

# Digital Democracy in Belgium and the Netherlands. A Socio-Legal Analysis of Citizenlab.be and Consultatie.nl<sup>1</sup>

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Does the dawn of ubiquitous networked computing catalyse a deepening of democracy? Or is democratic empowerment through digital devices and online applications just a fantasy? In order to inform the ongoing debate with empirical findings, a case study design involving two manifestations of digital democracy around 2015 in the Low Countries is applied. Contrary to the standard research focus on the instrumental character of internet ‘tools’ for democracy, much attention goes to the social setting in which selected manifestations of digital democracy are studied. This setting – which is not static but in flux – is broken down into two components: the embedding of the technological capabilities in challenged legal-political realities and the societal expectations that are projected onto these digital technologies.

In line with the attempt to replace an all too common instrumentalist reading of digital innovations with a circular representation, the transforming social setting is not just a backdrop but key to the analysis. The setting provides two important starting points. First, a major shift in legal-political reality concerns the change from *government* to *governance*. The classic arrangements of the state holding regulatory and decision-making monopolies are defied by the concurrent realities of the administrative state in an era of accelerating globalization, the rise of private transnational regulation and digitization. Second, the new wave of digital technologies is expected to formulate solutions for the major drawbacks that plague representative systems. Onto technology the desire is projected to ‘deepen’ the existing representative democracy by reinforcing its core rationale, which is reattributing ‘power to the people’.

This chapter is in five parts. First, the problem is introduced. Building on experiences with previous waves of online technology, the question is raised whether contemporary technological online capabilities may fulfill the promise of strengthening democracy. To determine what this promise may mean in an actual social and political context, the technology and its social setting are explored. Part two consequently elaborates on the research question, conceptualization and operationalization, in order to create a manageable evaluation framework that will be applicable to concrete manifestations of digital democracy. This involves the study of the so-called fourth wave-technology, followed by in-depth scrutiny of the two main components of the social setting, namely embedding and expectations. Since the social setting undergoes fundamental changes, it is necessary to describe additionally both the ‘new’ embedding of the technologies, and the ‘new’ desires are projected onto these technologies from that new embedding. In part III, these concepts are then translated into tangible, practical meanings to allow for direct application in case studies. This approach reduces the complex basic research question to a relatively straightforward evaluation exercise. The fourth part covers two case studies: the Belgian CitizenLab application and the Dutch system of Internet consultation of legislation and regulation. In both instances, the technology, its embedding and the expectations it raised are studied, with final emphasis on the

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<sup>1</sup> This chapter will be published in a shortened form in Prins, C. e.a. (eds.), *Digital Democracy in a Globalized World* (Edward Elgar, date of publication unknown as of 1 March 2017). In contrast to the published version, the conceptualization in this SSRN paper is much more elaborate. See for a general overview of the book: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2461488##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2461488##)

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evaluation question whether this technology can uphold the expectations. Conclusions and reflections follow in the final part.

## I. Problem formulation

### A. A digital-political fantasy?

'It's just a fantasy', she said. It was a sunny afternoon in June 2015 and the multi-stakeholder workshop on participatory governance in Konya had just come to an end. One of the participants was Itir Akdoğan,<sup>3</sup> who had graduated in 2012 on an academic dissertation on the perceived meanings of ICT as instruments for social change in metropolitan Istanbul. In the aftermath of the Arab spring, her empirical data did not support the prevailing idea of digital empowerment. Contrarily, she reduced the trust in the revolutionary power of ICT as hallmarked by Twitter, Facebook and other online social media, to digital-political fantasies. Following the theorizing of Jacques Lacan such fantasies serve a particular role: on a psycho-analytical level, they help to cope with the final impossibility to reach a full state of enjoyment (*jouissance*) since the subject is split from the source of enjoyment and the subject is on an ongoing quest to fill in the resulting lack. Applied to political theory, *jouissance* is reached by full participation in the democratic sphere. Success stories of the emerging digital ways of democratic discussion and deliberation fueled the idea that the lack of participation might be overcome by digital technology. Fairylike powers were accordingly attributed to ICT, such as the ability to curb political power by means of technological power. However, empirical findings pointed out that local challenges, such as long standing political culture, threw up barriers that proved insurmountable to the digitally mobilized society in their quest for political participation. The split between citizen and government remained, so the fantasy of digital empowerment was created as a coping mechanism.

The contention that the promises ascribed to ICT as enabling democracy are not realized, has been shared by many commentators and from many perspectives. A great deal of informed deliberation may take place on the internet but the information is prone to 'balkanization'<sup>4</sup>: many separate communities are formed in the virtual space of people that share the same worldviews. This segregation of the internet into smaller groups with similar interests often manifests itself by a narrow-minded approach to outsiders. Such balkanized cyberspace is indicative of an even more disruptive side of online communication. In 2001, Cass Sunstein warned for the risk of group polarization and the creation of echo chambers on the internet, two features that would be detrimental to democracy for their tendency to amplify extremist thinking.<sup>5</sup> Tragically, some 15 years later, these cautionary words are repeated again and again in the wake of a string of terrorist attacks. The very follow-up workshop on participatory governance in Turkey started with one minute of silence to remember the victims of the terrorist bombing outside Ankara Central railway station on 10 October 2015. Attacks in Paris (13 November 2015) and Brussels (22 March 2016) followed, as

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<sup>3</sup> Itir Akdoğan, *Digital-Political Fantasies in Istanbul. An analysis of the perceived role of ICT in changing institutional politics, activism and identity* (University of Helsinki 2012).

<[www.helsinki.fi/crc/Julkaisut/Digital\\_political\\_fantasies\\_in\\_Istanbul.pdf](http://www.helsinki.fi/crc/Julkaisut/Digital_political_fantasies_in_Istanbul.pdf)> accessed 1 September 2016.

<sup>4</sup> Massimo Battaglia and Christopher Weed, 'Balkanization by Internet?' (1997) 275 *Science* 289-292. Marshall Van Alstyne and Erik Brynjolfsson, 'Electronic Communities: Global Village or Cyberbalkans?' (1997) <[web.mit.edu/marshall/www/papers/CyberBalkans.pdf](http://web.mit.edu/marshall/www/papers/CyberBalkans.pdf)> accessed 24 May 2016.

<sup>5</sup> Cass Sunstein, 'The Daily We. Is the Internet really a blessing for democracy?' (2001) <<http://bostonreview.net/cass-sunstein-Internet-democracy-daily-we>> accessed 24 May 2016.

well as numerous assaults and bombings outside Europe. Investigators and academics increasingly point at the use of social media and other online platforms for propaganda, recruitment and instruction by extremist groups. Many proclaim that the very rifeness of ICT is instrumental to the upswing of worldwide terrorist violence through the diffusion of radical ideas.<sup>6</sup>

Less troubling but still dispiriting findings abound in western democracies on the political power of the internet. Cary Coglianese concluded in 2010 that '[y]et for now, the internet appears to be the greatest political tool not for all Americans, but for the usual suspects.'<sup>7</sup> Matthew Hindman demonstrated on the basis of numerous empirical cases that beliefs that the internet is democratizing US politics are simply wrong. The formal barriers to political expression online are relatively low, but the narrow readership – who gets to read their postings – prevents true democratic exchange of ideas. The extreme 'openness' of the internet is countered by new hierarchies that decide who gets read. These powerful hierarchies are structural, woven into the hyperlinks, Hindman continues, as well as economic, observable in large economic players such as Google or Yahoo!, and social, embodied in a highly educated, white, male elite.<sup>8</sup> In Denmark, a virtual democratic dialogue did not succeed in mobilizing new groups for political debate.<sup>9</sup> Building on a variety of secondary sources, Jan van Dijk demonstrated that the Internet is not drawing more people into the political process.<sup>10</sup> Overall, 'the often-romanticized "Athenian" or "public sphere" [. . .] has proved notoriously difficult to embed in political organizations.'<sup>11</sup>

## B. Crashed waves

This realism is a far cry from the optimism in the days of the first graphical browsers, when it was boldly proclaimed that 'the main value of the internet was political.'<sup>12</sup> From the first half of the 1990s on, consecutive waves of utopian aspirations about digital democracy emerged. The first wave was propelled by the belief that 'liberal governments can use the internet as a powerful engine of open government by providing the citizenry with more information about the operation of government and the effectiveness of laws.'<sup>13</sup> Through the equal access to information the internet was deemed to become 'the great equalizer because it changes the balance of power between

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<sup>6</sup> See, e.g. Jamie Bartlett, *Radicals* (to be published in 2017). Bartlett is head of the Violence and Extremism Programme and the Centre for the Analysis of Social Media at Demos (a UK think tank). See also the EU Internet Forum (24 July 2015) to raise awareness 'on the way in which terrorists are abusing the Internet and social media to incite terrorist atrocities or radicalize and recruit others'. <[www.asktheeu.org](http://www.asktheeu.org)> accessed 1 September 2016.

<sup>7</sup> Cary Coglianese, 'E-government and inequality in public participation' (*Regblog*, 27 October 2010) <[www.regblog.org/2010/10/e-government-and-inequality-in-public-participation.html](http://www.regblog.org/2010/10/e-government-and-inequality-in-public-participation.html)> accessed 24 May 2016.

<sup>8</sup> Matthew Hindman, *The Myth of Digital Democracy* (Princeton University Press 2009) 4, 18-19.

<sup>9</sup> Jakob Linnaa Jensen, 'Virtual democratic dialogue? Bringing together citizens and politicians' (2003) 8 *Information Polity* 29.

<sup>10</sup> Jan van Dijk, 'Digital Democracy: Vision and Reality' in I.Th.M. Snellen and W.B.H.J. van de Donk (eds), *Public Administration in the Information Age* (IOS-Press 2013) <[www.utwente.nl/bms/vandijk/research/itv/itv\\_plaatje/Digital%20Democracy-%20Vision%20and%20Reality.pdf](http://www.utwente.nl/bms/vandijk/research/itv/itv_plaatje/Digital%20Democracy-%20Vision%20and%20Reality.pdf)> accessed 24 May 2016.

<sup>11</sup> Andrew Chadwick, 'Web 2.0: New challenges for the study of e-democracy in an era of informational exuberance' (2009) 5 *Journal of Law and Policy for the Information Society* 9.

<sup>12</sup> Hindman (n 7) 1.

<sup>13</sup> Henry Perritt Jr, 'The Internet as a Threat to Sovereignty? Thoughts on the Internet's Role in Strengthening National and Global Governance' (1998) 5 *Global Legal Studies Journal* 435.

citizens and power barons'<sup>14</sup>. Around 1997, a second wave emerged, still under the Web 1.0 format. Carried by the observations of the ever-increasing extent of the internet in society it reinforced visions of a 'new democracy' equivalent to the vision of a 'new economy'.<sup>15</sup> With the burst of the dot-com bubble in the fall of 2001, this wave crashed. A third wave originated in the following years with the advent of the Web 2.0 perspective.<sup>16</sup> Enabling two-way communication and accepting user-generated content, the internet was quickly regarded as a platform for social and participatory experiments. The expectation was that these novelties – blogs, wiki's, online petitions, social media ... - would pave the way for a sizeable digital contribution to democratic policy making.<sup>17</sup> As sketched above though, by the end of the decade the accumulating empirical evidence appeared to confirm the statement that 'E-democracy so often has failed to live up to expectations.'<sup>18</sup>

### C. The fourth wave

Behind the froth of each broken wave, the face of a new wave materialized, and with it a new generation of believers stood up.<sup>19</sup> In 2016, a fourth wave can be identified on the basis of concurring technological features: ubiquitous computing on the one hand, and elevated pervasiveness and mobility of the internet on the other.

'Ubiquitous computing' was anticipated in 1991 as the next step after the mainframe and the personal desktop.<sup>20</sup> It refers to a technology that has become so pervasive that it is invisible to us and totally embedded in our lives. Whereas there are obviously degrees of ubiquity here, it appears that this phase has started.<sup>21</sup> The ability of everyday objects to do computations is considered so normal that many users have no idea that these objects contain a computer of some sort (that is, until the object malfunctions). While the addition of a microprocessor to a familiar appliance was seen as something extraordinary in the 1980s, now merely professionals and geeks rave about integrated circuit processors. Refrigerators, dishwashers, washing machines, televisions, cars, or mobile phones now all leave the factory with one or more microprocessors in them. Their numerous uses and popularity drive an ongoing quest for better specifications and larger mobility. The computing power of common ICT devices such as smartphones, tablets and of course PCs is generally sufficient to support high definition video communication while simultaneously running numerous different applications. Moreover, prices keep dropping as a result of technological innovation and mass scale production.

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<sup>14</sup> Howard Rheingold (1998) quoted in Peter Levine Peter Levine, 'Can the Internet Rescue Democracy? Toward an On-line Commons' in Ronald Hayduk and Kevin Mattson (eds), *Democracy's Moment: Reforming the American: Political System for the 21st Century* (Lanham, MD, Rowman & Littlefield 2002) 121.

<sup>15</sup> Jan van Dijk, 'Digital Democracy: Vision and Reality' (n 9) 2.

<sup>16</sup> O'Reilly T, 'What is Web 2.0?' (2005) <[www.oreilly.com/pub/a/web2/archive/what-is-web-20.html](http://www.oreilly.com/pub/a/web2/archive/what-is-web-20.html)> accessed 1 July 2016.

<sup>17</sup> Somewhat different from my analysis, Jan van Dijk (n 9) identified four consecutive waves of utopian aspirations about digital democracy, starting with teledemocracy. The last wave in van Dijk's analysis coincidences more or less with the launch of Facebook in 2004.

<sup>18</sup> Chadwick (n 10) 16.

<sup>19</sup> Andrew Chadwick, 'Bringing E-Democracy back in. Why it matters for future research' (2003) 21 *Social Science Computer Review* 443.

<sup>20</sup> Commission, *The Onlife Manifesto. Rethinking public spaces in the digital transition* (2012) <<https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/Manifesto.pdf>> 3-4. Accessed 15 August 2016.

<sup>21</sup> Paul Dourish and Genevieve Bell, *Divining a digital future: mess and mythology in ubiquitous computing* (MIT Press 2011).

In addition to the pervasiveness of powerful processors, the internet keeps spreading at a rapid pace.<sup>22</sup> The fourth wave technical specifications of the online world are high speed and bandwidth through an ever-expanding infrastructure, with 4G networks securing high mobility while 5G looms at the horizon. Furthermore, home and mobile subscriptions for broadband are increasingly affordable while user-friendliness keeps improving. The fading out and final elimination of roaming charges in the European Union by June 2017 and a string of regulatory measures are due to increase competition and reduce prices levels even more.<sup>23</sup> All this has led to an unprecedented level of coverage (the material dimension) and usage (the functional dimension<sup>24</sup>) of the internet.

‘Ubiquitous networked computing’ reflects the simultaneous pervasiveness of both digital devices and the internet. It characterizes the technological dimension of the fourth wave. From a user’s perspective this dimension materializes as ‘access to the internet wherever and whenever you want.’<sup>25</sup>

#### D. The question and how to proceed

What does this latest wave now hold from the perspective of democracy? Asking this question is really repeating the universal question that all of the previous waves sparked: to what degree contribute the online technologies which are perceived as manifestations of digital democracy actually to democracy?

Even though this question has guided – mostly implicitly – much of digital democracy’s research, its structure and formulation are undeniably problematic for research aims. First, the question displays circularity. Second, the main concepts are vague. In fact, not a single element is free from ambiguity: ‘contribute’, ‘perceived as digital democracy manifestations’, and finally, ‘democracy’ (again – hence the circularity) can be interpreted in myriad ways. Nonetheless, this seemingly ramshackle question was purposely crafted to reflect two important concerns. A first issue to consider is the circularity that derives from the dismissal of blind instrumentalism and the preference for a constructivist position.<sup>26</sup> In other words, it is recognized that the technological dimension (the digital democracy manifestations) and the social dimension (democracy) are intertwined and coproduce one another. Second, the concepts used in the question need to be sufficiently open and abstract to reflect the changes that they experience over time. Both technology and democracy evolve, and sometimes quickly. In short, the question is designed to express the mutual interdependencies between technology and democracy, and how both change over time.

The formulation of the general research question in such circular and open way obviously requires a thorough conceptualization before operationalization is even possible. In the conceptualization that follows, an attempt is made to describe the technologies in their social setting (for now just filled in as democracy), thereby acknowledging the co-producing while rejecting

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<sup>22</sup> According to the Dutch national statistical service (CBS), 9 in 10 people in the Netherlands accessed the internet on a daily basis in 2015 (2007: 88.4%, 2010: 88.6%). In 2005, just over 1 in 10 households had mobile phones with internet access, versus nearly 8 in 10 in 2014. < <https://www.cbs.nl/en-gb/news/2015/11/9-in-10-people-access-the-Internet-every-day>>. accessed July 2016. Regarding Belgium, internet usage and especially mobile internet typically lagged behind, but has progressed swiftly: 70.0% (2009), 77.8% (2010), 81.3% (2012), 83.9% (2014), and 85% (2015). Mobile Internet penetration is at 66.1% in early 2016 - it has doubled since 2013. <<http://www.Internetworldstats.com/eu/be.htm>> accessed 15 August 2016.

<sup>23</sup> <[http://europa.eu/rapid/press-release MEMO-15-5275 en.htm](http://europa.eu/rapid/press-release_MEMO-15-5275_en.htm)> accessed 1 May 2016.

<sup>24</sup> James C Witte and Susan E Mannon, *The Internet and social inequalities* (Routledge 2010).

<sup>25</sup> CBS (n 21).

<sup>26</sup> See Corien Prins in the introduction to this volume.

a purely instrumental or reductionist reading of the technologies associated with digital democracy. To complicate matters, technologies and their social setting are all but static, so the conceptualization needs to account for change. This is done by discussing the social setting twice: first, as a point of departure; second, as a concrete state. In sum, the following conceptualization consists of four parts. First, the features of transforming technologies are explored in relationship to shifting conceptions of society and democracy (II.A). Next, the focus is on the traditional social setting of the online technologies, which is broken down to embedding (nation state) and expectations (representative democracy) of the digital space (II.B.). Thirdly, since the social setting is exposed to systemic changes, the conceptualization continues with an elaboration of the two aspects of the social setting in a contemporary form. This means asking which forms the embedding and the expectations take on in the wake of the systemic changes that are now taking place in the (western) world (II.C). Fourth, all three constituting elements of the analysis – technologies, embedding and expectations – are discussed together (II.D).

The exploration of the conceptual dimensions of the constituting elements of the general question demands considerable attention and focus. This effort is subsequently rewarded with a straightforward operationalization into manageable research questions in section III (an additional bonus of the extensive conceptualization is that it can be used for research into digital democracy outside the scope of this contribution.) The research methodology will receive some attention as well in the third section. Section IV holds two case studies, selected from manifestations of digital democracy in Belgium and the Netherlands in 2015, to which the conceptual and consequently operationalized three-fold approach has been applied. Conclusions and reflections follow in section V.

## II. Conceptualization

### A. The fourth wave: ubiquitous networked computing and its functionalities

The technological dimension of the fourth wave combines the prevalence of digital devices and internet. The very large majority of households in western democracies have access to the internet inside and outside the home. Accessibility and affordability of online IC technologies are at such high levels that the classic digital divide in access to information along economic and education lines is practically obsolete.<sup>27</sup> Trusted ICT companies and young entrepreneurs build digital devices and applications that correspond with conceived or fabricated needs of society. Mobile innovations intend to facilitate life around the clock and everywhere we go. We believe that dedicated apps can monitor health, inform us about public transport and traffic jams, and make us see instantly which news is breaking. Can these multifunctional monitoring devices now also play a role in the realization of the political internet? Can mobile digital applications feature as *personal networked monitoring stations of democracy*? Features of so-called ‘monitory democracy’ are surely recognizable in the new functionalities of these applications. Not surprisingly, John Keane recognizes that power-scrutinizing mechanisms seem highly dependent on online instruments: ‘Monitory democracy and computerized media networks behave as if they are conjoined twins.’<sup>28</sup> Indeed, Facebook

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<sup>27</sup> The Digital Divide initially referred to the perceived gap between those who have access to the latest information technologies and those who do not from a purely material perspective. See James C Witte and Susan E Mannon, *The Internet and social inequalities* (Routledge 2010). Massimo Ragnedda and Glenn W Muschert, *The Digital Divide: The Internet and Social Inequality in International Perspective* (Routledge 2013).

<sup>28</sup> John Keane, *The Life and Death of Democracy* (W.W Norton & Company 2009) 739.

communities and WhatsApp groups emerge as platforms to monitor the actions of local and national governments (or the lack thereof) and share information on transgressions. This echoes the idea of 'monitorial citizenship', implying that citizens ring the alarm bell if things go wrong but otherwise accept politics as they are.<sup>29</sup>

But there is more to it than just the monitoring aspect. Building on past innovations and lived experiences in communication technology, the newest wave of online technologies is destined to operate in a social syntax where it is believed that real-time communication with just about anyone is possible in the digital space. In particular the horizontal architecture of social media sparked the belief that traditional social borders, drawn along the lines of social stratification, would evaporate and allow communication across all strata or classes. Lower, middle or upper class: anyone can talk now to the major, the prime minister or any other power holder in real time (yet virtual space) through chat sessions, Twitter, replies to blogs and so on. At the time of the last revision of this text, The Dutch prime minister and his secretary of state for security and justice went live on Facebook, replying to realtime comments.<sup>30</sup> In symbiosis with social change, innovations in digital technologies may thus facilitate a dialogue between those that are affected by decisions and those that make these decisions.

In a nutshell, shimmering in the face of the new wave is the promise that democracy may benefit from (at least two) of the functionalities that are present in ubiquitous networked computing: the extended, around the clock, networked monitoring of power, and horizontal communication.

## B. Challenged embedding, failing expectations: nation state and representative democracy

A predominantly technological reading of technical capacities entailed by digitization is all too common.<sup>31</sup> For the full picture, the embedding of the digital world and the expectations with regard to democracy that are projected onto it should be captured as well. Working towards an understanding of the imbrications of the digital and democracy entails addressing the embeddedness of digital space in the nation state first, for the nation state is the cradle of contemporary representative democracy. Next, the focus is on the expectations that are raised by and projected onto the digital in interaction with democratic political processes.

### 1. Challenged embedding: the nation state

'Technological artefacts do not simply appear out of nowhere: they are the outcomes of existing social, economic and technological relationships', attests Stirling.<sup>32</sup> Sassen argues that 'we cannot simply infer the impact of these technologies [. . .] on democratic participation by considering their technical capabilities.'<sup>33</sup> Indeed, the digital is embedded in the cultural, economic, political and other social systems in which we spend our lives and in which we bestow meaning upon the digital. Conversely, through this embeddedness, the digital can act back on the social and create new imaginations and possibilities. One set of relationships that is vital to our analysis connects digital technologies to the system of law, politics and public administration, a system that is in turn

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<sup>29</sup> Michael Schudson, *The Good Citizen: A History of American Civic Life* (Harvard University Press 1999).

<sup>30</sup> <[https://www.facebook.com/VVD/?hc\\_ref=NEWSFEED](https://www.facebook.com/VVD/?hc_ref=NEWSFEED)> accessed 3 September 2016.

<sup>31</sup> Saskia Sassen, *Territory, Authority and Rights. From Medieval to Global Assemblages* (Updated Edition, Princeton University Press 2008) 329.

<sup>32</sup> Andy Stirling, 'Opening up' and 'closing down' (2008) 2 *Science, Technology and Human Values* 262.

<sup>33</sup> Sassen (n 30) 341.

intricately linked to the nation state. As a point of departure the nation state is especially relevant in this contribution since it traditionally has represented the physical territory and conceptual space for experiments with various modes of democracy.<sup>34</sup>

Nonetheless, the relationship between the digital world and the nation state is a complicated one. On the impact of the information revolution, René Sève writes: '*C'est peut-être l'organisation politique, juridique, "citoyenne" qui semble la moins impactée*'.<sup>35</sup> Elections, lawmaking and the administration of justice indeed appear to be very elusive to the digital transition, surely so when compared to the easy uptake of digital strategies by commerce, services, entertainment or education. What these three domains precisely share is their strong association with the democratic nation state. The activities of rulemaking and conflict resolution have in common that they became gradually absorbed and monopolized by the nation state from the 17<sup>th</sup> century on. Electoral processes were added as an obvious exclusivity of the state with the advent of representative democracy. After two formative centuries, the process of creating a monopoly in administrative, legal and judicial affairs accelerated with such vigor and assiduousness that during the 19<sup>th</sup> and 20<sup>th</sup> century the nation state represented the most fundamental category of political organization in the world.<sup>36</sup> When digitization entered the picture towards the end of the 20<sup>th</sup> century and defied some of the basic premises of legal statism,<sup>37</sup> clearly the nation state (or more correctly, its civil servants, judges, officials, politicians ...) was not planning to yield. Online dispute resolution, online voting and computerized lawmaking still are tightly restricted in most nations. In addition, nation states have the material and regulatory means to exert massive influence over the internet.<sup>38</sup> However, the nation state blocking those three domains reads more and more as an anachronism in the era of ubiquitous computing. The capabilities and force of the digital space grow continuously, and what's more, digitization interacts with another phenomenon that challenges the foundational elements of the territorially organized nation state. The latter of course refers to globalization which is now seen accelerating into hyperglobalization.

In short, the nation state is under structural pressure. The archetypal laboratory for experiments with representative democracy is challenged by two intertwined systemic changes – digitization and globalization. Consequently, an assessment of contemporary digital democracy that takes its embedding seriously requires an operationalization of the nation state caught in the act of reacting to these changes. The so-called shift from *government* to *governance* seems to capture the essential characteristics of this reaction in a comprehensive way. Moreover, the details of this shift offer a practical way to understand and operationalize the embedding of digital democracy. The discussion of transformed embedding will be continued after a first look at the second aspect of the social setting.

## 2. Failing expectations: representative democracy

The second part of the social setting for the study of digital democracy concerns the expectations that are projected onto digital democracy applications. These applications are

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<sup>34</sup> David Held, *Models of Democracy* (Stanford University Press 2006).

<sup>35</sup> René Sève, 'Présentation. E-justice. Dialogue et Pouvoir' (2011) 54 Archives de philosophie de droit 38.

<sup>36</sup> Ulrich Beck and Natan Sznaider, 'Unpacking cosmopolitanism for the social sciences: a research agenda' (2006) 57 The British Journal of Sociology 3.

<sup>37</sup> Legal statism implies that the state aspires to gain a total monopoly on rulemaking and dispute resolution through exclusive use of state bodies such as parliament, government and courts. See e.g. Koen Van Aeken, 'E-justice in the Low Countries' in Bernard Hubeau and Ashley Terlouw, *Legal Aid in the Low Countries* (Intersentia 2014) 307-330.

<sup>38</sup> Sassen identifies elements of cyberspace that are firmly in the hands of nation states, such as technical infrastructure (fiber cables, mobile antenna's...) and internet legislation. Sassen (n 30) 330-338.

supposed to contribute to democracy – but to what kind of democracy, and to do exactly what? The starting point of the analysis is the observation that liberal representative democratic systems are challenged in many ways. Princeton researchers even stated in 2014 that the USA was no longer a democracy. They empirically demonstrated ‘that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influences.’<sup>39</sup> Worldwide, representative systems display an increasing number of fatigue symptoms, such as public indifference and low voter-turnout. Political parties with anti-democratic ideologies conquer ground, reaping the benefits of disillusionment and distrust in politics. Political alienation persists and aggravates. Elected officials are often hardly representative for the electorate. New democratic legitimacy gaps appear in the ‘administrative state’<sup>40</sup> while the European supranational order displays double gaps.<sup>41</sup>

In response to the ongoing popular and academic critique,<sup>42</sup> liberal nation states - and their international organizations and supranational constellations – started to develop a participatory dimension within representative systems, while carefully respecting the basic choice for representative rather than participatory democracy.<sup>43</sup> Within legal and political boundaries, experimentation with participatory methods and techniques is widely encouraged. In the search for new ways to remedy a suffering representative democracy, the capabilities of the interactive and mobile internet are naturally exploited. In positive wordings, it is suggested that digital democracy manifestations are expected to contribute to democracy through the process of *deepening democracy with participatory means*.

### C. Transformation of embedding and expectations: governance and deepening democracy

In line with the circularity sketched above, the transforming setting in which manifestations of digital democracy are studied is not just a backdrop but key to the analysis. It provides two important starting points. First, a major shift in legal-political reality concerns the change from *government* to *governance*. The classic arrangements of the state holding regulatory and decision-making monopolies are defied by the concurrent realities of the administrative state in an era of accelerating globalization, the rise of private transnational regulation and digitization. Second, the new wave of digital technologies is expected to formulate solutions for the major drawbacks that plague representative systems. Onto technology the desire is projected to ‘deepen’ the existing representative democracy by reinforcing its core rationale, which is reattributing ‘power to the people’. Participation is pivotal here. In the following paragraphs the two dimensions of the social setting are explained. These explanations facilitate the subsequent operationalization of the research question.

#### 1. Governance

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<sup>39</sup> Martin Gilens and Benjamin Page (2014) ‘Testing Theories of America Politics: Elites, Interest Groups, and Average Citizens’ <[http://scholar.princeton.edu/sites/default/files/mgilens/files/gilens\\_and\\_page\\_2014\\_-\\_testing\\_theories\\_of\\_american\\_politics.doc.pdf](http://scholar.princeton.edu/sites/default/files/mgilens/files/gilens_and_page_2014_-_testing_theories_of_american_politics.doc.pdf)> accessed 15 August 2016.

<sup>40</sup> See below under Governance.

<sup>41</sup> Rob van Gestel ‘The “Deparliamentarisation” of Legislation: Framework Laws and the Primacy of the Legislature’ (2013) 9 Utrecht Law Review 106.

<sup>42</sup> Dmytro Khuttky, ‘Efficient Participatory Democracy: Real Utopia Model’ (2016) 13 <<http://havenscenter.org/files/Khuttkyy%202016%20Efficient%20Participatory%20democracy.pdf>> accessed 15 August 2016.

<sup>43</sup> Illustrative is the Treaty of Lisbon Art. 10. See below.

What is governance? For the purpose of the present contribution, governance entails processes and institutions that contribute to public decision-making but which are not necessarily state backed or state sanctioned. Since 2001, the concept of governance has gained prominence in policy circles.<sup>44</sup> The adaptation of the White Paper on Governance<sup>45</sup> was the most visible sign of the changing paradigm in the European space, following years of experimentation with new regulatory techniques that moved away from copying national legislative action.<sup>46</sup> Defining governance is not obvious, and certainly is not so for legal scholarship, since its large scope entails interest from various disciplines, including sociology, political sciences and law. Some speak of 'the various institutionalized modes of social coordination to produce and implement collectively binding rules, or to provide collective goods.'<sup>47</sup> Others conceive governance as an alternative to top-down, command-and-control based governmental steering<sup>48</sup> whereas still others make the implicit association with *good* governance, highlighting the importance of procedural and substantive exigencies such as transparency, accountability and integrity – norms that migrated from the management of private entities to public administration.

One overall feature that is relevant to our outlook is that the governance paradigm relaxes many of the assumptions of government in its classic arrangement with the nation state. Governance activities take place on various and varied levels, renouncing the idea of one central seat of power that embeds executive and legislative institutions in accordance with the Trias Politica. This affects the composition of actors and their respective powers in three principle ways. To begin with, in nation states, as well as in the global political arena<sup>49</sup>, the executive bodies and regulatory agencies gain prominence in rulemaking at the expense of parliamentary legislative activity.<sup>50</sup> Next, regions, cities, city-regions and other actors that were marginalized at the height of normative nationalism<sup>51</sup>, appear to regain their autonomy and become powerful forces on a scale that may even transcend national borders.<sup>52</sup> Thirdly, the promotion of a bottom-up perspective in the

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<sup>44</sup> Commission, 'European Governance A White Paper', COM (2001) 428.

<sup>45</sup> Commission, 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission', COM (2002) 704 final.

<sup>46</sup> Rob van Gestel and Hans-W. Micklitz, 'Revitalizing doctrinal research In Europe. What about methodology?' (EUI Working Paper LAW 5/2011, 2011) 10.

<sup>47</sup> Renate Mayntz, *Über Governance: Institutionen Und Prozesse politischer Regelung* (Campus 2009).

<sup>48</sup> Pauline Vaillancourt Rosenau, *Public-Private Policy partnerships* (MIT Press 2000).

<sup>49</sup> 'The voice of the people – province by province, country by country, region by region, is much softer and less likely to be heard than the voice of the regulators, the judges, the ministers and heads of state.' Anne-Marie Slaughter, *A new world order* (Princeton University Press 2004) 104.

<sup>50</sup> This shift is sometimes presented as the change from a Trias Politica to a Duas Politica. See e.g. Alex Brenninkmeijer, 'Democratie en de burger' (Staatsrechtconferentie 2012).

<sup>51</sup> Beck and Sznaider (n 35) 8.

<sup>52</sup> Illustrative is the Flemish coalition agreement 2014-2019 in which the pivotal democratic function of cities is highlighted; cities receive more competences and, as a principle, it is accepted that state legislation may not be applicable to certain cities because of their different context and needs. Vlaams Regeerakkoord (2014-2019) 3. <https://www.vlaanderen.be/nl/publicaties/detail/het-regeerakkoord-van-de-vlaamse-regering-2014-2019>. accessed 3 September 2016. On a more global scale, Michael Bloomberg, NYC mayor from 2002 to 2013, argued that city government should be an important level of global governance: 'We're the level of government closest to the majority of the world's people. We're directly responsible for their well-being and their futures. So while nations talk, but too often drag their heels – cities act.' This quote testifies to the new assertiveness of cities in the context of global governance. Michael Bloomberg at the Economic Cooperation and Development Conference organized by the C40 Cities Climate Leadership Group, Chicago, Illinois, 8 May 2012, <[www.mikebloomberg.com/index.cfm?objectid=F37AF6A5-C29C-7CA2-FAD4026728D73EB8](http://www.mikebloomberg.com/index.cfm?objectid=F37AF6A5-C29C-7CA2-FAD4026728D73EB8)> accessed 1 February 2016. Another illustration is the Flemish coalition agreement 2014-2019 in which the pivotal democratic function of cities is highlighted; cities receive more competences and, as a principle, it is accepted that state legislation may not be applicable to certain cities because of their different context and needs.

arrangement of public affairs is due to advance the role and position of civil society organizations, community based organizations and other non-governmental actors. Of the manifold movements of actors on the playing field, the concurrent rise of executive and civil society actors is striking at first sight. Albeit somewhat counter-intuitive at first sight, this is understandable in a governance framework for at least three reasons. A first explanation concerns the recourse to self-regulation and co-regulation that entails assigning regulatory tasks to target groups in society. The increased attention for assessment and evaluation of rules and policies may offer a second explanation. Because executive bodies and regulators involved in rulemaking take an essentially instrumental stance, they have become interested in issues of compliance and effectiveness. This has led to the development and implementation of a range of meta-regulatory activities, with impact assessment and ex post evaluation at the center. While the debate is yet inconclusive about the democratic merits of these approaches, it is a fact that they minimally require cooperation of the general public or involvement of specific groups within society. A third explanation is both more fundamental and tentative. Whereas by procedure and by definition traditional legislation upholds formal normative standards that in turn safeguard protection and democratic legitimacy, there is no general principle that prescribes how non-legislative regulatory governance instruments should slot in democratic ideals.<sup>53</sup> This does not imply that executive bodies and independent agencies are at liberty to create rules that are exempt of democratic screening. There are internally binding rules that prescribe consultations and other means to prevent arbitrary use of power. Moreover, a minister or top level bureaucrat knows very well that a grave legitimacy deficit in a particular decision will all go but unnoticed.<sup>54</sup> The lack of representation will be openly dismissed by affected stakeholders, interest groups, monitoring instances, members of parliament or even the supreme administrative court (such as the Council of State). Therefore, executive actors are forced to reach out to society and invite stakeholders to participate in the decision making process. In a governance model, the demise of traditional democratic representation coincides with novel ways of involving society. At least three ways may be distinguished: autonomy for societal actors in processes of self-regulation, involvement in assessment and evaluation of laws, regulations and policies, and consultation and participation of stakeholders in the legislative and policy making process. The inclusion of non-state actors in a governance setting is habitually explained by the need for expertise in complex decision-making contexts and the voluntary quest for popular support, while it may be as well seen as a way to counter the relative lack of institutional and procedural safeguards for democratic involvement beyond the classic government model. Which argument is stronger is not an issue here; the important conclusion with regard to the embedding of digital democracy in the challenged nation state is that state as well as non-state actors may be involved in shaping democratic processes.

## 2. Deepening democracy

If it is expected that fourth wave innovations may contribute to 'deepening' democracy, the idea of deepening needs attention first. Etymologically, deepening may refer to a search of

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Vlaams Regeerakkoord (2014-2019) 3. <https://www.vlaanderen.be/nl/publicaties/detail/het-regeerakkoord-van-de-vlaamse-regering-2014-2019>. accessed 3 September 2016.

<sup>53</sup> A research outlook that since 2010 is increasingly winning popular acclaim within regulatory governance scholarship is precisely democratic legitimacy.

<sup>54</sup> This was often brought up by high level bureaucrats during interviews for the research of the following publication: Patricia Popelier, Peter Van Humbeeck, Koen Van Aeken and Anne Meuwese, *Kwaliteitsvolle regelgeving door middel van consultatie van belanghebbenden* (Vlaamse Gemeenschap Dienst Wetsmatiging 2010).

foundations.<sup>55</sup> In the current context this concerns a quest for the foundational features of democracy, which is the restitution of the 'rule of the people' in a present-day polity where every voice is heard and each interest is weighed in public decision making. This should not be taken too literally – liberal democracies generally shun the idea of a truly participatory democracy for it is generally associated with failed socialist states and collapsed communist regimes. Rather, the general consensus remains that the rule of the people is best realized through some model of representation, as in 'a system of rule embracing elected "officers" who undertake to "represent" the interests and/or views of citizens within the framework of the rule of law.'<sup>56</sup> This system has attained global dominance among democratic variations, even up to the supranational European order. Article 10 of the Lisbon Treaty clearly states that the functioning of the Union is founded on representative democracy. However, the description of democracy does not end here. Article 11(2) continues with 'The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society', whereas Article 11(3) posits 'The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent'.<sup>57</sup> Although the order of these articles confirms the hegemony of liberal, representative democracy, the inclusion of Article 11 acknowledges implicitly that representative systems have certain shortcomings, which can be remedied by introducing participatory elements. The latter activity represents deepening (representative) democracy.

Deepening representative democratic is not so much concerned with improving procedural aspects or technicalities of the electoral system. Rather, it is a manifestation of the longing for a polity where community members participate freely in public decision making by sharing information, defending opinions, and engaging in dialogue and deliberation. Key to the understanding of 'deepening' is the emphasis on the experience of participation, regardless of the outcome of the political deliberations.<sup>58</sup> Precisely the lack of meaningful participatory experiences is what hallmarks much of the critique on actual western democracies. At the same time, the digital universe offers countless ways of sharing information and engaging in communication, with an emphasis on interactivity and participation since the emergence of Web 2.0. With the emerging ubiquitous internet, anyone can now participate in social networks and share information. The concurrency of the accumulation of critique on representative democracy on the one hand, and the accessibility of applications that facilitate online communication and dialogue on the other, understandably creates high expectations on the part of the digital.

Whereas the realization of democratic legitimacy by providing participatory experiences is at the heart of the expectations of digital democracy applications, this is not the only one. Governmental administrations expect that participation can fulfill a rational-analytical function; they see participation and consultation as a tool to provide input into the public decision making process.<sup>59</sup> The knowledge on the ground of countless actors affected by rules and policies can be harvested to improve various qualities of law and policy, such as effectiveness, efficiency and compliance. Furthermore, participatory approaches may be functional to restore trust in the administration,<sup>60</sup> balance contested ideals and values in a global context of increasing cultural

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<sup>55</sup> <[www.etymonline.com](http://www.etymonline.com)> accessed 1 September 2016.

<sup>56</sup> Held (n 33).

<sup>57</sup> Moreover, Art. 11.4 provides the legal basis for the European Citizen's Initiative.

<sup>58</sup> Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2006).

<sup>59</sup> Patricia Popelier, Peter Van Humbeeck, Koen Van Aeken and Anne Meuwese, 'Transparant consuleren in Vlaanderen: de spanning tussen rationeel wetgevingsmodel en besluitvormingspraktijk', (2012) Tijdschrift voor Wetgeving 2.

<sup>60</sup> Meredith Edwards, 'Participatory Governance into the future. Roles for the Government and Community Sectors' (2001) 60 Australian Journal of Public Administration 78.

divides<sup>61</sup> and may even help to alleviate possible tension among groups, thus taking up the function of conflict prevention.<sup>62</sup>

In sum, deepening democracy primarily means remedying the lack of participatory elements in representative democracy. Advancing civil society's participation in decision making not only serves democratic legitimacy; it also improves the quality of public decision making by providing desired input. Because precisely the functionalities of 'participation' and 'information exchange' are distinctively present in the digital space, expectations with regard to deepening democracy are commonly projected onto the digital technologies.

#### D. Online technologies, governance and participation reconnected

In the preceding paragraphs, the three building blocks of the analytical framework (the online technologies, the changing legal-political realities of the embedding and the evolving expectations of digital democracy) were described separately. Now, it is time to reassemble the constituting parts. Which connections are most obvious?

The shift from nation state-based government to a governance model and the quest for a revitalizing of the foundational ideas of democracy through implementing participatory mechanisms, appear to be intimately connected. The shift from government to governance raises questions about the future-proofness of traditional democratic representation and the role of non-state actors, whereas the digital space is expected to produce solutions to overcome the flaws in representative democracy. Both social dimensions, embedding and expectations, display a struggle with the appropriateness of democratic representation as it is organized now, in particular with regard to inclusiveness and representativeness. Turning to the embedding again makes clear that these solutions predominantly appear to be participatory mechanisms.<sup>63</sup> The digital space now turns out to be well equipped with applications and devices that facilitate communication, dialogue and participation – precisely the things that the embedding needs, and a possible way to fulfill the expectations stemming from the embedding.

This seems to confirm the theoretical reciprocity between embeddedness<sup>64</sup> and technological capabilities of the digital that has been suggested by Saskia Sassen and others. The digital is embedded in the social and through this embedding, the digital can act back on the social, inspired by the expectations that are projected from the embedding onto the digital. The imaginations and expectations exist and are consequently expressed by a new generation of believers, yet whether they are truly realized has to be determined by empirical research. If it appears that no 'acting back' takes place these imaginations and expectations are indeed similar to the digital-political fantasies in the thesis of Itir Akdoğan. In more down-to-earth terms: 'acting back' takes place when online technologies, aimed at realizing participation in public decision making, are successfully developed and implemented, so flaws in representative democracy are remedied. If such technological advances do not exist or do not function, digital democracy remains a fantasy. How to proceed with the research from here is explained in the next section.

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<sup>61</sup> Held (n 33).

<sup>62</sup> Available online from <<http://one-europe.info/the-indication-of-societies>> accessed 1 September 2016.

<sup>63</sup> The focus on participation rather than control through monitoring precisely derives from the preceding analysis. Of the two chief functionalities of ubiquitous networked computing, the communication dimension raises most expectations; equally, from the viewpoint of the embedding, the issue of deepening democracy is salient. This does of course not imply that the monitoring power of the ubiquitous internet is of minor importance – the suggestion here is that the participatory mechanisms incorporate monitory functions, e.g. through the diffusion of critical information or public demands for release of information by the government.

<sup>64</sup> Sassen (n 30) 344.

### III. Operationalization and method

#### A. Operationalization

The basic research question concerns the assessment of digital democracy applications in terms of their contributing to democracy. In section II, the constituting elements of this problem were identified and explained. Using the findings from the conceptualization, these abstract elements - the technologies, the embedding and the expectations – are now replaced by their substantive meaning. This results in the following set of research questions:

- Are there ‘ubiquitous networked computing’ technologies that are deployed by state or non-state actors and that are expected to strengthen the challenged participatory dimension of public decision making?
- How can such technologies be evaluated?

The constitutive elements will now be further explained and developed to allow for immediate empirical scrutiny: the technologies, the embedding and the expectations. To answer the second question, an elementary evaluation framework will be proposed.

#### *Technologies*

In II.A, the technological dimension of the fourth wave’s digital democracy applications was discussed. The historically unprecedented availability, accessibility, affordability and mobility of internet, combined with the expansive use of digital technology in countless items of daily use and the popularity of 4G smartphones, makes believe that we have already entered the era of ‘ubiquitous networked computing.’ Crucial are also the inherent functionalities of monitoring and interaction.

Selecting digital democracy manifestations on the basis of this description is straightforward. In practice, applications will be considered if their operation requires online activity beyond the Web 1.0 level.

#### *Embedding*

With regard to the embedding of digital democracy, it was argued that the classic government arrangement in the nation state gradually makes way for governance constellations. For practical research purposes, this argument entails a shift in the institutional space where we have to look for digital democracy manifestations. Following the governance paradigm, this institutional space appears to be now:

- Non-state bodies in Civil Society
- Executive state bodies, Administration and Regulatory Agencies (multilevel)
- Legislative state bodies (multilevel)

The geographical space covers Belgium and the Netherlands, known together as the Low Countries. The timeframe is 1 January 2010 to 1 May 2016.

## Expectations

The notion was that the chief anticipation of ubiquitous networked computing consists in ‘deepening democracy’ by strengthening the participatory dimension of representative democracy. Participation as such is conceived as an overall objective that may be achieved in varying degrees by various means, including information sharing, consultation and co-deciding. Participatory mechanisms are thus not restricted to actual participation of citizens in the political decision making process. Providing or receiving information on future laws or policies, or establishing communication and dialogue between decision makers and people affected by their decisions, are manifestations of participation as well, be it that the former mechanisms embody less of the idea of participation than the latter do. The observation of the existence of a range of instruments, each expressing a different level of participation, has led to the creation of so-called ‘ladders of participation’. Whereas such a ladder is useful insofar it offers an ordinal way of assessing the distinct level of participation of a manifestation of digital democracy, it does in itself not provide evaluation criteria to evaluate the quality of a particular step. Hence, more detailed metrics and indicators are necessary. These will be discussed after a short look at ladders of participation.

### *The ladder of participation*

An assessment of a manifestation of digital democracy starts with determining the level of participation that is enabled. To this end, the ‘ladder of participation’ appears very useful. Simple ladders count just three steps whereas taller ones can extend to a dozen or more steps. Though ladders come in many sizes, they are all designed to reflect the increasing depth of participation in subsequent methods of participation. The basic format has three cumulative steps: information, consultation and participation. We suggest a five step ladder. It allows for a somewhat more detailed assessment and a better visualization of a position on the ladder relative to representative or participatory democracy. The higher steps (co-decision and in particular independent decision-making as illustrated by the initiative<sup>65</sup>) conform less to the assumptions of indirect democracy and fit better in a direct democracy. The lower levels typically articulate the ‘primacy of politics’, with the decision firmly in the hands of elected bodies.<sup>66</sup>

Table 1. Levels of participation<sup>67</sup>

Rank	Level	Definition
1	Information	One-way relation in which government produces and delivers information for use by citizens. It covers ‘passive’ access to information on demand by citizens as well as ‘active’ measures by government to disseminate information.
2	Consultation	Two-way relationship in which citizens provide feedback to government, based on the prior definition by government of the issue on which citizens’ views are being sought. Provision of information as well as feedback mechanisms are required.
3	Participation	Relation based on partnership with government, in which citizens actively engage in the policy-making process. It acknowledges a role for citizens in

<sup>65</sup> An initiative is a process that allows citizens to place new legislation on a popular ballot (Y/N). In a referendum, the people express their opinion on policy or legislation that is proposed by the government.

<sup>66</sup> Patricia Popelier, Rob van Gestel, Koen Van Aeken, Victoria Verlinden and Peter Van Humbeeck, *Inventaris van de consultatie van ontwerpregelgeving: alibi voor vrijblijvendheid of prikkel tot actie?* (WODC 2007). Koen Van Aeken, ‘Does Participatory Governance travel well? Local interpretations in countries neighboring the EU’, (2016) 4 Sociology and Anthropology (in press).

<sup>67</sup> Definitions drawn and reinterpreted from a number of sources including: OECD, *Engaging Citizens in Policy-making: Information, Consultation and Public Participation*, 2001. Van Aeken (n 65).

		proposing policy options and shaping the policy dialogue, although the responsibility for the final decision or policy formulation rests with government.
4	Co-decision	The public shares decision-making powers with the government. With the exception of agenda-setting, citizens contribute to all stages of the policy cycle, including the final decision.
5	Independent decision making	Interest groups set the agenda, define a policy option and organize the decision-making process with minimal involvement of the government.

Generally, the higher the level of participation, the more difficult it is to realize.<sup>68</sup> A plausible hypothesis<sup>69</sup> holds that this is partly due to cultural resistance to forming new partnerships with citizens in policy-making and to change traditional policy development processes within representative democracies. An Austrian in-depth analysis pointed at the very politicians for inhibiting the further evolution of e-democracy insofar they understood it as more citizens' participation.<sup>70</sup> The reluctance to embrace e-participation follows familiar findings outside the digital domain: the higher steps on the traditional ladder of participation are not easily opened up to the public by most governments.<sup>71</sup> This correlates with the relationship to representative democracy: higher positions on the ladder move away from the traditional foundations of representative democracy and incorporate more of the ideas of participatory democracy. From a citizen's stance, enthusiasm for the lower positions of the ladder is obvious, but this gradually fades when asked to engage in more active forms of participation that demand more effort and responsibility.<sup>72</sup>

#### *More elaborate metrics and indicators*

An 'ordinal' evaluation that ascribes a level or rank to the subject of the evaluation only marks the beginning of the assessment. The next step is an analysis of relevant indicators of the digital application or device, with the quality of participation as the main indicator. The use of metrics allows for more reliable in-depth assessments and is essential in case of repetition and comparison. A rudimentary and tentative take at an actual evaluation framework is presented in table 2. Familiar metrics from traditional consultation codes, participation manuals and secondary literature were screened for their usefulness in an online setting. Some negative metrics are included as well since participation is not without risks. For example, participatory models of decision making may fall prey to the capture of public power by private interests, the evasion of accountability and a lack of transparency<sup>73</sup>. While codes and manuals<sup>74</sup> that stipulate good practices

<sup>68</sup> viWTA, 'E-democratie in Vlaanderen. Houdingen en opinies ten aanzien van e-democratie in Vlaanderen' (viWTA 2007); Jeremy Millard J, 'ICTs and governance' (The Institute for Prospective Technological Studies 2004).

<sup>69</sup> OECD, 'Policies and Problems of E-Democracy: Challenges of online citizen engagement' (2004).

<sup>70</sup> Harald Mahrer and Robert Krimmer, 'Towards the enhancement of e-democracy: identifying the notion of the 'middleman paradox'', (2005) 15 Info Systems Journal 27.

<sup>71</sup> This was a returning finding in three empirical studies in respectively the Netherlands, Belgium and the Middle East and North Africa-region. Popelier et. al. (n 53 and n 65). Van Aeken (n 65).

<sup>72</sup> In a Flemish survey on the perceived interest in participation on the local level (higher levels between parentheses), citizens attributed a 'score of importance' of 9.3 (9) to provision and exchange of information whereas consultation scored only 6.8 (5.8) and active participation a mere 5.2 (4.4). viWTA (n 67).

<sup>73</sup> Jaime Alison Lee, "'Can you hear me now?': Making Participatory Governance Work for the Poor' 2015 (7) Harvard Law & Policy Review 405.

<sup>74</sup> Materials used include Popelier, Rob van Gestel, Koen Van Aeken, Victoria Verlinden and PeterVan Humbeeck, *Consultaties in de wetgevingspraktijk. Een zoektocht naar internationale best practices* (Politeia

may be useful in developing rudimentary metrics, the elaboration of a more refined framework necessitates testing and meta-evaluations. This is outside the scope of this contribution.

*Table 2. A preliminary evaluation framework for three levels of digital participation*

Position	Indicator	Metrics	Negative metrics
1. Information	Quality	Openness	Group polarization/echo chambers
		Active: availability	Digital divide (access)
		Neutrality	
		Access	
		Passive: responsive to citizen's demands	
2. Consultation	Quality	Representativeness and inclusiveness	Transparency
		Timeframe and accessibility	Regulatory capture
		Provision of information: availability and neutrality	Digital divide (use)
		Feedback	
		Impact	
3. Participation	Quality	Salience of topics	Regulatory capture
		Representativeness and inclusiveness	Legitimacy (non-elected bodies decide)
		Effortlessness	Digital divide (use)
		Informed and deliberative	
		Impact	

## B. Method – design, data collection and analysis

This research follows a case study design. Cases were compiled through an offline and (mostly) online search for manifestations of digital democracy in Belgium and the Netherlands that required 'ubiquitous networked computing'. The latter condition was translated as the minimal and required presence of Web 2.0 functionality to secure the operation of the application. The application could be implemented by non-state, executive or legislative bodies, as long as it served a goal that is associated with 'deepening democracy' by offering functionalities that enable some form of public consultation or participation in the public decision making process. The search used dedicated portals and various search engines, and involved reaching out to peers and professionals as well. Information on the selected cases was collected through secondary analysis using a wide array of materials including official notes of the government, a press release, blogs, social-scientific research and the author's own research notes on consultation and participation in representative democracies. The analysis itself consists in the application of the criteria of the evaluation framework (and more) to the two cases.

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2008). Peter Van Humbeeck, Patricia Popelier, Koen Van Aeken and Anne Meuwese, 'Hoe beter consulteren?' (2012) 2 Vlaams Tijdschrift voor Overheidsmanagement 19.

#### IV. Case studies

The first stage of the empirical inquiry – the search for manifestations of digital democracy in the demarcated time and space – did not result in many findings. The constraint that the ubiquitous internet with Web 2.0 functionalities has to be essential for the functioning of a manifestation clearly narrowed the range of results. Though often absolutely interesting, experiments with democracy that are facilitated by the use of internet but basically happen offline were consequently not considered.<sup>75</sup>

Strategies and techniques of ‘e-government’ as adopted by governmental administrations were excluded, because their objectives differ from the expectations of digital democracy that emerged in the preceding analysis.<sup>76</sup>

The selected cases are *Citizenlab.co* (Belgium & the Netherlands) and *Internetconsultatie.nl* (the Netherlands). In both instances, the discussion is organized along the lines of the three constituting elements of the overall analysis, with the third element opening up to the actual evaluation.

- a) Technologies: ubiquitous networked computing.
- b) Embedding: the shift from government to governance.
- c) Expectations: the expectation of deepening democracy by introducing participatory dimension in public decision making. Evaluation.

##### *Case 1. CitizenLab. A civic engagement platform for cities*<sup>77</sup>

At the onset of this research project, CitizenLab was not released yet. It existed merely as an application that was being marketed<sup>78</sup> and that vaguely echoed ‘SoLoMo’<sup>79</sup> while its founders were looking for partner cities to roll out pilot projects. Early 2016, however, CitizenLab announces that it is used in three Belgian cities (Hasselt, Vilvoorde and Geel) and one Dutch municipality (Schiedam).

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<sup>75</sup> An illustration is the G-1000 in Belgium, a platform for democratic innovation that brought 704 citizens together at a Citizen’s Summit in Brussels. Various phases in participation followed after a large-scale consultation of the population conducted through the G1000 website. Whereas the Internet definitely was instrumental for public agenda setting, the subsequent phases consisted in face-to-face meetings and deliberations. See <[www.g1000.org/en/](http://www.g1000.org/en/)> accessed 1 July 2016.

<sup>76</sup> Whereas E-government initiatives do fit the changing realities of a shift towards governance and the further deployment of the administrative state in many respects, objectives concerning ‘deepening democracy’ are mostly secondary, with a primary focus on boosting efficiency and effectivity of administrative processes. E-government architecture is even witnessed to consolidate control over citizens, reinforcing monopoly control over the government-citizen relationship. The latter observation is however less common in liberal democracies, where e-government and subsequent m-government (since 2013) strategies are often designed to increase transparency of governmental administration. See e.g. Jeffrey W. Seifert and Jongpil Chung, ‘Using E-government to Reinforce Government-Citizen Relationships’ (2009) 27 *Social Science Computer Review* 3.

<sup>77</sup> <Citizenlab.co> accessed 1 July 2016.

<sup>78</sup> <[www.youtube.com/watch?v=qpoEa6UQlaU](http://www.youtube.com/watch?v=qpoEa6UQlaU)> accessed 1 July 2016.

<sup>79</sup> SoLoMo is short for the convergence of social, local and mobile. Initially referring to a marketing strategy that brought together social (media), local (shops) and mobile (applications and devices), it transformed into a more general movement. Wired, ‘2013: the year of SoLoMo?’ <[www.wired.com/insights/2013/01/2013-the-year-of-solomo/](http://www.wired.com/insights/2013/01/2013-the-year-of-solomo/)> accessed 1 July 2016.

It concerns a tailored digital platform, operated by the city, which enables citizens to participate in the decision-making of their city with their computer or mobile devices. This is called 'co-creation' through so-called 'citizensourcing' or 'crowdgovernance'. An illustration: if a city wants to know the citizens' viewpoints on certain topics, it can organize a poll. It might also use the analytics from topical discussions amongst citizens - citizens can comment on each others' ideas, so the general mood and popular support are easy to measure.

CitizenLab displays many of the features of Digital Democracy according to the preceding analysis of the interplay between digital technologies and shifting legal-political realities.

#### a) Technologies

CitizenLab aims at helping governments 'to become more citizencentric through user-friendly cloud software, insightful data analytics and a focus on mobile'. The dual technological characteristics of UNC – that is, the prevalence of digital devices creating ubiquitous computing power and the nearly full coverage of the Internet with monitoring and communication functionalities - are fully exploited. The application runs on all kinds of digital devices with an emphasis on mobile. Cities can connect with citizens through PC, tablet or mobile phones, which function equally as monitoring stations and communication devices. Its user-friendliness contributes to the representative and inclusive character of the application. By offering a mobile, fun and easy user experience – partly inspired by gamification – CitizenLab reaches out to categories of citizens that are traditionally not interested or involved in 'politics'.

A string of interactive features is built in, such as polling or consulting. Analytical tools are embedded in the software to inform the decision-making process with customized input on various issues such as popular preferences and measurement of support. These technologies neatly fit the 'smart city', where online initiatives for civic engagement increasingly complement and reinforce offline efforts.

#### b) Governance

CitizenLab proclaims on its website: 'We're moving towards a new era. An era of smart cities with citizens actively involved in problem-solving, innovation and decision-making.' This statement illustrates two key aspects of the Governance paradigm: the return of the city as a pivotal actor and new ways of the involvement of civil society besides traditional representation through elections.

The city appears to offer a well-matched experimenting space for civic engagement for various reasons. The critique of representative democracy is voiced the loudest on the local level because unthoughtful decisions are directly experienced in the daily habitat of citizens, including issues of mobility, social services and garbage collection. Next, the separation of executive and legislative powers seems more blurred than on the higher levels, questioning the democratic legitimacy of the city's decision-making.<sup>80</sup> Moreover, policy inertia caused by conflicting party politics is immediately addressed by the ever-popular local media. In addition, municipal elections only take place once in six years in Belgium, leaving much room for alternatives to elections-based political representation. Furthermore, citizens' engagement to participate is stronger at the local

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<sup>80</sup> As illustrated by the advice of the auditor of the Belgian Council of State (the supreme court for administrative justice) to annul the decision of the city of Antwerp to move a popular funfair to another district. This decision should have been taken by the City Council instead of the Board of Aldermen, the executive body. Wim de Preter, 'Verhuis Antwerpse Sinksenfoor op losse schroeven', *De Tijd* 14 May 2016 <<[www.tijd.be/politiek\\_economie/belgie\\_vlaanderen/Verhuis\\_Antwerpse\\_Sinksenfoor\\_op\\_losse\\_schroeven.9766587-3137.art?ckc=1&ts=1464029052](http://www.tijd.be/politiek_economie/belgie_vlaanderen/Verhuis_Antwerpse_Sinksenfoor_op_losse_schroeven.9766587-3137.art?ckc=1&ts=1464029052)> accessed 18 May 2016.

level than at the national level, not in the least because the involvement may produce rapid and tangible outcomes. Co-creation is also much easier to organize on the administrative level of the city because of the clear demarcations of the experimenting space in terms of well-defined authority and budgets (in relation to the national level). Expectations of what can be done and what may be expected are much clearer at lower administrative levels. A civic engagement platform may be rewarded with offline commitment from a city government to really get things done, whereas more and more cities are looking into digital civic engagement solutions to extend their offline efforts.

### c) Expectations and evaluation

The primary state of implementation of CitizenLab inhibits an actual empirical evaluation of its effects and impacts. The assessment is therefore limited to its functions, or in technical jargon, its functionalities. Just as a function does not automatically implies the realization of an effect, functionality describes what a product, such as a software application or computing device, *can do* for a user. As is the case with ex post evaluation of policy and legislation, accurate and valid measurements of CitizenLab's contribution to deepening democracy are only possible after the platform has been up and running for some time and has reached 'cruising speed'. Because the platform targets deeply embedded patterns of political and civic attitudes, this may take up to five years<sup>81</sup> – a really long time considering the speed of digital innovation. For now, its functionalities are discussed and evaluated.

The first question concerns the scaling of CitizenLab on the ladder of participation. Following the presentation on its website, the application explicitly enables exchange of information and consultation. Based on numerous references to civic engagement, the emphasis on the creative side of civil society to propose policy options, and continuing stress on interaction and 'co-creation', it is fair to say that CitizenLab occupies position three on the ladder of participation. In fact, the main functionality of the platform is geared towards active participation. This is a truly high level. Whether actual practices reflect this level, has to be seen. Nonetheless, it is plausible that the very use of CitizenLab by a city implies an openness of the city's officials towards 'co-creation'. Definite conclusions demand future research and may point at differences across cities, since CitizenLab allows tailoring of the platform to the needs of a particular city, meaning that the level of participation can also be trimmed down to consultation.

The second question deals with the quality and other indicators for the observed levels of participation. While it is not yet possible to draw actual empirical conclusions, a closer look at CitizenLab's functionalities can reveal how participation is envisaged and shaped. Participation convincingly appears as a central objective that can emerge through various interactions, although the developers seem well aware of popular disinterest in more demanding forms of interaction. This insight has inspired the creators to build a platform that would be easy to use and very mobile in the first place. The majority of citizens dislikes political engagement from behind a computer nearly as much as spending time in a Town Hall meeting – instead, a ride on the tram or a moment in a waiting room should be sufficient for co-creation. In addition, different strategies to stimulate citizens' commitment are offered, some derived from gamification (or the use of game mechanics in a non-game context). For example, online participation may be rewarded with points. An elevated engagement score leads to citizen badges, indicating the citizen's status, and opportunities for the city to reward citizen's input with real-life benefits.

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<sup>81</sup> Gert-Jan Veerman, 'Evaluatie van wetgeving? Bouwstenen voor beslissingen' (Academie voor Wetgeving 2014).

In a nutshell, CitizenLab demonstrates how digital democracy can materialize in ‘fourth wave’ technologies and how these can contribute to a deepening of democracy through participatory functionalities. However, its embryonic state of implementation is not appropriate to test in-depth whether civil society, the city and other actors actually engage in the co-creation that the application encourages. Nonetheless, the actual adoption of the platform by four cities across Belgium and the Netherlands<sup>82</sup> in a short time span, may suggest that digital democracy may find fertile soil in a ‘social, mobile and local’ embedding.

## Case 2. Internetconsultatie.nl

Towards the end of 2011, the Dutch government decided to roll out internet consultation as a structural phase in the departmental preparation of laws, regulations and policy.<sup>83</sup> Internet consultation is seen as ‘a useful instrument in addition to the existing consultation practice in the legislative process. It informs people, businesses and institutions about upcoming legislation and regulation and allows them to make suggestions with regard to quality and implementation. Internet consultation increases the transparency of the process, amplifies the possibilities of public participation and advances the quality of legislation.’<sup>84</sup>

Does this manifestation of digital democracy strengthen the challenged participatory dimension of public decision making? The following assessment is organized in three parts. First, the technology is concisely presented. Next, its embedding is sketched. Lastly, the expectations are spelled out and tested.

### *a) Technologies*

Bills and concept regulations that are being prepared by government or parliament, are made publicly available on a dedicated website, [www.internetconsultatie.nl](http://www.internetconsultatie.nl). From 1 January 2014, the consultation documents<sup>85</sup> have to include, on top of the bill or concept regulation, the dedicated IC report as drawn under the IAK system and any available effect assessments (such as the Enterprise Effect Assessment).<sup>86</sup> The public is invited to send in comments, structured around three general questions provided by the relevant department. These comments are published (unless the author indicates not to want so), and once the consultation is closed, the government has to publish a statement that details what has been done with the public’s suggestions.

Internet consultation implicitly assumes the commonness of Internet access across society, whereas the technology itself incorporates a minimal – yet necessary – form of 2.0 interactivity. The platform is a single, comprehensive website, using a three color-scheme and a monotonous layout that provides minimal guidance while a profusion of technical-legal information looms in the background. The website is embedded in Overheid.nl, which is the official website for governmental

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<sup>82</sup> CitizenLab is available in 17 languages at the time of writing. It is likely that cities outside the Low Countries will roll out the platform as well, giving a global dimension to the application. E.g., a city can poll the popularity of a solution for a common problem in a foreign city among its own citizens. Cities and citizens may learn from each other.

<sup>83</sup> Ministerie van Veiligheid en Justitie, ‘Kabinetsstandpunt Internetconsultatie wetgeving’ (17 June 2011).

<sup>84</sup> [www.internetinternetconsultatie.nl/veelgestelde vragen](http://www.internetinternetconsultatie.nl/veelgestelde vragen) accessed 1 July 2016

<sup>85</sup> <[www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-19](http://www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-19)> accessed 1 October 2015

<sup>86</sup> <[www.kcwj.nl/gereedschapskist/onderwerppagina/evaluatiebeleid-wetgeving/ex-ante-evaluaties](http://www.kcwj.nl/gereedschapskist/onderwerppagina/evaluatiebeleid-wetgeving/ex-ante-evaluaties)> accessed 1 October 2015.

information and services. All of the administrations are required to use the same platform, regardless of the topic of consultation.

### *b) Embedding*

Historically, consultation of stakeholders can be regarded as the universally most applied method of impact assessment of policies and rules. For centuries, ruling bodies have been found to consult advisory councils, experts and representatives of important trades and industries to provide input in the law making process. In the Netherlands, these consultations thrived in the spirit of the prevailing corporatist ideas.

However, the longstanding traditions of the Dutch consultation system came under considerable criticism in the 1990s. The highly procedural formal consultations, centered on numerous councils with legal mandates, were deemed unsuited to modern realities.<sup>87</sup> The Dutch government consequently reduced the number of councils and removed the legal obligation to consult advisory bodies. In the fringes of these reforms, ministries turned to more flexible consultation approaches, including notice and comment procedures. Around 2007, the consultation system was again subjected to academic study and policy change. From a study commissioned by the Ministry of Justice<sup>88</sup> derived the finding of ‘methodological myopia’: a department rarely used more than one or two consultation methods. Consequently the government decided to try out a new method that corresponded to the ongoing digitization. It was also a reaction to invitations from the OECD<sup>89</sup> to make legislative policy more inclusive through the use of the internet. In the framework of the shift from government to governance, the introduction of a new form of consultation confirmed the importance of evidence-based rule-making and implied a further eroding of the assumptions of spontaneous compliance and obvious effectiveness in the traditional government model. Internet consultation also provided a new means to compensate for democratic legitimacy gaps caused by the intensification of executive lawmaking.

A pilot project was implemented in 2009. All Dutch ministries agreed to set up internet consultations for at least 10% of the entity of their bills and regulations (the latter ones issued by the executive and taking up the largest part). After a positive evaluation of the experiences (with 105 consultations in the two year period), the government decided in 2011 to roll out internet consultation as a structural phase in the departmental preparation of laws, regulations and policy briefs. In the spring of 2015, the Ministry of Security and Justice – generally responsible for legislative policy -commissioned an external research project to evaluate the practice of internet consultation that was established after the initial steps. The final report is expected in the spring of 2016. At the time of writing, the research is still ongoing, yet preliminary findings are useful in determining whether and to which degree this manifestation of digital democracy contributes to a deepening of democracy. This is the topic of the next section.

### *c) Expectations and evaluation*

Two expectations are traditionally projected onto consultation (in general) by academics and officials alike: it nourishes a rational-analytical decision-making process with empirical information straight from the fabric of society, and it contributes to the inspection of acceptability, the *creation*

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<sup>87</sup> OECD, ‘Better regulation in Europe: the Netherlands’ (2010).

<sup>88</sup> Popelier (n 65).

<sup>89</sup> OECD, ‘Better regulation in Europe: the Netherlands’ (n 84).

of legitimacy and the subsequent increase of compliance.<sup>90</sup> Contentions that internet consultation may actually *create* legitimacy (and accordingly increase compliance) are now considered too far-fetched with regard to internet consultation; whereas such optimistic view was indicative of the high expectations from the start, the more accurate description is now *gauging the level of popular support*. Presumably affected by the same enthusiasm, the Dutch government pointed at an increase in transparency and an '*amplification of the possibilities of public participation*.'<sup>91</sup> Do these functionalities stand empirical scrutiny? First, the level of participation is determined. Subsequently, the quality of participation is measured.

### *Level*

Does the Dutch Internet consultation effectively correspond to the second level of the ladder of participation? This presumes 'a two-way relationship in which citizens provide feedback to government, based on the prior definition by government of the issue on which citizens' views are being sought. Provision of information as well as feedback mechanisms are required.' Prior to 2014, the Dutch system did not systematically provide information besides the obvious text of the concept regulation or bill. With the additional requirement to do so, the Dutch system *in the books* displays more conformity the definition. In practice however, the additional information is often considered subpar, while the prescribed feedback is commonly absent or below standard.<sup>92</sup>

Nonetheless, the core principle of consultation as a participatory instrument is distinctly present in the Dutch practice – that is, the creation of a two-way relationship in which the government first presents information and citizens are consequently invited to respond. This practice is now subjected to the evaluation framework for consultation as it was developed earlier.

### *Evaluation*

Key evaluation criteria include: representativeness and inclusiveness of the respondents, the quality of information and the resulting possibility of learning in the relationship, the absence of regulatory capture and the actual impact on public decision-making process (versus 'window-dressing'), and transparency of the consultation process (albeit much less important in online consultation than in other informal consultations).<sup>93</sup> They are all instrumental in gauging the power of a particular digital technology to deepen democracy by means of consultation as a participatory mechanism.

The details of the empirical investigation are not public yet at the time of writing. Nonetheless, general trends can be used, in addition to governmental statistics from 2013. From the start in 2009 to 250 consultations have been organized, which resulted in 22.383 reactions from citizens, corporations and institutions. The website receives between 800 and 2000 visitors on a daily basis in 2013. Of course, visitors do not equal respondents: most visitors do not leave a reaction. The ones that respond typically have enjoyed higher education (HBO or WO, which means college or university).<sup>94</sup> The latter finding is so robust that it immediately wipes any assertions about 'inclusive lawmaking' by internet consultation. Only 1 out of 10 respondents has an educational background that does not comprise higher education whereas this is true for approximately 70% of the Dutch

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<sup>90</sup> Popelier (n 65).

<sup>91</sup> <[www.internetconsultatie.nl/veelgestelde vragen](http://www.internetconsultatie.nl/veelgestelde vragen)> accessed 15 may 2016.

<sup>92</sup> Aeken (n 65).

<sup>93</sup> Popelier (n 58).

<sup>94</sup> Broek, Kats, Lakerveld, Stoutjesdijk and Tönis, 'Doelrealisatie Internetconsultatie' (WODC 2016 (in press)).

population.<sup>95</sup> With regard to the adjacent yet different concept of representativeness, well organized interest groups are witnessed to mobilize their members for an internet consultation that concerns them. The voices of individuals or weaker groups are accordingly more scattered and less loud.

As to the quality of information in an internet consultation procedure, the material provided on the website is quite often of poor quality. Since 2014, the answers to seven questions that cover various aspects of the presumed impact of the bill or concept regulation have to be published in a uniform format as part of the consultation package. A quick scan of the provided materials in running and closed procedures revealed that they are overtly simple and very concise. Even more problematic is the observed tendency to justify governmental intervention whereas they should provide balanced viewpoints to initiate the formation of an informed opinion.<sup>96</sup>

Additionally, the mandatory feedback on internet consultation is often incomplete, overly concise and sometimes missing altogether. This contradicts the internal directive that, after ministerial decision making, a report summarizing the results of the internet consultation and the resulting, most important changes in the proposal is published on the website and in the Explanatory Memorandum that accompanies the new law.<sup>97</sup> This might have to do with the discretion exerted by departments to publish information on legislative and regulatory processes; generally, they are recommended to provide more information in the Explanatory Memorandum than in the general report on IC, but this is up to the department.<sup>98</sup> A possible explanation for this behavior is the political rationality of the law making process: the responsible department fears that hard-fought consensus on the content on the new law or regulation might be compromised by exposing adversarial opinions. Once the proposal has become law or regulation, this fear is no longer relevant, and possible alternative opinions may well be published in the Explanatory Memorandum. However, another problem rises here. Explanatory Memoranda ought to provide the justification for the law or regulation, and this should include the argumentation why the road chosen is better than alternative solutions. In practice, the EM is often biased, focusing solely on the merits of the new law or regulation, disregarding potential alternatives and refraining from comparisons. There is a tendency to highlight comments which display a positive attitude towards the proposal, while negative remarks are shuffled away. This is again indicative of the prevalence of a *defensive mode*, intimately connected to top-down legitimation, and the relative lack of a *reflexive*, dialogical, open and scientifically strong approach to public decision making.

Another issue concerns the actual impact that the consultation actually has on the formation of laws and regulations. For obvious reasons, consultations of laws or regulations that were agreed upon in governmental accords<sup>99</sup> at the start of a new legislature, or consultations on European regulations have absolutely no impact. With regard to other laws and regulations, the involved actors attest that the procedure has frequently resulted in minor changes and – much less so - in significant alterations.

Despite the previous comments, internet consultation is generally positively regarded by the general public and the involved functionaries. Moreover, the public character of an online consultation impedes regulatory capture and advances the transparency of public decision making.

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<sup>95</sup> <<http://www.compendiumvoordeleefomgeving.nl/indicatoren/nl2100-Opleidingsniveau-bevolking.html?i=15-12>>. accessed 15 October 2015. Data are from 2014. The range of age is 15 to 75, which roughly equals the age range of the population of respondents to Internet consultation.

<sup>96</sup> Scan conducted by the author in autumn 2015.

<sup>97</sup> <[www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-19](http://www.kcwj.nl/kennisbank/draaiboek-voor-de-regelgeving/hoofdstuk-2-formele-wetten-op-voorstel-van-de-regering-n-19)> accessed 15 October 2015

<sup>98</sup> Kamerstukken I, 2011/12; Kamerstukken II, 2011/2012.

<sup>99</sup> Broek, Kats, Lakerveld, Stoutjesdijk and Tönis (n 93).

The latest evaluation will most likely inspire modifications and fine-tuning to overcome some of the main issues that prevent a true 'deepening of democracy': the practical exclusion of citizens with lower educational baggage, the overrepresentation of well-organized interest groups, and the inclination of the ministries to take up a defensive position in supplied documents and feedback at the expense of a more reflexive attitude. Technological capabilities may provide partial solutions (such as increasing engagement through the use of social networks and digital media<sup>100</sup>) but the prevailing factor of the success of this particular digital democracy manifestation is the attitude of the executive and administrative actors.

## V. Conclusion

The focus of this chapter was on manifestations of digital democracy and their contribution to democracy in Belgium and the Netherlands from 2010 to early 2016. To steer clear from overtly instrumentalist approaches and to manage the complexity of the volatile contexts the empirical analysis of two representative cases was preceded by a rather elaborate conceptualization of the three main components of the study: the digital technologies, the embedding in legal-political realities and the expectations that were projected from the social onto the digital world. The interaction between these components as well as their transformations were discussed. The digital technologies that are central to the discussion are based on the ubiquitous internet with Web 2.0 functionalities. As to the embedding, the change from government to governance with new roles for non-state actors, including cities and civil society at large, turned out to be relevant. With regard to the expectations, it is anticipated that digital online technologies may 'deepen democracy' through participatory mechanisms in response to the cumulative challenges to representative democracy. Both transformations of embedding and expectations have in common that they raise questions concerning the rationality of traditional representation chiefly based upon elections. The functionalities of 'ubiquitous networked computing' accordingly appear to hold the solution with unprecedented access to the internet and participatory applications. Subsequent operationalization of the various conceptualized building blocks of the research led to the creation of a simple evaluation framework applicable to manifestations of digital democracy. The evaluation itself essentially entails a determination of the level and quality of participation that is enabled by the technologies.

The first case explored was CitizenLab, followed by an evaluation of the Dutch system of Internet Consultation. As a brand new platform for citizen engagement in the city, CitizenLab was in 2016 just adopted by four cities. Definite conclusions on its effectiveness are not yet possible, but the specifications of the tool are promising. Its focus on 'social, local, and mobile' appears to enable a high level of true participation in public decision making. Internet Consultation of legislation and regulation was implemented in 2011 after a pilot. The level of participation is (obviously) limited to consultation. Whereas internet consultation theoretically enhances the inclusive character of legislation, empirical findings demonstrate that it deals with issues in the domain of user-friendliness, representativeness, inclusiveness, information provision and feedback.

From a simple, concise comparison derives the preliminary conclusion that the 'social, local and mobile' features of digital democracy technologies may determine its success with regard to a deepening of democracy in the intricate context of transforming legal-political realities. It may well

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<sup>100</sup> One of the most successful public consultations in terms of the number of participants (Internetconsultatie Bibliotheekwet) was announced on YouTube <[www.youtube.com/watch?v=EKAloyEA81c](http://www.youtube.com/watch?v=EKAloyEA81c)> accessed 1 July 2016.

be the case that the characteristics of the 'fourth wave' enable some of the utopian expectations that have been ascribed to the online world in the past. Democracy is not a fixed state but a process<sup>101</sup> and with the prevalence of the interactive and always accessible internet, this process may undergo some acceleration in the near future. As always, more empirical research – that does not inhibit dreams and experimentation<sup>102</sup> - is needed before any more definite conclusion can be drawn.

This chapter may be beneficial to the advancement of such research in a number of ways - yet it may as well discourage further scientific scrutiny. A first hard-earned insight is that the desire to overcome the fallacies of common instrumentalist approaches to technology risks to deadlock any research whatsoever. Reconstructing the circularity between technologies and social setting requires jumping back and forth between the embedding of the manifestations of digital democracy, the manifestations itself, and the expectations that are projected onto them. Moreover, the focus on democracy – by definition a process rather than a fixed state - complicates these relationships, for it makes embedding and expectations change over time.

For those researchers stubborn enough to carry on, the conceptualization in this chapter may (or may not) offer a starting point for the assessment of digital democracy manifestations. It was argued that governance constellations provide the embedding of online tools whereas the core expectations of these tools relate to a deepening of representative democratic systems. Whereas the first argument may motivate researchers to look for digital democracy in previously less explored settings (such as regulatory agencies and civil society in regions and cities), the second argument may inspire a clearer focus on the quality of participatory mechanisms that are potentially unlocked by internet-based applications. There is even a rough sketch of an evaluation system that may be used to assess the contribution of a particular digital innovation.

A third lesson reads as late disclaimer. The debate on some increasingly salient digital democracy topics has been deliberately toned down to the advantage of the discussion of the social setting. There is certainly merit in tuning into some of the following sidestepped themes: balkanization and segregation on the internet, the impact of mobile (versus landline/cable) internet, the evolving role of (social and digital) media in elections, big data analytics and elections, familiar social media (Twitter, Facebook, ...) and political participation, and many more.

Finally, case study designs are obviously not known for its representativeness. Insofar the belief was expressed that the SoLoMo-approach might be one of the more constructive ways to organize political participation, such belief needs much more empirical testing to evolve from embryonic hypothesis to some kind of factual, generalizable statement. Future case studies could cover different applications, in different geographical areas and, importantly, after the applications have been up and running for at least a year or two. The novelty of CitizenLab prevented such longitudinal empirical scrutiny. Time will tell whether the participatory promises of social, local and mobile digital applications will be fully realized.

## Bibliography

Aeken K van, 'E-justice in the Low Countries' in Bernard Hubeau and Ashley Terlouw (eds), *Legal Aid in the Low Countries* (Intersentia 2014) 307-328.

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<sup>101</sup> Keane (n 27)

<sup>102</sup> Paul de Hert, 'Internet en Democratie: versterken ze elkaar of toch niet?' Christen Democratische Verkenningen [2012] 98.

- Aeken K van, 'Evaluation of Legislation in the Netherlands: Past Developments, Current Trends and Future Challenges' (2011) 3 *Journal of Legislative Evaluation* 137.
- Aeken K van, 'All on board? An assessment of advances in Dutch legislative policy 2010-2015' (2015) 9 *Journal of Legislative Evaluation* 1.
- Aeken K van, 'Does Participatory Governance travel well? Local interpretations in countries neighboring the EU', (2016) 4 *Sociology and Anthropology* (in print).
- Akdoğan I, *Digital-Political Fantasies in Istanbul. An analysis of the perceived role of ICT in changing institutional politics, activism and identity* (University of Helsinki 2012)  
<[www.helsinki.fi/crc/Julkaisut/Digital\\_political\\_fantasies\\_in\\_Istanbul.pdf](http://www.helsinki.fi/crc/Julkaisut/Digital_political_fantasies_in_Istanbul.pdf)>
- Marshall Van Alstyne and Erik Brynjolfsson, 'Electronic Communities: Global Village or Cyberbalkans?' (1997) <[web.mit.edu/marshall/www/papers/CyberBalkans.pdf](http://web.mit.edu/marshall/www/papers/CyberBalkans.pdf)>
- Massimo Battaglia and Christopher Weed, 'Balkanization by Internet?' (1997) 275 *Science* 289-292.
- Beck U. and Sznaider N, 'Unpacking cosmopolitanism for the social sciences: a research agenda' (2006) 57 *The British Journal of Sociology* 1-23.
- S.D. Broek, E. Kats, J.A. van Lakerveld, F.D. Stoutjesdijk, I.C.M. Tönis, 'Doelrealisatie Internetconsultatie' (WODC 2016 (in press)).
- Chadwick A, 'Bringing E-Democracy back in. Why it matters for future research' (2003) 21 *Social Science Computer Review* 443.
- Chadwick A and Howard PN, 'Introduction: New directions in Internet politics research' in A. Chadwick A and Howard PN (eds.), *The Handbook of Internet Politics* (Routledge 2008) 1-9.
- Chadwick A, 'Web 2.0: New challenges for the study of e-democracy in an era of informational exuberance' (2009) 5 *Journal of Law and Policy for the Information Society* 9.
- Coglianesi C, 'E-government and inequality in public participation' (*Regblog*, 27 October 2010)  
<[www.regblog.org/2010/10/e-government-and-inequality-in-public-participation.html](http://www.regblog.org/2010/10/e-government-and-inequality-in-public-participation.html)>
- Commission, 'European Governance A White Paper', COM (2001) 428.
- Commission, 'Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission', COM (2002) 704 final.
- Commission, *The Onlife Manifesto. Rethinking public spaces in the digital transition* (2012)  
<https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/Manifesto.pdf>
- de Hert P, 'Internet en Democratie: versterken ze elkaar of toch niet?' [2012] *Christen Democratische Verkenningen* 92-100.
- Dourish P and Bell G, *Divining a digital future: mess and mythology in ubiquitous computing* (MIT Press 2011)
- Gestel R van 'The 'Deparliamentarisation' of Legislation: Framework Laws and the Primacy of the Legislature' (2013) 9 *Utrecht Law Review* 106.
- Gestel R van and Micklitz H-W, 'Revitalizing doctrinal research In Europe. What about methodology?' (2011) EUI Working Paper LAW 5/2011.

Gilens M and Page BI, 'Testing Theories of America Politics: Elites, Interest Groups, and Average Citizens' <[http://scholar.princeton.edu/sites/default/files/mgilens/files/gilens\\_and\\_page\\_2014\\_-testing\\_theories\\_of\\_american\\_politics.doc.pdf](http://scholar.princeton.edu/sites/default/files/mgilens/files/gilens_and_page_2014_-testing_theories_of_american_politics.doc.pdf)>.

Held D, *Models of Democracy* (Stanford University Press 2006).

Hindman M, *The Myth of Digital Democracy* (Princeton University Press 2009).

Khuttky D 'Efficient Participatory Democracy: Real Utopia Model' (2016)  
<<http://havenscenter.org/files/Khuttky%202016%20Efficient%20Participatory%20democracy.pdf>>.

Jensen J L, 'Virtual democratic dialogue? Bringing together citizens and politicians' (2003) 8 Information Polity 29.

Dijk J van, 'Digital Democracy: Vision and Reality' in Snellen I and Donk van de S (eds), *Public Administration in the Information Age* (IOS-Press 2013)  
<[www.utwente.nl/bms/vandijk/research/itv/itv\\_plaatje/Digital%20Democracy-%20Vision%20and%20Reality.pdf](http://www.utwente.nl/bms/vandijk/research/itv/itv_plaatje/Digital%20Democracy-%20Vision%20and%20Reality.pdf)>.

Edwards M, 'Participatory Governance into the future. Roles for the Government and Community Sectors' (2001) 60 Australian Journal of Public Administration 78.

Keane J, *The Life and Death of Democracy* (WW Norton & Company 2009).

Lee JA, "'Can you hear me now': Making Participatory Governance Work for the Poor' 2015 (7) Harvard Law & Policy Review 405.

Levine P, 'Can the Internet Rescue Democracy? Toward an On-line Commons' in Hayduk R and Mattson K (eds), *Democracy's Moment: Reforming the American Political System for the 21st Century* (Lanham, MD, Rowman & Littlefield 2002) 121-137.

Mahrer H and Krimmer R, 'Towards the enhancement of e-democracy: identifying the notion of the 'middleman paradox'', (2005) 15 Info Systems Journal 27.

Mayntz R, *Über Governance: Institutionen Und Prozesse politischer Regelung* (Campus 2009).

Millard J, *ICTs and governance* (The Institute for Prospective Technological Studies (IPTS) 2004) .

OECD, 'Engaging Citizens in Policy-making: Information, Consultation and Public Participation' (2001)  
OECD, 'Policies and Problems of E-Democracy: Challenges of online citizen engagement' (2004)  
OECD, 'Better regulation in Europe: the Netherlands' (2010).

Perrit H, 'The Internet as a Threat to Sovereignty? Thoughts on the Internet's Role in Strengthening National and Global Governance' (1998) 5 Global Legal Studies Journal 423.

Popelier P, Gestel R van, Aeken K van, Verlinden V and Humbeek P van, *Inventaris van de consultatie van ontwerpregelgeving: alibi voor vrijblijvendheid of prikkel tot actie?* (WODC 2007)  
<<http://wodc.nl/onderzoeksdatabase/consultatie-van-ontwerp-regelgeving.aspx?cp=44&cs=6802>>.

Popelier P, Gestel van R, Van Aeken K, Verlinden V and Van Humbeek P, *Consultaties in de wetgevingspraktijk. Een zoektocht naar internationale best practices* (Politeia 2008).

Popelier P, Van Humbeeck P, Van Aeken K and Meuwese A, *Kwaliteitsvolle regelgeving door middel van consultatie van belanghebbenden* (Vlaamse Gemeenschap Dienst Wetsmatiging 2010).

Popelier P, Van Humbeeck P, Van Aeken K and Meuwese A., 'Transparant consulteren in Vlaanderen: de spanning tussen rationeel wetgevingsmodel en besluitvormingspraktijk' (2012) 1, Tijdschrift voor Wetgeving 2.

Preter W de, 'Verhuis Antwerpse Sinksenfoor op losse schroeven', *De Tijd* 14 May 2016 [www.tijd.be/politiek\\_economie/belgie\\_vlaanderen/Verhuis\\_Antwerpse\\_Sinksenfoor\\_op\\_lossen\\_schroeven.9766587-3137.art?ckc=1&ts=1464029052](http://www.tijd.be/politiek_economie/belgie_vlaanderen/Verhuis_Antwerpse_Sinksenfoor_op_lossen_schroeven.9766587-3137.art?ckc=1&ts=1464029052).

O'Reilly T, 'What is Web 2.0?' (2005) [www.oreilly.com/pub/a/web2/archive/what-is-web-20.html](http://www.oreilly.com/pub/a/web2/archive/what-is-web-20.html).

Ragnedda M and Muschert GW, *The Digital Divide: The Internet and Social Inequality in International Perspective* (Routledge 2013).

Rosenau PV, *Public-Private Policy partnerships* (MIT Press 2000).

Sassen S, *Territory, Authority and Rights. From Medieval to Global Assemblages* (Princeton University Press Updated Edition 2008).

Seifert JW and Chung J, 'Using E-government to Reinforce Government-Citizen Relationships' (2009) 27 Social Science Computer Review 3.

Sève R, 'Présentation. E-justice. Dialogue et Pouvoir' (2011) 54 Archives de philosophie de droit 1.

Slaughter AM, *A new world order* (Princeton University Press 2004).

Sunstein C, 'The Daily We. Is the Internet really a blessing for democracy?' <http://bostonreview.net/cass-sunstein-internet-democracy-daily-we>.

Stirling A, 'Opening up' and 'closing down' (2008) 2 Science, Technology and human values 262.

Tyler TR, *Why People Obey the Law* (Princeton University Press 2006).

viWTA, 'E-democratie in Vlaanderen. Stakeholderanalyse' (viWTA 2007) <http://ist.vito.be/nl/pdf/rapporten/rapportededemocratiestakeholdersanalyse.pdf>.

viWTA, 'E-democratie in Vlaanderen. Houdingen en opinies ten aanzien van e-democratie in Vlaanderen' (viWTA 2007) [http://ist.vito.be/nl/pdf/dossiers/dossier\\_9\\_edemocratie.pdf](http://ist.vito.be/nl/pdf/dossiers/dossier_9_edemocratie.pdf).

Witte JC and Mannon SE, *The Internet and social inequalities* (Routledge 2010).