskRabbit that promote the crowdsourcing of work, government has primarily focused on ‘Have Your Say’ platforms that promote the crowdsourcing of information.<sup>77</sup> In other words, the ‘wisdom of the crowds’ could potentially replace or supplement the work of traditional experts whose legitimacy derives either from their election or from their professional expertise. This tendency is more present in the case of crowdsourcing legislation than in e-petitioning due to the more active participation of citizens in problem solving.

The idea that collective wisdom could replace expertise has been promoted by the development of digital platforms that allow anyone with minimal digital skills to share their opinion and knowledge. Interestingly, in the case of Uber petitions, this phenomenon is exacerbated at different levels: the business model of UberX or UberPOP implies the de-professionalisation of private transportation services by assuming that anyone with a driving license can drive another individual to a specific destination with the help of GPS technology and the pricing algorithms offered by the company. This nonetheless violates existing laws and regulations on transportation that require a professional licence for taxi drivers. As described in Section 2, whenever this ride-sharing platform saw its interests threatened by national or local lawmakers that either wanted to promote the enforcement of existing legislation or enact new rules that reflect new technological developments, Uber also decided to recruit non-professional help. Its passengers were the legislative force the platform required. Contrary to crowdsourcing, citizens do not engage in drafting. This example is nonetheless illustrative of the evolution of the de-professionalisation trend and the contestation of elites. Both phenomena appear to have started at the business level but in the last few years they have expanded to the legislative contexts.

Despite this growing de-professionalisation trend, research has shown that in several cases citizen participation initiatives remain in the hands of the

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<sup>76</sup>Marie R. Haug, ‘The Deprofessionalization of Everyone?’ (1975) 8 (3) *Sociological Focus* 197; Richard A. Epstein, ‘By Law and Big Med: The Deprofessionalization of Legal and Medical Services’ (2014) 38 *International Review of Law and Economics* 64.

<sup>77</sup>David Orozco, ‘The Use of Legal Crowdsourcing (“Lawsourcing”) to Achieve Legal, Regulatory, and Policy Objectives’ (2016) 53 (1) *American Business Law Journal* 145, 146.

most educated and economically favoured members of society.<sup>78</sup> As the Uber case shows, leadership in petitioning is still structured and well organised by companies with strong lobbying departments.

#### 4.2. Democratic legitimacy

Technologies of participation are a means to advance participatory democracy, tailor policy to local needs and improve the quality of decision-making.<sup>79</sup> The legitimacy of the legal change petitioned in the context of online civic engagement is, to a great extent, dependent on the involvement of a representative number of citizens in the deliberation process, that is, in the production of reasonable and well-informed opinions. The promotion of deliberation includes much more than the collection of opinions but it refers as well to inclusiveness, communication and the willingness to be persuaded and change pre-existing arguments.<sup>80</sup>

Democratic legitimacy is a difficult concept to define as it refers to the validity or authority of legislation, that is, the legally recognised or morally internalised acceptance of a statute.<sup>81</sup> More specific types of legitimacy have been examined in the literature. For example, Scharpf distinguishes between input and output legitimacy: the first refers to citizen's participation ('government by the people') and output legitimacy to institutional governance or 'government for the people'.<sup>82</sup> Input legitimacy in the case of crowdsourcing and e-petitioning implies inclusive participation and representation. This concept thus refers to who participates and who is selected to represent those that cannot participate directly. In the case of both participatory initiatives, we are confronted by the problem of self-selection and its discontents. Only the interested citizens will participate in the process, which necessarily means that representation might not be representative. Although only minimal digital skills are required for e-participation, inclusiveness has remained a problem within and beyond the digital divide.

Crowdsourcing and e-petitioning trigger the participation not only of individual citizens but also of members of interest groups who are more informed,

<sup>78</sup>Edward P Weber, 'A New Vanguard for the Environment: Grass-Roots Ecosystem Management as a New Environmental Movement' (2000) 13(3) *Society & Natural Resources* 237, 240.

<sup>79</sup>Herman Bröring and Albertjan Tollenaar, 'Vechten tegen Windmolens: falende inspraak' in Bert Marseille, Anne Meuwese, Lex Michiels, Jurgen Pourter (eds), *Behoorlijk Bestuursprocesrecht. Opstellen aangeboden aan prof. mr. B.W. N. de Waard over grondslagen, beginselen en vernieuwingen van het bestuursprocesrecht* (Boom Juridische Uitgevers, 2015)

<sup>80</sup>Amy Gutman and Dennis Thompson, *Democracy and Disagreement* (Belknap Press, 1998); Sergiu Gherghina and Sergiu Miscoiu, 'Crowd-Sourced Legislation and Politics: The Legitimacy of Constitutional Deliberation in Romania' (2016) 63 *Problems of Post-Communism* 27, 28.

<sup>81</sup>Victor Bekkers, Geske Dijkstra, Arthur Edward and Menno Fenger, 'Governance and the Democratic Deficit: Introduction' in Victor Bekkers, Geske Dijkstra, Arthur Edward and Menno Fenger (eds), *Governance and the Democratic Deficit: Assessing the Democratic Legitimacy of Governance Practices* (Routledge 2016) 1, 6; Wim Voermans, Josephine Hartmann and Michael Kaeding, 'The Quest for Legitimacy in EU Secondary Legislation' (2014) 2 *Theory and Practice of Legislation* 5.

<sup>82</sup>Fritz Scharpf, *Governing in Europe. Effective and Democratic?* (Oxford University Press, 1999).

have better digital skills, and are more willing to give their input in the law-making process. This interest bias is present both in the self-selection mechanism as well as in the leadership of these initiatives, as the crowdsourcer or the initiator of a petition can shift the direction of civic engagement by influencing the language of the participatory initiative. The democratic legitimacy of these non-state actors can be contested since they participate in order to influence the legislature to enact laws that favour them, recruiting citizens that might be sympathetic with their claims. In addition, they are not held accountable and are not voluntarily selected by the general public.<sup>83</sup>

Another aspect to be considered in the context of inclusiveness and representation is that citizen participation is a supplement and not a replacement for representative democracy. In more than 20 countries, citizen participation in the election of their representatives is not only a right but it is coerced by compulsory voting laws.<sup>84</sup> To illustrate, Belgium, Argentina and Australia still enforce compulsory voting, while the Netherlands and Venezuela are examples of countries that have abolished coerced participation. Ordinary citizens often have a textual interpretation of legislation and are not aware of policy considerations. Representatives and, in particular, the involvement of lawyers can however enlighten the meaning of constitutional rights in a way that ordinary people might not be able to understand.<sup>85</sup> Lawyers can act as civic educators and avoid populist or opportunistic interpretations of legislation or required legislative changes.

Despite their democratic deficits, citizen participation initiatives are not only a source of social knowledge but also a source of information about local issues.<sup>86</sup> Platform participation offers multiple advantages, including cost reductions resulting from the efficient use of technologies, rationalisation of processes, increase in transparency, and higher level of trust.<sup>87</sup> The popularity of technologies of participation and experiments that aim to give voice to citizens who feel forgotten by politics, is significant; in particular during economic crises such as the ones witnessed in Ireland and Iceland.<sup>88</sup> However, the results of citizen participation are not always taken into account as the large volume of crowdsourced opinions and petitions makes this task almost impossible for governments and Parliament. This raises the question of whether the mere process of participation should be considered

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<sup>83</sup>Joshua C. Gellers, 'Crowdsourcing, Global Governance: Sustainable Development Goals, Civil Society, and the Pursuit of Democratic Legitimacy' (2016) 16(4) *International Environmental Agreements* 415, 417.

<sup>84</sup>Idea, *Voter Turnout in Western Europe since 1945: A Regional Report* (Idea 2004), available at [http://www.idea.int/vt/compulsory\\_voting.cfm](http://www.idea.int/vt/compulsory_voting.cfm)

<sup>85</sup>Mark Tushnet, 'Citizen as Lawyer, Lawyer as Citizen' (2008) 50 *William & Mary Law Review* 1379, 1385.

<sup>86</sup>Charles Lindblom, *Inquiry and Change* (Yale University Press, 1990).

<sup>87</sup>Isabel Garcia-Sanchez, Luis Rodriguez-Dominguez, Jose-Valeriano Frias-Aceitano, 'Revolution in E-Governance: Evidence from Spanish Local Government' (2013) 23 *Environmental Policy and Governance* 323.

<sup>88</sup>Silvia Suteu, 'Developing Democracy through Citizen Engagement: The Advent of Popular Participation in the United Kingdom's Constitution-Making' (2015) 4(2) *Cambridge Journal of International and Comparative Law* 405, 407.



satisfactory to promote the democratic legitimacy of legislation even if the legislative process is not effectively influenced.<sup>89</sup>

## 5. Conclusion

This article analysed the role of technology in civic engagement in light of new developments in the context of e-petitioning, in particular the emergence of platforms such as Uber that mobilise citizens to support their interests, creating the appearance of a grassroots movement. The interactive dimension of the internet has permeated the political process and changed the way in which citizens perceive their role in the law-making process.<sup>90</sup>

In this article, I first inquired into the democratic deficits of online petitions in the age of digital agoras by studying the case of Uber's efforts to mobilise passengers to sign e-petitions and participate in the local, state, and sometimes national legislative and regulatory processes.<sup>91</sup> Notwithstanding its importance and convenience, pure online participatory democracy remains a problematic supplement to representative democracy, as technology by itself cannot reinforce democracy, promote widespread and representative citizen engagement and minimise populist forces.<sup>92</sup>

Second, I questioned whether online petitions are different from traditional offline petitions and I discussed the role of digital platforms in the promotion of civic engagement. In the last few years, we have observed that in the 'digital agoras', powerful private actors such as Uber have attempted to mobilise citizens to influence lawmakers in a certain direction, creating the appearance of a grassroots movement. The mobilisation of thousands of citizens in a short period of time might at first show civic sympathy towards technology and innovative forms of transportation, but it might also be indicative of the powerful networks of these platforms and their ability to draft convincing e-petitions. While one of the advantages of online participation is the ability to gather dispersed knowledge and information, the data gathered through online petitions and crowdsourcing might not always be representative. Rather, the information obtained through digital platforms does not originate from a representative sample of the general population but from a self-selected internet population that

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<sup>89</sup>Silvia Suteu, 'Developing Democracy through Citizen Engagement: The Advent of Popular Participation in the United Kingdom's Constitution-Making' (2015) 4(2) *Cambridge Journal of International and Comparative Law* 405, 406.

<sup>90</sup>See, for example, Shelley Boulianne, 'Social Media Use and Participation: A Meta-Analysis of Current Research' (2015) 18(5) *Information, Communication & Society* 524.

<sup>91</sup>For a thorough analysis of the interaction between sharing-economy platforms and local regulators, see Michele Finck and Sofia Ranchordás, 'Sharing and the City' (2016) 49 *Vanderbilt Journal of Transnational Law* 1299.

<sup>92</sup>Eleonora S. M. Cunha, Giovanni Allegretti, and Marisa Matias, 'Participatory Budgeting and the Use of Information and Communication Technologies: A Virtuous Cycle?' (2011) 3 (1) *RCCS Annual Review*.



has internet access, minimal digital skills, and a particular interest in that topic.<sup>93</sup>

Notwithstanding the abundant literature on open government and civic engagement, much remains unknown about the relationship between online participation and democratic legitimacy. For example, while ‘digital agoras’ promise enhanced legitimacy and greater civic engagement, the relationship between the results of citizen participation and politics is still unclear: will and should the representatives always take into account the voices of citizens or is the fact that an open and transparent debate was organised enough to increase the democratic legitimacy of a specific piece of legislation?<sup>94</sup> Or, as Archon Fung pointed out, will we have to accept that ‘the notion that more intensive forms of citizen participation will increase democratic legitimacy is more an ambition than a guarantee?’<sup>95</sup> In addition, further empirical research would be required to shed more light on the added value of digital participation in comparison to traditional offline participatory instruments such as petitioning. This article took a first step in this direction by discussing the complex interaction between participatory democracy and representative democracy in the context of online petitions.<sup>96</sup> Future research should nonetheless inquire, for example, whether the employment of technology improves the influence of civic society on legislative outcomes or whether this impact will continue to depend on what is petitioned, who is truly behind the petition, and how legitimate their action is perceived to be.<sup>97</sup>

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<sup>93</sup>Helen Briassoulis, ‘Online Petitions: New Tools of Secondary Analysis’ (2010) 10(6) *Quantitative Research* 715, 719.

<sup>94</sup>Silvia Suteu, ‘Developing Democracy through Citizen Engagement: The Advent of Popular Participation in the United Kingdom’s Constitution-Making’ (2015) 4(2) *Cambridge Journal of International and Comparative Law* 405

<sup>95</sup>Archon Fung, ‘Putting the Public Back into Governance: The Challenges of Citizen Participation and its Future’ (2015) 75(4) *Public Administration Review* 513, 517.

<sup>96</sup>See also Dmitry Epstein, Mary J. Newhart, Rebecca Vernon, ‘Not by Technology Alone: The “Analog” Aspects of Online Public Engagement in Policymaking’ (2012). Cornell e-Rulemaking Initiative Publications. Paper 18.

<sup>97</sup>Joshua C. Gellers, ‘Crowdsourcing, Global Governance: Sustainable Development Goals, Civil Society, and the Pursuit of Democratic Legitimacy’ (2016) 16(4) *International Environmental Agreements* 415, 416.