AI & Tech: Fearmongering and Regulatory Capture

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Key Points

- AI regulation remains sparse and current initiative to regulate AI need to be informed and grounded in actual AI potential and capabilities.
- Tech companies, especially AI companies, have been using media to shift discourse away from real threats, towards hypothetical outcomes.
- This situation is an opportunity to build technical expertise within the public service, equip elected policymakers with the tools to combat regulatory capture, and rethink trans-jurisdictional and transnational policymaking in Canada.

Introduction

Over the last 3 years, Artificial Intelligence (AI) has seemingly become the next existential threat to humanity. Every government must rush to create comprehensive legislation on AI and corporations which create these AI models are the only ones with the expertise to craft these laws. Or so goes the rhetoric. The heavy participation of corporations in regulation, and the rhetoric surrounding AI, raises risks of regulatory capture. To minimize these risks, Canada must 1) trust and equip its public servants; 2) train and protect its elected policymakers against regulatory capture; and 3) cooperate with provincial and international governments.

Regulatory Capture and AI

The transnational and technical nature of technology, especially AI, encourages governments to give disproportional trust and power to corporations. Governments are willing to trade their authority in search for

efficiency and transboundary regulation.[1] Some might even argue that corporations are more capable of or appropriate for creating transboundary regulation.[2] Recent portrayals of AI as a sudden emergency, instead of the slowly evolving technology it actually is, create a "crisis" moment which justifies immediate, rushed actions, but may also open the door to reconsidering government's approach to legislating technology.[3] This context opens the door to regulatory capture, where corporations either become or heavily control regulatory agents and shrink the distance between legislated and legislator.[4] This heavy participation in the regulatory process is visible in both Canada's and the European Union's (EU) public consultations on their respective AI bills (Figure 1).

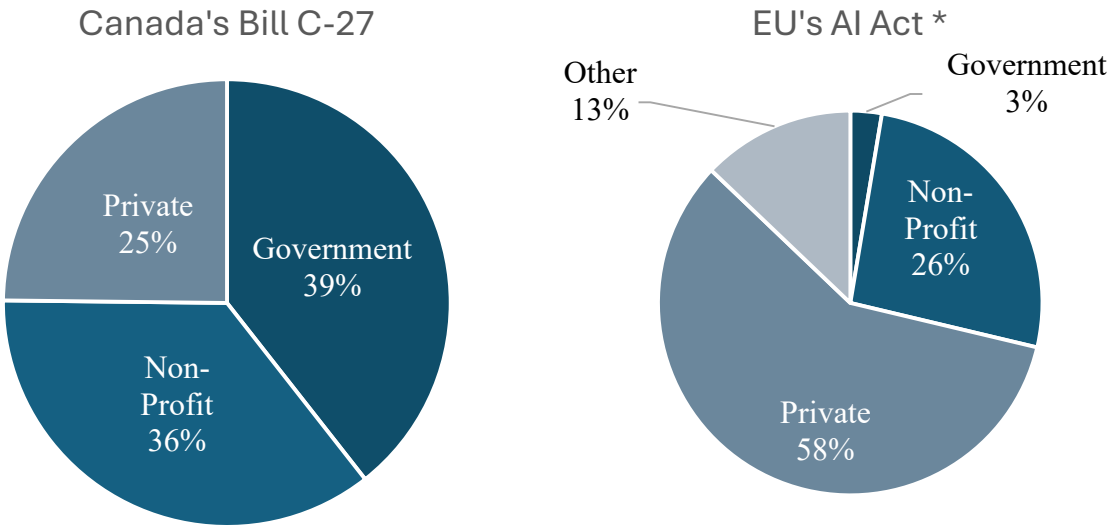

Figure 1. Affiliation of witnesses in public consultations for Canada's Bill C-27 and the EU's AI Act.

Source: Data computed from 'Bill C-27, Digital Charter Implementation Act, 2022', European Commission, 'AI Act'.

Note: Government includes all levels of government; Non-Profit includes academics, and civil society groups; private includes law firms, industry groups, and corporations.

* The EU data includes unaffiliated citizens under "Other". EU consultations do not include EU government officials, only member states' government officials.

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[1] Hall and Biersteker, 'The Emergence of Private Authority in the International System'.
[2] Gleckman, 'Re-Visioning Global Governance'.
[3] Naomi Klein on Global Neoliberalism.
[4] Dal Bo, 'Regulatory Capture'.

Existing Policy

The recency of AI is evident in the small quantity of legislation on Artificial Intelligence (AI). The most advanced regulation is the European Union's AI act. Its core approach relies on categorizing AI in four risk categories based on the provider's purpose: minimal, limited, high, unacceptable.[5] This approach works perfectly fine for single purpose AI systems that were commonplace during the regulation's drafting. However, recent "general purpose" and "generative" AI, because of their inherently broad usage, fall within a new section which shifts the risk categorization to the be based on the consumer's usage. This makes categorization extremely difficult and arbitrary. [6] Canada is currently considering Bill C-27 which is mostly aimed at protecting data and regulating interprovincial trade in AI to "mitigate risks of harm and biased output" from AI.[7] At the international level, the most relevant agreement is the recent UN Pact for the future which sets non-binding recommendations for both states and corporations to follow in regulating and using AI.[8] On the private side, the most notable organization is the "Partnership on AI" created by Google, Facebook, Amazon, IBM and Microsoft[9] and now includes dozens of corporations, universities, and non profits, and aims to achieve, among other goals, transparency, accountability, equity and inclusion in AI.[10] Neither of the domestic regulations are particularly stringent on the use or design of AI, especially recent, complex, AI systems, and the international guidelines suffer from lack of enforcement and vague rules.

Attempts at Regulatory Capture

Government must be very careful about who is involved in drafting regulation. Historically, regulatory capture has been achieved by using lobbyists, installing corporate friendly regulators or through other "revolving door" methods[11]. The captors then use this control to mold regulation in ways favorable to their interests, diluting or repealing existing regulation, and shaping future regulation. The relative recency of AI and the young age of the most prolific firms

[5] European Commission, 'AI Act | Shaping Europe's Digital Future'.
[6] Helberger and Diakopoulos, 'ChatGPT and the AI Act'.
[7] Minister of Innovation, Science and Industry, Digital Charter Implementation Act.
[8] United Nations General Assembly, The Pact for the Future.
[9] Hern, '"Partnership on AI" Formed by Google, Facebook, Amazon, IBM and Microsoft'.
[10] Partnership on AI, 'About'.
[11] Dal Bo, 'Regulatory Capture'.

goes suggests the traditional approach is inaccurate to this context. Another avenue is being used. Rhetoric around AI has been very sensationalist, emphasizing the possible future risks, while often ignoring the actual present ability of AI models. Few have been as vocal about the potential risks of AI as the corporations commercializing it. Using terms like "existential risk"[12] or "extinction risk"[13] and referring to AI with words like "magic".[14] While these quotes make for exciting news headlines, the reality is that AI models, despite being very impressive are far from collapsing society over night, with frequent errors[15], inaccuracies,[16] and distinctively "artificial" output.[17] This gap between rhetoric and reality is typical of modern attempts at regulatory capture, especially in technology regulation.[18] They are creating a space within which the obvious solution is to regulate heavily, leaving only a few "enlightened" corporations untouched. By convincing governments that AI is an imminent threat, high profile AI companies pose themselves as the only solution to benefit from the technology while minimizing risks. This becomes even more pernicious if elected officials begin doubting their experts when their response does not match the mainstream discursive urgency. Compounding this, some academics have grabbed onto the rhetoric: book titles likening algorithms to nuclear weapons,[19] open letters asking for moratoriums on AI research,[20] and Nobel Prize winners who use their speech to warn about a theoretical super intelligent AI "take[ing] control".[21] This builds an environment where reality is no longer relevant, the only policy concern becomes the theoretical catastrophic scenario of the future, not the very real current threats of AI in education (writing),[22] war (autonomous

[12] Gladstone.ai, 'Action Plan to Increase the Safety and Security of Advanced AI'.
[13] 'Artificial Intelligence Poses "Risk of Extinction," Tech Execs and Experts Warn'.
[14] Morrow, 'Sam Altman, AI's Biggest Star, Sure Hopes Someone Figures out How Not to Destroy Humanity'.
[15] Chanda and Banerjee, 'Omission and Commission Errors Underlying Ai Failures'.
[16] Dragutin Petkovic, 'It Is Not "Accuracy vs. Explainability"—We Need Both for Trustworthy AI Systems'.
[17] Driessen, 'Best AI Detector | Free & Premium Tools Tested'; Anderson et al., 'Ai Did Not Write This Manuscript, or Did It?'; Gao et al., 'Comparing Scientific Abstracts Generated by Chatgpt to Real Abstracts with Detectors and Blinded Human Reviewers'.
[18] Saltelli et al., 'Science, the Endless Frontier of Regulatory Capture'.
[19] O'Neil, Weapons of Math Destruction.
[20] Future of Life Institute, 'Pause Giant AI Experiments', 22 March 2023.
[21] Geoffrey Hinton, 'The Nobel Prize in Physics 2024'.
[22] Coldwell, '"I Received a First but It Felt Tainted and Undeserved"'; Farhi et al., 'Analyzing the Students' Views, Concerns, and Perceived Ethics About Chat GPT Usage'.

weapons),[23] and security (borders and predictive policing).[24]

Recommendations

The good news is that regulatory capture is not new, and there are numerous proven solutions to minimize its impact.

Build Internal Expertise

While consultants and experts from academia and the private sector are invaluable to avoid blind spots in and ensure applicability of regulation, it is imperative that there be internal experts, not recruited from or loaned by the private sector, who have the power to steer legislation towards current threats, away from theoretical, rhetorical dangers. This approach closely follows the idea of "enlightened regulatory capture" which posits that by involving extra-governmental expertise only once the regulation is being finalized, and minimizing procedural constraints, private expertise can be successfully utilized while minimizing the risk of bad actors.

Train and Inform Elected Policymakers on Regulatory Capture

It is also imperative that the elected policymakers, the ones with the final say on any legislation, be aware of modern regulatory capture practices. They must be trained to listen to their internal experts and, if external consultation is necessary, let the internal experts consult with the external experts to minimize the risks of threat ballooning.

Mobilize All Governments and Recognize Jurisdictional Challenges

The Canadian federal government has limited capacity to regulate AI: The most important players operate in the United States and powers important to regulating its use in education, health, and labour rest with the provinces. It is imperative that the Canadian government collaborate with the provinces on legislation, but also that it utilizes the facility of the provinces to collaborate with their American counterparts, especially California, to ensure that legislation is effective.[25]

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[23] Longpre, Storm, and Shah, 'Lethal Autonomous Weapons Systems & Artificialintelligence'.
[24] Alikhademi et al., 'A Review of Predictive Policing from the Perspective of Fairness'; 'Introduction: The Growing Panopticon of Border Technologies'.
[25] Rutan, 'Legislative Interaction of a Canadian Province and an American State'; VanNijnatten, 'Towards Cross-Border Environmental Policy Spaces in North America'.

Conclusion

Canada is well positioned to regulate AI and has the potential to both benefit from its boons and minimize its risks thanks to its very educated population[26], its proximity with the United States, and its large bureaucracy. However, to ensure that it will not fall prey to regulatory capture it must 1) trust and equip its public servants; 2) train and protect its elected policymakers against regulatory capture; and 3) cooperate with provincial and international governments.

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[26] OECD, 'Population with Tertiary Education'.

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