Queen's Policy Review

QPR

EXPLORING THE LANDSCAPE OF PUBLIC GOVERNANCE

VOLUME XIV

GRADUATE JOURNAL
QUEEN'S SCHOOL OF POLICY STUDIES

Queen's UNIVERSITY POLICY STUDIES

QUEEN'S POLICY REVIEW
SCHOOL OF POLICY STUDIES

Exploring the Landscape of Public Governance

Volume XIV

2023-2024

To Dr. Kathy Brock, Professor Eugene Lang, and all cherished professors

We dedicate our academic and professional success to each of you. We will always carry your guidance, wisdom, unwavering support, and influence with us into each future endeavor.

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ABOUT US

The **Queen's Policy Review** (QPR) is a graduate-level scholarly publication edited and reviewed by students and faculty at the Queen's **School of Policy Studies** in Kingston, Ontario.

The goal of the fourteenth edition of this journal is to act as a competitive platform to publish exemplary work in public policy and governance and related fields from graduate students across Canada and the global sector.

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LAND ACKNOWLEDGMENT

The **Queen's Policy Review** acknowledges that Queen's University is situated on **Anishinaabe and Haudenosaunee territory**. As an institution, Queen's has benefited from colonialism and imperialism in their destructive nature and as a student organization within this university, Queen's Policy Review shares in that complicity.

As a journal that explores policy issues that shape our everyday lives, we remain committed to a goal of allyship. Queen's Policy Review stands in solidarity with Indigenous persons, and dismantling systemic racial and ethnic discrimination, and other forms of oppression, in and beyond our roles at Queen's and as future policymakers.

Queen's Policy Review remains committed to engaging in academic theory and debate that elevatesam bars the perspectives and lived experiences of all equity-deserving persons both within academic spaces and beyond.

LETTER FROM THE CO-EDITORS-IN-CHIEF

Dear Readers,

The Queen's Policy Review Editorial Team (2023-2024) is proud and ecstatic to present Volume XIV of the Queen's Policy Review: *Exploring the Landscape of Public Governance*.

This edition of the Queen's Policy Review aims to display the wide landscape of public administration nationally and internationally, and represent the contemporary informative topics that fall thereunder. After the COVID-19 Pandemic, domestic and global politics and issues have progressed. In turn, reliable evidence-based research and critical thinking are essential to explaining such issues.

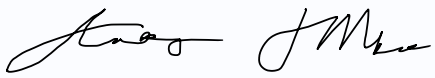
The QPR editorial team thus selected an inclusive theme that features the unique work and perspectives of various graduate students globally, and we are happy to have received a significant number of submissions, making this year's edition to have the most contributors since the establishment of QPR. In addition, the featured submissions help demonstrate the ever-changing political sphere.

It has been our pleasure to gather submissions from talented graduate students across Canada and around the world and create this journal to contribute to the growth of QPR this academic year. We hope that the next editorial team and, by extension, the next cohort continue to provoke discussions and share insights about the public administration sphere through this platform.

To our Editorial Team and Journal Staff, thank you for your efforts in contributing to the successful completion and publication of this journal, marking a legacy to inspire generations.

To our diverse Contributors, we are forever grateful for your trust for sharing your superb work.

Best wishes,



Ariane Abainza & John McKee
Co-Editors-in-Chief
Queen's Policy Review
2023-2024

Inequality and Religious Oppression Against Copts in Egypt: The Persisting Policy Challenges After the 2011 Revolution

Lilian Estafanous, Queen's University

ABSTRACT

Since the 1950s, The Coptic Orthodox Church has been the sole political and social representative of a Coptic community. Copts were marginalized from national politics, which included the activism of Coptic political parties and social movements. To a considerable extent, the revolution in 2011 broke the long-standing pattern of political restriction among the Copts and the lack of community recognition of Coptic identity and culture. The article addresses the causes and consequences of inequality and religious oppression as well as the unique policy challenges for Copts in Egypt that have persisted after the 2011 revolution.

INTRODUCTION

After the 2011 revolution, the Egyptian government has taken critical but limited steps toward improving religious freedom conditions. President El-Sisi has administered several reforms that returned a relative level of stability. Despite these positive signs from Egyptian leadership, there remain significant challenges to religious freedom in Egypt, especially for Copts. *How has the nature of power relations between the church and the regime been since 2013? How does the regime establish its legitimacy on a practical level among Copts in Egypt? Are the Copts' challenges a result of longstanding government inaction? Has the Copts' situation improved Under the President's El Sisi Administration in 2013? Has the new government been able to change the policy history in dealing with the Copts' plight*? Should the church withdraw from the political sphere and allow Copts to defend their interests by joining political parties and movements? How has the regime managed its relationship with organized Coptic advocacy groups and protest movements in Egypt and the diaspora? To what extent the term indigenous is important in Copts' identity framing and formation? All these questions are part of this article's subject matter that addresses the causes and consequences of inequality and religious oppression as well as the unique policy challenges for Copts in Egypt after the 2011 Revolution.

To identify aspects of continuity and change, the first section of this article presents the Copts' situation between 2011-2013. The second section provides a snapshot of the existing policy history and the institutionalized discrimination against Copts. The third section discusses the various approaches to addressing religious oppression in Egypt.

THE COPTS BETWEEN 2011-2013

The anger among Copts was expressed during the January 2011 protests, when Copts pushed side by side with Muslims against Mubarak's police and thugs. One of the most consequential outcomes of the January revolution was the rise of a revolutionary stream specific to the Copts. Coptic grievances were based on several concerns, such as struggles over national identity, the sectarian character of Egyptian society, and the problematic institutional relationship between the Egyptian state and the Coptic Church. By February 11, Mubarak was gone. The Coptic Community became more disappointed with the unfolding of the post-revolution events, which contributed to their growing sense of despair. While Copts were initially optimistic about the revolution, they frequently mentioned that the numerous forms of injustice experienced under the Mubarak regime persisted after the revolution.

The transition period after the fall of Mubarak was a time of hardship that is characterized by: increasing polarization of Egyptian society, continued attacks against Copts, an increasing number of crimes, as well as general social, economic, and political instability. Kidnappings in Minya in Upper Egypt, where Christians are estimated to make up more than a third of the population, have been a weekly occurrence since Mubarak's ouster. Victims were held with the abductors until their families paid a ransom (Brownlee, 2013).

In 2012, after more than a year under the interim government of the Supreme Council of the Armed Forces, elections were held, and the Mohamed Morsi became the first democratically elected head of state in the entire history of Egypt in June 2012, only to be ousted in July 2013, after mass protests against his agenda. The opposition to Morsi was fueled by religious minorities' fear of discrimination and many Moderate Muslims' concern about a total Islamization of society. Throughout his presidential campaign, Morsi emphasized that he believed in equal citizenship for all, irrespective of religious affiliation. Most of Egypt's Coptic Christians were suspicious of voting for Morsi and had profound fears of the rise of an Islamist president (Sedra, 2013). Therefore, in the first round, many voted for other nominees, namely, Hamdin Sabbahi or Ahmad Shafiq. After a year into Morsi's presidency, sectarian violence has increased in frequency and intensity. The Coptic minority realized they did not overestimate the threat to their rights. The Muslim Brothers and the Freedom and Justice Party could not ensure public safety, especially for Copts. Even though the sectarian violence record is either incomplete or unreported in most cases. Data from the Egyptian press show that the number of sectarian attacks rose from 45 in 2010 to 70 in 2011, the year of the revolution that toppled Hosni Mubarak, to 112 in 2012 (Tadros, 2013b). Undoubtedly, Christian and Muslim Egyptians suffered the effects of the lack of security, robberies, break-ins, kidnappings for ransom, and verbal and severe cases of verbal and sexual assaults on women (Tadros, 2013b).

From February 2011 through July 2012, Copts have been active in street politics regarding both national issues and communal grievances. In 2012, there were 15 reported protests on the cases of individual Copts or matters of religious discrimination. The participants were organized Coptic movements and ordinary citizens, Christian and sometimes Muslim. Crucially, the protests were happening at public sites rather than church sites (Tadros, 2013b). The protesters' demands, however, have been met only very rarely. Finally, as the grassroots anti-Morsi 'Tamarod movement' gained steam, Copts called for Morsi's removal from office and new elections (Brownlee, 2013).

Anti-Christian attacks rocked the heart of Egypt. The most dramatic example was the April 7, 2013, attack on the Coptic Orthodox cathedral in the Abbasiyya district of Cairo. The incident left two dead and nearly a hundred injured, including many police officers (Tadros, 2013b). This attack was a severe assault on a national symbol (Brownless, 2013). Following the events, President Morsi didn't act to protect the cathedral after the attack. His behavior comes under the category of poor assessment of events which allowed for the relations between church leadership and the state to deteriorate even more.

Clashes between Morsi's critics and supporters in late June 2013 culminated in massive anti-Morsi protests on June 30, the first anniversary of his inauguration. The protests were the largest since the ouster of Mubarak and included calls from Copts and moderate Muslims for the military to intervene to oust Morsi. Many were injured, and more than a dozen were killed.

The Church's patriarch, Pope Tawadros II, endorsed the July 2013 military intervention against Morsi. Since then, the Brotherhood and its supporters have seen the Copts as a conspiracy against Morsi. Pro-Morsi protesters, angry at the Church's backing of the military takeover, have attacked more Coptic churches and properties. In July 2013, the army announced the ousting of Morsi in response to the millions of Copts and moderate Muslims demonstrations demanding his resignation.

Further violence, not stability, followed the coup. Since Morsi's ouster on July 3, 2013, attacks on Christians have taken place in governorates across Egypt, including Minya, Luxor, North Sinai, Marsa Matrouh, Port Said, and Qena. On July 3, 2013, Morsi supporters' arsonists burned St. George's Coptic Catholic church and al-Saleh church in Delga, Minya, in the south. The attacks injured eight Christians and Muslims. Neither the Police nor the army forces did interfere in protecting St. George's during the attack. Christian residents of Delga reported that most of the Christians in the area had fled, afraid to return home to find their homes had been burned (Human Rights Watch, 2013a). Also, on July 3, pro-Morsy protesters' thugs attacked St. Mary's church in Marsa Matruh.

Two days later, On July 5, 2013, in the village of Naga Hassan, near Luxor, residents brutally beat to death four Copts inside their home as Police, and a mob of residents surrounded the house. Residents also harmed three others and destroyed at least 24 Christian-owned properties. The conflict escalated over 17 hours without effective police intervention. Police officers controlled the situation only after the men were killed (Human Rights Watch, 2013b). On July 6, Two Copts kidnapped in Northern Sinai were killed because a ransom had not been paid (Human Rights Watch, 2013a). Lastly, on July 9, masked men attacked St. Mina's church in Port Said.

After Morsi's removal in July 2013 by the military, pro-Morsi demonstrators camped near the Rabaa al-Adawiya mosque in the Nasser City district of Cairo to protest his ouster by the military. On August 14, 2013, the Egyptian police and armed forces cleared the demonstration camps after the military failed to end the six-week sit-ins by peaceful means. The result was the killing of more than 800 protestors. Thousands of pro-Morsi protestors found the Rabaa incident as a catalyst for more waves of church burnings. In August 2013, arsonists destroyed no less than 43 churches in Upper Egypt, Beni Suef, and Fayyoum and attacked 207 properties (Doorn-Harder, 2015). Many human rights advocates stated that the surge in attacks was coming from disgruntled Morsi supporters (Brownlee, 2013).

In such a tense and polarized situation, authorities should be on high alert to prevent sectarian violence, hold the perpetrators accountable, investigate whether security forces and the police took adequate measures to stop the attacks, and bring prosecutions as appropriate. However, this was not the case, and while Islamists were sometimes the aggressors, law enforcement officials often enabled the attacks. As in most attacks against Copts, security forces failed to take necessary action to prevent or stop the violence, and the authorities never even identified the culprits. For example, after the Nag Hassan attacks, Luxor governorate's director of security informed Human Rights Watch that the police's job was not to intervene and stop killings but to investigate the incidents afterward (Brownlee, 2013; Human Rights Watch, 2013a).

The end of the Islamist government carried a sense of relief to Coptic communities. However, it remains to be known whether the transition delivered security or reproduced the

regular practices of state officials manipulating sectarian tensions rather than addressing them. In 2014, Abdel Fattah El-Sisi was elected with 97 per cent of the votes after a military coup. Such a high level of voter support can indicate that voting was entirely free and fair. Many Egyptians saw the appointment of El-Sisi as a sign of inter-religious cooperation. Therefore, he was welcomed by the Copts in Egypt and the diaspora alike. The Copts perceived in al-Sisi as a savior from the Muslim Brotherhood government. They found great support in the church reconstruction policies; religious tolerance and Copts recognition discourse; elimination of radical ideas from the Islamic discourse; calls to revolutionize Islam, and his firm declarations regarding punishing those guilty of sectarian violence. On many occasions, El-Sisi spoke of a new republic in Egypt that accommodated everyone without discrimination. El-Sisi appointed Manal Awad as the governor of Dumyat in September 2018. In late December 2019, El-Sisi appointed a committee to combat sectarianism. In January 2021, Egypt's Grand Mufti permitted Muslims to construct Christian churches as paid labor. A month later, on February 9, 2022, the first Coptic Christian Judge, Boulos Fahmy Eskandar, was appointed as head of Egypt's Supreme Constitutional Court, the highest judicial authority in the country. The appointment was a promising step toward greater Coptic inclusion and representation in Egypt's public sphere. El-Sisi has also administered several reforms that returned relative stability, such as launching a government program and initiatives to promote inclusivity, addressing religious intolerance in rural areas, and eliminating intolerant references in the elementary public-school curriculum (Perkins, 2020).

However, violence did not end. For example, in one year, 2017, St. Peter and St. Paul's church in Cairo was bombed, killing 29 Copts. Months later, Daesh attacked two Coptic churches. One bomb hit a church in Tanta, the other in Alexandria. Forty-five people were killed, and 126 were injured. In May 2017, a busload of pilgrims traveling to the Monastery of St. Samuel the Confessor, 135 kilometers south of Cairo, was attacked by shooters. 28 Copts died, and 25 were wounded (Gornall, 2017). The rise in violence against the Copts, even after El-Sisi, led the Copts to take a stance. Copts of Egypt have refrained from openly criticizing the military to prevent destabilizing the fragile status quo, which might worsen their situation. Diaspora activists, much more vocal than their coreligionists in Egypt, strongly denounce violence and discrimination (Marzouki, 2016).

A REALITY SNAPSHOT: INSTITUTIONALIZED DISCRIMINATION AND THE COPTS' SITUATION SINCE 2013

The Copts' situation might have slightly improved in some aspect since 2013. However, as we are in the third decade of the 21st century, Copts are still deprived of their fundamental rights, directly impacting individuals and society. Most importantly, the Copts' challenges have resulted from longstanding government inaction as consecutive administrations have been dealing with the Coptic concerns as a mere "dossier" in the hands of national security rather than being a high-priority citizenship issue under the president's responsibility (Guindy, 2020). The following is a snapshot of the enduring discriminations against Copts that have existed in the past and persisted after the 2011 revolution.

The Census of Copts

Due to discrepancies between Coptic statistics in the Egyptian Census and the Coptic Orthodox Church's estimates, the exact number of Copts residing in Egypt is in question. The National Civil Status Administration does not

release accurate records, even though it has records of all citizens born after 1900 (Guindy, 2020). Census officials attempt to determine faith from a superficial examination of names, resulting in inaccurate statistics (Sedra, 2014). Most experts and media sources state that there are approximately 15 million Copts in Egypt, which accounts for 15-20 per cent of the entire Egyptian population (109.3 million in 2021), making them the most extensive Christian Egyptian denomination and the most significant Christian domination in the Middle East and North Africa (Dorjee, 2019).

The absence of reliable statistics on the Coptic community exemplifies the political sensitivities surrounding the Coptic issues in Egypt. Sedra (2012) indicates that counting Copts means intervening in longstanding debates about fair representation and equality before the law. In his book, Aqb ā t al- mahjar or Copts' Diaspora, Khalil indicates that the government insists on denying the actual number of Copts because revealing the real number permit Copts to demand their rights in proportion to their declared numbers which open doors to more confrontations between Copts and the government (Khalil, 1999).

The Constitution

The question for the Copts is not only about identity, but the standing originated from their identity; are they to be given equal treatment before the law or, according to some extremist Islamist claims, forced to revert to a minority rank in a state ruled by the Shari'a or Islamic law? The constitution declares that Islam is the state religion; therefore, even though the constitution states that Egyptians are equal before the law and that religious opinion is absolute, national identity, in constitutional terms, is linked to Islam. In an interview with the author, RO, an executive at Coptic Solidarity organization, stated, "If we look at the Egyptian constitution, article 2 indicates that all legislations are based on sharia law. Therefore, despite areas in the constitution that guarantee religious freedom rights, article 2 negates them all. The same goes for the rights of assembly, free speech, women's rights, divorce, and adoption, among others" (RO, 2022).

Sean Nelson, Legal Counsel for Global Religious Freedom with Alliance Defending Freedom (ADF) International, illustrated in one of the Coptic Solidarity conferences that blasphemy laws in the Egyptian constitution violate the core rights of religious freedom (e.g., the right to choose your religion or not to have them at all, the right to worship and pray, the right to live out your faith or to be able to identify your faith publicly without being attacked, and the right to be able to share your beliefs or criticize other believe which involves freedom of expression, association, and press). He indicated that Blasphemy is supported by Article 98 (f) of the Egyptian Penal Code. Which significantly penalizes "defamation of religions" with a 6-month to a 5-year prison sentence. He stated, "Blasphemy is not just a religious offense law, but it incorporates national security concerns, community concerns, and that kind of framing is important to understand the authoritarian way of managing minority groups in Egypt" (Coptic Solidarity, 2022b).

Nelson also indicated that in 2015, half of the blasphemy cases targeted Christians. Moreover, Article 98F Egypt's anti-blasphemy law has been used recently to target Christians or liberal Muslims in high-profile cases. In February 2016, four Coptic minors were sentenced to five years in jail after making a video mocking members of the Islamic State group beheading an individual after the militants finished Islamic prayers. Naout, a Muslim thinker was sentenced to three years in jail for saying on her Facebook page that the Eid Al-Adha tradition of

slaughtering sheep was the "greatest massacre committed by human beings." El-Beheiry served a one-year sentence in prison after he stirred controversy by questioning the credibility of some sources of Islamic jurisprudence (Barsoum, 2016; Coptic Solidarity, 2022b). Ambassador Alberto Fernandez indicated during the Coptic Solidarity conference that the 2021 sentencing of the high-profile lawyer, former Egyptian general, military judge, and Islamic thinker Ahmed Abdo Maher to five years in prison over "anti-Islamic" remarks posted on his social media had sparked controversy in Egypt (Coptic Solidarity, 2022b). Maher was charged with "contempt of religion" and "stirring up sectarian strife". Alberto expressed that the very arbitrary nature of the implementation of different articles of the Egyptian constitutions is a feature of the system. He stated, "the state can embrace nationalism and promote unity while preserving the power to demonize any citizen over moral transgressions" (Coptic Solidarity, 2022b). In the conference, Brother Rachid, a thinker, indicated that the blasphemy law is very vague, and the authorities can use it against their enemies, critics, and opponents for any reason" (Coptic Solidarity, 2022b).

On 4 September 2022, the recent baby Shenouda circumstance brought back to the fore the discrimination Indigenous Egyptians face under Islamic law of adoption. Baby Shenouda was abandoned inside a Coptic church in Egypt. The Coptic priest of the church assumed that the child's biological parents were Christians as they had left the baby in front of a church, not a mosque. The priest entrusted the baby to a Christian couple who had been trying for a baby for 29 years. The couple took the baby, baptized him in the Coptic church, obtained a birth certificate that stated his religion as Christian, and named him Shenouda, a popular Coptic-Egyptian name. Four years later, the adoption incident came to the knowledge of Egyptian government institutions. Under Islamic laws, a child whose biological parents are unknown is considered as a Muslim, and it is illegal for Christians to adopt a Muslim child. Shenouda was seized from his adoptive parents by the police and sent to a Muslim orphanage. He was given a Muslim Arabic name, Yousif, and is being taught the Islamic religion after a new birth certificate stating that Shenouda, now Yousif, is a Muslim. Copts in Egypt and worldwide are concerned not only about the trauma Shenouda has been exposed to, one of many cases under the Islamic law of adoption, but the symbolic meaning of Copts' precarious position.

Executive, Judicial, Legislative and Government Positions

Of the 33 ministers and 15 deputy ministers (as of December 2019) in the Egyptian government, there is only one junior Coptic minister (since September 2015). Of the 27 appointed governors and 23 deputy governors, there are two Copts, including a woman (Dorjee, 2019; Perkins, 2020). Out of 524 government-appointed heads of city, districts, or town councils, there is barely a single Copt (Guindy, 2020).

To prove Egypt's advancement concerning women, on March 3, 2022, 98 female judges took the oath to assume judicial roles in the State Council. This step is an unprecedented achievement; since its inception 75 years earlier, no woman had sat on the podium of the State Council court. Nevertheless, none of the new appointeess was Christian. The percentage of Copts in the judiciary bodies is kept below two per cent, while there was not a single Copt in the supreme judiciary council before 2022. Copts account for 15-20 per cent of Egypt's population. Therefore, at least 10 of 98 should have been Copts for proper representation (Ibrahim, 2022).

According to Coptic solidarity statistics, Egypt currently has 135 ambassadors abroad and about 20 consul-generals. No Copts were appointed to any major Western, non-Western capital, international organization, or Arab or Muslim country, and no Copts were appointed consul-general (Guindy, 2020; Ibrahim, 2022).

In the current parliament, of the 596 parliament members, there are 39 Copts. That represents barely six per cent. Their representation is also linked to the constitutional provision (Art. 244) of temporary unspecified measures to favor particular groups (women, Copts, farmers, and workers) to be elected on a restricted list (Guindy, 2020).

Army, Police, and Special Services

Copts have also been excluded from high-ranking Egyptian police and armed forces positions. The acceptance rate of Copts each year at the military and the police academies is always below 2 per cent. Also, no Copts are among the National Defence Council members. Copts are also prohibited from working for intelligence services or national security departments (Brownlee, 2013; Khalil, 1999).

Freedom of Worship

Examples of religious constraints include 1) religious affiliation is a requirement in the identification cards and all official and private application forms, commercial contacts, and notarized acts; 2) the authorities can instantly change one's religious affiliation in case of conversion to Islam, but the reverse is impossible; 3) dozens of women are coerced to convert to Islam, including several cases of underage girls (Coptic Solidarity, 2020); 4) a unified law to regulate the building of all houses of worship has been rejected. Instead, a separate church law was adopted, which left the entire process in the hands of the national security department. Caroline Doss, Coptic solidarity executive committee president, stated during one of the Coptic Solidarity conferences, "the 2016 church law is intrinsically discriminatory, and it doesn't advance the life of Copts because it is unified" (Coptic Solidarity, 2022a). Moreover, the Church Building Law of 2016 (Law 80/2016) is considered the first Law of its kind in Egypt to grant building approvals for churches. However, governors have approved only eight new churches since the passage of the Law, including three properties in new and currently uninhabited urban developments (Dorjee, 2019). They have issued few to no permits for new churches in Christian-inhabited communities such as Upper Egypt, where thousands of Christians have no local churches (Coptic Solidarity, 2022a).

Education and Universities

Coptic history and culture are marginal in Egyptian educational programs, as Islamic history constitutes the central component of the history course. Islamic religious education has become obligatory in Egyptian schools since 1957 (Abdou, 2018). The official curriculum of the ministry of education ignores seven centuries of the Coptic era history while glorifying invading forces for having slaughtered thousands of Christians in Egypt and North Africa. The result is school curricula that create a schism between Muslim and Christian school children.

There are 25 public (state-run) universities in Egypt, including 450 faculties, with more than 1550 leadership positions (university president, vice president, dean, and vice dean). Only a handful of these positions are occupied by Copts (Dorjee, 2019; Farah, 1986; Hasan, 2003; Nisan, 1991; Perkins, 2020). In 2022, the president of Cairo University, Muhammad Uthman al-Khosht, assigned 31 new directors, deputy directors, managers, and researchers to head several departments, not one of them being Christian (Ibrahim, 2022).

Al-Azhar University is one of the ten largest universities in the world, with over half a million students in 87 faculties. It has expanded its role from teaching Islamic studies to a complete portfolio of colleges teaching medicine, engineering, and dentistry, among other fields. However, Al-Azhar does not allow Christians to study at its non-religious faculties, and the state has not allowed the establishment of a Coptic university (Carter, 1986; Loza, 2006; Zeidan, 1999). Moreover, admission to regular military and police colleges is limited to Muslim students.

Societal Discrimination

Discrimination persists even in less formal settings. Of the 69 football clubs, with over two thousand players in the premier league, second and third division, players are rarely Copts. No Copts of any denomination are represented in top-level football and, therefore, in the national team. Similarly, in the latest summer games in Tokyo, Egypt's delegation included 141 athletes: one of them was a Copt (Ibrahim, 2022). Coptic athletes' complaints about being banned from joining sports teams in most clubs are ignored.

APPROACHES TO ADDRESSING RELIGIOUS OPPRESSION IN EGYPT

To answer the question of how the government should respond to the most pressing issues of inequality facing Copts in the 21st century, the first set of recommendations focuses on policies and programs for addressing inequality and alleviating sectarian tension in Egypt. The second set of recommendations emphasizes the significance of building allies and creating channels of collaboration between various actors.

Policies and programs for addressing inequality and Alleviating Sectarian Tension in Egypt

Over the years, several Coptic organizations and individuals have requested the Egyptian government, authorities, and President El-SISI to help the persecuted Copts. They suggested solutions to reduce the discrimination against the Copts living in Egypt and called on Egyptian authorities to 1) make ending sectarian violence a priority and pass legislation to combat discrimination; 2) abolish the so-called "reconciliation meetings," which should not replace bringing perpetrators to justice; 3) apply the full force of justice against perpetrators of violence, including all local police and government officials whose indifference and complacency have allowed these mob actions and attacks against Copts. Reversion to earlier constitutional language will have no more than a symbolic effect if it is not combined with establishing a police force and judiciary that thoroughly applies the law, irrespective of denomination; 4) implement legislation to guarantee the freedom of building new churches and repair of existing ones; 5) shut down avenues of religious hate, including from within state-backed religious, media and educational bodies; 6) annul the "anti-blasphemy" code in Article 98(f) of the Penal Code; 7) remove religious identification from official identity cards; 8) allow Christians to have their fair share of leadership jobs, form political organizations, and occupy higher positions in the government; 9) implement programs that are designed and delivered by experts in psychology, religions, and cultures. Such programs must promote tolerance, peace, and equal rights for all citizens, among other principles advocated for by Egyptian human rights organizations.

Recommendations Related to Building Allies and Creating Channels of Collaboration

The study suggests that the government should adopt the Copts' struggle and perceive it as a national concern for all Egyptians rather than

a minority concern. Meaningful inclusion should be marked by deep and complex negotiations rather than superficial gestures of interfaith unity. Many interviewees expressed the need for the government, Muslims, and Copts to work together and establish common human rights organizations. RI, an executive member of Coptic Orphans, stated in an interview with the author, "to help the Copts, we have to bring Christians and Muslims together in the same space in which they begin to know each other, then respect each other, and then love each other." She added, "this is the greatest security for Copts in these villages where they may be outnumbered." She gave an example of the Valuable Girl Community Project, stating, "it is amazing to see Muslim girls talking positively about Copts as brothers and sisters, and that is the change we have made" (RI, 2022).

Contrary to the common idea that the church should withdraw from the political sphere and allow Copts to defend their interests by joining political parties and movements, many activists and priests recommended getting the church to be more involved in politics. MA, an executive member of the Canadian Egyptian Organization for Human Rights and former member of the Canadian Coptic Association, illustrated that the church should encourage the congregation to participate in politics and teach Christianity applied (MA, 2022). GU, a lawyer and activist, indicated that by getting the church more involved, even though activists may or may not always agree with the church's position, Copts could have more unity in their purpose. He stated, "There is much more unity of purpose, clarity of communication, and a whole tone of credibility inside the church systems" (GU, 2022). YO, a Priest in Canada, declared that there was a time that the church was against political activists and political activism in general. He stated, "we are now back on the right track, and the Church started to understand how to do things effectively." He also indicated that the clergy needed to encourage people to participate in politics. He explained, "priests can't be political figures and can't have direct roles. However, they can have a role in encouraging activists to pursue their role in the community" (YO, 2022).

The interviews suggest that diaspora activists can play significant roles in the home country as intermediaries when they establish relationships with other participants and build transnational networks. This perspective focuses on the broader constellation of institutions and relations within which diasporas are embedded. It suggests that Copts' mobilization can be more substantial by having an external union that they fall under. In an interview with the author, ME, a Conservative party of Canada candidate for Mississauga-Streetsville 2019 and activist, expressed that situating the Coptic rights as rights of all Christians or rights of persecuted minorities worldwide will make the Copts' case more assertive to the international community (ME, 2022). FA, an activist and university Professor, also indicated that it would be far more effective to amalgamate all Christian groups from the Middle East (e.g., Syria, Sudden, Iraq) and far east (e.g., India, China) and form a coalition around the situation of Christians under one cause. He also suggested that the Copts, whether in Egypt or the diaspora, should unite with other minorities, such as the Assyrians, the Chaldeans, the Ahmadi, and the Bahai. The larger group, the higher weight, and attention it gets (FA, 2022). YO, a priest in Canada, stated, "On many occasions, we tried to lobby with other priests from the middle east who are not just Copts or Egyptians. We cooperated with the catholic church in Canada and priests from Iraq, Lebanon, and Syria, especially regarding raising global issues such as the beheading of 20 Copts

and one Ghanaian by the shores of Libya" (YO, 2022). The strategy of trans-faith alliance among Christian minorities was manifested in the creation of In Defence of Christians (IDC) in 2013. IDC presents itself as a non-profit and non-partisan organization that seeks to raise awareness among policymakers of the persecution of Middle East Christians.

CONCLUSION

The Copts, who participated in the modernization movement in the late 19th century and fully engaged in the national revival movement of the early 20th century, after some initial reluctance, joined in the 2011 uprising that ended in toppling Mubarak's regime and the 2013 popular movement that ended with the toppling of the Brotherhood regime. In all these cases, the hope was to build the foundation for a more inclusive and egalitarian system. Nevertheless, most of the Copts still feel they are chasing after the wind.

Copts recognize the complexity Coptic Leaders in Egypt have faced in dealing with the multidimensional persecution of Copts. However, the importance of this news is not so much that intolerance against Christians in Egypt exists but that it seems to invade all aspects of life. In other words, whereas violence and persecution against Egypt's Christians are not uncommon, institutionalized, and open discrimination against them infiltrates every aspect of Egyptian society. Therefore, the problem is not about electing the 'wrong people but that the elected leaders did not address the structural shortcomings of the legal and political system.

While Copts have great faith in El-Sisi himself, the question of why these incidents are persistent remains unanswered. The relationship between the Police, army, president, Copts, and Islamists remains puzzling and ambiguous. The current situation can be seen in this light: Coptic complaints about Morsi grew stronger during his twelve-month period. The rise of the Muslim Brotherhood and Islamists showed the Copts' political dilemma and struggle wide-open. Thus, the termination of Egypt's first Islamist president did not necessarily present a golden age for Muslim-Coptic relations. The absence of a practical legal framework for all Egyptians and institutional guarantees for rights explains why violence against Copts continues to shake the country. To produce a more inclusive and stable government and prevent future bloodshed, Egyptian leaders must go beyond scapegoating Islamists. Together, leaders and state security should promote citizenship and uphold the rights of religious minorities, take measures against sectarian violence, and facilitate the safe and voluntary return of people forced to flee their homes. On the other hand, the Church should allow Copts to defend their interests by joining political parties and movements. The Coptic Church should also transform itself from a state-oriented Church into a civil society that protects universal ideals such as human rights and social justice and supports developmental projects for Muslims and Christians alike. Such an approach will help bridge the gap between the two religious communities, particularly in Upper Egypt, where religious affiliations are predominant and state institutions are weak.

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Can Data be Decolonised? A Discussion of Data Colonialism, the Commodification of Data, and Sovereignty

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ABSTRACT

How is data collected, processed, and stored? Where and to whom is this personal information sold? These are just a few questions that relate to the broader notion of 'data colonialism,' which presents a clear link between present-day technology, technology companies, states, and the legacy of colonialism worldwide. *As people's lives are increasingly digitized, is it possible to disentangle the need to be connected with the reality of choosing how personal data is used?* These provocations lead to further questions about how to conceive of the state and sovereignty, and the potential re-framing of these concepts based on non-Western theories, given the cross-border nature of technology. This paper demonstrates how data is the new frontier for colonial behaviour, as demonstrated by the prevalence of technology companies (e.g., Microsoft and Meta), which extract data primarily for the purpose of profit. This "data colonialism" phenomenon relies on consumers' reliance on technology to continuously produce data; its prevalence in contemporary life is such that all human life is commodified. Ultimately, this paper presents a contextualised view of data colonialism by showing its relation to digital colonialism and the wider history of colonialism more generally. This paper raises the issue of data as a recursively-generated commodity to analyze the ways in which technology companies are looking to expand their markets and data bases, which links to the initial conversation about how data colonialism is necessarily rooted in colonial, expansionist legacies. Finally, the topic of data colonialism is dialectically positioned against conceptions of sovereignty to show how it complicates traditionally understood boundaries and erodes state borders.

INTRODUCTION

The presence of technology in everyday life is continuously increasing as the world becomes more connected and formerly analogue processes become digitized. This increased interconnectivity may seem positive on the surface, but what happens when the actual functionalities of these applications and devices are revealed? How is data collected, processed, and stored? Where and to whom is this personal information sold? These are just a few questions that relate to the broader notion of 'data colonialism' which presents a clear link between present-day technology and the legacy of colonialism worldwide.

With increased public awareness about topics such as surveillance technology and facial recognition tools for example, it is important to first analyse data colonialism and the impact that it has on society. As such, using a dialectical model, this paper will explore the historical legacy of colonialism and empire, and how this process of domination has transformed into what is now called digital and data colonialism. It will then link data colonialism with discussions around data as a commodity and sovereignty. Finally, this paper will turn to possible solutions and further questions as to what can be done to decolonise data and to reimagine technological structures that are not rooted in colonial framings.

OVERVIEW: DIGITAL COLONIALISM VS DATA COLONIALISM

To begin this discussion, it is important to differentiate between what is understood to be 'digital colonialism' as compared to 'data colonialism'. Based on current readings, most authors use the two terms interchangeably, or use one but reference what is covered by both. With respect to the term 'digital colonialism,' this

generally refers to a broader field of study that includes an analysis of infrastructure such as hardware and software, as well as data, and how these aspects relate to the overall process of extraction and appropriation. For example, the scholar Kwet analyses digital colonialism across a range of contexts and has identified that:

> …a new form of corporate colonisation is taking place. Instead of the conquest of land, Big Tech corporations are colonising digital technology. The following functions are all dominated by a handful of US multinationals: search engines (Google); web browsers (Google Chrome); smartphone and tablet operating systems (Google Android, Apple iOS); desktop and laptop operating systems (Microsoft Windows); office software (Microsoft Office, Google G Suite); cloud infrastructure and services (Amazon, Microsoft, Google, IBM); social networking platforms (Facebook, twitter)…" (Kwet, 2019).

This list shows some of the ways, though not even the full extent, to which private companies have access to personal information. Looking at this list, one might also consider if it is even possible to do away with any or all these services in modern-day life. For example, is it possible to go through university today without access to a word processing software such as Microsoft Word (as part of the Microsoft Office suite)? One might also consider Microsoft's Education programme where the Office 365 suite is available to students and teachers free of charge. This seems like a generous programme, but one must consider what is being given up for this to be worth it for the company. Additionally, it is important to recognise that digital colonialism is one aspect of a broader conversation about neocolonialism, and how systems of oppression are created and perpetuated in present day. In this way, digital colonialism is one facet operating within a larger frame of global domination. Other forms of neocolonialism to consider include foreign aid and financial systems, infrastructure and development investments, and foreign policy more generally (Utietiang Ukelina, 2022).

Moreover, other scholars, such as Nick Couldry and Ulises Mejias, take a narrower field of study and deliberately refer to 'data colonialism' in their work. They use the term 'data colonialism' to mean:

> …an emerging order for the appropriation of human life so that data can be continuously extracted from it for profit. This extraction is operationalized via *data relations*, ways of interacting with each other and with the world facilitated by digital tools. Through data relations, human life is not only annexed to capitalism but also becomes subject to continuous monitoring and surveillance (Couldry & Mejias, 2019).

It is this continuous monitoring that allows for the cycle of data extraction to continue, as people are constantly creating more data depending on how and what they post online, which browser they use for search queries, or which applications they use and how frequently they use them. These authors go on to say, "the result [of data colonialism] is to undermine the autonomy of human life in a fundamental way that threatens the very basis of freedom, which is exactly the value that advocates of capitalism extol" (Couldry & Mejias, 2019). For Couldry and Mejias, the emphasis is placed on data as the defining information that structures all other relations, meaning how people interact with each other, with the state, and with market forces. As a result, they point to

the ways that these structures and relations are heavily influenced by private companies who use data to influence the public's decision-making, and ultimately their way of life in an effort to expand capitalist control and production (Couldry & Mejias, 2019).

With these definitions in mind, this paper takes a narrow approach and uses Couldry and Meijas's definition of 'data colonialism' to discuss the legacy of colonialism and empire in the digital context, and what this means in terms of how sovereignty is understood. This definition of data colonialism is context-specific to this discussion to analyse the impact that this specific process has on people and communities. A key idea stemming from research around data colonialism (and digital colonialism for that matter) is that these forms of domination and oppression stem from the colonial legacy of imperial nations.

Just as "…some colonial powers did invest in transportation infrastructure such as railways, such investments were strictly for the benefit of facilitating the efficient transport of raw materials…" rather than for the advancement of the countries they were exploiting (Coleman, 2019). This same process of development for the purpose of extraction can be seen in relation to the digital sphere as well, specifically regarding user data in African nations. Coleman discusses how Western technology companies have financed "…critical connectivity infrastructure… to extract and control untapped user data" in African nations, and that the "…extraction, analysis, and control of data in African countries with limited infrastructure, limited data protection laws, and limited competition, combined with social, political, and economic power imbalances and decades of resource pillaging is what gives the above consequences true power" (Coleman, 2019). A concrete example of this is Facebook's 'Free Basics' mobile application, which "…gives users in developing nations access to limited online services and content for free" (Coleman, 2019). However, when this application is used Meta harvests "…huge amounts of metadata about users…" such as "… which third-party sites users are looking at, when and for how long" (Solon, 2017). All this information is then used by Meta for their own expansionist purposes, under the guise of helping those previously unconnected to the Internet get online. As such, the example of ICT infrastructure development for the purposes of data extraction is an extension of colonial forms of dominance that continue to define state relationships and socioeconomic statuses of countries around the world. In this way, 'data colonialism' is a recent iteration of colonialism based on the structures of capitalism and neoliberal ideologies perpetuated by private companies, such as Meta.

THE COMMODIFICATION OF DATA

Building on this discussion of what data colonialism is and how it operates, it is important to focus on the impact of data colonialism and what it means for the futurities of not only targeted groups such as Indigenous and minority communities, but all people to a certain extent. A key aspect to understand this impact is to recognise the value that is placed on data only after it has been extracted from an individual. In this respect, scholar Robert Nichols's concept of 'recursivity' is helpful to understand this process. Nichols analyses recursive dispossession and uses the term 'recursivity' to show how the concept of property was created through the process of dispossession from its 'original owners,' because the 'original owners' did not claim the land in the same way (Nichols, 2020). Therefore, he argues, that "…in this (colonial) context, theft is the mechanism and means by which property is generated: hence its 'recursivity'. Recursive dispossession is effectively a form of property-generating theft" (Nichols, 2020). In this way, the

concept of recursivity can also be applied to data colonialism because data is only assigned value after it has been extracted; it has no value when an individual is the only one who has claims and at this initial stage the individual cannot sell it or gain any value from it because private companies and states hold this value-assigning power.

As such, through data colonialism the dispossessed have their information and data taken away and used to generate profits for private companies, only after it has been extracted. Scholars Couldry and Mejias argue that this process of extraction further integrates economic systems and social relations "…as human life is converted into raw material for capital via data" (Couldry & Mejias, 2019). A key difference between land dispossession and data dispossession is that in most cases the individual has officially handed over the rights to their data through terms and conditions, however, these are written in a way to make them deliberately inaccessible and incomprehensible to the average person. Regardless, the general principle and logic of land theft as a recursive process can be applied to data commodification.

With the recursively-generated commodification process firmly in place, private technology companies are looking to spread to new markets and explore new forms of dispossession. This is where a clear impact of this process can be seen. An interesting study by scholar Jason Young looks at how digital colonialism is shaping knowledge politics in Indigenous communities, specifically in Canada's Arctic region. Based on his studies he argues that, "…digital engagement can erode the embodied and social practices that are critical to the transmission of some forms of Indigenous knowledge" (Young, 2019). He highlights rituals of respect as being of key importance to Inuit life, and that "knowledge is not something to be held and recited, but a set of skills that must be constantly practiced and adapted to a changing world" (Young, 2019). These examples reaffirm the different shapes that community organisation can take, such as based on care and respect for others and the surrounding environment, and offers an alternative form of governance not rooted in colonial structures.

Unfortunately, Young has found that the introduction of technology is eroding this form of community and knowledge, and is working to dispossess Inuit "…of their own epistemic resources for navigating the Arctic and engaging in the political decision-making processes that impact their own lives" (Young, 2019). This trend can be critically examined from two distinct though not mutually exclusive perspectives: one, that Inuit communities are increasingly relying on technology to not be left out of the benefits that it can offer (for example communicating with relatives who are far away), and two, that this increasing digitalisation of Inuit life is contributing to data colonialism as their information is ultimately commodified by companies or used for surveillance purposes by the state. Young points to this sense of inevitability and mentions that "[Inuit communities] also use the Internet for a range of other tasks, including email, paying bills, banking, watching multimedia, online shopping, checking news and weather, and more. That these tasks may seem familiar to broad audiences goes to show how colonial and epistemic politics can operate in subtle and mundane ways" (Young, 2019). This point relates to Leanne Simpson's reflections about the digital dispossession experienced in the Idle No More movement, which will be discussed further below (Simpson, 2017).

The 'mundane' aspect of technology is perhaps the most worrying trend of data colonialism: the fact that these tools have somewhat seamlessly integrated into everyday

life, that now they have become essential to actively participate in modern day society. This all-encompassing nature leads to indiscriminate data commodification, though based on historical colonial legacies, some groups are targeted, monitored, and surveilled more than others as they are seen as threats to the state or to the process of capitalist extraction.

Moreover, in terms of impact, Young cites a worrying trend in terms of socialisation in Inuit communities in Canada's Arctic. He argues that, "Internet users tend to engage less in the embodied and collective practices… and instead engage in more individualized and less experiential forms of knowledge acquisition" (Young, 2019). He notes this impact is not unique to Inuit communities, but rather shows how it is especially damaging to these communities as their "…knowledge system [is] based on in-person socialization and experiential learning" (Young, 2019). In this way, not only is data being extracted and then profited from these communities, but the communities themselves are deteriorating because of this process. This is another clear extension of colonial relations that aim to assimilate and/or eradicate different cultures and communities.

CONCEPTIONS OF SOVEREIGNTY

Based on this understanding of what data colonialism means and the impact it has in relation to the history of colonialism, it is now important to turn to ideas around sovereignty that are being challenged in the digital sphere. Young's study of how technology is contributing to the deterioration of traditional Inuit communities and ways of life, discussed above, leads to the last piece of this dialectic: conceptions of sovereignty. As alluded to above, data colonialism complicates the Westphalian state model due to the transnational nature of data and technology and the prominent role that private companies play in this process, as opposed to traditional models of geopolitics where state entities are the defining actors. It is increasingly common for technology companies to work with and for state actors, which ultimately works to erode sovereign boundaries in the Global South as these private companies take on a more prominent role in inter-state relations. States can then leverage this expertise to further their own benefit and data collection capabilities, such as how the United States Department of Defense awarded "…cloud-computing contracts to four companies: Amazon, Google, Microsoft and Oracle" that are valued at $9 billion (Farrell, 2022). As a result, these non-state actors can influence state decisions related to data and technology.

Another perhaps more subtle example is Australia, who is surrounded by smaller nations and is therefore in a strategic position to use digital technology to collect information about the states and citizens around them. Ultimately, the surrounding states "…are vulnerable to data extraction if they lack large-scale data actors, strong infrastructures for data collection, processing and storage, and have weak infrastructures for connectivity" (Magalhaes & Couldry, 2021). This is one example that shows the discrepancy of capabilities across states, and the ability of one state to dominate over others because it is much more technologically advanced. A key issue in trying to 'fight back' against this form of domination is the uncertainty of what is categorised as legal and illegal under international law in cyberspace. In this way, principles such as that of non-intervention are much more easily applied to traditional borders than they are to technological boundaries. As such, the underlying idea of sovereignty is put into question by tools and technology that transcend border logics, and intelligence alliances further complicate the traditional, border-oriented approach to sovereignty.

This idea of blurred borders in cyberspace leads to the question of whether it is possible to think beyond border narratives and traditional state-boundary logics. If we turn to individuals as sovereign beings, would issues of data colonialism disappear? Or is it more logical to turn to communities as sovereign beings, as turning to the individual could be viewed as perpetuating neoliberal ideology that helped to facilitate this dilemma in the first place? It is at this point, that Indigenous theorising of sovereignty, and more specifically nationhood, could be helpful and relevant to discussions of sovereignty as being altered by the impact of technology. Indigenous scholar Leanne Simpson has written about the inability to structurally intervene in the colonial nature of technology, and its encompassing and controlling nature (2017). She wrote from the specific context of internet organising for the Idle No More movement in Canada, where they "…tried to build a movement online through social media…" but when thinking about the consequences of online organising, she discusses a lack of trust across those involved as they had never met each other in person, but rather relied on digital means to communicate (Simpson, 2017). There are benefits to online organising that should be acknowledged, such as ease of communication and the ability to connect with others around the world on the same cause, but a key issue arises when social media users use the tools and applications uncritically. This is something else that Simpson (2017) points to as a key issue, especially as Idle No More was an Indigenous rights-based movement, so the Canadian government took a keen interest in monitoring their online activity that no doubt has been stored for future use. But perhaps a rethinking of sovereignty, something she has already done, is the way to intervene and actively refuse the politics of surveillance, data commodification, and ultimately colonialism that states and technology companies alike are perpetuating today.

A return to Indigenous conceptions of nationhood could help in this process, and at the same time alter Westphalian state models to rethink sovereignty so that it is based on something other than arbitrarily drawn borders. Scholars, such as Starblanket and Coburn emphasise a recentering of sovereignty and to shift thinking away from Euro-centric terms of domination in order to, for example, "…centre Indigenous relationships with Creation…" and understand "…the land… [as] a web of living, constitutive relations…" (Starblanket & Coburn, 2020). Simpson echoes this point by placing relationships based on consensus and care at the core of understanding 'sovereignty,' rather than a land- and place-based conception founded on violent control stemming from the settler state (Simpson, 2015). Thinking through the issue of data colonialism in relation to questions around sovereignty and nationhood, placing care at the centre of considerations may help to understand how technology, and the role it has in everyday life and in society, needs to change so that the agency can be held by the end-users. However, this still leaves the question as to whether all relevant actors can be included in this model. For example, where would technology companies fit into a community-based approach to nationhood? This may render the role of technology companies obsolete, because the value placed on technology and online presence would be irrelevant in a community-centred environment whose key attention is placed on relationships with others and everything around them. Returning to one of Leanne Simpson's questions, perhaps this is indeed the way to structurally intervene and disrupt the data commodification, state-based model that countries and companies alike operate from.

Another way to theorise about this disruption is to think in terms of self-determination, and what this would mean for the goal of 'worldmaking.' Officially self-determination may have been achieved in the postwar context of the 1950s and 1960s, but practically many former colonies still struggle to act completely independently due to colonial legacies, and data colonialism presents as a more recent extension of this former colonial control. Building on the ideas above regarding sovereignty, important to include is Harsha Walia's conception of decolonization as a process to achieve expansive politics, rooted in a form of "…true self-governance…" (Walia, 2013). This expansive approach can serve to centre the needs of those who are not considered within current state structures, as well as those who are considered but then subsequently ignored because their pleads do not conform to the bottom line. The technology industry has already blurred the lines and roles of states and private companies, so this could be the moment to intervene in these hierarchies and present a new form of governance not based on borders and profits. Scholars such as Getachew present historical perspectives of anticolonial struggles, to show their innovative attempts to turn away from the dominant liberal voices of domination (Getachew, 2019). In this way, Getachew shows that anticolonial struggles were more than a fight for inclusion; they were pointing to the problem of the international racial hierarchy based on relations of domination and the concept of unequal integration (Singh, 2023). This same baseline struggle can be seen again in the form of technological integration, or lack thereof, depending on one's geographical and economic position. As such, the ideas around global governance and worldmaking that anticolonial activists put forward could still be relevant to overcome data colonialism. Previously discussed was the idea of sovereignty or nationhood based on communities of care; however, there could be a role for regional organisations to supplement this new organisation to regulate technology, for example.

CONCLUSION: CAN DATA BE DECOLONISED?

With this analysis of data colonialism and its relation to questions around sovereignty and data as a commodity, questions may arise such as what can be done to mitigate this process or to not fall victim to it. Ultimately, is it possible to decolonise data? Would this lead to new forms of self-determination in the digital sphere? One key point to this, is the idea that "data colonialism is a *collective* problem" and that "…by attempting to reform a particular network within a wider system of platforms, we are not challenging the foundations of the system but merely finding alternative ways to replicate it" (Couldry & Mejias, 2019). In this way, it is important to consider systemic changes that can take place that would ultimately lead to the decolonisation of data. As Couldry and Mejias rightly point out, this process cannot be undertaken by any one individual, but rather, needs to be a joint effort to ensure that the foundation of data extraction that is currently employed by tech companies is not simply recreated in a different form.

As such, one possible shape that this alternate structure could take is through the practice of Indigenous data sovereignty which "…realises the rights of [I]ndigenous peoples to manage and govern their own data, based on alternative approaches to data governance and the appreciation of data as a living representation of culture, ancestry and history…" (Morris, 2023). The idea of Indigenous data sovereignty fits well with the concepts of Indigenous sovereignty that were previously discussed, and it shows that they can be adapted to the digital context. By rejecting the capitalist base of current

governance structures, it may be possible to decolonise data. As such, "…[Indigenous data sovereignty] would challenge the very fabric of the capitalist-based information age, it would create the opportunity to eliminate digital colonialism and unethical practices such as unconsented data collection and retention" (Morris, 2023).

This echoes Couldry and Mejias's argument and points to two key ideas that are necessary to decolonise data: a rejection of capitalism and new governance structures. By rejecting the capitalist model of value that is placed on data, then technology can be located in a decolonised "…digital commons logic…" (Pinto, 2018). On a very basic level, the idea of a digital commons logic again reflects the alternate ways of thinking about sovereignty, because it "…involves the administration by a community of a resource, which thus escapes market or state governance" (Verdier & Murciano, 2016). This idea needs more work to fully articulate what exactly it means, but it has been posed as an interesting alternative to current forms of governance that facilitate, and to an extent encourage data colonialism.

In this way, a digital commons logic forces a new way of thinking that is not based on existing networks and systems, and could be facilitated by an Indigenous approach to sovereignty that focuses on community ownership and self-determination. It also supports Couldry and Mejias's (2019) call to "…*reject[s] the idea that the continuous collection of data from human beings is a rational way of organizing human life"* and to "…imagin[e] a common future for humanity beyond the contemporary project to reduce human life to the inputs and outputs of data processing".

Overall, this paper presents a contextualised view of data colonialism by showing its relation to digital colonialism and the wider history of colonialism more generally. From this perspective, data colonialism undermines basic principles of freedom of human life as it relegates humans to their data relations and the profit that can be generated from them. As such, data colonialism can be categorised as an extension of colonial domination in how private technology companies promote their tools and collect data on populations without their general awareness. Moreover, the issue of data as a recursively-generated commodity was raised to analyse the ways in which technology companies are looking to expand their markets and data bases, which links to the initial conversation about how data colonialism is necessarily rooted in colonial, expansionist legacies.

Finally, the topic of data colonialism was dialectically positioned against conceptions of sovereignty to show how it complicates traditionally understood boundaries and erodes state borders. This led to the questioning of alternatives: are there other ways to think about how different people relate to each other that is not rooted in the Westphalian state model? Indigenous ideas of nationhood and sovereignty help to consider this question and to think through alternative models of governance based on community orientations. In an effort to not close on a pessimistic note, it is important to consider alternatives and possible solutions to the issues presented above. There is never just one way of thinking when it comes to global topics such as data colonialism, and so ideas and approaches such as Indigenous data sovereignty and a digital commons logic can be helpful to subvert the all-encompassing approach that data and technology has on life. These approaches may seem daunting as they would require a complete rethinking of how societies are governed, however, perhaps that is the only way to truly decolonise data.

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Public Trust and Homesteading as a Form of Social Activism

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ABSTRACT

Public trust is integral to the smooth functioning of the public sector. Without public trust, the legitimacy of the public sector is severely threatened. By examining the three lowest periods of government trust since the 1950s, an understanding can be obtained surrounding the responses of citizens, the effects on governance, and the legitimacy of the public sector. Based on the public trust data collected annually by the Pew Research Center the three lowest periods of government trust are the Vietnam War/Woodstock (1960s-70s), the politicization of climate change (1990s), and the COVID-19 pandemic (2020s). Each major drop in government trust corresponds with a "return to the land" as a form of social activism, searching for autonomy from government oversight. In the '60s-'70s there was the back to the land movement, the '90s had a major spike in urban homesteading, and presently there is a resurgence of the back to the land movement, commonly referred to as modern homesteading. This response to low government trust can provide meaningful insight into the effects of low trust on effective governance as well as the legitimacy of the public sector.

INTRODUCTION

Public trust is the cornerstone of effective governance in the public sector. Without citizen trust, the legitimacy and functionality of government institutions are at risk. To comprehensively understand the dynamics of public trust, it is crucial to explore the lowest periods of government trust and analyze the corresponding responses of citizens. These periods offer unique insights into the repercussions on governance and the overall legitimacy of the public sector.

By leveraging annual public trust data collected by the Pew Research Center, this study zeroes in on the three lowest troughs in government trust since the 1950s: the Vietnam War/Woodstock era in the 1960s-70s, the politicization of climate change in the 1990s, and the challenges posed by the COVID-19 pandemic in the 2020s.

Intriguingly, each substantial decline in government trust aligns with a notable phenomenon: the pursuit of autonomy from government oversight through a "return to the land." In the '60s-'70s, this took the form of the back-to-the-land movement, where idealistic hippies sought to remove themselves from the 'rat race' while the '90s witnessed a surge in urban homesteading in response to climate change fears. Presently, we are observing a rekindling of the back-to-the-land movement, often referred to as modern homesteading. Each movement centered around autonomy from government oversight through subsistence farming. Such a response should not come as a surprise. As was described by Jason G. Strange, "around the world and across centuries, we find rural subsistence embraced as a means of economic, cultural, and spiritual self-defence (2020).

These reactions of social activism during periods of diminished government trust hold the potential to provide profound insights into the consequences of low trust in governance and the public sector's overarching legitimacy. The following sections of the paper explore literature rooted in public trust frameworks to understand homesteading as a response to low public trust, and the implications of low trust on the legitimacy of the public sector.

Review of the Literature

Public Trust

Public trust in public administration is a critical topic in the realm of governance and public policy. Understanding the factors that influence trust in government institutions is essential for effective governance. As such, there is a substantial body of literature on this subject. This is because, in the public sector, trust is a key component of efficient and effective operation [i](Bouckaert, 2012; Shafritz & Hyde, 2017). When trust is low, the legitimacy of the public sector is threatened. Therefore, public trust significantly influences administrative performance, especially in times of hardship and economic downturns when the public may be experiencing frustrations with the government (Bouckaert, 2012).

From a public service perspective, there is a responsibility for keeping the government accountable and providing trustworthy information to the public to promote democracy (Mosher 1968; Bouckaert, 2012). In times of political or economic conflict, this type of communication can help ensure that the government is accountable, transparent, and effective when serving the public interest, therefore, promoting public trust in government (Mosher, 1968; Bouckaert, 2012). Public trust and public sector effectiveness are two concepts that are inextricably connected and therefore can serve as a foundation for policy decisions that serve the public interest (Mosher 1968; Bouckaert, 2012).

The New Public Management (NPM) model emerged in part because of trust between administrators, elected officials, and citizens (Bouckaert, 2012). The model sought to restore public trust by embracing private sector principles to improve effectiveness and efficiency (Bouckaert, 2012). Privatization was believed to be a means of cutting costs in response to fiscal crises such as oil shortages and the expansion of welfare services. However, NPM has also been criticized for creating new problems and challenges, such as fragmentation, complexity, loss of coordination, erosion of public values, and reduced trust among public employees and stakeholders (Van De Walle, 2010). Some scholars have argued that NPM may have paradoxically undermined public trust by creating distrust, as it implies that public servants are self-interested and need to be monitored and incentivized (Van De Walle, 2010).

From this, emerged the New Public Service (NPS) framework. New Public Service is an approach to public administration that emphasizes democratic values, citizenship, and public interest over market principles and individual self-interest (Denhardt and Denhardt, 2000). It is based on the idea that public servants should serve citizens, not customers, and facilitate their participation in finding solutions to societal problems (Denhardt & Denhardt, 2000).

Trust is an essential component of the New Public Service, as it requires public servants to be accountable, responsive, and ethical in their actions (Denhardt & Denhardt 2000). Trust also fosters collaboration and cooperation among citizens, communities, and civil society - all factors that contribute to the legitimacy of the public sector.

The importance of public trust to the legitimacy of the public sector cannot be understated. Hence, the emergence of frameworks to account for methods of promoting trust between the public sector and citizens. Without trust in the transparency, legitimacy, and accountability of the public sector, there are significant consequences (Denhardt & Denhardt, 2000; Van De Walle, 2010; Bouckaert, 2012; Shafritz & Hyde, 2017).

Consequences of Low Public Trust

Bodies of literature on the consequences of low public trust have generally centered on approval of elected officials and support for use of public resources to achieve policy goals

(Chanley, 2002). This is because low public trust has significant implications for the election process as well as public policy initiatives (Chanley et al., 2010). This is especially true when elected officials need the public to support the use of public resources to meet policy goals (Chanley et al., 2010). In fact, trust is an important determinant of the quality of services delivered by the public sector (Chanley et., al. 2010; Fritzen et. al. 2014). As such, high levels of public trust correspond with high levels of public cooperation as well as economic growth and support for policy decisions (Fritzen et al. 2014).

Scholars Aurthur Miller and Jack Citrin debated the consequences of low public trust in 1974. Miller took the stance that public cynicism posed a threat to the entire system of governance, that without trust from the public, the continued function of government would fail (1974). Comparatively, Citrin argued that public distrust predominately posed a threat to incumbent politicians seeking officials seeking re-election and therefore actually presents as a method for holding elected officials accountable and promoting transparency (1974). Since the development of their arguments, other scholars have found further evidence in support of both Miller and Citrin's viewpoints.

While not per se to the severity of complete government collapse, low trust still has significant implications for smooth government function (Chanley, 2002). For instance, when trust is low, voters are more likely to support third party and nonincumbent candidates as well as to reject the use of public resources for policy initiatives (Chanley, 2002). Furthermore, declining trust is tied to support of devolution of government authority as well as low support for federal spending on initiatives such as education, the environment, and aid to cities (Chanley, 2002). Another significant consequence of low government trust is citizen compliance (Chanley, 2002). When trust is high, the government can gain citizen compliance without having to use methods of coercion (Chanley, 2002; Barber, 1983). Each of these consequences has significant implications for the smooth function of government as well as the legitimacy of the public sector.

Legitimacy of the Public Sector

Political legitimacy refers to how accepting and supportive citizens are of their government's authority and decision making (Greif and Ruben, 2022). The relationship between public trust and political legitimacy can be complex, but also reciprocal (Greif and Ruben, 2022). For instance, public trust enhances compliance among the citizenry; thus, promoting legitimacy (Greif and Ruben, 2022). Legitimacy can also foster trust in the sense that citizens are more supportive and engaged with governments that they perceive as legitimate (Greif and Ruben 2022). While either situation can occur, it is generally considered that public trust provides the foundation for legitimacy in the public sector. Scholars such as Bo Rothstein (2012) have also explored the relationship between public trust and legitimacy of the public sector and came to similar conclusions. For instance, Rothstein argued that without public trust, the legitimacy of the public sector is hindered due to the difficulties associated with obtaining the economic and political resources needed for effective policy implementation (Rothstein, 2012). He also found that when citizens feel that the government is honest and responsive to their needs, for instance, legitimate, they are more trusting (2012).

Moreover, the concept of a social contract is central to both public trust and political legitimacy (Jonathan-Zamir et al., 2023). In a democratic society, citizens agree to abide by the rules and decisions of the government, without the need for coercion, in exchange for protection of their rights and well-being (Jonathan-Zamir et al., 2023). Trust in the

government is, therefore, a manifestation of the belief that the government is fulfilling its end of the social contract, contributing to its legitimacy (Jonathan-Zamir et al., 2023).

To this end, when trust is present, citizens provide their consent to be governed. Legitimate governments derive their authority from the consent of the governed. When citizens are trusting of their government, they are more likely to willingly consent to be governed (Jonathan-Zamir et al., 2023). Public trust, therefore, contributes to the government's ability to govern effectively as well as implement policies that align with the interests of the citizens

As a result, public trust and political legitimacy are deeply interconnected and mutually reinforcing. A government that receives high levels of public trust is more likely to be seen as legitimate. Additionally, legitimacy can also foster higher levels of trust among the public. Comparatively, low levels of government trust can potentially erode legitimacy. This, therefore, demonstrates the importance of fostering trust between citizens and their government to ensure the stability and effectiveness of democratic performance.

Epochs: The Homesteading Response to Low Public Trust

The Back-to-the-Land Movement, which blossomed during the late 1960s and early 1970s, represented a quest for simplicity and self-reliance by forging a deep connection with the land. This movement attracted idealistic individuals from the post-Woodstock era who yearned to break free from a system they no longer believed in. Its rallying cry, "Make Do with Less," encouraged self-sufficiency and a lifestyle independent of the dominant governmental institutions in the United States. Proponents of this movement equated simplicity with happiness and autonomy, forging an idealistic ideology centered on embracing a life with fewer possessions. At its core, this entailed a pursuit of self-determination through subsistence farming (Wallace, 2019). The central theme was exerting control over consumption, both physical and material, which defined much of the Back-to-the-Land Movement.

It was believed that while everyone is inside the system to some extent, there are methods of subverting it from within which is achieved every time a person moves from consumption to production (Radke, 2016). Many participants of the movement thought themselves to be a living resistance to participation in a government that was no longer trusted to have their best interests in mind (Radke, 2016).

Government trust began to erode in the 1960s. Disillusionment over the government's handling of the Vietnam War fueled a desire for self-sufficiency and reduced reliance on governmental oversight (Wallace 2019). Separation from governmental bodies through subsistence farming presented itself as a means of 'self-defense' (Strange, 2020). Participants in the movement developed a sense of distrust towards government decision-making and yearned for greater control over their lives in response. This movement was inherently peaceful, with its adherents turning to the land to satisfy their needs while minimizing government interference. As previously mentioned, the primary objective was to require less, thus liberating themselves from the shackles of government oversight, which was seen as tainted by government regulation (Radke, 2016).

By 1970, Americans had become considerably untrusting of government decision making (Miller, 1974). Citizens had become deeply divided on policy issues with little support for government action, a matter worsened by the Watergate scandal in 1972. The political system continues to suffer today from both the Vietnam War and the Watergate scandal with many American citizens remaining skeptical of elected

officials and the political process (Miller, 1974) - a consequence of low government trust that came to head with the 2020 presidential election.

By the close of the 1970s, the back to the land movement had largely dissipated, primarily due to rising living costs, energy crises, and expanding employment opportunities (Leon, 1981). In 1973, the Organization of Arab Petroleum Exporting Countries (OAPEC) imposed an oil embargo, leading to fuel shortages and soaring costs (Smithsonian, 1973). The embargo placed a financial strain on numerous American households, as they struggled to secure fuel for transportation, further reinforcing their dependence on stable employment and consistent income (Smithsonian, 1973).

Simultaneously, this era witnessed a surge in the number of women entering the workforce. The second-wave feminist movement that took hold in the 1960s resulted in unprecedented job growth for women in the early 1970s (Leon, 1981). The burgeoning employment opportunities, combined with economic difficulties, ran counter to the "Make Do With Less" philosophy by creating an ever-increasing list of necessities that could not be realistically fulfilled through subsistence farming. Subsistence farming involves producing most of one's livestock or crops to meet their family's needs. Thus, these factors compelled adherents of the Back-to-the-Land Movement to re-enter the job market, once again relying on regular income to cope with fuel shortages and energy crises (Smithsonian, 1973; Leon, 1981).

In the 1990s, yet another test of the public's trust emerged in the form of climate change. During the 1970s and 80s, climate change was just another environmental issue, generally considered bipartisan (Harris, 2012). However, by the 1990s a great political divide began to emerge. Partisan lines were drawn, and scientific research was subjected to politicization (Harris, 2012). Partisan Think Tanks emerged to increase public skepticism of scholarly research into the effects of science, promoting distrust in science (Weddig, 2022).

For those that remained concerned about the changing climate, a series of movements emerged. Urban homesteading for instance, became a popular way for city dwellers to locally source and produce food and household items. During this time, farmers markets surged in popularity as a means of green consumerism. By the late 1990s, the "Food Not Lawns" movement had gained traction by encouraging suburban communities to replace monoculture lawns with food sources. As with urban homesteading, the focus was on locally sourcing food items to be more environmentally conscious. Jason G. Strange (2020), found another surge of subsistence farming in Kentucky in 1992, immediately following the politicalization of climate change.

Decades later, there has been a notable resurgence in the Back-to-the-Land Movement, with today's largely millennial generation rejecting government oversight in favor of self-sufficiency (Radke, 2016; Wallace, 2019; Leon, 1981). This contemporary resurgence is often referred to as "homesteading," focusing on autonomy through subsistence agriculture. Participants in this resurgence are increasingly distancing themselves from government institutions, particularly those linked to the administrative state (Pew Research Center, 2022). Their motivations are deeply entwined with concerns about food safety, healthcare, and climate change, coupled with a yearning to disconnect from the digital world (Wallace, 2019). Unlike its hippie predecessors, modern homesteaders tend to be more ideologically conservative with religious motivations and a belief that man has dominion over the land.

This modern Back-to-the-Land Movement, or modern homesteading, revolves around the core concept of autonomy over

oneself and one's environment. Furthermore, concerns about food safety, healthcare, and climate change have driven individuals back to the land to take charge of what their families consume (Radke, 2016). By assuming control of food production, worries about sourcing and chemical additives are alleviated. A common thread in this movement is fear, not unlike the movements of the 90s, spawned by criticism of science and a rejection of the modern healthcare system (Radke, 2016).

The COVID-19 pandemic brought to light the distrust that had been brewing across decades. Segments of the population rejected pandemic safety measures such as masking and quarantining. As the pandemic continued and vaccines became available, there was great skepticism at its effectiveness and safety. In response, many modern homesteaders were prompted to explore natural medicine alternatives as people sought to enhance their self-reliance (Life on a Homestead Post COVID-19, 2021). The pandemic also instilled a sense of distrust in government supply chains and regulations (Life on a Homestead Post COVID-19, 2021). Delays and shortages generated frustration, while uncertainties and quarantine measures fueled apprehension and conspiracy theories.

These factors converged to intensify the desire for autonomy. Within homesteading communities, existing pipelines for goods and services proved more effective than conventional grocery stores for many. Locally sourced foods were perceived as of higher quality than store-bought alternatives. Herbal medicines and immune boosters gained popularity as vaccine hesitancy drove many away from mainstream medicine. Distrust in healthcare systems led to an increased reliance on homeopathic remedies and resistance to mask mandates. Collectively, these factors culminated in widespread hesitancy to adhere to CDC guidelines and fostered a preference for a more natural approach to managing health concerns.

Much like their predecessors, modern-day homesteaders have grown disenchanted with government interference and are now seeking autonomy through the land (Radke 2016). Distrust of government oversight has propelled a resurgence in using the land to meet basic human needs. Government agencies such as the Food and Drug Administration and the Center for Disease Control and Prevention have encountered significant pushback as the public yearns for independence from the oversight of government bureaucracies (Radke, 2016). The administrative state has been questioned based on legitimacy due to increased government distrust. Rejection of recommendations from prominent doctors and government organizations grew throughout the first year of the pandemic, culminating on January 6th, 2021.

In addition to distrust of the administrative state, the public began questioning the legitimacy of the American election process - posing a significant threat to democracy. After losing the presidential election in 2020, supporters of Donald Trump staged an insurrection at the White House with the intention of ensuring former president Trump remained in office. Claims of election tampering spurred this response as Trump supporters were fueled with inaccurate information regarding election results. As was argued by Miller (1974), distrust has the power to thwart the legitimacy of government. While the insurrection is not directly tied to homesteading, distrust is. When distrust spawns a social movement, the implications for government legitimacy are significant. Furthermore, while not intrinsically connected, there are a great deal of similarities between the ideologies (i.e., fear of government oversight, far right political stances, and distrust of the Administrative State) of modern-day homesteaders when compared against the

January 6th insurrectionists; a reality that can shed light on the effects of social activism in response to government distrust.

ANALYSIS

Public administration scholars have long studied public trust and its impact on the legitimacy of the public sector. This is because public trust serves as the lifeblood of the public sector. Scholars such as Arthur Miller (1974) argued that without trust, the public sector would collapse entirely. Through Miller's lens (1974), the continued function of government would cease to exist without the trust of the public. Other scholars have found that public trust ensures effective and efficient government, both factors that have significant implications for legitimacy (Bouckaert, 2012; Shafritz and Hyde, 2017).

Without the support of the public, administrators and elected officials are severely limited in their ability to leverage public resources for effective policy implementation. As such, it is to be expected that scholars of public administration build upon and continue to contribute to the framework of public trust. These bodies of literature provide a strong foundation for understanding the importance of public trust, the consequences of low trust, and the implications for the legitimacy of the public sector. Despite these incredibly valuable contributions to the field of public administration, it is also of the utmost importance for scholars to understand what happens when social movements emerge in response to low public trust.

While these bodies of literature are integral to the field of public administration, there is a gaping hole in the literature. There have not been studies exploring social movements that emerge from low government trust. This is a significant gap that prevents scholars in the field of public administration from truly understanding how societal responses to low trust can materialize into social movements that threaten the legitimacy of the public sector. The social activism response that is central to this research is that of the back to the land movement. This is due to several factors including but not limited to 1) the relationship between low trust and resurgences of the movement, 2) the themes that have emerged among participants in the movement tied to low trust, and 3) the consequences for public legitimacy associated with participation in this movement.

Applying established public trust frameworks provides significant insights into how declining trust materializes as social movements, particularly in the context of the back-to-the-land movement. Furthermore, existing literature has found that when interviewing participants of the back to the land movement(s) cite a lack of trust in government as a key motivational factor for their lifestyle, many of which also reject recommendations from the Center for Disease Control (CDC), Food and Drug Administration (FDA), United States Department of Agriculture (USDA) and so on. Major consequences of the rejection of the administrative state's recommendations include but are not limited to the rejection of mask mandates during the COVID-19 pandemic, anti vaccination beliefs, and skepticism of the election process. As such, it is imperative for public administration literature to expand and include how social movements such as the back to the land movement threaten the legitimacy of the public sector.

CONCLUSION

This research delves into the intricate relationship between public trust, social movements, and the legitimacy of the public sector. The foundational premise that public trust is indispensable for effective governance and the legitimacy of government institutions serves as the guiding principle. By scrutinizing three historical troughs in government trust – the

Vietnam War/Woodstock era, the politicization of climate change in the 1990s, and the contemporary challenges posed by the COVID-19 pandemic – this study elucidates the recurring pattern of societal responses to low government trust, notably the "return to the land" movements.

The examination of these historical epochs reveals a consistent phenomenon: in periods of diminished trust, individuals seek autonomy through subsistence farming, manifesting as the back-to-the-land movements. The '60s-'70s witnessed the back-to-the-land movement in response to the Vietnam War and eroding trust in government decision-making. Similarly, the '90s saw the rise of urban homesteading amid climate change concerns, and the present day witnesses a resurgence of the back-to-the-land movement, termed modern homesteading, amidst the COVID-19 pandemic. In each case, citizens sought to distance themselves from government oversight, emphasizing autonomy and self-sufficiency.

The literature review establishes the critical importance of public trust for the legitimacy of the public sector. It explores frameworks such as New Public Management and New Public Service, emphasizing the interplay between trust, accountability, and effective governance. Consequences of low public trust, including impacts on elections, policy support, and citizen compliance, underscore the far-reaching implications for the functionality and legitimacy of the public sector.

The legitimacy of the public sector is a recurrent theme, woven through discussions on political legitimacy, the social contract, and the reciprocal relationship between public trust and legitimacy. The research posits that public trust forms the bedrock of political legitimacy, and disruptions in trust can undermine the democratic foundations of governance. Social movements, particularly the back-to-the-land responses observed, emerge as tangible expressions of dissatisfaction and skepticism toward government institutions, challenging their legitimacy.

This study fills a critical gap in the literature, illuminating the dynamic interplay between declining public trust, emergent social movements, and the legitimacy of the public sector, with significant implications for contemporary governance and policymaking. The exploration of back-to-the-land movements as responses to trust deficits provides valuable insights into the consequences of low trust on citizen behavior, decision-making, and perceptions of governmental legitimacy. By expanding the discourse on social activism arising from low trust, this research contributes to a nuanced understanding of the multifaceted challenges faced by the public sector in maintaining legitimacy amid periods of heightened societal skepticism.

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Privatization and Governance in Canadian Immigration Detention

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ABSTRACT

This paper explores the realities of the Canadian immigration detention, particularly with refugees. Refugee detention refers to the practice of holding individuals who have fled their home countries to seek asylum and suffer from a state of limbo within designated facilities. In Canada, the approach to refugee detention evolved from a federally-managed system with the minimum use of detention when necessary to the implementation of the *Immigration and Refugee Protection Act, 2001* (IRPA) that significantly broadened the scope and powers of detention, and the most recent termination of detaining refugees at provincial levels. These changes highlight the complex interplay between the state sovereignty, the immigration policies, and the broader human rights concerns. Although the efforts of individuals and organizations to contributing to protecting the human rights of refugees are recognizable, this paper argues that the efforts of individuals and organizations that contribute to protect the human rights of refugees that led to the recent termination of detaining refugees at provincial levels does not affect the Canadian detention regime, and could even potentially enhance the existing privatization issues in detention centers and further disadvantage the refugees, potentially impacting the Canadian detention system, as the existing detention system has been significantly impacted by the neoliberalism trend. In other words, the privatization of refugee detention in Canada, as influenced by neoliberal ideologies, presents a significant challenge to the principles of accountability, transparency, and the humane treatment of detainees.

INTRODUCTION

Refugee detention refers to the practice of holding individuals who have fled their home countries seeking asylum, in a state of limbo within designated facilities (Belton, 2015; Macklin, 2001; Silverman & Massa, 2012). This administrative action has represented a growing concern within the framework of global immigration control, which intended to manage and process asylum claims, prevent unauthorized entry, and ensure individuals are available for removal if their asylum claims are rejected (Belton, 2015; Macklin, 2001; Silverman & Massa, 2012).

In Canada, the approach to refugee detention has evolved significantly over the years, from a system directly managed by the federal government with the minimum use of detention when necessary to the implementation of the *Immigration and Refugee Protection Act* (IRPA) in 2001 that significantly broadened the scope and powers of detention, and the most recent termination of detaining refugees at provincial levels. These changes highlight the complex interplay between the state sovereignty, the immigration policies, and the broader human rights concerns.

A plenty of scholars have discussed the issues within the Canadian surveillance and governance practices and policies in refugees and irregular migrants (Flynn & Cannon, 2009; Levine-Raky & St Clair, 2014; Macklin, 2001; Macklin, 2013), including but limited to the transferring responsibility to private airline carriers and undocumented migrants and the human rights protection issues with the administrative stigmatization in detention process and practices. Thereby, this paper will take another lens of perspective that focus on the current refugee detention centers and the issues within its administrative management, which has been impacted by the neoliberal ideology and

practices in detention system and will potentially be even more so after the most recent change in detention process that reinforced by the termination of using provincial prisons. The human rights protection campaign, #WelcomeToCanada campaign (Human Rights Watch, 2022), was initially called for the cancellation of the current detention process and its transition to more humanitarian strategies in refugee treatments. Although their demands were heard at the provincial level, leading to the termination of refugee detention in provincial prisons, the federal government has not canceled refugee detention but instead transformed it into a more centrally managed, federally-run process.

The Canada Border Services Agency (CBSA) now has transformed their reliance on provincial prisons to their own immigration holding centers to detain migrants, even in the provinces that have terminated the contract with CBSA. This has raised some concerns in it combining with the rising ideology of neoliberalism and potentially worsen the issue of transparency and accountability that already existing in those detention centers.

This paper does not diminish or overlook the efforts of individuals and organizations in contribution of protecting the human rights of refugees. However, I argue that their efforts of the most recent termination of detaining refugees at provincial levels does not affect the Canadian detention regime, and could even potentially enhance the existing privatization issues in detention centers and further disadvantage the refugees and potentially impacting the Canadian detention system, as the existing detention system has been significantly impacted by the neoliberalism trend. This paper would take a close focus on the privatization of the refugee detention in Canada, combined with the trend of neoliberalism in Canadian political system. This paper analyzes the existing privatization in refugee detention processes through the lens of neoliberalism and governmentality, applying the Anglo Model of refugee planning (Mainwaring & Cook, 2018) to the current Canadian detention system.

The Anglo Model of Governmentality and Surveillance under Neoliberalism

Governmentality, a concept developed by Foucault, refers to the governance practices beyond the state's direct control, emphasizing the regulation of populations through a variety of institutions and practices (Foucault, et al., 1999; Singer & Weir, 2006).

In the context of refugee detention, governmentality manifests through practices and policies that aim to manage and control refugee populations, which put surveillance as a center conceptual tool of governmentality in these processes. The surveillance practices in detention centers extends beyond physical confinement, encompassing a wide range of monitoring techniques including the use of biometric data, video surveillance, electronic monitoring, and the gathering of personal information (Human Right Watch, 2019; Adelman et al., 1994), to enable authorities to monitor, categorize, and manage individuals within detention centers, thereby both contain and monitor refugee populations. Therefore, surveillance within detention centers is not simply a technical measure but is also deeply embedded in the sovereign power's claim to govern the life and movement of individuals (Foucault, et al., 1991; Singer & Weir, 2006). These technologies of surveillance are instrumental in constructing the refugee as a subject of governance, and a biopolitical strategy to govern life by categorizing, assessing, and managing individuals based on perceived levels of risk and utility, where the life of refugees becomes a direct concern of state power.

These surveillance strategies within the detention system highlights a shift in the exercise of sovereignty. It was traditionally understood as the state's authority over a defined territory and

its population, but now have a different framework for understanding the immigration control regime within the Anglo countries, including Australia, Canada, the U.K., and the U.S., in demonstrating a more fluid and expansive form of power. According to Mainwaring and Cook (2018), the Anglo model of refugee detention has shared characterization in its reliance on indefinite and/or mandatory detention, privatization of detention facilities, and the use of creative legal geographies to manage migrant populations. These practices are not only about monitoring and controlling the movement of refugees and migrants but also about governing their behavior, identities, and social relations (Conlon & Hiemstra, 2017). It has a significant impact on the refugees' life during and after detention process, and even impact on the potential refugee claimers who intend to seek asylum in Canada. Therefore, surveillance, as a tool of governmentality, also been utilized to reinforce the state's sovereignty and its ability to regulate populations within its borders and beyond (Mainwaring & Cook, 2018; Pickering & Ham, 2014).

Furthermore, the sovereignty exercised within the Anglo model of detention is now deeply intertwined with neoliberal ideologies. Since neoliberalism emphasis on de- regulation, privatization, and the reduction of state intervention in the economy (Mainwaring & Cook, 2018), it has been significantly reflected by the current Canadian detention management as the management of detention is outsourced to private firms. This neoliberal approach not only transforms the logistics and economics of detention, but also aligns with governmentality's broader goals by extending governance beyond the state apparatus, intertwining market mechanisms with sovereign practices. This shift commodifies state responsibilities, subjecting them to market logic and promoting the privatization and marketization of state functions, including the management of immigration detention facilities, under neoliberal ideologies.

This shift towards privatization not only commodifies surveillance and detention but also diffuses state accountability, as responsibilities and ethical considerations are transferred to private actors operating within a profit-driven logic. The privatization of detention facilities and the use of private security firms underscore a neoliberal transformation of state governance, where market principles influence the strategies and mechanisms of population control (Conlon & Hiemstra, 2017; Mainwaring & Cook, 2018).

Service Lack of Transparency and Accountability

According to Mainwaring and Cook (2018), the Anglo model of refugee detention has a common pattern in relying private firms in refugee detention facilities. They have mentioned that most services have been outsourced to private companies, such as Corbel Management Corporation, G4S, and other private entities which will be discussed in late part. CBSA stated they have overseen and supervised on these services and have authorized the Canadian Red Cross (CRCS) as an independent monitor to ensure the humanitarian and human rights protection (Mainwaring & Cook, 2018; Canadian Red Cross, n.d.). However, a CBC news report (2017) has claimed that this independent monitoring by the CRCS is completely useless and waste of money – the only function it has is to make CBSA looks good. This has been evidenced between a comparison between the CBSA annually reports in 2017 and 2022.

In the Annual report 2017, CRCS has claimed the several issues they found during their monitoring and have purposed some practical suggestions for every issue been mentioned. For instance, there are serious limitation of refuge accessing the mental medical services:

> "Immigration detainees housed within provincial correctional facilities frequently reported difficulties in accessing medical and mental health services. In the facilities visited in Ontario, and according to the authorities in place, perceived delays in receiving care are due to the high volume of the general criminally detained population requiring medical assistance. In Alberta, correctional and health staff at the visited facilities indicated that they do not generally have a specialized training on immigrant or refugee needs, as immigration detainees represent a very small fraction of the overall population. In addition, and in Quebec, some of the interviewed immigration detainees suffered from several mental health problems, not only related to their detention, but also to their background after being through perilous journeys before arriving in Canada. It was observed that not enough mental health support was provided, with a psychologist or psychiatrist visits being only once per week." (2017)

Two main issues have been mentioned here, including limited access for mental health services and delayed health care. The CRC then recommended:

> "the Canadian authorities ensure that immigration detainees have on-site access to medical services, including Mental Health support, regardless of their place of detention" (2017)

According to both the websites of Government of Canada (n.d.) and Calian Ltd (2020) which is the private firm who providing medical services, there are financial spending for medical services, including psychologists and psychiatrists provided, in the detention center and provincial prisons at the latest started by 2015. However, when the Annual report 2020 came out, the mental health service does not seem to have any difference:

> "Mental health practitioners, such as psychologists, were not present in all the monitored PCFs (Provincial Correctional Facility). Moreover, placement of vulnerable people, such as those with mental health conditions, in restrictive environments like the monitored PCFs creates a greater risk of harm, particularly during the pandemic. The CRCS observed placement of people with mental health conditions in segregation units in three (3) of the PCFs it monitors, which is of concern since these units tend to be even more restrictive. Also, the CRCS was notified that many detained individuals who were suicidal were placed on suicide watch units, which is a segregation regime where a person must wear a tear-proof garment and is under 24-hour surveillance."

In this comparison, I use mental health service rather than medical services due to its speciality of the period for the 2020 Annual Report, as it examined from the beginning of the COVID to a later time of the pandemic. While it is understandable that the pandemic has impacted physical health services, it should not limit the provision of digital mental health care, which could have been mobilized to address the unmet needs of those suffering from psychological conditions exacerbated by their incarceration and previous traumatic experiences. Therefore, it is unacceptable to have the detained refugees who have mental issues untreated or been mistreated, especially after those issues have been brought out previously. The CBSA reports demonstrate that, despite significant financial investment and external oversight commitments,

the actualization of improved care and mental health support for detained refugees is still limited. This gap between policy and practice points out that the oversight by CRCS and CBSA has not resulted in actual improvements in the well-being of detainees, challenging the perceived efficacy of privatization in ensuring the humane treatment of vulnerable populations.

Additionally, as I browse these Annual reports from 2017 to 2023, I found that there are issues have been mentioned by the CRCS repeatedly, even when I only focus on the detention centers and filter out the issues in provincial prisons. This includes but is not limited to accessible medical services (both psychological and physical) and the conditions of detention (religious, cultural, educational, and leisure activities), which purpose to be guaranteed in the first place. This means that CBSA does not making any improvements, despite their active effort in responding the CRCS's suggestions and making action plans.

Furthermore, a direct cause of such issues would be the absence of regulations governing private firms. According to CBSA's Code of Conduct (2018), the private firms are not regulated by this code. Those private firms have only been "expected to comply with, and … respect the requirements", as well as "respect the spirit and intent of its requirements" (CBSA, 2018). This lack of enforceable standards for private firms not only undermines the established mechanisms of accountability and transparency essential to public services, but also implicitly grants a degree of legitimacy to these actors in roles typically managed by state authority. The resulting power dynamic introduces a troubling paradox: while the state exteriorly maintains the sovereignty and the tools for enforcing it, the actual exercise of these powers is increasingly outsourced to private firms. Such arrangements weaken direct state oversight and risk creating an environment in which deprivation of liberty is subject to private interests and market efficiency, potentially undermining the rights and welfare of detainees.

In the next section, this paper will discuss three critical areas in Canadian refugee service that have been outsourced to private entities by the CBSA. Each representing and impact a different aspect of detention management: medical, welfare, and security services. These contracts are emblematic of the broader shift towards privatization within the Canadian detention system, a trend that raises significant questions about accountability, quality of care, and the ethical implications of profiting from detention.

THE INVOLVEMENT OF PRIVATE FIRMS

Welfare

When browsing all contracts between CBSA and private entities, the second most valued contract is with Corbel Management Corporation (the first one is with Deloitte in consulting services, which is unclear whether it is impacting the detainees directly). This company has been cooperating with CBSA since 2003 to provide welfare services in detention centers (Mainwaring & Cook, 2019), including but not limited to building cleaning and maintenance, food services, and supply arrangement (more details are not publicly displayed). According to the website of the Government of Canada (n.d.), there are seven contracts between CBSA and Corbel Management Corporation from 2012 until now. However, a report of Government of Canada in 2015 indicates that additional contracts may exist but have not been disclosed in their contract list, including one contract worth over $37 million.

Despite the reports of satisfactory conditions and services provided, the lack of transparency regarding these contracts is still concerning. It raises questions about the full extent and nature of the services delivered and the accountability mechanisms in place. The

substantial financial figures and the potential existence of undisclosed contracts underscore a deeper issue within the privatization model: while aiming to provide necessary services efficiently, there is a risk of muddling the true costs and quality of services rendered to vulnerable populations. This lack of clarity not only impedes public scrutiny but also complicates efforts to evaluate the effectiveness and ethical implications of outsourcing critical welfare services in detention environments. Consequently, it becomes essential to advocate for more openness and rigorous oversight to ensure that privatization does not compromise the welfare of detainees or the integrity of immigration services.

Health

The third largest amount of contract is with Calian Ltd in medical service. Although the contracts between the CBSA and Calian Ltd tend to represent the high focus and provision of medical care to a highly vulnerable population, the fact is the medical services they provided still contains major issues as previously discussed, which raised concerns about the privatization of health services within the Canadian immigration detention system. According to the website of the Government of Canada (n.d.), there were 11 contracts awarded by CBSA to Calian Ltd from 2015 to 2021, with a cumulative value exceeding 30 million dollars, which is a substantial investment in healthcare services for immigration detainees, as there were only three detention centers with one of them has only started the contract with Calian Ltd in 2020 (Calian Ltd., 2020). Combined with the fact that there are significant limitations of medical services both physical and psychological that are provided to the detained refugees and the fact that there are several deaths over the years (CBSA, 2019; CBSA, 2022), it raises the concern for an examination of value for money, the quality of medical services rendered, and their alignment with the humane treatment standards required by law.

As mentioned previously, placing refugees with psychological conditions in segregation units and those who have suicidal in suicide watch units with a tear-proof garment under 24-hour surveillance is both mistreatment and inhumane in international mental health standards (CBSA, 2022). Therefore, the involvement of a so-called professional medical private firm has raised critical questions about the standard of healthcare services provided to detainees, whose health and well-being are in the hands of the state. It is in question whether the outcomes of these contracts are transparent and rigorously audited to safeguard the health rights of those under immigration detention. As healthcare is a fundamental human right, the efficacy and ethics of outsourcing such a crucial service must be rigorously evaluated to ensure that the dignity and rights of all individuals in detention are upheld.

Security

The security protocols and operations within Canadian immigration detention centers, particularly those managed by private firms, like GardaWorld Corporation and G4S, have raised critical concerns regarding the treatment and safety of detainees. There are several death reports caused by abuse and violence by either inmates and other detained refugees or the guards and malpractices in dealing with detained refugees who have mental issues (Bureau, 2023; Human Rights Watch, 2022), which highlight a systemic issue in the quality of the service provided and the oversight and accountability of private security services. There also reports of retaliation against hunger strikers by GardaWorld security guards during the COVID hunger strike, including frequent disruptive searches and denial of water access (Serebrin, 2021), further underscores a punitive approach to detainee management that conflicts with the humane

treatment standards set forth by international human rights principles. The concern is not simply about the individual missteps of private guards or companies but about a structural misalignment where the delegation of state functions to private firms creates an environment where accountability is diluted, and the well-being of detainees can be compromised.

CONCLUSION

In conclusion, the privatization of refugee detention in Canada, as influenced by neoliberal ideologies, presents a significant challenge to the principles of accountability, transparency, and the humane treatment of detainees. The proliferation of private firms within the detention system, such as Corbel Management Corporation, Calian Ltd, and security providers like GardaWorld and G4S, reflects a concerning shift where market dynamics begin to overtake the state's humanitarian obligations. This is not to overlook the material adequacy of facilities provided by these contracts, which have generally met basic living standards. Yet, reports of inadequate mental health support, along with several fatalities within these centers, reveal a distressing disconnect between the well- funded provision of services and the actual quality of care received by detainees.

As the Canadian detention regime continues to evolve, the #WelcomeToCanada campaign's push for more humane treatment strategies has indeed led to some changes, such as the termination of detaining refugees at the provincial level. However, these actions fall short of addressing the underlying issues perpetuated by the privatization and neoliberal reforms of the detention system. The surveillance apparatus and privatized management practices demonstrate a departure from traditional sovereign control towards a model where private firms play an increasingly dominant role. While offering logistical and economic efficiencies, this model risks eroding the protective frameworks designed to safeguard the rights and dignities of those seeking asylum, and threatens to undermine Canada's commitment to upholding international human rights standards.

It is imperative for the Canadian government to take a proactive stance in reconciling the tension between neoliberal privatization and the ethical treatment of refugees. This could involve establishing enforceable standards for private entities, enhancing transparency in contracting processes, and maintaining a direct line of accountability that does not abdicate state responsibilities to private interests. Ultimately, the protection of refugees and asylum seekers must remain a priority, transcending the influence of market-driven ideologies to affirm Canada's position as a nation committed to humanitarian aid and the rule of law.

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Case Study on Intergovernmental Relations: Indigenous Child and Family Services

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ABSTRACT

This paper examines the interjurisdictional tensions at play between federal, provincial/territorial, and Indigenous actors seeking to redistribute, retain, or reclaim child and family services (CFS) authority, as the case may be. The paper examines the history of Indigenous CFS in Canada, the problems that arise while these authorities negotiate a devolution of power, and the outcomes, achievements, and barriers to date in relation to the current jurisdictional authority pertaining to CFS. The paper concludes with lessons that have been, or should be, learned from this case study on intergovernmental relations in practice.

INTRODUCTION

In recent years, discourse has evolved surrounding child welfare jurisdiction in Canada. The catalyst for these discussions has been desired reconciliation in response to the lived experience of Indigenous people. The country's prevailing systems have long resulted in the systematic and discriminatory removal of Indigenous children from their families. According to a Census in 2021, 53.8% of children in foster care are Indigenous, while only accounting for 7.7% of Canada's child population (Canada, 2023).

As the *Constitution Act* and *Indian Act*, when taken together, specify that child welfare falls under provincial/territorial jurisdiction, each region has established their own respective laws, policies, and institutional structures that govern this critical field (Canada, 2022). As would be expected, this resulted in a patchwork approach to matters of child and family services (CFS) across Canada.

However, in 2019, the federal government sought to correct this historical inadequacy by passing into law Bill C-92: *An Act respecting First Nations, Inuit and Metis children, youth, and families*. This ambitious legislation, touted as being co-developed with Indigenous, provincial, and territorial partners, seeks to affirm the inherent right of Indigenous peoples in Canada in exercising control and jurisdiction over their own child and family services (Canada, 2023).

Within the analysis to follow, this paper will examine the interjurisdictional tensions at play between federal, provincial/territorial, and Indigenous actors seeking to redistribute, retain, or reclaim CFS authority. I will first examine the history of Indigenous CFS in Canada as well as the problems that arise while these authorities negotiate a devolution of power. Next, I will define the roles and responsibilities of these disparate players as well as their capacity to act on issues of CFS. Following that, I will review the outcomes, achievements, and barriers to date in relation to the current jurisdictional authority pertaining to CFS. Finally, I will conclude with lessons that have been, or should be, learned from this case study on intergovernmental relations in practice.

HISTORY OF INDIGENOUS CFS IN CANADA

Canada has a long and troubling history of policies that have enabled child apprehension from Indigenous populations who have called this land home since time immemorial. While not the focus of this paper, an acknowledgement of the history of Indigenous child welfare in Canada cannot bypass the Indian Residential School (IRS) system. While early church-run

Residential Schools appeared in the 1830's, federal policies of the 1880's provided funding for IRS operations (NCTR, 2023). In 1920, the federal *Indian Act* made it compulsory for Treaty-status children to attend Residential School (NCTR, 2023). As Sir John A. Macdonald proclaimed at the time, the objective of IRS was to "take the Indian out of the child" (Fine, 2015), thus setting the tone for Canada's regrettable treatment of Indigenous children for decades to come. This history provides important context as, prior to legislative changes of the 1950's, the federal government was the sole entity overseeing child welfare interventions for First Nations on-reserve and, "[i]n most cases, the response to suspected abuse of an Aboriginal child was to send the child to a residential school" (Bennett).

In 1951, with the impacts of IRS on Indigenous children and families simmering in the background, the intergovernmental dynamic in CFS was born from the sweeping amendments made to the *Indian Act*. Specifically, CFS became interjurisdictional in nature through the addition of Section 88 to the *Indian Act*, which affirms the provincial law of general applicability. Through Section 88, the federal government relinquished power to the provinces, dictating that provincial laws of general application be extended to First Nations living in that province, insomuch as provincial laws did not interfere with matters covered in the *Indian Act* (Bennett). This section thus enabled subnational governments to administer CFS to individuals outside of their constitutionally mandated jurisdiction (Bennett). Accordingly, Section 88 represented the devolution of powers that were traditionally held by the federal government under Section 91(24) of the *Constitution Act*, which grants the Parliament of Canada legislative authority over "Indians, and Lands reserved for the Indians" (Constitution Act, 1982). As there is no explicit mention of child welfare or CFS within the *Indian Act*, it became a matter of provincial jurisdiction with the passage of the *Indian Act, 1951*, effectively altering the Constitution's division of powers. This possibility was alluded to by Gardner (2017), who stated: "Constitutional evolution is often initiated by unilateral action."

The far-reaching nature of this jurisdictional devolution was affirmed by the Supreme Court of Canada in their 1976 ruling in Natural Parents v. Superintendent of Child Welfare et al. Therein, Canada's highest court confirmed that provincial child welfare services could extend onto reserve (SCC, 1976), solidifying provincial incursion into what had been Constitutionally mandated federal jurisdiction.

The Canadian Constitution provides the division of powers, delineating those areas that fall under federal jurisdiction as opposed to those that fall under the provincial purview. Yet, Section 88 of the *Indian Act* gives credence to the fact that "constitutions can evolve through mechanisms other than formal amendment– so-called 'informal methods of constitutional change'" (Gardner, 2017).

The allowance for provinces to take control over matters of Indigenous CFS immediately resulted in negative ramifications for Indigenous children. As Parrott (2022) explains, this devolution allowed for what is now known as the "Sixties Scoop", a decades-long campaign wherein provincial child welfare agencies opted to remove Indigenous children from their homes and forego providing them an opportunity to remain in their community with the appropriate supports and resources. Johnston (2016) provides a succinct summation of the "Sixties Scoop", stating that Indigenous children "weren't just removed from their immediate families; they were removed from their communities and extended family members who could have offered support. Perhaps most damaging of all, they were removed from their culture, with the accompanying loss of identity." It is estimated

that between 1960 and 1990, as many as 20,000 Indigenous children were adopted out of their communities (Glover, 2023). This has had long-lasting and intergenerational impacts for these individuals and their families in the same vein as the IRS (Metis National Council, 2023).

In the 1980's, following sustained outcry from Indigenous communities about their treatment in CFS matters under the provincial regime, the federal government established the First Nations Child and Family Service (FNCFS) in 1989, whose underlying directive was the "expansion of [FNCFS] on reserve to a level comparable to the services provided off reserve in similar circumstances" (CWRP1, 2015). The services provided by FNCFS are to be undertaken in accordance with applicable provincial CFS laws, which were first beginning to be enacted provincially in the 1980's.

As will be demonstrated in the following section, the intergovernmental and interjurisdictional nature of CFS has continued to evolve over the past ~ fifteen years, leading to present day.

Current Challenges Facing Indigenous CFS

Jurisdictional issues relating to CFS are an inherent part of Indigenous children's' lives. While the funding and provision of CFS services rests solely with the subnational government for most children in Canada, responsibility for these services is often shared by federal, subnational, and First Nations governments for First Nations children (CWRP2, 2015). "A 2005 survey of twelve First Nations Child and Family service agencies found that these agencies collectively experienced almost 400 incidences of jurisdictional disputes around services for First Nations children in the course of a single year" (CWRP2, 2015). The prevalence of this jurisdictional gap led to the tragic story of Jordan River Anderson, a First Nations boy who passed away at the age of five, unable to experience life outside of the hospital due to a refusal of both federal and provincial governments to fund his out-of-home care (CWRP2, 2015). This led to the creation of "Jordan's Principle", endorsed by the House of Commons in 2007, which holds that the government of first contact will pay for services required by First Nations children with payment disputes to be resolved later.

"Jordan's Principle" clearly demonstrates the delicate intergovernmental relations at play when dealing with Indigenous CFS. However, a separate, profound undertaking also succeeded in advancing awareness and accountability for issues surrounding Indigenous children in care: the Truth and Reconciliation Commission (TRC) and their 94 Calls to Action. Call to Action no. 1 dealt specifically with child welfare, calling on Canadian governments to reduce the number of Indigenous children in care by, in part, "Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside" (TRC, 2015).

Similarly, and prior to the federal government's recent legislation implementing the United Nations Declaration on the Rights of Indigenous Peoples, the Canadian government has endorsed UNDRIP since 2010 (Fontaine, 2016). Pertaining to CFS, Article 7(2) of UNDRIP notably states: "Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group" (United Nations, 2007).

Alongside the TRC and UNDRIP, a further catalyst for federal action was in response to a 2017 Ontario court ruling relating to "Sixties Scoop" Children. Therein, the court ruled that the prevalence of Indigenous children losing their language, culture and identity within the

provincial child welfare system required Canada to exercise their duty of care in preventing Indigenous children from losing their identities in this way (Fryer & Tiedemann, 2019; Tasker, 2017).

Given these multiple prompts, it became necessary that the federal government acted in standard-setting with regards to Indigenous CFS. The opportunity has long been ripe for the federal government to act in such a manner; "[though] the *Constitution Act* provides Canada with the authority to enact legislation on behalf of First Nations peoples in areas such as child and family services, Canada has never done so," (Bennett).

Accordingly, Canada passed Bill C-92 in 2019, thereby establishing nationally held guiding principles in the provision of CFS. As Parliamentary Secretary Dan Vandal said in his sponsoring speech: "These principles are national in scope. They are a base standard to ensure that all services for first nation [sic], Inuit and Metis children are provided in a manner that considers the individual child's needs, including the need to be raised with a strong connection to the child's family, culture, language and community" (Vandal, 2019).

Beyond setting these principles, the heart of this legislation is rooted in intergovernmental relations as this bill legislates a further devolution of power to the benefit of Indigenous autonomy. While Indigenous communities must attempt to collaborate with federal and provincial governments in coming to an accord on this jurisdictional transfer, a lack of success therein is not a death-knell. "After the one-year period for negotiating a coordinating agreement with the federal minister and the province has lapsed, the Indigenous law will prevail over provincial and federal laws where there is conflict" (Dyck, 2019).

While Bill C-92 is a needed step in addressing a prevailing societal issue, it was not met with unanimous approval. In their submission to the House of Commons Standing Committee on Indigenous and Northern Affairs, the Chiefs of Ontario (2019) highlighted a commonly held concern around the bill's lack of statutory funding of First Nations child welfare, stating: "The promise of jurisdiction will be left unrealized if funding is not addressed".

A further issue that was flagged was the inadequacy of consultation. Canada boasted of engaging with national, regional and community organizations representing various Indigenous groups and peoples, as well as provinces and territories (Canada, 2023). However, this notion was challenged numerous times, as the Senate's Committee report on Bill C-92 read: "The lack of meaningful consultation is a message heard by your committee time and time again" (Dyck, 2019).

There has also been concern of how these changes will impact Indigenous CFS service providers. The executive director of Native Child and Family Services of Toronto, Canada's largest urban Indigenous child welfare organization, called the legislation hasty, reckless, and awkward, expressing concern that the bill will result in a jurisdictional quagmire (Stefanovich, 2020).

However, the largest concern was raised by the provinces. Alberta called for a delay in its implementation, and Manitoba deemed the legislation dangerous in its approach (Stefanovich, 2020). The most profound provincial challenge has come from Quebec, who has taken the matter to court with the belief that the law is unconstitutional, arguing Bill C-92 is beyond the authority of Parliament. In their ruling, the Quebec Court of Appeal held that the matter does, indeed, fall within federal jurisdiction and that Indigenous self-determination regarding CFS is protected under the rights-affirming Section 35 of the Constitution (Beatch et al., 2023). However, the

Court also held that two provisions were unconstitutional, being that which gives Indigenous CFS laws the force of federal law in certain circumstances and that which gives Indigenous laws paramountcy over conflicting provincial laws (Beatch et al., 2023).

A Constitutional challenge being launched by a subnational government in response to such a law is not unexpected. As Gardner (2017) posits, federalism is a system that inherently destabilizes itself. "Federalism is by nature a contestatory system in which it is anticipated that national and subnational governments will contend to secure influence and advantage" (Gardner, 2017). As such, any incursion into one's jurisdiction by the other is sure to trigger a defensive response, such as that presented through a legal challenge. The constitutionality of Bill C-92 is currently being examined by the Supreme Court of Canada, with a ruling imminent.

ROLES, RESPONSIBILITIES, & INTERGOVERNMENTAL FORA

The interjurisdictional nature of Indigenous CFS makes it an interesting case study. As previously discussed, although the *Constitution Act* established federal jurisdiction over Indigenous peoples and land reserved for them, Section 88 of the *Indian Act* saw the devolution of CFS to the provinces/territories. To complicate matters further, the federal government is still within its right to legislate on this matter, as affirmed by the Quebec Court of Appeal. Underscoring this, however, is the fact that, "Canada's constitutional distribution of authority between the provinces and federal government leaves no room for Indigenous self-government" (Stacey, 2018). Despite their limited power to self-govern given the restrictive nature of the Constitution, Indigenous peoples are being empowered to regain jurisdiction and self-determination of their own CFS matters through Bill C-92. As such, the interjurisdictional complexity of Indigenous CFS has become fully integrated between three levels of authority: federal, provincial/territorial, and Indigenous. It is from this position of shared authority that I proceed in this analysis.

As part of Bill C-92's initial engagement process and in lieu of a standing forum to host such discussions, the Minister of Indigenous Services Canada convened an emergency national meeting on Indigenous CFS in early 2018. This conference brought together federal, provincial, and territorial governments alongside First Nations, Inuit and Metis leadership and grassroots to discuss needed reforms in Indigenous CFS (McKay, 2018). The resulting Report listed myriad recommendations for all parties involved, including a global recommendation to develop a protocol "on transference of jurisdictional control, to be formally entered into by all partners, … This model will be used as the basis of the collaborative development of distinct-based agreements for child and family services" (McKay, 2018). As such, this national meeting yielded an implicit agreement from all three levels of authority that jurisdiction would be transferred to Indigenous peoples. This decree is what we see actioned through Bill C-92.

Although subnational governments are still charged with overseeing child welfare policies in their regions, the federal government's new directives will present a greater level of standardization in what has historically been a patchwork approach. Additionally, as previously indicated, C-92 now allows for Indigenous communities to enter into coordination agreements with the federal and subnational government to facilitate the transfer of power from the province/territory to the Indigenous community (Beatch et al., 2023). This is a prime example of Alcantara & Morden's (2019) notion of multilevel governance (MLG), which is defined as the growing role of Indigenous actors

in settler societies, "MLG is a positive development for Indigenous communities given the history of colonialism and racism that they have had to endure. The migration of authority, even if partial, is likely preferable to authority being located solely in the hands of the Canadian state (Alcantara & Morden, 2019).

ACHIEVEMENTS & BARRIERS

Despite the idyllic promise of the emergency national meeting and the resulting legislation, there have been multiple barriers to Indigenous reclamation of CFS control. Harkening back to the funding concern raised by many Indigenous individuals and organizations when the legislation was before Parliament, in 2021 the federal government indicated that "legal orders forcing Canada to fund First Nations child and family services…won't apply to nations who assume jurisdiction through Ottawa's Indigenous child welfare reform act" (Forester, 2021). This naturally places community in a severe deficit while trying to reclaim the CFS jurisdiction offered to them.

An additional barrier was forecast by Senator Mary Jane McCallum (2019), who spoke to the reality that it is not economically prudent for provinces to relinquish CFS authority, especially when the legislation lacks mechanisms by which provinces must cooperate with Indigenous communities. "The [Assembly of Manitoba Chiefs] …has indicated time and again of their inability to get the province to the table to discuss this transfer of authority" (Senator Mary Jane McCallum, 2019). A similar issue was present in Alberta. The Louis Bull Tribe was left awaiting control of their CFS, with the Chief stonewalled, saying the province "won't recognize [the arrangement] at all. They won't sign co-ordination agreements" (Hobson, 2022). This troubling fact gives credence to an inherent feature of federalism: "the ability of the federal government to accomplish its objectives … often depends upon provincial cooperation" (Gardner, 2017).

Alcantara & Morden (2019) speak further to such inescapable power dynamics at play in federal states, characterizing a profound issue that prevails today: "In Canada, power relations remain extremely important despite the emergence of Indigenous MLG and the concomitant migration of authority to Indigenous actors. Federal, provincial, and territorial governments continue to control and sometimes dictate the creation and implementation of Aboriginal policy".

Despite these troubling barriers, there have been notable achievements since this legislation passed, as six communities have passed their own CFS laws under Bill C-92's framework (Beatch et al., 2023). However, having only six communities across the nation reclaim self-determination over CFS in the 4.5 years since the legislation passed seems woefully low. This reality is even more stark when considering Peguis First Nation in Manitoba, one of the six communities to pass their own CFS laws. Earl Stevenson, Peguis' in-house counsel, argued they formed their own law through ceremony and not under C-92. "The federal government didn't give us anything, they didn't allow us anything…What we've done through our own self-determination and our inherent rights, we've created this law" (Canadian Press, 2023). As such, and in the face of significant barriers to efficient and effective progress in this power devolution, even success stories themselves come with caveats that indicate the process is not as collaborative as would be hoped.

LESSONS & REFLECTIONS

The history of Indigenous CFS, and the jurisdictional authority governing this matter, represents an intriguing case study on intergovernmental relations in Canada. Given respective provisions of the *Constitution Act* and the *Indian Act*, both federal and subnational

governments can, and have, legislated in this area. Following governmental commitments to reconciliation and engagement sessions between all the requisite players, the federal government enacted a path forward for Indigenous communities to now legislate in CFS matters as well. As Stacey (2018) writes:

> "the federal system can – and should – accommodate Indigenous political autonomy. Federalism exists to ensure that different groups of people have a degree of political control over the very things that make them different."

While CFS control is but one step in a more fulsome path to autonomy, assuring Indigenous ability to retain and raise their children will ensure that their identities, cultures, and languages – that which makes them distinct – are adequately preserved.

However, this path has been wrought with peril. Perhaps the most consequential lesson from a devolution of jurisdiction perspective must be a heightened attentiveness to the impacts of funding, or the lack thereof. An issue that was raised early and often in the legislative process, namely, the failure to provide adequate and sustained funding, has proven to be an insurmountable barrier for many communities. Indeed, without the requisite funding in place, many communities were precluded from the possibility of reclaiming CFS authority due to the lack of financial capacity needed to develop their own laws, systems, and infrastructure, as required.

Moreover, the process lacked efficiency as several instances arose where provinces proved to be unwilling partners, hindering the forward movement of Indigenous communities in reclaiming their self-determination over CFS. Without adequate mechanisms to ensure cooperation and compliance, we see the negative impact this has on meaningful and timely progress.

Finally, as was expected, Bill C-92 has resulted in a jurisdictional quagmire. This is not only true at the grassroots level where service providers feel unprepared to navigate the road ahead, but also at the larger, political level as has been demonstrated through Quebec's legal challenge. When issues of real or perceived jurisdictional conflict arise, it is unavoidable that a challenge would be launched by the party that feels hard-done-by; in this case, the provinces/territories, as "holders of government power constantly probe for advantage in a permanent contest over public policy" (Gardner, 2017).

The disconnect with some actors at the provincial level is aptly described through factors raised by Esselment (2012), dictating why conflict exists between various levels of government. These factors include the [economic] interests of the province; the ideological position and/or political perspective of the provincial government; and general partisan considerations (Esselment, 2012). As each of these aspects factor into play with the most vocal adversaries of this legislation, it is not surprising that competing interests make some subnational governments more oppositional than others.

Nevertheless, while the actions and jurisdictional devolution surrounding Indigenous CFS are headed in the right direction following decades of problematic treatment and discriminatory policy, much work remains ahead:

> "We need to get to a place where Indigenous peoples in Canada are in control of their own destinies and making their own decisions about their futures," (Stacey, 2018).

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Outsourcing the Government: A Critical Examination of Three Promises of Algorithmic Governance

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ABSTRACT

The 21st century has brought new modes of governance. Among these, algorithmic governance has received a lot of attention especially in relation to how it affects practices and policies of public administration. There are concerns that relegating social processes to machine-learning systems can result in negative outcomes and entrenched social inequalities. It also opens a pathway for non-government actors with their own priorities and value-systems to have a say in the practice of governance. These concerns have elicited certain assurances or "promises" from proponents of algorithmic governance that seek to alleviate concern surrounding them. This paper critically examines three of these "promises", not with an eye for disapproval, however, to highlight that concern areas persist and must be addressed meaningfully for the benefits of algorithmic governance to manifest themselves.

INTRODUCTION

Terms such as 'Algorithmic Decision-making Tools' (ADTs) or 'algorithmic governance' have become common parlance in recent years for those looking at the relation between public sector entities and technology. The outsourcing of certain tasks which were previously the purview of the public-sector, have necessitated such terminology as we begin a discourse on the reality that increasingly, several aspects of day-to-day governance are conducted, at least in part, by algorithms.

Proponents of ADTs argue for their inclusion within the public sector, promising better and more equitable governance that benefits a broader section of the public. Having ADTs take on the tasks that can be prone to human biases is an opportunity to streamline the relationship between the government and the public in a cost-effective, risk-mitigated, collaborative way that is sustainable.

Algorithms are, of course, not a recent development. Search engines like Google and Bing, or online mega-retailers like Amazon have been entrenched into the everyday lives of people since establishment. What is more recent, however, are concerns surrounding the negative externalities, largely in the form of biases and inequalities that have the possibility to emerge from the integration of algorithms into systems of governance. There is also the question of whether regulatory policies dedicated to keeping such inequalities at baycano keep up with the pace at which algorithmic governance is growing and the pace at which such technologies are developing.

The emergence and proliferation of ADTs was a natural manifestation of the emphasis on Public-Private Partnerships (P3) in the 21st century. Algorithms, broadly defined, are finite sets of instructions meant to solve certain problems or carry out certain functions. More specific definitions of algorithms present them as using:

> …unsupervised and semi-supervised machine learning on massive databases to detect objects, such as faces, and process texts, such as speech, to model predictions…automate decision-making for commercial purposes, including content visibility and advertising, and for political interests, such as deportations and counterterrorism (Srivastav 2021).

The gradual creep of ADTs into public administration can be largely situated within a broader movement in the 21st century towards what some have described as 'New Governance'. This entails an expansion of the stakeholders operating public institutions and providing services beyond the government. It includes new participants such as corporations, universities, think tanks, NGOs, consultancy firms and more. 'New Governance' envisions public administration as a collaborative process emerging out of the dissatisfaction towards a 'top-down' approach to governance that only include public sector actors (Alexander 2009).

Some high-profile examples of algorithmic governance in recent years include Canada's Directive on Automated Decision Making implemented in 2019 with the objective to ensure that ADTs are "deployed in a manner that reduces risks to Canadians and federal institutions, and leads to more efficient, accurate, consistent, and interpretable decisions made pursuant to Canadian law" (Government of Canada, 2021). Additionally, in 2020, the United States passed the *National Artificial Intelligence Initiative Act, 2020* (NAIIA) with bipartisan support, leading to the implementation of the National Artificial Intelligence Initiative (NAII). Among its objectives, one is to "lead the world in the development and use of trustworthy AI systems in public and private sectors [and] prepare the present and future US workforce for the integration of artificial intelligence systems across all sectors of the economy and society" (NAIIO, 2021).

Several smart city initiatives have also been undertaken at both a national level, such as the Smart Cities Mission in India, at the international level by the Association of Southeast Asian Nations (ASEAN), and the European Union (EU). Much of these projects are tasked with the objective of solving issues of urban development, housing, traffic, transportation, policing and attaining goals of sustainable development.

The direction is clear for both developed and developing nations. There is a clear movement towards algorithmic governance and in increasing the deployment of ADTs. The advantages are evident. Combining the managerial abilities of private sector actors to mitigate risks, developing policies that are – at least in theory – more cost-effective and employ resources at an optimal level, all while avoiding delays and errors that human-based decision making is prone to. Finally, perhaps algorithmic governance is only a natural progression in the nature of public administration as digitalization creeps into every facet of everyday life, from education, entertainment, finances, health and more, so why not governance as well?

The promise of algorithmic governance is the promise of better and more equitable governance. Decisions made to benefit a wider set of beneficiaries, made more efficiently, made with fewer public resources, and made keeping goals of sustainable development for all, especially the most marginalised in mind. To achieve these objectives, proponents of algorithmic governance make certain 'promises' or 'assurances.' However, there has been a steady stream of concern regarding the possibility of ADTs ripping open new frontiers of inequality and discrimination despite these promises.

The track record of algorithmic governance thus far has not been flawless but has instead reflected shortcomings in the functioning of what is presented as 'data-driven, impartial and scientific' policy making. This paper critically examines three major 'promises' made by the advocates of ADTs keeping in mind whether the increasing reliance of public sector entities on algorithmic governance is likely to lead to a dismantling of societal inequalities.

THE THREE PROMISES

Much of the concerns surrounding the use of ADTs in decision-making emerges from the fact that algorithmic governance is still a relatively new phenomenon that is still largely in flux owing to the rapidly developing and evolving nature of the technologies that facilitate it. This makes it harder for those whose job it is to assess ADTs' benefits to the public and gives rise to a number of concerns regarding their usage. While efforts are made to keep a keen eye on the development of algorithmic governance vis a vis its promise for better, more equitable decision-making, often these developments are difficult to assess.

Promise 1: Artificing is more efficient than Satisficing

One of the foremost arguments made in favour of algorithmic governance reasons that decision-making and governance can be smoother, faster and more efficient when conducted with some degree of algorithmic participation. Algorithms are able to work with vast swathes of data which they are able to analyse, interpret and employ with more speed and accuracy that humanly possible. Using algorithms presents an optimal use of resources and provides services to the public, something proponents of ADTs consider an evolution from the suboptimal nature of exclusively human-based governance, which are criticized as bloated, inefficient and vulnerable to prejudice.

This constitutes the evolution from 'satisficing' to 'artificing' which in the field of Public Administration, represents a change from a cognitive heuristics approach to governance in favour of an optimised approach where services are delivered to the highest capacity with the most optimal use of resources. Satisficing is an approach to public administration, popularised by Herbert Simon in 1947, that argues that those in the profession of operating the government and delivering services to the public would use their intuition to make rational – though not necessarily optimal – decisions in public administrative issues (Snow, 2021).

This state of public administration was not one that Simon believed was by choice. In his work in the 1950s, he expressed a healthy scepticism towards the concept of 'optimisation' or 'maximisation' of organisms in a learning and choice environment. Simon (1956) argued:

> …it appears probable that, however adaptive the behaviour of organisms in learning and choice situations, this adaptiveness falls far short of the ideal of "maximizing" postulated in economic theory. Evidently, organisms adapt well enough to "satisfice"; they do not, in general, "optimize".

Further, in his prize lecture for the Nobel Award in Economics, Simon (1979) opined, "decision makers can satisfice either by finding optimum solutions for a simplified world, or by finding satisfactory solutions for a more realistic world."

Snow (2021) qualifies this argument, highlighting that bureaucrats often work under gruelling pressure and time constraints and so the decisions and choices they arrive at, are likely to be 'rational' to the best of their abilities; however, may not necessarily be the most optimal in nature, outcome or in the use of resources.

Artificing emerges as a contrast to satisficing. Taking advantage of the new frontiers of technological developments, it offers an alternative: one that relies less on the intuition and presumption of rational choice by humans. Proponents of ADTs argue that rationality is a presumption upon human actors, and they are, instead, marred by biases and prejudices that impede the smooth functioning of public institutions. Algorithmic governance emerges as a contrast since its tools can process data much more rapidly and produce optimised plans, policies and measures that max out satisfaction

for the public while managing limited resources to the best of their ability. However, the promises of algorithmic governance do not, at present, live up to the realities of the world which are often complex, situational, and perpetually in a flux, something that a digital program may not be equipped to deal with no matter how large of swathes of data it is working with.

One important facet of artificing is that artificing is an approach that does not seek to *replace* the human involvement in the task of governance, but rather, to augment it by carrying out the tasks that are difficult for humans to do. Snow (2021) notes that, "This approach means that an element of human intuition endures as part of the decision-making process, even after the introduction of algorithmic tools" and that thus, artificing is not some unwise total reliance on machine learning for social decisions, but rather can be considered "the form of satisficing which persists following the introduction of ADTs," (Snow 2021).

If the argument, is that algorithms can fill the gaps of human knowledge in augmenting governance and public services, it relies on an assumption that ADTs can churn out impartial, unprejudiced, and data-driven decisions. This is likely to not be the case and is akin to Simon's notion of a 'simplified world' where many of the subtle complexities of contemporary life are not present in a sufficient manner. Yes, ADTs can be better than human intuition (though some would argue that context matters in this argument) and yes, they can be reliably data-driven. However, there arises questions of what data? Where did the data come from? Who gathered it? From whom? Under what parameters?

This dilemma is best highlighted in the employment of algorithms in law enforcement. The use of ADTs in policing, which has led to the rise of 'predictive policing': a process of using statistical criminal data within a certain jurisdiction to drive policing activity, decision-making and volume. Predictive policing, on paper, allows police departments around the world to use historical statistical data relating to crime in a certain jurisdiction to predict where greater policing is required and thus allows law enforcement to more effectively deploy their resources to create a safer community, both for the public and for responding officers (Meijer and Wessels, 2019).

In their review of predictive policing, Meijer and Wessels (2019) highlight that the main arguments in favour of it include optimal deployment of resources, helping in identifying individuals who may be prone to commit crimes even before they have done so by profiling. In the United States, the criminal justice system has been criticized for decades for the disproportionate targeting of minorities and in particular, the African-American community. Since decisions on where to police are being taken by an algorithm and not by human actors who are likely to be affected by prejudices and bias to varying degrees, predictive policing is presented as a more empirical and impartial tool. It is almost seen as a tool that would reduce the inequalities in law enforcement.

However, initiatives like predictive policing are, in fact, likely to result in the further targeting and racial profiling of minorities. Divorcing the context of systemic racism and its history in policing may reinforce the prejudices that gets reflected in the data. In 2019, the Los Angeles Police Department (LAPD), one of the most prominent users of predictive policing technology shut down its Operation LASER – a predictive policing operation that used data-mapping to populate police unit presence at what it considered 'hot-spot' zones for gun violence with 'laser-like precision' (Puente, 2019). The decision to shut down the use of this ADT came after internal audits fuelled by citizen protests revealed though the algorithm was supposed to work with analysts who made the call on where

to deploy units, they were often left working with inconsistent data and wrong criteria on which areas to tackle (Puente, 2019).

The program was meant to target violent offenders, yet the audit revealed that over half the targets of LASER had one or zero violent encounters with the police and around 10% has no police encounters at all (Baek & Mooney 2020). The program was found to also targeted Latino and African-American communities whose members made up 84% of LASER's targets based on historical crime data (Baek & Mooney 2020).

The issue with the use of algorithmic governance based on data in cases like this is that labelling something as 'data-driven' and free from human instinct gives it a sense of objectivity and absolute impartiality that is far from the truth. Data is not immune to bias or prejudice. However, it's perceived as 'objective' and thereby policies are being formulated based upon this perception, can create a scenario where mistaken confidence can lead to bad policymaking and decision-making.

Selective enforcement and the targeting and 'redlining' of black and brown communities can also create biased and corrupt data which would then be used as guidance for further policing and policies. This would be antithetical to the goal of safer communities. It would likely entrench biases and inequalities further into society (Srivastava, 2021). Diaz (2021) observes, "Instead of enabling a multifaceted approach to correcting these longstanding problems, predictive policing systems accept the world as it is and generates a one-note solution: more policing".

This is not to suggest that the public sector and the scores of educated and qualified experts working in tandem alongside algorithms and deploying them for governance tasks are not cognizant of these dangers. Canada's Directive on Automated Decision making, for instance, clearly spells out a cautious approach to ADTs, reflecting a desire that data-driven decisions by the government are 'responsible' and 'comply with procedural fairness'; that impacts of ADTs are 'assessed and negative outcomes reduced'; and finally, that information from the use of ADTs is transparently made available to the public (Government of Canada, 2021).

However, there are no guarantees that these standards would be met, or even be aspired to by all parties lurching towards the temptations of algorithmic decision-making. There is also the factor that a lot of the time, algorithmic governance does not fall under the sole purview of the public sector but often works in tandem with partners outside the government, primarily the private sector and corporations. These actors bring with them many benefits; however, they also operate with different priorities when it comes to the long-term picture. It brings a whole new set of challenges as discussed in the following section.

Promise 2: Collaborative governance with the private sector leads to largely positive outcomes

One of the biggest draws of the new standards of governance have been the liberalisation of who can participate in public administration. Collaborative governance between the public and private sectors have been viewed largely favourably with regards to inviting erstwhile peripheral actors into the act of governance within an open setting (Alexander 2009). It has largely been viewed as an opportunity to benefit from the private sector's reputation of efficiency, resource management, expertise, time-management and finally to mitigate risks in public projects and service delivery.

However, at the end of the day, whatever their objectives for engaging in this new collaborative form of governance, the private sector's end goals remain the maximisation of

their profits. The risks of integrating the private sector within public governance, while tempting on the surface, becomes compounded by the aforementioned uncertainties discussed with regards to data-based decision making and ADTs.

There is enthusiasm from both sides at unlocking new frontiers of partnership where the private sector expertise improves upon the work of the public sector. However, the reality remains that while the government often lacks the level of expertise on the usage of ADTs that the private sector does, such collaborations can often end up as profit-making ventures for corporations and firms which do not inherently have social justice and societal equality at their core.

One of the cores draws of collaboration on public-sector projects is the sharing and thereby relative mitigation of risks related to achieving project outcomes. Wang et al. (2018) observe:

> Both the public and private sectors are comprised of rational, economic-minded people. As long as the risks outweigh the benefits, neither side will enter into a partnership. However, if each partner can transfer some of the inherent risks onto the other partner, thus sharing the risks, then a partnership can be built.

Applying Principal-Agent theory to P3s, Verweij and van Meerkerk (2021) conclude that there are considerable differences in value-systems operating the public sector (the Principal) and the private sector (the Agent). Such differences do not necessarily have to be negative in nature. However, this does not change the fact that there are some significant challenges associated with these differing value-systems, especially, as is discussed later. They are required to work closely, with a high level of trust and over a long period of time to achieve positive outcomes for public-interest projects they collaborate on (Warsen et al., 2018) and differences at their core values can be inimical to this objective.

Verweij and van Meerkerk (2021) identify some of the challenges of differing values for P3s. Private actors can, in many cases, be self-serving. They may choose to prioritize their own priorities over the project which they now have a significant role to play in. Due to asymmetries of information regarding the competencies of private sector organisations as relating to specific projects, the public sector may not pick the most optimal partner. Even if they do pick an optimal partner, they may fall victim to 'moral hazard' wherein the Agent (i.e. the private partner) misleads the Principal on costs of the project exploiting their superior information advantage.

Therefore, it is not always certain whether P3s do end up making optimal decisions with regards to public benefit. It is almost certainly a guarantee that the goal of a private corporation would be either the maximisation of their profits or to invest in public projects purely on the basis of seeing them as low-risk, low investment and 'easy' projects where the long-term betterment of public interest is not the priority. In such cases, Alexander (2009) comments:

> …many new governance scholars acknowledge that traditional rights-based regulation and litigation may need to operate in tandem with new governance processes. Yet, few scholars have analysed how such processes should be structured at the micro-level.

Speaking from the lens of social movements, Bloch-Wehba (2022) states that a major area of concern in the realm of law enforcement is that "a cottage industry of technologies and techniques—biometric surveillance, license plate readers, predictive policing, and social media monitoring, to name just a handful—are transforming law enforcement and expanding its capacity".

The new frontiers of P3s promise a lot in terms of superior project management, risk mitigation, resource and time management while investing in public projects represents a safe and low-risk investment for the private firms. On paper, at least, it seems to resemble a win-win arrangement for both parties. However, the reality is that there is much research yet to be done that decisively demonstrates a consistent positive impact of P3 projects and in fact, there are marked limitations about several P3 projects and how their efficacy is assessed.

To date, there is no decisive definition of public and private sector cooperation in governance. However, when attempting to define what constitutes a 'good performance' of a P3 project, both narrow and broad definitions seem to take outcome as the primary measure of performance (Warsen et al., 2018). Wang et al. (2018) argue that a narrow definition focuses on how well the targets and outcomes in the PPP contract are realised whereas a broader understanding expands the scope of 'success' to more parameters and examines citizen satisfaction and 'value for money'. However, the concept of 'value for money' remains nebulous and therefore measuring 'success' for a P3 project is difficult.

Another area of concern revolves around the notion of contracts. Verweij and van Meerkerk (2021) observe that, "the transaction costs theory [of economics] states that contracts should be as complete, stable, and fully specified as possible". This, however, is not a minor operational issue, but is instead, a major obstacle for P3s. In their study on the biggest risks to P3 projects, Rybnicek et al. (2020) found that, "issues regarding contracts represent one of the greatest challenges in PPPs". Much of the concern regarding contracts emerges from poorly negotiated or incomplete contracts. However, as Verweij and van Meerkerk (2021) note, incomplete contracts are often a necessity for P3s to allow the private actors to employ their full innovation abilities, thus requiring greater monitoring from the public sector which can be costly.

It is also not a simple task to engage in P3 projects and hope for positive outcomes, especially as it relates to public administration and the delivery of services. In their enquiry into the functionality of P3s Warsen et al. (2018) observe that P3 projects tend to be long-term and thus prone to several unpredictable variables, which therefore implies that, "constant nurturing of the partnership, the ability to cope with unexpected events that are not specified in the contract, and managing relations are crucial for the project's success".

Despite the risks associated with the differing value-systems of the public and private sector, and despite the concerns with incomplete contracts and the nature of defining successful P3 projects, Verweij and van Meerkerk's study finds that types of P3s generally tend to be more cost effective than regular contracts, however, the actual effectiveness of P3s are difficult to gauge due to insufficient 'real project data'. In the absence of such data, it can remain largely nebulous how well governance objectives and public satisfaction is being met. Without such parameters, it is difficult to argue whether P3s are leading to better governance for all in society or whether public interest is being auctioned off for the sake of risk sharing, shallow appearances of fiscal responsibility from the government and corporate profits.

Promise 3: ADTs assist with achieving the goals of sustainable development and are better for the environment

A third reason algorithmic governance is often lauded is its perception of aiding sustainable development. While green technologies and 'smart city' initiatives with renewable energy as the crux of its operation have been employed across various nations, one

of the largest and all-encompassing efforts on the global level to integrate data-based decision-making and governance has been conducted by the United Nations' Global Pulse project.

According to the UN, many strategies of algorithmic decision-making employed typically in the private sector, such as profiling, personalisation & predictive analysis can be meaningfully applied to sustainable development goals to enable "agile, efficient and evidence-based decision making" (United Nations). However, there have been studies that indicate that the environmental costs of employing ADTs to take sustainable and environmentally-friendly decisions may be inimical to the goal of greener cities. Such costs often tend to be ignored when policies are settled around the use of ADTs (Brevini, 2020).

Much of the concerns here relate to the previous two concerns discussed as well. Brevini (2020), for instance, denounces technological determinism which holds that technology will be the cure for the major ailments of society including environmental degradation, which they believe are further entrenched through treaties such as the Kyoto Protocol. There are also concerns surrounding the involvement of private sector corporations, especially in largescale global initiatives such as the UN Global Pulse's 'Data for Climate Action' (D4CA), an initiative that invites private sector to share their datasets and conceptualise innovative solutions for climate action.

Espinoza and Aronczyk (2021) observe that a major foothold of private sector involvement in climate problems, and more importantly, climate solutions is their role as an Environmental Information System. This implies they can, "can fill gaps in global climate data sources by providing more diverse, integrated, and timely datasets" (Espinoza and Aronczyk 2021). This is a salient problem in many international policies surrounding sustainable development where entire groups of peoples are not being counted nor their environment assessed, leading to potential loss of basic rights as noted in the UN Secretary-General's Independent Expert Advisory Group's (IEAG) Report on Sustainable Development (IEAG, 2014). Filling gaps in information and reducing asymmetries or inequalities of information at a global scale, thereby levelling the playing field for all participating states and organisations, regardless of how developed or underdeveloped they were, has been a primary starting goal for the UN for almost a decade now (IEAG, 2014).

Ultimately, though, while much effort is being made at a global level to ensure more equitable future for all vis a vis the environment and the problems people are likely to face in the future, the costs of a lot of data and algorithmic driven policies tackling climate change and sustainable development can be higher than any perceived profits. Brevini (2020) observes several such costs such as the computational systems and cloud computing required for a lot of algorithmic decision making have a significant cost in the form of energy consumption, electronic waste and emissions.

Electronic waste or 'E-waste' in particular, has emerged as a major issue, giving rise to wat many have termed 'waste colonialism' or 'toxic colonialism' wherein much of the toxic electronic waste from the Global North end up in many underdeveloped countries in Africa and Asia as veritable 'international dumping grounds'. Michaelson (2021) reported on this phenomenon as the "ugly underbelly of recycling in the Global North". Investigations by Greenpeace have found such practices to be reminiscent of age-old colonialism: of developed countries in Europe and North America viewing African and Asian countries as 'less than' (Louw, 2022).

According to the World Economic Forum Report on e-waste, around 44.7 million metric tonnes of e-waste are generated every

single year with the US and Europe accounting for more than half of the waste generated (WEF, 2019). Much of this waste finds its way into developing countries and adds to existing problems of waste management within their borders and ends up being very difficult to trace (Gill, 2019).

Thus, it is seen that in countries that are more advanced are more likely to be employing ADTs and thereby incurring largescale costs by way of electronic wastes, energy consumptions and emissions. Though the goal of international policymaking on big data-based solutions to sustainable development and greener futures may be tempting, such costs need to factor into the considerations to assess whether, at the end of the day, the objectives of sustainability are indeed being met.

CONCLUSION

The advent of technological developments offers a genuine opportunity to reduce these inequalities and perhaps to the lowest levels ever in history. The potential for 'data for good' certainly exists as swathes of data about every aspect of life can certainly be used for the betterment of the vulnerable and marginalised both on a national and international level.

The critical nature of this paper's examination is not intended to imply that data and algorithmics should not have a role to play in governance and in improving living standards for the public wherever possible. Instead, being able to achieve this with as little negative externalities would be the ideal outcome. To this effect, the critical nature of this paper is meant to serve as a reminder to not get swept away by the promises of algorithmic governance, but to take a more nuanced, informed, and cautious approach to it.

Algorithmic technologies for governance are, still relatively new. In asking the question, whether algorithmic governance *as it stands right now* likely to dismantle existing biases and/or inequalities in society, this paper finds it to not be a very strong possibility based on the existing academic literature as well as an analysis of several such initiatives, projects, and efforts around the world today. Lee and Lai (2021) observe that technology and those arguing for it need to account for its potential to create differential treatments for vulnerable populations, falling which, it risks perpetuating "historic and systemic inequalities". However, the possibilities of such a new frontier of governance, especially when used intelligently, and with human-input overseeing and community input, has potential.

It is, therefore, crucial for academic discourse to continue viewing such developments with a critical eye to root out, as much as possible, the aforementioned negative externalities with the objective of a positive outcome. The goal cannot be and should not be to become modern-day luddites. The goal must be to ensure these developments are as equitable as possible and more people across the world are able to access the benefits of such developments and the good governance they will hopefully facilitate in the future.

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The Ethical Dilemmas of the Edward Snowden Case

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ABSTRACT

This paper examines the ethical dilemma of the Edward Snowden case, a former NSA private contractor who leaked over 7,000 classified documents to The Guardian. Applying ethical theories of Consequentialism, Deontology, and Virtue Ethics, this paper analyzes various perspectives to answer the question: *was Snowden justified as a means of exposing potential government overreach and protecting civil liberties, or whether his action compromised national security by disclosing classified information?* This paper found that the case challenges whether ethical loyalty should lie with upholding government transparency and individual rights or adhering to national security protocols and legal obligations.

ISSUE

The ethical question is whether Edward Snowden was justified as a means of exposing potential government overreach and releasing classified documents to unauthorized recipients, such as *The Guardian* and *The Washington Post*, to protect civil liberties?

CASE FACTS

Edward Snowden was a Central Intelligence Agency (CIA) network security technician before becoming an NSA private contractor in 2009, where he fathered information on secret global surveillance programs run by the NSA (The Guardian, 2013). In May 2013, Snowden flew to Hong Kong to meet with journalists from *The Guardian* where he participated in several interviews and leaked more than 7,000 classified documents. In these documents, the NSA was collecting and monitoring the telephone records, text messages, social media accounts, photos, documents, emails, and connection logs across the globe (MacAskill & Dance, 2013). Included therein is PRISM, a data-mining program that gave the NSA, the FBI, and the GCHQ "direct access" to the servers of Internet giants like Google, Facebook, Microsoft, and Apple. (MacAskill & Dance, 2013). The files show the scope of the vast surveillance conducted by the NSA, including hundreds of millions of email address books, hundreds of billions of cellphone location records, and trillions of domestic call records, most of which belonged to ordinary people suspected of no wrongdoing (Gellman and Soltani, 2013). Moreover, he revealed that the U.S. Government was sharing data collection with the "Five Eyes" alliance (i.e., U.K., Canada, Australia, and New Zealand) (NBC News, 2014).

In the aftermath of the release of documents, the U.S. Government charged Snowden with violating the *Espionage Act of 1917* and theft of government property, so he fled the country for safety. However, the U.S. Department of Justice revoked his passport, so he was held in custody at the Sheremetyevo International Airport in Moscow for 39 days before gaining temporary asylum. (NBC News, 2014) Snowden became a naturalized Russian citizen by September 26, 2022 (Roth, 2022).

Several court rulings on the case demonstrated inconclusiveness and contradiction. For example, on December 16, 2013, Judge Richard Leon, a U.S. district judge in the District of Columbia, declared that the mass collection of metadata "probably" violates the Fourth Amendment (Roberts & Ackerman, 2013). Yet, only nine days later, U.S. federal Judge Pauley III ruled the NSA's collection of phone data as lawful under Section 215 of the *USA PATRIOT Act* and under the Fourth Amendment (Yachot, 2014).

Given the differences of these court rulings, the ethical dilemma centers on

whistleblowing versus national security and legal accountability. In other words, the ethical dilemma is whether Snowden's decision to reveal these surveillance practices was justified as a means of exposing potential government overreach and protecting civil liberties, or whether it compromised national security by disclosing classified information. Thus, the case challenges whether ethical loyalty should lie with upholding government transparency and individual rights or adhering to national security protocols and legal obligations. This dilemma underscores the difficult balance between transparency, the public's right to know, and the security needs of the state.

APPLICATION OF RELEVANT THEORIES AND LEGISLATION TO CASE

Analyzing the ethical dilemmas of the Snowden case requires considering the principles of consequentialism, deontology, virtue ethics, and national and international legislative frameworks.

Deontology

Deontology focuses on upholding rules and regulations to assess the moral worth of one's actions (Alexander & Moore, 2021). The U.S. government used certain legislation and provisions to deem the actions of Snowden as illegal and an act of insubordination. The *Espionage Act of 1917* prohibits wartime activities perceived insubordinate, such as attempts to acquire defense-related information with the intent to harm the country or acquire documents to pass them to foreign enemies (Office of the Director of National Intelligence, n.d.). As mentioned, the U.S. government charged Snowden under this Act for the unauthorized disclosure of classified national defense information to unauthorized persons, like the media. His disclosure further violated the laws and regulations governing the handling of classified information, including Executive Order 13526 (The White House, 2009) and non-disclosure agreements Snowden signed with the NSA (Office of Public Affairs, 2019). His methods for accessing and downloading classified information from NSA systems also violated of the *Computer Fraud and Abuse Act* (CFAA).

Furthermore, Snowden can be criticized for not exploring appropriate whistleblowing procedures (Kessler, 2014). He did not report his concerns with his superiors or report wrongdoings through appropriate channels, such as the U.S. Senate Committee on Ethics or the Inspector General (Kessler, 2014). However, Snowden argued that there was no available legal channel as the *Whistleblower Protection Enhancement Act* that exempted contractors from protection against retaliation (Kessler, 2014). Yet, Robert Turner, associate director at the center for national security law at the University of Virginia School of Law, argued that it would have been difficult for anyone to engage in retribution against him had he gone to through the appropriate legal channels (Kessler, 2014).

There are precedent cases involving American public servants coming forward to complain about the government's mass surveillance program. NSA Senior Executive Thomas Drake attempted to take the case through "appropriate channels" to the NSA and the U.S. Congress. Drake was later fired, arrested by gun-wielding FBI agents, stripped of his security clearance, and charged with crimes equivalent to lifetime imprisonment (Hertsgaard, 2016). Drake stated, "Snowden carefully saw what happened to me…it was clear…there was no other recourse." (Welna, 2014). Snowden claimed he tried to bring up his concerns to superiors and colleagues (Stossl, 2020). While his colleagues recognized the scope of the surveillance as overreaching, they expressed little interest in trying to make a difference, believing it was "above their pay level" (Welna, 2014).

Conversely, deontology also focuses on one's inherent duty to uphold moral principles beyond the rule of law. In this perspective, although he violated laws and regulations, Snowden upheld his higher moral principles before the rule of law. Snowden argued, "I took an oath to support and defend the Constitution. And I saw the Constitution was being violated on a massive scale." (NBC 2014). He upheld the moral principle of preserving the Fourth Amendment, which protects individuals against unreasonable searches and seizures by the government (Constitution Annotated, n.d.). The unwarranted mass surveillance and data collection on innocent citizens by the NSA violated this right. Furthermore, the vast global access to personal and private communications violated Article 12 of the UN Declaration of Human Rights (UNDHR). It states that everyone has the right to be protected against arbitrary interference with his privacy, correspondence, or home (United Nations). Snowden further argued he was upholding the First Amendment of a free and adversarial press, which can challenge the government. Accordingly, Snowden held the U.S. Government accountable for their actions, as demonstrated from the ruling of Judge Leon. Judge Leon declared that the mass collection of so-called metadata most likely violated the Fourth Amendment, pursuant to unreasonable searches and seizures. In addition, he expressed doubt of the NSA's central rationale for the program to prevent terrorist attacks, as the Government failed to cite a single case in which analysis of the NSA's bulk metadata collection stopped any terrorist attack (The Guardian, 2013).

Limitations of Deontology

Deontology has various limitations. When applying rules and regulations to this case, there is a conflict between defining what is right and wrong. For instance, there is a contradiction between the Fourth Amendment and the *1917 Espionage Act*. The potential mitigation to this challenge is to look at legal whistleblowing protocols. The U.S. Office of the Directional National Intelligence defines whistleblowing as "the lawful disclosure of information a discloser reasonably believes evidence wrongdoing to an authorized recipient." They also define "wrongdoing" as "a violation of law, rule, or regulation…a substantial and specific danger to public health or safety." (Office of the Director of National Intelligence). Snowden thus met the conditions of wrongdoing for breaking the confidentiality agreement and failing to report to an "authorized recipient," like the Inspector General and go through the proper legal channels. However, as he prioritized his moral principles to protect rights to privacy by exposing constitutional and international violations of the U.S. government, his actions can be justifiable, even though he was legally in no position to make this assessment, making his employment status significant.

Consequentialism

Consequentialism is concerned with basing ethical choices on outcomes, as opposed to relying on traditional rules (Kernaghan & Langford, 2014). To apply this perspective to the case, a cost-benefit analysis is vital to assess the decisions of Snowden and weigh the consequences. Ultimately, the concern is whether there was a greater good from the whistleblowing of Snowden and how his actions resulted in short- and long-term consequences. In the short-term, critics argued that his actions were detrimental to national security and overwhelmingly unethical, as the public was not "harmed" by the mass surveillance. American security agencies asserted that foreign intelligence agencies accessed the thousands of top-secret documents which hindered U.S. intelligence gathering capabilities (Hartfield, 2021). However, while weighing the potential benefits and risks, Snowden asked himself, "How can I [execute whistleblowing] in the most responsible way that

maximizes the public benefit, while minimizing the risks?" (TED, 2014). This way, he would not obstruct national security (Stossl, 2020). Snowden further stated he gave the files to three news outlets, ensuring that "…if they felt this was in the public interest," they would need to inform the U.S. government before publicizing. In turn, this would give "the government its best chance to argue against" the release of these publications, especially if it would put current operations at risk (Stossl, 2020).

Conversely, a consequentialist could argue that the public had the right to know the extent of the illegal deeds of the government and that by whistleblowing, Snowden was protecting the privacy and security of the public. His actions ultimately resulted in long-term positive legislative changes, such as the restrictions placed on bulk data collection in the *2015 Freedom Act* (Amnesty International, 2015) and the removal of Section 215 of *the USA PATRIOT Act*. The latter Act is a provision that granted the U.S. Government broad authority to collect "tangible things," such as records, papers, and documents relevant to foreign intelligence or international terrorism investigations (Snowden, 2019). It expanded the surveillance powers of the government by allowing the collection of metadata, including phone records and other forms of communication, from US citizens and residents (Snowden, 2019). Such legislative amendments emphasized the protection of individual privacy.

Furthermore, his whistleblowing increased public attention and awareness surrounding the use of digital security, known as the "Snowden Effect," (Eddington, 2019). Polling on government surveillance and privacy following his actions revealed that 25 per cent of respondents changed their patterns of technology use, and 34 per cent of respondents took at least one step to hide their personal information from the government (Geiger, 2018). This change also led to the adoption of a new technical protection called 'end-to-end encryption', which popular apps like WhatsApp used (Stossl, 2020). These protections provide users with greater security and prevent the monitoring of communications on a mass scale.

Finally, a consequentialist could also argue that the whistleblowing of Snowden came at high personal cost, as his actions cost him his job and livelihood in the U.S. He was held in custody at the Sheremetyevo International Airport for 39 days after fleeing and was unable to leave the country for nearly a decade. Snowden stated in an interview, "When I left Hawaii, I lost everything. I had a stable life, stable love, family, future," (Greenwald & MacAskill, 2013). Critics have argued that Snowden was incentivized by personal gain, including book publishing deals, international acclaim, and Russian citizenship (Hartfield, 2021).

Limits of Consequentialism

Applying consequentialism to determine whether the actions of Snowden were justifiable has limitations. Firstly, consequentialism focuses only on the outcomes or ends, not the means. Therefore, there is neither an assessment of the ethicality or impact of the means nor an analysis of what other potential means and outcomes to utilize. While consequentialism allows us to assess impact, it does not allow us to evaluate the merit of how alternative choices could have played out. Additionally, it can be difficult to calculate long-term consequences. While Snowden may have considered short-term consequences (e.g., holding the U.S. government accountable and informing the public), he could not have predicted medium- to long-term impacts (e.g., expulsion from the country and residing in Russia or more importantly the impact on U.S. security).

Virtue Ethics

Virtue ethics focus on cultivating morally desirable characteristics within individuals to empower them to make virtuous choices when faced with ethical dilemmas (Kenaghan & Langford, 2014). By applying virtue ethics to the case, one can evaluate whether he demonstrated virtues such as honesty, courage, and commitment to the public interest regardless of the various legislation he was ready to challenge. After all, virtue ethics further relies on value statements that emphasize virtues guiding the actions of public servants rather than strict rules (Kernaghan & Langford, 2014).

Critics may question his integrity by arguing that his actions were driven by egotism and mere disregard for the law, as Snowden chose to reveal his name rather than remain anonymous. Therefore, some may argue that he prioritized his agenda and fame over the well-being of the nation and its citizens. Furthermore, critics may accuse Snowden of acting recklessly, potentially endangering national security and undermining the rule of law. From this perspective, the decision to leak classified information violates his duty to uphold the law and protect national interests.

However, supporters of Snowden would argue that he exhibited courage by exposing what he perceived as unlawful and extreme government surveillance practices to protect individual privacy rights. Snowden claimed that disclosing his identity was to prove the authenticity of the leaked confidential documents (The Guardian, 2013). Consequently, he demonstrated a commitment to truthfulness, justice, and the public interest, which align with virtues valued in virtue ethics.

Limitations of Virtue Ethics

Virtue ethics has weaknesses in evaluating the ethical justification of the character and, by extension, the actions of Snowden. First, the theory heavily relies on subjective judgment on character traits. The subjectivity of virtue ethics thus raises questions about the interaction of opposing virtues and which values should guide decision-making (Kernaghan & Langford, 2014). For instance, those who align with the values of Snowden would view him as a public hero, while those who do not would define him as a traitor to his country. Therefore, the divergence of values and beliefs among individuals influences their interpretation of the character of Snowden.

Second, virtue ethics heavily focuses on individual morality. The challenge of legitimizing chosen virtues questions why certain values are deemed more important than others (Kernaghan & Langford, 2014). It may then overlook broader ethical considerations, such as national security or the rule of law, potentially neglecting the consequences of whistleblowing. Indeed, the different commitments and values of Snowden about the basic principle of the public interest have put the principle of democracy and the integrity of democratic government at stake (Kernaghan & Langford, 2014). Proponents of Snowden would argue that he was prioritizing the public interest, and his opponents would contend that his recklessness to risk national security is a scofflaw behaviour.

POSSIBLE OPTIONS

Snowden had several options to explore before deciding to whistleblowing against the U.S. Government, including the following:

Option 1

It was justifiable for Snowden to fly to Hong Kong and release thousands of classified documents to reporters instead of utilizing and exhausting alternative legal channels to whistleblowing.

Option 2

Snowden could have gone through the appropriate legal channels, regardless of their complexities, including reporting his concerns to

his superiors, the Inspector General or the Director of National Intelligence. Although one cannot know what would have happened if Snowden had pursued this Option, the case of Thomas Drake demonstrates that it may have severely jeopardized the career and overall livelihood of Snowden, and the public may not have found out.

Option 3

Snowden could have quit his job at the NSA, considering the personal toll it was taking on his conscience. This decision would have resolved the conflicting values and responsibilities of Snowden with working for the U.S. Government. However, the public would not have learned the truth, and there would not have been any changes to legislation or policy regarding data collection and the right to privacy.

BEST OPTION

In conclusion, based on applying deontology, consequentialism, and virtue ethics, Snowden was justified in releasing thousands of classified documents regarding government surveillance to the public. In his interviews, Snowden explained that he has no regrets about what he did and that "the greatest freedom I've gained is that I no longer worry about what happens tomorrow because I'm happy with what I've done today," (Szoldra, 2016). The mass surveillance program conducted by the NSA demonstrates violated the privacy and freedom of millions of individuals across the world. Moreover, Snowden took the appropriate steps to minimize harm to the U.S. government by requiring journalists to initially speak with the government before releasing confidential information. His actions led to the increased use of encryption technologies and amendments to legislation, such as Section 215 of *the USA PATRIOT Act*. Accordingly, his actions benefitted the public good and opened a public debate surrounding the ethics of mass surveillance conducted by governments.

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Protecting Children in Digital Environments: an Analysis of Harms and Regulatory Options in the Canadian Context

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ABSTRACT

Existing and proposed Canadian legislation, specifically the *Protection and Electronic Documents Act* (PIPEDA), and Bill C-27*, An Act to enact the Consumer Privacy Protection Act* (CPPA), the *Personal Information and Data Protection Tribunal Act* (PIDPA) and the *Artificial Intelligence and Data Act* (AIDA) *and to make consequential and related amendments to other Acts*, fall short of providing adequate protections for children in relation to the potential harms posed by the use of digital technologies in various contexts. Two case studies will be used to provide context about harms posed to children in relation to digital technologies and environments. Case study one will discuss the sharenting phenomenon and its associated harms. Case study two examines affective artificial intelligence being employed in educational settings. The lack of regulation amplifies digital harms posed to children, making it essential for policymakers to intervene. This report analyzes existing and proposed legislation in Canada and provides recommendations to address the gaps where harm to children permeates.

INTRODUCTION

Digital governance is increasingly informed by the need for robust artificial intelligence and online content regulation. Yet, existing and proposed Canadian legislation fall short of providing adequate protections for potential harms posed using digital technologies in various contexts, especially in relation to children.

The overarching goal of this paper is to explore the circumstances in which children are vulnerable to harm in digital environments with the goal of recommending appropriate policy interventions. Two case studies will be used to provide context about how children experience digital technologies and environments. Case study one will discuss the sharenting phenomenon, which refers to the practice where parents or guardians share pictures, videos, or other forms of content relating to the children in their care on social media (Ugwudike et al., 2023). This case study addresses the harms associated with sharenting and highlights how sharenting is receiving increasing recognition, yet current policy approaches remain limited. Case study two examines affective artificial intelligence being employed in educational settings. This case study provides context relating to affective AI and how children understand data collection and AI systems while highlighting the harms posed to children.

The ubiquitous nature of sharenting and affective AI has yet to be addressed by existing or proposed Canadian legislation. The legislative framework section of this report will provide an analysis of existing and proposed legislations in Canada, focusing on the *Protection and Electronic Documents Ac*t (PIPEDA), and Bill C-27, *An Act to enact the Consumer Privacy Protection Act (CPPA), the Personal Information and Data Protection Tribunal Act (PIDPA) and the Artificial Intelligence and Data Act (AIDA) and to make consequential and related amendments to other Acts.* The report will propose regulatory vehicles to address the gaps where harm to children permeates.

CONTEXTUAL FRAMEWORK

Child-Centric Approach

A child-centric approach builds off sociological methods and requires placing children at the center of discussion and research while respecting their autonomy (Banister and Booth, 2005). Zhao et al., (2019) found that

children are indeed capable of comprehending certain risks associated with privacy, but they do not have expansive understanding of data collection risks.

Livingstone et al., (2019) posited that it is vital to factor in children's understanding of their digital surroundings, their digital literacy or skills, and their ability to consent to regulation or services that impact them. Research that is child-centric involves treating children as partners in research by respecting their right to be heard and facilitating their participation in an advisory or design role (Milkaite et al., 2021). At its core, a child-centric approach recognizes that children are their own individuals with "opinions, interests, and viewpoints that they should have the opportunity to express" (Skivenes, 2011).

The Definition of a "Child"

18 is the federal age of majority uniformly across Canada which means that federal laws apply using 18 as the age of majority regardless of the province or territory (The Ontario Justice Education Network, 2015). Article 1 of the United Nations Convention on the rights of the Child put forth that "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." This paper is concentrated on policy interventions and considerations at the federal level; therefore, the term "children" refers to individuals under the age of 18.

Datafication of Children

The datafication of children is becoming increasingly prevalent in the online world as children continue to be "monitored, analyzed and manipulated through technological processes" (Wang et al., 2022; Wilson, 2018 & Siibak, 2019), raising concerns about their agency, privacy, safety, and overall wellbeing in the digital sphere. With the entrenchment of surveillance capitalism, which "aims to predict and modify human behaviour as a means to produce revenue and market control" (Zuboff, 2015 & Mascheroni, 2020), digital environments are increasingly designed in a manner that encourages users to share more and more personal data (Mascheroni, 2020). Though adults may voluntarily share personal information online, children are not always afforded the ability to consent to their information being shared. As such, children can become victims of intimate surveillance by parents, guardians, friends, and institutions (Mascheroni, 2020). Online services constantly monitor, record, aggregate, analyze, and profit from children's online presence through a variety of means, such as monetization and behavioral engineering (Wang et al., 2022).

CASE STUDY 1: THE SHARENTING PHENOMENON

Sharenting refers to the practice where parents or guardians share pictures, videos, or other content including or relating to the children in their care on social media (Ugwudike et al., 2023). The digital practices of parents, including sharenting, often inform the datafication of childhood (Siibak, 2019). Parents engage with sharenting in numerous forms, including creating dedicated accounts for their children and/or running parenting blogs (Doğan Keskin et al., 2023; Fineman, 2023). Digital narratives about children are regularly shared by parents on social media sites like Facebook, Instagram, and Twitter, offering a permanent digital record of family life (Barnes and Potter 2021). It is estimated that close to 80 per cent of children will have an online presence by the time they are two years old (Bessant 2017, as cited in Ugwudike et al., 2023). The average parent uploads 1500 photos of their child to the Internet before the child turns five, according to the US-based Child Rescue Coalition (Doğan Keskin et al., 2023).

Associated Harms and Implications

Fraud and Identity Theft. Scholars argue that sharenting has ethical and privacy related implications for children, including minimizing their agency and presenting potential threats related to grooming, cyberattacks, identity thefts, fraud, and otherwise unlawful use of (meta)data (Ugwudike et al, 2023; Siibak, 2019; Ferrera, 2023). For example, a majority of children's images on pedophile websites were initially posted on social media by parents (Doğan Keskin et al., 2023). Through sharing private information about children's lives, including their location, where they attend school, and their personal traits, sharenting can put children at risk of digital fraud (Nottingham, 2019). Types of digital fraud may include identity cloning for illicit activities, financial identity theft, and medical identity theft. A UK report suggested that sharenting will account for two-thirds of identity fraud by 2030 (Coughlan, 2018 as cited in Nottingham, 2019). Since children lack credit histories, they are particularly vulnerable to financial identity theft (Lavorgna et al., 2022).

Emotional Neglect and Child Abuse. Harms associated with sharenting include threats to a child's social, emotional, and/or mental development, with scholars arguing that sharenting presents a form of child abuse and neglect (Doğan Keskin et al., 2023). Emotional neglect is generally defined as a lack of attention given to the emotional well-being of the child (Nottingham, 2019). Parents or caregivers may coerce children to act in a particular manner to improve their online presence (Nottingham, 2019). Children of parents who blog/vlog are especially at risk for being coerced to perform a certain way due to pressures to maintain a certain online following or income level (Nottingham, 2019). Furthermore, these children may have to put up with long hours of filming whilst having no legal protections unlike registered child actors (Nottingham, 2019).

Complications with Ownership and Consent. The notion of who legally owns a minor's private information remains contested (Amon et al 2022 as cited in Cai 2023). Although it is advised that parents obtain their children's permission before sharing their information online, infants are incapable of making decisions for themselves or foreseeing the repercussions of those decisions (Doğan Keskin et al., 2023). Parents may only be able to obtain consent from children who are old enough to attend school (Doğan Keskin et al., 2023). Even so, scholars have found that sharenting practices "can make children feel that their rights and autonomy are being undermined," with studies indicating that there are disagreements among children and parents regarding consent to post their personal information, particularly content that is perceived to be embarrassing (Barnes and Potter, 2021). Variations in perceived consent may be influenced by the age and developmental traits of the child or by variations in the methods used by the parents to obtain their consent (Doğan Keskin et al. 2023).

Current Landscape

The sharenting phenomenon has begun to gain international recognition in the past few years. For example, the United States' National Center for Missing and Exploited Children launched the "Take it Down Platform" in December 2022. This initiative assists tech companies in deleting pictures and videos that depict minors in fully or partially nude conditions or that contain explicit sexual content (Doğan Keskin et al., 2023). A father in Turkey filed for divorce claiming that his spouse had abused their children by forcing them to appear online, resulting in the mother being ordered by the court not to post any content relating to her kids on social media (Doğan Keskin et al., 2023). Similarly, in France, there have been instances where children have sued their parents for sharing their photos (Doğan Keskin et al., 2023).

Despite increasing awareness, many repercussions regarding sharenting are still unknown. The majority of widely used social media platforms were all introduced in the previous 20 years (Yates, 2023). The United Nations (UN) Committee on the Rights of the Child highlights the importance of taking children's best interest into primary consideration when coming to a decision related to children (United Nations Committee on the Rights of the Children, 2013). Yet, most countries lack a robust legal framework protecting children's right to online privacy and parents remain the primary decisionmakers of whether and how to disclose their children's private information online (Lavorgna et al., 2022). The ubiquitous nature of sharenting has yet to be addressed by existing or proposed Canadian legislation. Once children's private information has been uploaded by parents online, it is difficult to have it removed due a lack of robust legislation (Ferrera, 2023). As discussed, sharenting media may inadvertently disclose sensitive information about children's lives and is often shared without children's consent, pointing to the need for protections (Ugwudike et al., 2023; Beauvais & Shade, 2022).

CASE STUDY 2: AFFECTIVE AI IN CHILDREN'S EDUCATIONAL ENVIRONMENTS

Background

Affective AI is the branch of technologies that apply "affective computing, machine learning, and artificial intelligence" to process and respond to human emotions but do not themselves experience emotional states (McStay, 2020). Affective AI analyzes human emotions through various inputs including facial expressions, body language, written content, and physiological signs (Zhao et al., 2022).

In the context of educational environments, affective technologies are used to interpret the emotional status of students to provide feedback and adjust teaching to customize learning experiences (Yadegaridehkordi et al., 2019). Affective artificial intelligence can be applied in both in-person and online educational settings to bolster teaching efforts and quality while improving the emotional interactions of students and their teachers (Pei et al., 2024). Measuring students' emotional states involves the collecting, measuring, reporting, and analyzing of students' information to improve learning (Hasnine et al., 2023). Rationale for the use of affective technologies in educational environments includes monitoring student engagement with the goal of intervening and mining large amounts of data to better understand variables that affect student engagement (Whitehill et al., 2014). Affective technology is cited as a beneficial tool to use in educational environments to support teachers in monitoring students' engagement, emotional states, and attention levels (Hasnine et al., 2023).

The Challenges and Critiques of Affective AI in Educational Environments

Additional challenges associated with the use of affective AI in educational settings include: the role of educators potentially shifting, overreliance on affective AI negatively impacting students by reducing human interaction and ensuring that education technology companies collect and store sensitive data about students responsibly (Forbes, 2023).

Most emotion recognition and related work has been adult-centric, pointing to the need to model children more richly to ensure AI fairness (Löchner & Schuller, 2022). Scholars have critiqued that education technology can profile 'problem students' to rationalize 'intervention' in a manner that imitates the larger scale predictive profiling of racialized populations (Ettlinger, 2024).

Another concern is that education technology requires a massive amount of data and analytics to be collected from students to develop learning analytics (Ettlinger, 2024). There

is already a wealth of research that highlights how predictive analytics contribute to the 'digital redlining' of lower-income or working-class students (Macgilchrist, 2019). Learning analytics may also provide traditional learning institutions the ability to outsource the cost of software and development to external vendors while deteriorating the privacy of students without their informed consent (Ettlinger, 2024).

The Perspectives and Contributions of Children to Artificial Intelligence Research and Regulation

Even though young children may lack deep awareness of the intricacies of artificial intelligence, they are still able to contribute meaningfully to the development of regulation. Children possess relational and intuitive abilities that can inform the development of ethical and social boundaries in relation to human-artificial intelligence interactions (World Economic Forum, 2023). Intergenerational dialogue is capable of informing research and policy relating to the design of AI frameworks and systems (University of Twente and KidsRights Foundation, 2022). When children are given the opportunity to meaningfully share their perspectives and experiences, there can be successful implementation of rights for children and legal requirements for digital technology and environments (Milkaite, 2021). Developing artificial intelligence related mechanisms with and for children increases inclusiveness and diversity (La Fors, 2022). Children are currently inadequately protected from harm and their perspectives are often missing from consultations and analysis of the issues they face as well as from potential solutions to safeguard them. The use of affective AI on children in educational environments lacks a robust regulatory response in Canada. To meaningfully move forward, there is a need to explore child-centric solutions.

Canadian Legislative Framework

Background

On June 16, 2022, Bill C-27, the Digital Charter Implementation Act of 2022, was introduced by François-Philippe Champagne, the Minister of Innovation, Science and Industry (ISED), in the House of Commons ("Legislative Summary of Bill C-27", n.d.). Bill C-27 introduces three new pieces of legislation; namely, *the Consumer Privacy Protection Act* (CPPA)*, the Personal Information and Data Protection Tribunal Act* (PIDPTA)*, and the Artificial Intelligence and Data Act* (AIDA). The proposed Bill follows the former Bill C-11, the Digital Charter Implementation Act 2020, which previously proposed amendments to PIPEDA but died on the Order Paper in 2021 when Parliament was dissolved on August 15, 2021, before the federal election.

The existing draft of Bill C-27 aims to primarily replace PIPEDA and introduce measures for regulating the use of AI. However, PIPEDA and CPPA in their current form do not afford children sufficient protections from the phenomenon of sharenting and its associated harms. Drawing from research presented on the sharenting phenomenon and the use of affective AI in educational environments, this section of the report aims to demonstrate the inadequacy of current regulatory measures (or the lack thereof) for the protection of children.

There are multiple factors that allude to Canada's failure to establish legislative oversight to address children's privacy rights. The proposed legislation does not concretely define the term 'minor' let alone address measures for handling data that is collected of underage individuals. The lack of definition for this term is problematic as it indicates oversight for safeguarding this group of vulnerable individuals. The Bill overlooks the importance of children's privacy especially considering that there is an increased amount of children's data being collected and distributed

without meaningful consent (Gordon, 2021). Researchers have found that "the absence of privacy exposes children to sexual and commercial exploitation, irreversible damage to their reputations, cyberbullying and surveillance" (Chander, n.d.; Lievens, 2010). These issues are especially concerning given that the existing draft of the legislation does not establish requirements for how businesses should be allowed to use children's data (Gordon, 2021).

When considering the ways in which existing and proposed legislation fail to adequately address measures to protect children in digital environments, it is crucial to understand the core concepts that inform ethical guidelines. In relation to AIDA and the need for ethical AI regulation guidelines, it is argued that principles of transparency, accountability, and responsibility are important aspects to consider (Bahrevar & Khorasani, 2021). These three core concepts foster public trust and confidence in AI systems as they promote clarity and increase fairness and accountability (Bahrevar, & Khorasani, 2021).

Privacy by design "…is a methodology for proactively embedding privacy into information technology, business practices, and networked infrastructures. Privacy-by-design measures are designed to anticipate and prevent privacy invasive events before they occur ("Privacy by Design" 2018, 1). This principle is crucial to the understanding of how the proposed Bill C-27 falls short of safeguarding children's privacy rights. It elucidates that when a product, system, or law is developed through collaborative efforts by policymakers, technology companies, and/or regulators, it minimizes the potential for misunderstandings (Office of the Privacy Commissioner of Canada, 2023). For instance, Bill C-27 was designed from an adult-centric perspective, minimizing that children also possess privacy rights and may have access to AI technology. Researchers argue that products should be designed with children's needs in mind and that only data that is necessary should be collected in a manner that is mindful of ethical data management and governance (Office of the Privacy Commissioner of Canada, 2023). Therefore, by disregarding potential repercussions that may pose harm to children, Bill C-27 is not inclusive and fails to adequately protect their interests.

Discussion on Current and Proposed Canadian Legislation

Current: PIPEDA. Since the enactment of the PIPEDA in the start of the 21st century, there has been a significant transformation in the landscape surrounding the collection, utilization, and disclosure of personal data. PIPEDA was created "to alleviate consumer concerns about privacy and to allow Canada's business community to compete in the global digital economy" ("Summary of Privacy Laws," 2018). The purpose of this legislation is to strike a balance between the privacy rights of individuals and the legitimate needs of businesses to collect, use, and disclose personal data *("Understanding PIPEDA," 2023).* It only applies to the commercial activity of private sector entities (including federally regulated organizations such as airports and banks as federal government institutions fall under the Privacy Act) but excludes those in Quebec, Alberta, and British Columbia as they have their own privacy laws similar to PIPEDA ("Understanding PIPEDA," 2023).

Despite PIPEDA's multiple revisions over the past two decades, it fails to define the term 'children,' and does not require organizations to make any effort to verify that parents/guardians have consented on behalf of their child (Gaytandjieva et al., 2021). Resultantly, this perpetuates the cycle of organizations collecting, using, and distributing the non-consensual personal data of children. Although Principle 4.3 of PIPEDA states that "seeking consent may be impossible or inappropriate

when the individual is a minor, seriously ill, or mentally incapacitated" (Minister of Justice, 2000), the existing version of PIPEDA lacks a precise definition for the term 'minor.' This leads to uncertainty regarding whether a child aged 13 and under is deemed incapable of making their own decisions or if the term applies to all those under the age of 18. Hence, the current form of PIPEDA falls short of adequately protecting children's privacy rights and ensuring that there is some form of meaningful consent obtained from either a parent or guardian before data collection, utilization, and/or distribution.

Proposed: Bill C-27 — CPPA + AIDA. Part 1 of Bill C-27 seeks to repeal and replace the 20-year-old PIPEDA in two ways. Firstly, it aims to enact the CPPA, which seeks to substitute PIPEDA with a new legislative framework overseeing the collection, utilization, and distribution of personal data for commercial purposes in Canada (Government of Canada, 2023). *The* CPPA proposes to maintain, update, and expand current regulations for private sector entities to safeguard personal information. Hence, *the* CPPA aims to enact stricter consequences for non-compliance *including* higher fines, quasi-criminal prosecutions, opportunities for legal claims for breach of privacy, and explanation requirements (Bill C-27, 2022). In conjunction, Part 2 of the Bill seeks to enact the PIDPTA*,* which will *hear* appeals made by the Privacy Commissioner under *the* CPPA and impose penalties accordingly (Bill C-27, 2022). Lastly, *Part* 3 of the Bill enacts AIDA. This Act aims to regulate international and interprovincial trade in AI systems, mandate specific measures to mitigate risks of harm and biased outputs, enable public reporting measures, and prohibit the possession or use of illegally *obtained personal information to develop AI systems* (Bahrevar, & Khorasani 2021). Through this Act, responsible design, development, and deployment of AI systems will be bolstered.

Issues with Bill C-27 — Children's Privacy Rights. The proposed CPPA fails to provide adequate safeguards for children against the dangers of sharenting and its related harms. The CPPA section of the bill recognizes children's information as "sensitive" and mandates that technology vendors exercise discretion when handling data concerning minors (Beauvais & Shade, 2022). The Act further explains that a child's data cannot be collected without the consent of a parent or guardian and cannot be retained indefinitely (Beauvais & Shade, 2022). However, the Act does not define the terms "sensitive" and "minor." This ambiguity within the Act raises questions about what constitutes a minor's information (Beauvais & Shade, 2022). Additionally, not defining these key terms implies that businesses will be able to exercise discretion in determining what content is sensitive and suitable for minors.

On a similar note, the CPPA fails to address regulations for handling data that is collected of individuals under the age of majority after they reach majority age (Beauvais & Shade, 2022). This oversight can leave room for discrepancies by delegating the responsibility of ensuring children's privacy rights to big tech companies. Lastly, the provisions in the CPPA state that "organizations will be prohibited from using manipulative techniques as a means to collect children's information" (Consumer Privacy Protection Act, 2023). Yet, there is a lack of explanation for what constitutes "manipulative" when businesses can effectively cloak all personal information under the guise of a "legitimate business necessity."

Comparably, AIDA also falls short of adequately implementing safeguards to protect children from the risks associated with the use of affective AI in educational environments. Privacy, especially children's privacy, matters now more than ever. Children's decisions on what media they consume and who they interact with

are increasingly informed by algorithmic recommendations (Office of the Privacy Commissioner of Canada, 2023). AI relies and capitalizes on the collection of large amounts of sensitive data to train new AI systems that rely on algorithmic decision-making (Office of the Privacy Commissioner of Canada, 2018; Office of the Privacy Commissioner of Canada, 2023). In relation to this, the provisions of AIDA, do not require AI systems to prove compliance with ethical AI regulation guidelines. The absence of an ethical AI framework raises concerns about the validity of the current AI systems in use, especially considering that these systems can be readily available to children in digital environments. Unfortunately, both the CPPA and AIDA fail to provide such safeguards, leaving children vulnerable to becoming victims of unwarranted surveillance, targeted advertising, and algorithmic decision-making.

POLICY RECOMMENDATIONS

Although both sharenting practices and affective AI have gained traction over the past few years, there is a lack of robust policies, both internationally and in Canada, protecting children's right to privacy online (Lavorgna et al., 2022). The following options can be integrated within the Canadian framework to better cater to the interests of children and minors.

1. Content Removal Request Mechanism:

Similar to California's "Online Eraser" law, create a mechanism for children to remove or request the removal of online content associated with them ("NOTE: Sharenting Is Here to Stay, So Now What?", 2022). A limitation of this approach would be that sharenting practices would be addressed retroactively ("NOTE: Sharenting Is Here to Stay, So Now What?", 2022).

2. Invest in Educational Campaigns/Digital Literacy Education:

This initiative intends to inform parents about the harms associated with sharenting to prepare them to act as responsible digital custodians of their children's data (*Buchanan* et al 2019, as cited in Lavorgna et al., 2022). Moreover, this option can provide children, parents, and educators with the knowledge to navigate affective technologies safely. This can include modules or in-person training sessions to allow all involved stakeholders to better understand how the technology works, as well as what potential benefits and harms are associated with its use. Zhao et al (2019) highlighted that parents often rely on self-guided online research to deal with the challenge of facilitating their children's digital technology use but may feel unsupported due to a lack of reliable sources of information.

3. Child-Centric Research & Impact Reports:

Allocate funding to research and impact assessments focused on how sharenting and affective AI affect children. Research should include children's perspectives on what they perceive to be issues and opportunities in these spaces. More research and empirical evidence are needed to provide rationale for policy responses to be implemented. A child-centric approach also allows for a deeper understanding of the opportunities and harms associated with sharenting and affective AI. This allows for the prioritization of children's perspectives, which is especially prevalent given that they are often highly impacted by but rarely have a say on regulation concerning their rights.

4. Update Legislation to Explicitly Define Key Terms:

The existing draft of Bill C-27 does not include any measures to protect children from digital harms. Firstly, the CPPA needs to be re-drafted to include children at the forefront of discussion when considering the right to privacy. The new legislation should concretely define the

term 'minor' while also addressing measures for handling the personal data of underage individuals. Without concrete definitions for these terms, businesses will be able to exercise discretion in deciding what content should be considered sensitive and suitable for minors, which may not be in the best interest of children in digital environments.

5. Ensure AI systems are Transparent & Accountable:

Drawing from ethical AI guidelines, it is crucial to ensure that AI systems are developed to produce transparent results and that technology companies are held accountable for malpractice. Transparency in AI systems is crucial as biases are inevitable in any AI system that is developed by humans. To mitigate systemic bias in AI systems, they must be made transparent and accountable. Defining reasonable practices within legislation will require companies to ensure that their systems meet regulatory standards and protect users of any age from unwarranted harm. It is recommended that legislation outlines that companies that deploy AI systems must follow ethical AI guidelines to operate in Canada. This will require companies and businesses to ensure that their AI systems are meeting regulatory standards while increasing fairness and transparency for its users.

CONCLUSION

There is a wealth of perspectives to consider when designing and implementing policy or regulatory vehicles, yet children's voices are often missing from policy dialogues. With reference to the case studies on the sharenting phenomenon and affective AI, this paper analyzes the harms posed to children in digital environments. This report has highlighted that existing and proposed Canadian legislation fall short of providing adequate protections for children in relation to the digital harms elucidated by the case studies. It has become evident that children are a vulnerable group who require the utmost level of protection possible. The lack of adequate regulations amplifies the dangers that children are prone to in digital environments, making it essential for policymakers to intervene and ensure that children are protected from the harms they face through under-regulation of the sharenting phenomenon and affective artificial intelligence.

In attempts to mitigate the digital harms posed to children, the recommended policy suite consists of the following five policy interventions: (1) Content Removal Request Mechanism, (2) Invest in Educational Campaigns/Digital Literacy Education, (3) Child-centric Research and Impact Reports, (4) Update Legislation to Explicitly Define Key Terms, and (5) Ensure that AI systems are Transparent and Accountable.

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Reforming Employment Services: Improving the Integration of Social Assistance

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ABSTRACT

The 2016 Auditor General report found that employment services in Ontario have been ineffective at helping individuals find and maintain full-time employment. Recognizing the need for reform, Employment Ontario announced in 2019 that they were moving ahead with major changes to employment services. One of the major changes under this transformation is the integration of social assistance. While this proves extremely promising, early reports have recognized several shortcomings of the new service delivery model. This paper discusses some of the challenges identified during this transformation and analyzes why employment services continue to be ineffective at supporting clients on Ontario Works. Then, this paper provides recommendations on how employment services can be improved to support multi-barrier clients in becoming self-sufficient in the long term.

INTRODUCTION

Employment Services (ES) aims to provide programs and services to job seekers to increase labour force participation and support marginalized populations. However, in 2016, the Auditor General reported that Ontario's employment and training programs were not effective in helping people find and maintain full-time employment (Office of the Auditor General of Ontario, 2016). Recognizing the need for reform, in 2019 Employment Ontario announced they were moving ahead with major changes to employment services (McSeween & Metlin, 2020). One of the biggest changes to employment services has been greater integration of social assistance. Individuals on Ontario Works (OW) often have major barriers to employment and should be considered top-priority clients for employment services. Quantitative findings have not been released to this date to determine whether this transformation has been effective at improving the employability of Ontario Works recipients (Office of the Auditor General, 2016). However, First Work has provided an initial report with insights from 20 Employment Service Providers (ESP) in the prototype regions and has already recognized some considerable challenges.

This paper will evaluate the success of the new employment service delivery model in supporting individuals on Ontario Works to find and maintain employment. It will consist of four parts: Part I will report the findings of the 2016 and 2018 Auditor General report which prompted this mass transformation and the integration of these two services. Part II will describe some of the early challenges identified in the new service delivery model. This assessment will be based on a combination of the early findings from First Work. What will be demonstrated through this section is that social assistance clients have complex and diverse needs that the current service delivery model does not account for. Next, Part III will provide a set of recommendations on how employment services can better serve Ontario Works recipients and increase their employability. Lastly, Part VI will try to answer why employment services continue to be inefficient and ineffective at supporting Ontario Works clients and what is preventing further reform from being implemented.

PART I: AUDITOR GENERAL REPORTS

The most recent Auditor General reports have recognized several shortcomings to both ES and OW. Accordingly, the need to improve effectiveness and efficiency was widely

recognized. Employment Services were criticized for their ineffectiveness in helping clients find and maintain full-time employment. The report found that only 35% of clients seen within the 2015/2016 year were full-time employed and only 14% stated they found employment in their field of training, a professional occupation, or a more suitable job than before the program (Office of the Auditor General, 2016). Accordingly, employment services are ineffective at meeting their mandated goals despite their allocated $1.3 billion in spending. Some of the issues mentioned include that there was a lack of job retention resources, apprenticeship and training programs had low completion rates, and there was insufficient research regarding labour market trends. (Office of the Auditor General Report, 2016).

Furthermore, OW Programs have also been found to be ineffective at helping clients obtain employment and become self-reliant. The 2018 Auditor General report found that only 10% to 13% of recipients were able to successfully find employment and leave the program (Office of the Auditor General, 2018). Moreover, there here has also been an increasing number of individuals on Social Assistance. Between 2009 and 2018 the number of OW cases increased by almost 25% while the length of time people spend on the program has nearly doubled (Office of the Auditor General, 2018). Additionally, clients who do leave the program are highly susceptible at returning to OW. One study conducted in 2013 found that 35% of recipients returned to OW within a year and a half of exiting the program (Office of the Auditor General, 2018). This demonstrates that OW is ineffective and helping these clients become self-reliant long term.

PART II: INTEGRATION OF SOCIAL ASSISTANCE

Changes to Employment Services

The integration of social assistance aims to provide streamlined employment supports and services for OW clients. Before this transition, clients were recommended by OW caseworkers to connect with employment services however there was very little follow-up to determine whether clients were following through. Under this new model, individuals who are currently receiving OW are referred to employment services by their OW caseworkers. The referral is triaged and sent to the closest ESP. Staff are expected to contact these clients to set up an initial appointment. This integration proves very promising, as social assistance and disability clients often face many challenges to employability and require assistance.

Challenges to the New Model

One of the biggest challenges that is posed by this referral system is the lack of job readiness that many clients exhibit. In 2018, 36% of recipients were found to have barriers affecting their employability such as homelessness and mental health concerns (Office of the Auditor General, 2018). Additionally, one report found that approximately 41% of individuals on Ontario Works have not completed Grade 12 or equivalent (Corporation of the Country of Wellington, 2018). Employment services are currently unequipped to provide the required life stabilization support for these clients to succeed. As explained by one frontline staff worker:

> "There's been a major push on registering all OW clients, no matter what their profile is. We register them but, at some point they [the Service System Managers (SSM)] will come back to us and ask why these people are not employed. That's because [some of these clients] typically may not have been the right fit for our services. So, now we are going to have these clients on our caseloads, which will

> eventually impact our milestone outcomes and our performance payments… I think that the Ministry didn't think that through. And I believe the Ministry are the ones who are pushing the SSM to increase our volumes, but there is long-term impact to that," (Shahjahan et al., 2022).

Many of the clients referred through OW cannot demonstrate that they are job-ready even from their first appointment. In addition, many participants in the First Work report commented that the new model was seen as "salesy" at best and "coercive" at worst (Shahjahan et al., 2022). As a result, staff have reported an increased number of negative interactions with uncooperative clients under the new model. In turn, employment services will not be effective if clients do not exhibit independent motivation and a willingness to put in the work. This begs the question: if clients do not demonstrate interest in participating in Employment Services, putting in the effort to job search or cooperating with their Employment Consultants, are they truly ready to show up to work regularly and on time?

Once a client is registered with ES, they are on the EC's caseload for a minimum of 12 months. However, many clients become unresponsive to contact attempts while others do not demonstrate a willingness to put in the work needed to write a resume or apply to job openings. Additionally, some clients have barriers such as language or childcare that need to be resolved before gaining employment. Since ES cannot assist with these issues, the only thing that ECs can do is refer them to other services. As explained by one ESP participant, "A good portion [of highly barriered job seekers] have been on OW for more than five years…They [the ministry] want to move those people and try and find something for them. But [they] need some sort of training to get back to the workforce. How do you then move forward with that, and how are we being expected to push things forward and move that needle?" (Shahjahan et al., 2022). Accordingly, ES is not equipped with the right resources to be able to assist OW clients. While the streamlined referral system proves promising, it does not prove effective if these clients are not able to demonstrate progress or gain full time employment.

PART III: RECOMMENDATIONS

Recommendation #1: Life Stabilization Supports

The first recommendation is that OW caseworkers conduct greater screening to assess job readiness with their clients before referring them to ES. Additionally, if a client is not responding to contact attempts, showing up to their appointments or cooperating with ES staff, they should easily be referred back to OW caseworkers to work on job readiness. This would prevent a lot of wasted time and energy on clients who are not job-ready. Clients who require language, childcare, addictions, mental health, or housing support should be referred to the appropriate services before being referred to ES. Consequently, Ontario Works needs to put a greater focus on providing life stabilization supports. While it may take longer for individuals to get off OW, clients will be more likely in the long run to be self-sufficient. Once a client has secured life stabilization supports and demonstrates that they are interested in finding employment, then they can be referred to ES.

Recommendation #2: Programs to increase Job Readiness

Secondly, it is recommended that a new program is implemented specifically for OW clients with a focus on job readiness. Many programs have been cancelled under the new model with the belief that one-on-one support is more effective. However, these programs are effective at helping individuals develop a 9-5 routine and connecting with others in their

community. Additionally, many frontline staff have reported burnout, in part due to the increased number of clients on their caseloads (Shahjahan et al., 2022). As one participant in the First Work report noted, "There was a flood of these clients…such that caseloads went up enormously; workload associated with each went up enormously as these clients need extensive supports; at the same time as training and data systems were being unrolled and… put an untenable burden on staff." (Shahjahan et al., 2022). Accordingly, many individuals do not receive the level of support they need due to the high caseloads. Programs can be one way to mitigate high caseloads, allowing individuals to receive more training in a small classroom setting.

Components of this program can include: the development of soft skills (e.g., communication, leadership, project management), resume building, interview preparation and career assessments. Moreover, the program could include information on current labour market trends. This is one aspect of ES that the auditor general reported was lacking and has not been addressed in the new model (Office of the Auditor General, 2016). Additionally, a digital literacy component could also be included in this program to help clients adapt to the changing labour force. One study conducted by Deloitte found that a full 76 per cent of workers believe they are not prepared to meet the digital skills requirements of the future (Hjartarson & Serrano, 2023). What is great about this program is that it teaches clients how to build the skills to become more self-reliant. While it may be a greater investment in the short-term, these clients are less likely to return to ES or OW in the future.

Previous programs such as the Youth Job Connection (YJC) proved extremely effective and included full-time minimum wage pay based on attendance (Sharp, 2022). The YJC program proved highly successful at providing employment opportunities to multi-barriered youth as it exceeded its client intake target of 12% and provided over 5,600 job placements (Ministry of Advanced Education and Skills Development, 2016). Similarly, this could be used to incentivize OW clients to participate and regularly attend class. After completing the program, clients can proceed with a job placement where employer incentives are provided to hire clients for a 12-week job trial. The addition of the program before a job placement proves extremely beneficial as it assists OW clients with transitioning from welfare to employment.

Recommendation #3: Better Jobs Ontario Eligibility

The third recommendation is to make it easier for Ontario Works recipients to become eligible to participate in Better Jobs Ontario. Better Jobs Ontario (formally known as Second Careers) provides financial support to low-income individuals who are interested in receiving training in high-demand occupations. To increase the employability of individuals on social assistance, further education and training is often required. This program seems extremely promising as it can address the increasing mismatch in the labour market. The most recent data found that over 34.2 per cent of job vacancies in Ontario were "long-term vacancies," remaining open for more than 90 days (Financial Accountability Office of Ontario, 2024). At the same time, in March 2024, 21.3 per cent of all unemployed people were unemployed for 27 weeks or longer (Ministry of Labour, Immigration, Training and Skills Development, 2024). This represents an almost 4 percentage point increase from March 2023 where only 17.5 per cent of individuals were long-term unemployed (Ministry of Labour, Immigration, Training and Skills Development, 2023). Labour force market trends are changing and the need for individuals to be able to adapt or pivot job

fields mid-career is becoming increasingly more prevalent.

Programs such as Better Jobs Ontario are vital to supporting individuals on social assistance in achieving their long-term goals. However, Better Jobs Ontario proves extremely hard for individuals to qualify for. Eligibility criteria include proof of a layoff from a previous position, proof of unemployment for six months or longer, and proof that an individual cannot get a job with their current credentials. The latest numbers have found that only about 7,700 individuals have started training through Better Jobs Ontario between January 2021 and January 2023 (Ministry of Finance, 2023), yet there are approximately 394,000 beneficiaries of Ontario work (Eschner, 2023). Accordingly, it is recommended that the eligibility criteria be modified to make it easier for individuals (especially on OW) to qualify for this program.

It is also recommended that clients who are in training should be considered a funded outcome. Under the new model, 20 per cent of funding to ESPs is given through performance-based funding (Shahjahan et al., 2022). ESPs receive a certain amount of funding for clients who are working 20 hours or more a the 1,3,6, and 12-month checkpoints (Shahjahan et al., 2022). Clients who are in training through Better Jobs Ontario are not considered a "funded outcome." Therefore, ECs are encouraged to push OW clients into getting a job rather than pursue further education or training. Accordingly, it is recommended that individuals in training through programs such as Better Jobs Ontario also be considered a funded outcome. The amount provided may not be as great as achieving full-time employment but can compensate ESPs for the administrative costs associated with program application (Shahjahan, 2022).

Recommendation #4: Increased Communication Between ES and OW

The last recommendation is to update the case management software system to allow for easier communication between OW caseworkers and ECs. ES staff use case management programs to register and keep track of clients. Communication between ES and OW is essential to the success of OW clients, yet it is not done nearly as often as it should be due to the administrative burden. Under this system, clients are required to sign a disclosure of records form which allows caseworkers and ECs to communicate. However, caseloads are extremely high and current communication requires direct emails or phone calls between one another which is extremely time-consuming (Shahjahan et al., 2022). Therefore, it is recommended that OW caseworkers and ECs are given the option to share specific case notes through Caseflo. This way, ECs and OW caseworkers can constantly update one another regarding a client's progress without the added administrative burden.

PART IV: WHY HASN'T MORE BEEN DONE?

There are many reasons why more has not been done to reform employment services. The first reason is that there has not been enough time passed for many of these changes to be implemented. Before the transformation was announced in 2019, there was very little regulation on how employment services were delivered. The (2016) Auditor General report recognized 121 third-party service providers. These organizations received funding from Employment Ontario, however each of these service providers had a different service delivery model. The new model has eliminated the discrepancies between the different ESPs, aiming to eventually streamline all employment services across Ontario under one service delivery model. Phase 1 of the transformation began in January 2021 by introducing Service System Managers in three prototype regions across Ontario: Region of Peel, Hamilton-Niagara, and Muskoka-

Kawarthas (McSeween & Metlin, 2020). In 2023 Phase 2 began, and many other regions including York, Ottawa, Durham, Halton, Kitchener-Waterloo, and Barrie started their transition (Shahjahan et al., 2022). In the coming years, more changes to employment services are expected as more data becomes available and policy analysts can analyze lessons learned from the prototype regions.

Another reason more has not been done is because there has been a lack of consultation with frontline staff. To develop effective and efficient policies, policy analysts need to consult with frontline staff and include their perspectives in the policy design. Frontline staff are the ones who interact with clients on a day-to-day basis. Accordingly, they understand what clients need to succeed and can recognize issues that many policy analysts may not have thought of. Greater consultation with both employment service workers and Ontario Works caseworkers is required to develop informed and effective policy. Greater dialogue should be encouraged between ESPs, Ministry of Labour, Immigration, Training and Skills Development, Employment Ontario, and SSMS, regardless of one's status or position.

Lastly, some of the recommendations proposed may be costly and the Government of Ontario may be unwilling to increase spending considering the $9.8 billion deficit anticipated in the 2024 budget (Battaglia, 2024). Improving employment services may not be considered a huge priority for the Government of Ontario, given that Ontario's unemployment rate is not particularly alarming and currently sits at 6.7% (Ministry of Labour, Immigration, Training and Skills Development, 2024). However, there has been an increasing number of individuals on Social Assistance (Office of the Auditor General of Ontario, 2018). Therefore, it is recommended that the Government of Ontario perceive employment services as an investment to reduce the number of individuals on Ontario Works. This may be a costly investment upfront but will demonstrate long-term returns as recipients become more self-sufficient and can leave the program for good. Additionally, it should be noted that while recommendations #2 and #3 may be considered more costly, other recommendations are less expensive. For example, recommendation #4 would not cost much, yet it can make a huge difference on the administrative side for both caseworkers and ECs.

CONCLUSION

In conclusion, employment services have recently undergone a massive transformation which includes the integration of social assistance. The new service delivery model holds a lot of potential for assisting individuals on Ontario Works to find and maintain employment. However, there are many shortcomings to the new model as it fails to account for issues of job readiness. As a result, many employment services continue to be ineffective at helping marginalized clients achieve full-time employment outcomes. The recommendations provided in this report aim to support front-line staff and encourage OW clients to become self-sufficient. Throughout this implementation process, policymakers must continue to consult front-line staff in ES and OW offices to ensure their perspectives and experiences are included. By reforming employment services, the Government of Ontario can continue to improve the overall well-being and economic prosperity of its residents.

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Navigating the Maze: Intergovernmental Dynamics in Canada's Housing Crisis

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ABSTRACT

Canada's housing crisis, marked by soaring prices and a scarcity of affordable options, necessitates coordinated intergovernmental efforts. Despite Prime Minister Justin Trudeau's stance on federal jurisdiction, experts argue for federal involvement due to its fiscal tools and institutions like the CMHC. The NHS exemplifies this commitment, aiming to construct homes and reduce homelessness. Provinces and territories primarily responsible for housing face challenges due to varying fiscal capacities and regional needs. Municipalities implement zoning regulations and collaborate on initiatives like the *BC Housing Supply Act*. Non-profits and Indigenous governments also play roles, with funding commitments acknowledging the need for improvement. While achievements like the NHS and bilateral agreements show progress, challenges remain, including jurisdictional uncertainties. Lessons highlight the importance of collaboration, regional considerations, and alignment of priorities. Addressing immigration's impact on housing underscores the need for improved coordination. In conclusion, effective collaboration across government levels and stakeholders is crucial to navigating this complex issue and finding sustainable solutions to Canada's housing crisis.

THE PROBLEM

The issue of housing affordability and availability in Canada has become a pressing problem, with skyrocketing housing prices and a shortage of affordable housing. This case study explores the intergovernmental aspects of addressing this challenge and will draw on examples from British Columbia's (B.C.) actions with all levels of government.

Prime Minister Justin Trudeau, following his election with a platform centred around "making housing more affordable," recently stated that ensuring affordable housing is not within the federal government's purview. During a press conference in August 2023 in Hamilton, Ontario, where he unveiled several federally funded housing projects, Trudeau declared, "Housing is not primarily the federal government's responsibility, and it is not something we have direct control over." (Hopper 2023). However, experts argue that the federal government has an increasingly significant role in shaping housing policy in Canada. The rising cost of housing, coupled with a housing shortage, has prompted political debates, and calls for action (Raycraft, 2023).

Canada has experienced a housing crisis characterized by rapidly increasing housing prices, a severe shortage of affordable housing, and escalating homelessness rates. Housing has become increasingly inaccessible for many people in Canada. The Canadian Real Estate Association (2023a) reported that the average home price in Canada was over $650,000 in September 2023, up 2.5 per cent from September 2022. However, in February 2022, the average reached $816,075, and the highest average so far in 2023 was $728,534 in May (2023b).

ROLES & RESPONSIBILITIES

Federal Government

The federal government has been increasingly involved in shaping housing policy, challenging the traditional boundaries of its jurisdiction. The federal government controls various levers that significantly influence the housing market, such as fiscal policy, bank regulation, and the Canada Mortgage and Housing Corporation (CMHC), a federal crown

corporation dedicated to making housing affordable (Raycraft, 2023).

The National Housing Strategy (NHS) is evidence of the federal government's growing interest in housing. It provides a comprehensive plan aimed at, over the next ten years, constructing up to 160,000 new homes and reducing chronic homelessness by half (GoC, 2023). The strategy also includes a range of housing policies, such as a fund to boost the housing supply, support for first-time homebuyers, and a tax on foreign buyers (GoC, 2023). These initiatives signal the federal government's desire to address the housing crisis proactively, even in areas where it does not have explicit constitutional responsibility.

The federal government's fiscal capacity is a powerful tool. Its control over budgetary resources grants it the ability to make significant financial investments in housing programs and initiatives. This financial leverage raises a question: Should the federal government recognize its link to Canada's vertical fiscal imbalance in tackling the housing crisis? This imbalance results from the federal government's greater ability to raise taxes alongside provincial governments' more significant spending responsibilities (Feehan, 2020).

Provincial and Territorial Governments

Housing is generally seen as a provincial responsibility based on the interpretation of the Constitution (Raycraft, 2023). Provincial and territorial governments are responsible for overseeing housing policies, affordable housing initiatives, and land use planning. They have the authority to manage the allocation of resources for housing programs and to address local housing needs.

However, provinces and territories have different fiscal capacities, with natural resource-rich regions like Alberta enjoying higher funding capabilities when market prices are high (Krawchenko, 2019). This creates a challenge as the severity of the housing crisis and the capacity of the local governments to respond are regional-specific. In B.C., the provincial government actively invests in supporting municipalities and non-profit housing providers to ensure the growth and sustainability of affordable housing.

Territorial governments, such as Yukon, often depend on federal support to address housing issues. Recently, the Yukon government entered a housing partnership with Ontario. This memorandum aims to share housing expertise and connect Ontario investors with Yukon developers to boost long-term housing options (Lang, 2023).

Municipal Governments

Municipal governments are ringing all the alarms as they are on the front lines of the housing crisis. They see the homelessness rate increasing and see how the region looks less attractive to newcomers due to house shortages and rent prices. Municipal governments typically have the authority to determine zoning and permitting regulations, although these may be superseded by directives from the provincial level (Hopper, 2023).

The B.C. Government recently announced a new Housing Supply Act that has established housing targets for ten municipalities, aiming to accelerate the construction of thousands of homes in high-need areas, including below-market rentals. The Province is providing resources and monitoring progress closely; however, municipalities are leading the work. In this case, the Mayers of Delta and Vancouver publicly applauded the initiative and reinstated the vital link between provincial and municipal governments in tackling the housing crisis (Ministry of Housing, 2023b).

On October 24, 2023, the B.C. government passed the B.C. Short-Term Rental Accommodations Act to combat the housing shortage (BC OHCS, 2023). This act empowers local governments, enforces a principal residence

requirement, and establishes provincial oversight. These measures are vital in the face of rapidly expanding short-term rentals and the shortage of long-term housing. The phased implementation of these rules is a significant step toward achieving balance in the rental market.

Non-Profit Housing Providers

Non-profit housing providers are active in delivering social and affordable housing. They are vital players in addressing the housing challenge, especially for vulnerable populations. In British Columbia, they receive significant financial support from the provincial government to enhance their operations and expand their services. Non-profit housing providers are responsible for not only delivering housing but also filling gaps in services to vulnerable individuals (Ministry of Housing, 2023a). Non-profit housing providers also receive direct funding from the federal government. In the 2015 federal budget, CMHC was given the mandate to grant $150 million over four years, starting in 2016-17, to allow cooperative housing and non-profit community housing providers to prepay long-term, non-renewable mortgages (GoC, 2020).

Indigenous Govt's & Leadership Groups

Indigenous governments and leadership groups have a role in housing policy, especially concerning housing on Indigenous lands. However, their roles vary based on self-governance agreements and the specific circumstances of each Indigenous community. This long and complex process moves too slowly and exasperates the severity of the housing issues with Indigenous peoples.

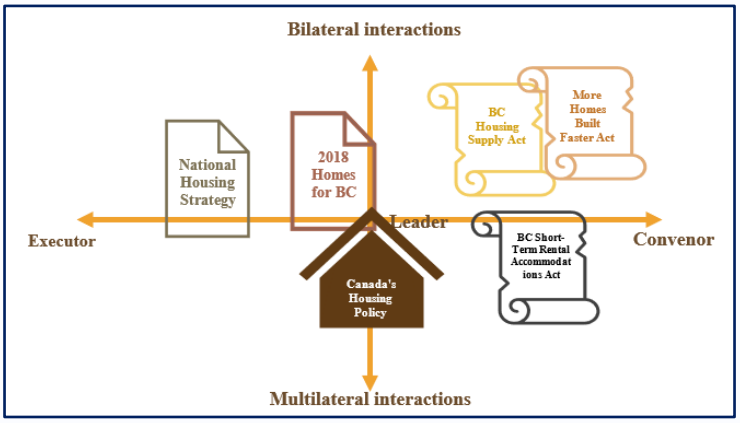
According to Statistics Canada, the Indigenous population experienced a growth rate of 9.4% between 2016 and 2021, nearly double the rate of growth seen in the non-Indigenous population during the same period. In the 2022 federal budget, there was a commitment of $4.3 billion over seven years aimed at enhancing Indigenous housing conditions. However, the Assembly of First Nations contests that this amount needs to be improved, as they had initially requested $44 billion to address issues such as overcrowding, and the urgent repair needs of homes on reserves (Malone, 2022).

Intergovernmental Forums

Snoddon and VanNijnatten (2016) propose a way to represent to represent the different dimensions of intergovernmental relations. This model offers a valuable framework for situating Canada's housing policy, allowing us to analyze the federal government's role and engagement approach. In Figure 1, the horizontal axis assesses the federal government's "directive" authority over provinces, while the vertical axis indicates the nature of federal engagement, ranging from multilateral to bilateral.

Figure 1

Models of Intergovernmental Coordination (Snoddon & VanNijnatten 2016, 14)



In this model, Canada's housing policy coordination can be seen as primarily in the "leader" role along the horizontal axis, meaning that the federal government sets goals and encourages provinces to take action while respecting provincial jurisdiction. It is situated more toward the "multilateral" end of the vertical axis, as it involves coordinating with multiple provinces and territories to address housing

challenges on a national scale. While multilateral engagement is prominent, the federal government may negotiate specific agreements or collaborate more closely with individual provinces on certain housing issues. For example, In June 2018, the Governments of Canada and B.C. signed a 10-Year Housing Agreement (BC Housing 2018). This bilateral housing agreement earmarks over $990 million to safeguard, revitalize, and enhance social and community housing. It aligns with the objectives outlined in 'Homes for BC' (released per the 2018 BC Budget), the provincial government's comprehensive 30-point plan for addressing housing repair, construction, and affordability in B.C. (BC Housing, 2018).

The federal government's role in housing policy is taking on the role of an executor to some extent. It has imposed actions and regulations through initiatives such as the National Housing Strategy, implementing policies, and providing funding for specific housing programs. It does not directly control all aspects of housing policy; however, it sets some expectations and influences decisions at different government levels. On the other hand, the BC *Supply Act* sets a "convenor" tone as it encourages actions from the municipal governments and bilateral agreements with the province. Ontario's *More Homes Built Faster Act* is another example, but it leans even more towards the role of convenor. Municipal Housing Pledges are a vital aspect of Ontario's initiative, outlining strategies for municipalities to meet housing targets and address the housing supply crisis (MMAH, 2022).

O'Reilly et al. (2017) emphasize the difference between informal and formal relations when dealing with intergovernmental issues. This dynamic can be seen in the context of Canada's housing policy, as shown in Table 1.

Canada's Housing Policy Formal and Informal Relations

Formal Relations	Informal Relations
Formal relations are structured by the rules and roles established within institutional settings. In Canada, these relations are defined by jurisdictional considerations of population and economic power inequalities. They set the stage for resource allocation and responsibilities. Formal meetings and negotiations are common avenues for addressing housing policy matters. **Examples include:** Intergovernmental Meetings Federal-Provincial/territorial Agreements Municipal-Provincial Agreements Legislative and Regulatory Frameworks Land Claims and Agreements	Informal relations play a pivotal role, even if they are less visible. These informal relationships are built on personal connections, trust-building, and behind-the-scenes negotiations. They involve personal discussions and the development of trust. Such interactions are essential for consensus-building and problem-solving, albeit without formal documentation. **Examples include:** Networking and Personal Relationships Advisory Committees NGO Advocacy Public Consultation and Media Engagement Elders' Consultations (Traditional Knowledge Sharing)

Understanding and harnessing the potential of informal connections is a challenge. Government officials acknowledge their importance but may need a clearer understanding of how to leverage them effectively to enhance intergovernmental policy capacity. Canada's housing policy relies on a combination of formal and informal relations. While formal relations provide structure and guidance, informal relations are pivotal for trust and cooperation. Both facets should be better understood and used to address the housing challenge effectively.

OUTCOMES & ACHIEVEMENTS

Several outcomes and challenges have emerged in addressing the pressing issue of housing affordability and availability in Canada. On the achievement front, the NHS initiated by the federal government demonstrates its commitment to addressing the housing crisis. The NHS has already led to the construction of new homes and the implementation of policies like a tax on foreign buyers, showing the federal government's proactive role, even in areas where it lacks explicit jurisdiction (Raycraft, 2023).

Cooperation between federal and provincial governments is also exemplified by initiatives like the BC *Housing Supply Act* and Ontario's *More Homes Built Faster Act*. These tangible acts have led to progress in accelerating affordable housing construction in high-need

areas. These initiatives encourage municipal governments to act and represent a crucial step forward.

The commitment of $4.3 billion in the 2022 federal budget to enhance Indigenous housing conditions is a significant achievement as it acknowledges the urgent need to improve housing on reserves and address overcrowding issues (Malone 2022). However, it is essential to understand that the Indigenous housing crisis in Canada has deep historical and systemic roots, primarily stemming from colonization. To address this crisis effectively, governments must also acknowledge the challenges tied to Indigenous urban migration and provide comprehensive solutions. Moreover, it is crucial to recognize Indigenous communities' profound spiritual and cultural connection with the land and prioritize housing solutions that honour these values (Gabriel, 2023).

Several other stumbling blocks persist in the efforts to address the housing crisis. Jurisdictional uncertainty due to the lack of apparent constitutional authority for housing policy has led to ongoing debates and differing interpretations, hindering effective decision-making and resource allocation. While the federal government's intent to address the housing issue is commendable, critics argue that the execution has faced challenges. Some experts contend that a more practical approach might have involved bolstering federal funding while leaving the responsibility for housing programs in the hands of the provinces (Raycraft 2023). This way, the federal role could have been gradually expanded over time, making it more manageable and efficient.

In a broader institutional and structural context, the outcomes and achievements reflect the evolving nature of intergovernmental relations. The successes and challenges are influenced by factors such as the constitutional framework, fiscal realities, the complex process of Indigenous relations, regional differences, and the interplay of formal and informal relations. To make substantial progress, all levels of government need to work together and find common ground in addressing this critical issue.

LESSONS & REFLECTIONS

This case study on Canada's housing policy sheds light on the complex nature of intergovernmental relations in a federal system. Several key lessons and reflections can be drawn from this analysis:

- The distribution of roles and responsibilities in federal systems is not always clear-cut, and intergovernmental relations play a crucial role in addressing complex policy challenges.
- The federal government's fiscal capacity can give it an influential role in policy areas traditionally considered provincial, as seen in housing policy.
- Effective intergovernmental forums and collaboration are essential for tackling multifaceted issues like housing affordability and availability (Wallner, 2017).
- Success in intergovernmental relations depends on factors such as financial resources, effective coordination, and alignment of priorities between governments.
- The interplay of politics and policy can lead to federal governments taking a more proactive role in areas traditionally reserved for provinces.
- Regional variations in housing challenges and solutions make it challenging to implement uniform housing policies at the national level. What works in one province or territory may not be suitable for another, requiring tailored solutions.

Additionally, the impact of high levels of immigration on housing supply has become a contentious issue. Critics argue that the federal government needs to engage in more effective collaboration with provinces to address the housing challenges that arise due to increased immigration. This points to the necessity of improved coordination and policy alignment between different levels of government. Federal Housing, Infrastructure and Communities Minister Sean Fraser went as far as suggesting a cap on international students to ease the pressure on the housing crisis (Tunney, 2023).

The case of Canada's Housing Policy exemplifies the intricate dynamics of intergovernmental relations, where roles and responsibilities may be ambiguous. However, cooperation and collaboration between federal, other levels of government, Indigenous peoples and groups and NGOs are essential to addressing pressing policy challenges at all levels.

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For Whom the Sea Calls: Lobster Fisheries Dispute in Nova Scotia

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ABSTRACT

This paper examines the conflict in Nova Scotia between the Mi'kmaq lobster fishing industry and non-Indigenous fisheries, with special focus on the events of Autumn 2020 where the settler fishers first mobilised an 'acadian' identity. It deconstructs how the framing of conflict, and perceived inherent rights, led to the dissolution of civility through analysing the progression of violence, vandalism, and failure of the Canadian Government over decades to mitigate these resource disputes. With the potential to be united by their shared source of livelihood, a passionate connection to the land they call home, and a shared history of displacement under colonial rule, it is perversely counterintuitive to see neighbouring peoples so violently divisive. From this severe cleavage of the population on the southern shores of Nova Scotia, sharp lines are drawn between differing interpretations of treaty law, inherent rights, ancestral identities, and understandings of land and ecosystem services. The fundamental difference in understanding between the settler state and Indigenous peoples lies within conceptions of identity, land and resource ownership and the significance of official treaty rights. Framing matters; had the Department of Fisheries and Oceans (DFO) or any federal government since the 1999 Marshal decision been able to define a 'moderate livelihood' in collaboration with Indigenous leadership, the relationship with the non-Indigenous fishers may have been different. Historical context matters though history is not destiny; it enables a greater understanding of how shared generational experience of settler colonialism influences positionality and inspires aggression and resentment during complex resource conflicts.

INTRODUCTION

It is mid-October 2020 and the smell of blood mixes with smoke on the salty maritime air in St Mary's Bay off the coast of Nova Scotia. What drives lobster fishers to the point of violence against neighbours? The answer is complex, cloaked in decades of context and ultimately bound by the way we frame our relationships to one another, to the state, and to the land.

This paper will examine the conflict in Nova Scotia between the Mi'kmaq lobster fishing industry and non-Indigenous fisheries, with special focus on the events of Autumn 2020. It intends to deconstruct how the framing of conflict, and perceived inherent rights, lead to the dissolution of civility through analysing the progression of violence, vandalism, and failure of the Canadian Government over decades to mitigate disputes. Special attention will be given to lenses of historical and legal context, relevant to these disputes and the 1999 'Marshal' decision (R v. Marshall, 1999) in recognition of how this can shape conflict, dialogue, policy - and ultimately, history. This paper will begin with a background on the ongoing altercations in Nova Scotia and their colonial significance. It will then examine the conflict, culminating in the events of October 2020, through the perspectives firstly of Mi'kmaq and then Acadian fishers, each trapped within their respective frames. The paper will conclude with an analysis of how various frames, identity politics, and group positionality can lead to vastly different interpretations of law, human rights, and morality.

Historical Context: Decades of Conflict and defining a 'Moderate Livelihood'

The Mi'kmaq, situated on the East coast of Turtle Island, were some of the first Indigenous Peoples to build trade relationships

with European settlers in the 17th century (Fox, 2006). Colonial exploitation of fishing and hunting industries subsequently decimated natural resource stock and dispossessed Mi'kmaq of their land in the 18th century, resulting in territorial wars that produced the Peace and Friendship treaties (Fox, 2006). The Peace and Friendship treaties, protected under Section 35 of the Canadian Constitution, are distinct from many other treaties in that they did not include the surrendering of traditional land rights and resources (Fox 2006; Government of Canada [GC] 2015). Indeed, throughout the 20th century, Mi'kmaq activists have contested federal bans on Atlantic salmon fishing, emphasising their right to fish for subsistence as a part of the fight for recognition of historic treaties (Bruce, 2001). In the 1999 'Marshal' decision (R v. Marshall, 1999) the Supreme Court of Canada (SCC) ruled to uphold the 1760 Treaty of Swegatchy, which ensured the rights of Indigenous peoples to freely hunt and fish for a 'moderate livelihood' in all seasons (Prosper et al., 2011). This was a recognition of early, pre-confederation treaties and the binding obligations they imposed on the Canadian state.

In the Supreme Court's second decision, the court 'elaborated' on the extension of Indigenous treaty rights by outlining their nature as subject to regulation when there are concerns of biological conservation or other related public interests (King, 2011; Prosper et al., 2011). These decisions triggered years of conflict between Indigenous and non-Indigenous fishers and the Canadian Department of Fisheries and Oceans (DFO), marked by acts of intimidation, violence, and vandalism (Krause & Ramos, 2015). Years of aggressive confrontation, known as the Burnt Church crisis - between 1999 and 2001 - involved standoffs between the RCMP and Indigenous people and resulted in a number of arrests that ultimately cost the federal government $15 million dollars (Stiegman, 2003). Eventually, by 2002 most Mi'kmaq Bands had agreed to short-term sustainable fishing management strategies with the state who had clarified they retained the right to limit Indigenous fishing when conservation was concerned (Fox, 2006). Nearly 20 years later, in September of 2020, arrests were made during confrontations beset once again by violence and vandalism. Conflict arose between Mi'kmaq and non-Indigenous fishers after the Sipekne'katik First Nation launched a self regulated lobster fishery outside the seasonal allowances of the commercial fishing season (Canadian Press, 2020a).

In early November 2020 the Pictou Landing First Nation was the latest Mi'kmaw band to start fishing for lobster outside the federally regulated season (Ryan, 2020a). Citing the 1999 Marshal decision, they produced a Self-Regulated Fisheries Management Plan and handed out fishing licences and trap tags. The management plan, which includes an extensive list of conservation and safety measures, does not indicate how many total licences the band will issue; however, it does feature a limit of 30 traps per fisher (Ryan, 2020a). It is important to cast this number against that granted to commercial fishing boats in the eastern section of the Northumberland Strait specifically, which are allocated 250 to 280 traps each (Ryan, 2020a).

Environmental concerns to justify this conflict were initially superimposed to obscure deeper issues of racism and resentment ruminating just below the surface across Atlantic Canada. Concern from non-Indigenous fishers over the conservation of lobster populations has since been denounced by many biologists and conservationists who have drawn attention to the small scale of Mi'kmaq fishing fleets (King, 2011). Initially, there were five Sipekne'katik fishing vessels dropping 50 traps each; this grew to around ten Mi'kmaq vessels with a total of 500 traps (Bailey, 2020; Minke-Martin, 2020). The commercial fishing sector, with 100 fishing

vessels in the bay each allowed 350 traps, accounts for around 35,000 traps in total (Bailey, 2020). The Sipekne'katik First Nation has issued 7 lobster licences to date while the DFO recognizes "a total of 2,979 commercial lobster licences in lobster fishing areas (LFAs) 27-38 as of Dec. 31, 2018" (Smith, 2020).

The Supreme Court of Nova Scotia issued an ex parte interim injunction on October 21st, 2020, to prevent further interference or intimidation from the commercial fishers (Renic, 2020; Turtle Island News, 2020). This court ordered protection prohibited the following: blockading; restricting; threatening; intimidation; interference with persons, gear, or contracts; trespassing, and breaching the peace (Renic, 2020; Turtle Island News, 2020). As of October 2022, conflict persists on a nation-to-nation basis as the federal government continues to insist it must lead the regulation of all commercial fisheries while Indigenous leaders argue, in the name of self-governance, that they have the right to manage their own fishing activities. Presently there are thirteen Mi'kmaw communities in Nova Scotia, the largest of which being Eskasoni with 4,314 people and the Sipekne'katik with 2,554 (Office of L'Nu Affairs, 2011).

Culmination of Violence: A Brief Overview of the Events of October 2020

On October 13th, 2020, a New Edinburgh lobster pound containing Indigenous-caught lobster was ransacked, and rocks were thrown through windows. This was the beginning of the most violent resource-based conflicts in recent history across the communities of Digby, New Edinburgh, Middle West Pubnico, Saulnierville, and Yarmouth in Nova Scotia (The Canadian Press, 2020a). A vehicle was set ablaze in Middle West Pubnico while Mi'kmaq fishers were trapped inside the nearby pound. These explosions of violence were witnessed by over 200 people. A few nights later, on October 17th, a third pound holding catches from Mi'kmaq fishers was burned to the ground by an angry mob, thousands of pounds of lobster were destroyed, and Sipekne'katik First Nation Chief Michael Sack was assaulted, and one unnamed person was hospitalised (Bailey, 2020). In the daylight, Sipekne'katik fisher's boats were boxed in, held captive in the harbour by over one hundred vessels, then followed out onto the water and shot at with flare guns. Trap lines were cut, citizens and sympathisers stalked, vehicles vandalised, equipment sabotaged, and lives threatened (The Canadian Press, 2020a). All this resonates with an eerie echo of the violence during the Burnt Church crisis decades earlier.

The Other Side of the Coin: 'Non-Indigenous' Fishers or Acadians?

The perceived antagonists in these conflicts have previously been referred to as "non-Indigenous" fishers. However, this designation lacks historical nuance as those most upset by the self-regulatory Indigenous fisheries have recently identified themselves as Acadian stakeholders in the issue.

The Acadians are an ethnic group descended from the 17th century French settlers (Landry & Anselme-Chiasson, 2020). Wrought with their own history of war and 'otherness,' Acadians were forcefully displaced in 1755 when the colony fell under British rule (Gaudet, 2022). Those that expressed hesitancy or outrightly refused to pledge an unconditional oath of allegiance to the British faced deportation along the eastern seaboard until 1762 (Ross & Deveau, 1995). Many who refused did so out of fear of being legally committed to fight against the French in war time, but also to not signal British support to their allies in subjugation; their Mi'kmaq neighbours (Landry & Anselme-Chiasson, 2020).

Historians estimate that more than half of the Acadian population was removed from present day Nova Scotia with the remaining population seeking exile in the woods or dying

from disease, starvation, or drowning at sea (Landry & Anselme-Chiasson, 2020). From 1763 onward, the land previously coinhabited by the Acadians and Indigenous peoples was settled by British citizens and the French and Mi'kmaq names were quickly replaced. The few remaining Acadians were eventually pushed to settle along St Mary's Bay in places with decidedly less fertile land and, consequently, men who were once proud farmers became fishers (Ross & Deveau, 1995). Unable to vote or own land until 1789, the Acadian population in Nova Scotia was exploited for labour and reduced to poverty (Landry & Anselme-Chiasson, 2020). Despite this, the 4,000 Acadians in Nova Scotia in the early 1800s quickly grew to over 140,000 across the Maritimes by the turn of the century (Gaudet, 2022). The development of middle-class industry and urbanisation led to the emergence of an intellectual elite, affluent clergy members, and a generation of liberal professionals alongside thriving tradesmen and agriculturalists. Enfranchised centuries earlier than Indigenous Peoples in Canada, Nova Scotia Acadians were given the right to vote in 1789 (Landry & Anselme-Chiasson, 2020). Allowed to urbanise, industrialise, speak their native language, and practise their religion: Catholicism, and establish their own educational institutions - Acadian identity grew quickly and distinctly from others in emerging Canada (Gaudet, 2022). Out of fear of mass assimilation into English-speaking culture in the 20th century, Acadians were encouraged through both the 1930s Antigonish Movement and the Co-Operative Movement to support local fishermen in becoming self-sufficient while regaining control of their livelihoods (Landry & Anselme-Chiasson, 2020). According to 2011 Canadian Census data the Acadian population in Nova Scotia alone boasts 34,585 people with a thriving cultural, economic, and educational atmosphere.

How Identity Shapes Relationality to Others, the Environment, and The State

One aspect that makes these more recent resource conflicts unique from the Burnt Church crisis decades prior is the sudden mobilisation by the non-Indigenous fisheries of an "Acadian" minority cultural identity in intentional opposition to that of the Mi'kmaq fishers. Traditional Acadian flags boasting red, white, and blue were flown proudly across the docks opposite the Santéé Mawióómi Mi'kmaq flags (St.Thomas University, 2022). With the potential to be united by their shared source of livelihood, a passionate connection to the land they call home, and a shared history of displacement under colonial rule, it is perversely counterintuitive to see neighbouring peoples so violently divisive. From this severe cleavage of the population on the southern shores of Nova Scotia, sharp lines are drawn between differing interpretations of treaty law, inherent rights, ancestral identities, and understandings of land and ecosystem services. The fundamental difference in understanding between the settler state and Indigenous peoples lies within conceptions of identity, land and resource ownership and the significance of official treaty rights.

Historically, the federal Canadian government has failed to recognize treaty rights. This legacy is evidently pervasive in the Nova Scotian non-Indigenous/Acadian community, as the actions of the fishers highlight both an ignorance of treaty law, settler entitlement, and racism. This failure to 'make consistent' the Indigenous and colonial interpretations of treaty agreements is predicated on fundamental differences between understandings of nationhood and sovereignty (Nichols, 2018). The Canadian state is of a Westphalian model, characterised by absolute sovereignty, and thus its theoretical existence is incompatible with ideals of independent Indigenous nations functioning

as sovereign entities on Crown land (Nichols, 2018). Treaty rights, therefore, cannot be interpreted nor defined through the normative lens of the Westphalian nation-state. Similarly, the disaccording definition - or lack thereof - of a 'moderate livelihood' is an issue inherited from the intentionally vague language of the courts. The Supreme Court of Canada intended for the federal government to define the limitations through negotiation with the Mi'kmaq - which, even now, they have yet to do (Davis & Jentoft, 2001). Thus, the DFO, an agent of the federal government, has developed an interpretation without the input of Indigenous peoples (Bruce, 2001). Sipekne'katik Chief Mike Sack argued that decades of waiting for the federal government to uphold their treaty rights and negotiate would lead to the Mi'kmaq defining it themselves - as many others argue they have an inherent right to do (Slaughter, 2020).

On the anniversary of the Marshall Decision in September 2020 when the Sipekne'katik, asserting their treaty rights, began issuing commercial fishing licences, they awarded the first to Randy Sack, the son of Mr. Marshall (Mercer, 2020). This obviously symbolic act of determined self-governance holds deep significance to the Mi'kmaw people; this is clearly about more than just lobster catches. Likewise, the cries of injustice from the non-Indigenous fishers are about so much more than concerns for the conservation of stock populations. By adopting and mobilising Acadian nationalism, the non-Indigenous protestors intended to, and succeeded in inciting further politicisation through a group positionality that sparked memories of historical injustice and existentialist fears for cultural preservation.

The perceived increased agency of Indigenous fishers became a threat to ontological security with respect to the Acadian hegemony over the lobster fishing industry; the hard fought-for source of livelihood that pulled their ancestors out of poverty and colonial oppression centuries earlier. The glaring irony here is the violent opposition these Acadians have fostered for neighbouring peoples attempting to grow beyond the confines of the very same colonial oppressor. Both groups, having faced centuries of displacement, violence and forced assimilation, are deeply characterised by an inherent instinct for cultural preservation. Their histories eventually diverged as Acadians were granted human rights nearly two centuries earlier than Indigenous peoples in Canada, allowing them comparatively accelerated political and economic agency and the ability to preserve a unique national identity (Gaudet, 2022). In this sense, the Acadians who fought fiercely against the Sipekne'katik livelihood fishery were paradoxically fighting a war for cultural preservation they had already won hundreds of years earlier while simultaneously impeding the people they once considered allies from realising the same actualization (Ross & Deveau, 1995).

In keeping with this self-contradiction, the non-Indigenous fisheries initially expressed concerns of ecological conservation and marine system health with regards to the Mi'kmaq fishers' activity in the off season. "This is about conserving the fishery for everyone - both indigenous and non-indigenous fisher[s]. Unless there is one set of rules driven by conservation of the fishery, Canada's fishery will be destroyed" said the Coldwater Lobster Association President Bernie Berry in a 2020 press release (Mercer, 2020). This argument has roots in colonial perspectives like 'terra nullius' which regards Indigenous lands as uninhabited spaces free for conquest and development, to justify colonial acquisitions (Wysote & Morton, 2019).

A perspective of "no man's land" entirely fails to recognize the historical and current presence of Indigenous nations on the land, their inherent rights to fish, and their Traditional Ecological Knowledge-based ecosystem

management. Moreover, throughout the events of October 2020 the Acadian assailants expressed a flagrant disregard for conserving the delicate ecosystem in St. Mary's Bay as they killed hundreds of pounds of harvested Sipekne'katik lobster. The fishers regularly presenting the greatest threat to the ecosystem are the non-Indigenous fishing crews who accounted for nearly all the 2,252 violations from 2015 to 2019 laid by the DFO (Mercer, 2020).

Scholars and reporters have pointed out that the 2018 scandal which found Clearwater, a domestic industry giant, guilty of endangering lobster stock, ignoring federal warnings, and the illegal storage of traps on the ocean floor, saw little public rage from the Acadians nor other non-Indigenous fishers (Cousins & Forani, 2020). Jenica Atwin, a Fredericton MP, and the Green Party's fisheries critic for Atlantic Canada stated that this is evidence that what is occurring in St. Mary's Bay is rooted in anti-Indigenous racism (Mercer, 2020). Both the accusations from the non-Indigenous fishers and the potential "externally imposed regulation" of the DFO are failed interpretations of Indigenous rights to fish and are inherently incongruent with the "culturally aligned value system management" of the Mi'kmaq self-regulated management plans (Mcmillan & Prosper, 2016; Prosper et al., 2011). These management plans are shaped by the traditional concept of "Netukulimk," which represents the spiritual relationship with non-human nature that ensures mutual social and physical prosperity for both the community and local ecology (Canadian Press, 2020b; Prosper et al., 2011). In March of 2021 talks between Kwilmu'kw Maw-klusuaqn Negotiation Office and the DFO on defining a 'moderate livelihood' fell through when then Fisheries Minister Bernadette Jordan outlined conditions that would require Indigenous fishers forgo their treaty rights and be subject to the limitations of both DFO official licensing and required to fish exclusively within the commercial season. Chief Mike Sack explained that there is no room out on the water for small livelihood fisheries in season as they would be competing with the significantly larger commercial boats (Moore, 2021a). Beyond that, he reiterated that the Mi'kmaw conservation plan possesses far greater ecosystem management capacity than that of either the federal government or commercial industry (Moore, 2021a).

Restorative Justice: Reconciliation of Divisions Amongst Neighbours and Nations

On January 12th, 2021, Nova Scotia RCMP announced the arrest of 23 people in connection with the events on the night of October 13th, their court date set for March 29 (April, 2021). With the charges of breaking-and-entering as a backdrop, the threats and intimidation continued into 2021 when Sipekne'katik lobster harvester Jolene Marr was sent a video message featuring racial slurs and six gunshots (Moore, 2021b). During the court hearings in March, it was explained that 22 of the defendants had agreed to participate in a restorative justice program which would create opportunities for them to collaborate with the victims of their crimes to develop a resolution. Ultimately, this program allowed the defendants to avoid criminal records. Many Indigenous communities' members have since refused participation in this program, including Chief Mike Sack who was assaulted, and the Mi'kmaq fishers who were trapped inside the lobster pounds - making their discontentment with the aggressors avoiding court time for what amounts to "racial hate crimes," clear (Moore, 2021a).

Ideally, true restorative justice would include an acknowledgement of the responsibility of the role the federal government and DFO played in these decades of conflict. It would include recognizing inherent rights to steward and utilise natural resources on unceded land as outlined in the Peace and Friendship Treaties as

well as in the Marshal Decisions. It would also include defining a 'moderate livelihood' through consultation with Indigenous Peoples and adopting UNDRIP Article 21 that explicitly says that states are to take "effective and special measures to ensure continuing improvement of [Indigenous] economic and social conditions" (UN General Assembly, 2008). Similarly, adequate compliance with the Truth and Reconciliation Commission Calls to Action would include defining 'moderate livelihood' in accordance with UNDRIP Article 20 which outlines the rights of Indigenous peoples to maintain and develop their own economic institutions, enjoy their own means of subsistence, and engage freely in traditional economic activities (Lightfoot, 2015; UN General Assembly, 2008). A "living tree" doctrine of constitutional interpretation requires rights to be understood in a progressive and adaptive manner to fit modern needs (Borrows, 1997; Nagy, 2020). Applied to the lobster fishing dispute, the "living tree" doctrine would see 'moderate livelihood' defined in accordance to and in cooperation with Indigenous perspectives, to encourage economic development and subsistence fishing relative to modern standards. This is where the cognitive dissonance of the Acadian protestors' positionality could be addressed - as their displays of fervent nationalism during the 2020 lobster disputes was evidently in direct correlation to their own livelihoods and self-perceptions as they framed themselves as regional settler minorities. True restorative justice would have those charged with crimes in relation to the violent outbreaks in the Autumn of 2020 and subsequent continued acts of racist aggression see the inside of a court room. Those who were not charged with crimes but are members of the non-Indigenous fishery industry and Acadian community should be asked to participate in acts of reconciliation which may be able to demonstrate how historical context, framing and settler colonialism have informed their positionality against their neighbours. This may be able to begin to dissolve the walls of hate, fuelled by a perceived lack of equal treatment, to reveal two communities with strikingly similar interests in protecting and ensuring their livelihoods.

CONCLUSION

Ultimately, when considered as a case study, the events of the 2020 lobster disputes make a strong argument for understanding context in a historical, social, and economic sense when addressing positionality in resource disputes. "Framing is crucial: if the DFO or any federal government since the 1999 Marshal decision had worked with Indigenous leadership to define a 'moderate livelihood,' the relationship with non-Indigenous fishers could have evolved differently." This case is a poignant argument for the inclusion of Traditional Ecological Knowledge in scientific understanding of aquatic conservation. One can argue that a bottom-up interpretation - from the Indigenous communities themselves - of 'moderate livelihood' would be better suited for ensuring economic, political, and environmental success of Indigenous self-regulated lobster fisheries. This illuminates a glaring gap in western conservation and environmental policy which systematically ignores the centuries of lived experience and relationality that Indigenous Peoples have cultivated with the land. There exists a wealth of other ways of knowing; of viewing the natural world as more than just economic resources but rather as an interdependent abiotic and biotic community, and committing to respecting these relationships (Theriault, 2020).

Indigenous voices must be at the centre of these decision-making processes and should undoubtedly be allowed to define their own economic and environmental conditions. Framing of historical context is integral in ensuring the inherent rights of Indigenous Peoples are upheld through policy and through

community conduct. Historical context matters though history is not destiny; it enables a greater understanding of how shared generational experience of colonialism influences positionality and inspires aggression and resentment during complex resource conflicts. Utilising an understanding of frames and historical context in this complex issue opens the violent events blotted across the fall of 2020 to a century's long explanation. Only through this lens is one able to begin understanding what drives one neighbour to violence against another.

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Breaking The Homeless-Hospitalization Feedback Loop

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ABSTRACT

Lived experiences of homelessness and mental illness are inextricably linked, and Canada is currently experiencing a crisis of both. Tracing back to historical policy decisions, there exists a negative feedback loop of homelessness-hospitalization poses a human rights disaster. Services are difficult to navigate, waitlists for housing are long, shelters are at capacity, and hospitals are overburdened. We pay for this deeply fragmented health and social system in both monetary and human cost. An understanding of the historical, social, and structural context is essential to address this crisis long-term. Collaboration that transcends constitutional boundaries is required by all orders of government to successfully disrupt the negative feedback loop. Without an innovative, cohesive, and most importantly, person-centred approach, we remain on a deeply problematic and unsustainable trajectory.

INTRODUCTION

Canada is dealing with an overwhelming crisis of homelessness and mental illness – challenges that are inextricably linked and complex. There is a "revolving door" or "feedback loop" of patients experiencing homelessness and mental illness needing to use acute care services to address health needs. Without access to primary care and affordable housing, there is a recirculation between emergency departments, mental health units, shelters, jail, and more. This is deeply troublesome, as it represents patients' unmet needs due to discontinuity of care and inadequate community support.

Although there is an important connection between homelessness and mental illness, there is no direct causal relationship between the two. Experiencing homelessness can compromise mental health; mental illness or substance use disorders can precede the onset of homelessness, and continued homelessness can worsen it. On any given night in Canada, there are approximately 25,00 to 35,000 people experiencing homelessness, and this figure is thought to be underestimated (Government of Canada, 2021). Among the homeless population, estimates of mental illness range from 30% to 40%, with some research suggesting it could be higher than 50% (Community Support and Research Unit, 2011).

The importance of mental health and addictions has come to the forefront of many policy conversations, reflecting a growing understanding and compassion. Yet, there remains a documented upwards trend of homelessness and mental illness in Canada, with the COVID-18 pandemic exacerbating a pre-existing crisis. From 2018 to 2022, there was a 20% increase in homelessness (Segel-Brown, 2024). Of this group, there was an 88% increase of people living in unsheltered locations (Government of Canada, 2024) (or absolute homelessness). Homelessness became significantly more visible with more encampments appearing and more "rough sleepers." The pandemic also saw an interesting downward trend of people using transitional housing or shelters and choosing to sleep rough instead (Government of Canada, 2023).

In any given year, there are approximately 150,000-300,000 people experiencing homelessness (Forchuk et al., 2023). It is estimated that 30% to 40% of this group experiences mental illness, with some research suggesting it could be higher than 50% (Canadian Mental Health Association, n.d.). The relationship between mental health and

addictions and homelessness suggests that any action to address one needs to also address the other.

Definitions

Homelessness or "homeless" are broad terms that can encompass a range of housing situations existing along a continuum of types of shelters. One extreme of the spectrum is absolute homelessness; a narrow concept that includes living on the street, in encampments, or in emergency M. On the other end, hidden homelessness may encompass individuals without a home of their own who live in a car, with family, friends, or a long-term institution. These broad terms will be used for this report for clarity purposes.

Mental Illness is a broad term characterized by alterations in thinking, mood or behaviour associated with significant distress and impaired functioning. Some examples include mood disorders such as major depression and bipolar disorder, schizophrenia, anxiety disorders, personality disorders and substance dependency.

Rough Sleeping refers to sleeping in public spaces, regardless of housing circumstances. It differs from being homeless as not all homeless persons may have slept rough, as they may have alternative accommodation (i.e. shelter), while seeking long-term stable housing.

The Role of Historical Policy Decisions on the Homelessness-Hospitalization Loop

The current state of homelessness and mental illness can be traced back to policy decisions from over 60 years ago, which marked the beginning of a paradigm shift in how we understand and treat mental illness. But the mass closure of psychiatric hospitals, combined with a decrease in federal funding of housing and social programs was the catalyst for people struggling with mental illness and addictions and/or low-income to become increasingly marginalized and vulnerable to homelessness.

Deinstitutionalization connotes a process that begun through the late 1960s and 1970s in which many psychiatric hospitals and inpatient beds were closed, with patients being discharged into the community with a goal of being supported in the community (Sealy & Whitehead, 2006). The state of psychiatric care in Canada during the "asylum-era" of the late 1800s into the 1900s was designed to control, silence, and disempower people with mental illness to stop "deviance" and segregate those who did not fit into the industrial labour market (Spagnolo, 2014). This time marked a shift in how mental illness was treated with the emergence of improved anti-psychotic medication and calls to move away from a neglective asylum system to a community-based system (Chaimowitz, 2018). Governments favoured reducing the large expenditures associated with psychiatric institutions. The burden of cost for housing and community supports was shifted onto other governments and agencies. Over time, stricter jurisdictional boundaries were drawn between orders of government and provinces/territories gained greater autonomy over healthcare, which meant taking on more of the costs (Bartram & Lurie, 2017) (Sealy & Whitehead, 2006) proportionate to what was cut from psychiatric institutions. The pressure of healthcare costs meant it was more favourable to spend on general hospitals and physicians. This left the deinstitutionalization transition incomplete, with health and social infrastructure underprepared to meet the needs of people affected (Spagnolo, 2014).

In the 1990s, Canada shifted towards neo-liberal economic policy. In an effort to balance the federal budget, "small government" was favoured, meaning significantly less government in the welfare state (Buccieri et al., 2023; Gaetz, 2020). Perhaps the biggest

contributor to mass homelessness today was the change in housing policy that saw cuts to federal spending on building social housing, deciding the private sector was better equipped to take it on. Home ownership was emphasized and there was a decline in rental units being built. The introduction of the Canada Health and Social Transfer led to a reduction of spending on health, education, and social welfare (Gaetz, 2020; Fowler, 2019). shifting these constitutional responsibilities on provinces/territories, as well as the burden of cost. People that were already vulnerable and low-income were impacted the most, with more people losing their homes, marking a rise of visible homelessness in Canada, referred to as a national disaster at the time (Fowler, 2019; Spagnolo, 2014). There was an influx of charitable organizations, such as soup kitchens and emergency services, such as shelters, to respond to the ensuing moral panic, but very little done to support people in exiting homelessness. While we continue to emphasize an emergency response that treats the symptoms of homelessness instead of the root causes, the problem will continue to worsen until a preventative approach is equally explored.

The Current Homelessness-Psychiatric Hospitalization Feedback Loop

Approximately half of people experiencing homelessness in Canada also report concurring mental illness. When homelessness and mental illness intersect, there is an exacerbated burden of health problems, such as chronic illness, poor nutrition, sexually transmitted infections, and substance use disorders. Approximately 20% to 50% of people experiencing homelessness also report substance use. In general, people experiencing homelessness face more barriers in accessing primary healthcare. The acute nature of their situation translates into a reliance on emergency services as a primary source of care. Additionally, homelessness at discharge increases the likelihood of being readmitted within a 30-day period. These circumstances feed into the negative feedback loop of homelessness and hospitalization.

People experiencing homelessness and mental illness experience higher rates of hospitalization and emergency care – they are 8.48 times more likely to have ED encounters compared to a general population (Hwang et al., 2011). They experience higher rates of hospitalization, long lengths of stay and are much more likely to be re-hospitalized (Hwang et al., 2011). There is also a relationship between the duration of homelessness and health challenges, where 87% of people homeless for 6 months or more reported a health challenge (Government, 2023).

There are numerous reasons for these rates of healthcare usage and readmission among people experiencing homelessness. Some barriers include: a shortage of primary care physicians, challenges getting referred to specialists, difficulties with transportation to get to appointments, fees for missed appointment, and costs of prescription drugs. Additionally, experiencing homelessness makes basic needs hard to acquire, resulting in food insecurity and a lack of access to hygiene resources, all of which can compromise health.

Notably, mental health services are used at a rate that is fourfold higher than housed groups (Laliberté et al., 2020). People with mental illness have the highest rates of readmission among all hospitalized patients. Being homeless at discharge is most prominent reason for being readmitted within a 30-day period, increasing the likelihood of returning to ED by two-fold (Laliberté et al., 2020). The 30-day period following discharge is one of high needs and requires additional support, but despite this there is a gap in our understanding on the quality and continuity of care that is received during this time. Discontinuity of care contributes to high

readmission rates, which is an indicator of poor healthcare system performance. Fragmented health and social services in the community deepens the reliance on ED and clinics; and the feedback loop continues. Therefore, without addressing the various social and structural determinants of health, it is unlikely the loop can be disrupted.

Overrepresented Groups in Homelessness

Structural determinants of health play a significant role in the lived experience of homelessness and mental illness, such as (Skosireva, 2014) low socioeconomic status, education level, gender identity or racial identity. Marginalized groups are thus overrepresented in homelessness due to systemic barriers designed to uphold these inequities.

- 20% of people experiencing homelessness in Canada identify as a member of a racialized group (Government of Canada, 2023). Black identity was the most reported racial group, making up 8% of the homeless population, although only 4% of Canada's population is Black.
- Indigenous people are also overly represented in the homeless population, with one third identifying as Indigenous, including First Nations, Inuit, and Metis.
- 13% of people experiencing homelessness identify as 2SLGBTQI+, with the highest rate of response being among youth.
- Additionally, veterans accounted for approximately 5% of the homeless population but make up only 2% of the population in Canada.
- Unemployment rates exceed 80% for people experiencing homelessness, which can create a loss of purpose and feelings of dissatisfaction. Employment and steady income are important contributors to physical and mental health. A stable income provides material benefits, but more importantly promotes social inclusion and can reduce reliance on emergency shelters (Poremski et al., 2015). Additionally, disability benefits are identified as the most relied upon source of income but continue to be difficult to access and insufficient to keep up with a high cost of living.

Marginalized groups are overly represented in the homeless population, and face the most barriers in accessing essential services. Although experiences of homelessness, mental illness, substance use, low income and disability are mutually inclusive, they are not mutually dependent and should not immediately be conflated with each other.

Uncoordinated Health and Social Services

Canada's healthcare and social service landscape is siloed by design due in part to jurisdictional divisions of power laid out in the constitution. There are various sectors and orders of government involved in taking care of people experiencing homelessness, but a lack of communication with one another. Its fragmented nature places the onus on the individual to navigate its confusing landscape of services, rather than services and providers wrapping care around the patient.

Services accessed by people experiencing homelessness are run by different orders of government. For example, housing is the responsibility of municipalities, but a social assistance check they rely on is issued by the province. Therefore, the limitations on what each service can do based on what jurisdiction oversees them prevents cross-sectoral collaboration, even if goals overlap. We've established the interconnected relationship between health and housing, yet these are

managed by different ministries with different funding models. Healthcare services receive typically received funding based on patient volume and service delivery metrics, while housing programs may rely on different funding streams that prioritize construction or maintenance of facilities over integrated service delivery (Bucchero, 2016). Also, although provinces/territories are constitutionally responsible for services like healthcare, people are interacting with services at the local level. The federal and provincial/territorial governments that can provide funding and set legislation are far removed from the problem, leaving municipalities to manage the consequences.

A lack of coordinated funding models and the far-removal of policymakers from the frontlines hinders collaboration across providers. It means agencies are focused on their specific mandates and performance indicators to guarantee the funding they need to operate. But the funding requirements can be counterintuitive, for example funding models that decrease when the volume of users decreases disincentives recovery.

Providers involved in the service of the homeless population can include hospitals, family doctors, housing agencies, shelters, case workers, social workers, safe supply workers, and more. They may share an overarching goal of reducing the rate of homelessness and hospitalization, however each may define the problem differently and apply their own distinct lens on how to solve it. Privacy laws and a lack of a shared electronic records system further hinders collaboration due to limitations on what information can be shared.

A Lack of Affordable, Appropriate Housing

> **Core housing need** is defined as spending a proportion greater than 30% of income on housing that meets acceptable standards of adequacy, suitability and affordability.

Perhaps the main reason people experience homelessness is a short supply of affordable rental units. Canada's housing market has a severe supply and demand problem, with 1.7 million Canadians in core housing need (Canadian Mortgage and Housing Company, 2024). Federal investment in social housing has declined, with the federal budget for housing programs dropping from 1.5% to 0.7%. Coinciding trends of deregulation and a focus on home ownership with less construction of rental units has left many low and moderate socioeconomic families struggling to afford housing (Gaetz, 2013). There is a supply and demand problem, with our rising population (particularly in urban areas) creating a rising demand, making the shortage of housing an issue of supply. The federal government has taken positive steps with the introduction of the National Housing Strategy; however, critics argue that these measures are insufficient to address homelessness given the scale of the problem and the historical underinvestment in social housing (Biss & Raza, 2021).

More and more people cannot afford appropriate housing, opting instead to use shelters, staying with friends or family, or are choosing to sleep rough. Many shelters operate at or near full capacity, particularly in metropolitan areas where homelessness is more pronounced. Canada is estimated to have over 100,000 people that are experiencing both homelessness and mental illness, but only 25, 367 housing units dedicated to people living with mental illness across the country (Community Support and Research Unit, 2011). The vacancy rate for subsidized in major cities where homelessness is more pronounced is 0-1%, making waitlists long and frustrating.

Additionally, more people are choosing to sleep outdoors in encampments, even if alternatives such as shelters are available at the time. It is estimated that the proportion of people

experiencing homelessness who are sleeping rough is between 14-23% (Lihanceanu, 2020). The increase in encampments results from intersecting policy issues, including homelessness, the pandemic, economic downturn, and a lack of social and supportive housing. Encampments in public spaces, such as parks, are a source of scrutiny due to the health and safety concerns they may pose. Municipalities have reported fires, biohazardous conditions, and instances of violence and property damage, making public spaces inaccessible to many. Individuals may opt to reside in encampments for several reasons, such as:

- Restrictive rules and eligibility criteria at shelters;
- Shelters being over capacity; shelters typically operate at 95-100% capacity;
- Concerns of safety and security in shelters, specifically regarding theft and gender-based violence;
- Shelter type or bed availability not matching family makeup;
- Lack of privacy in shelters;
- Desire for community and support;
- Desire for autonomy and a right to self-determination; and
- Deteriorating housing affordable, a spike in inflation and less job vacancies (Statistics Canada, 2023) make it harder and harder to acquire and maintain housing. Chronic underfunding of social housing underscores Canada's homeless crisis, and current investments must be substantial to reverse the damage done by deprioritizing it.

The Criminalization of Homelessness

Homelessness and mental illness cannot be meaningfully addressed without also understanding their criminalization. Lifetime prevalence rates of arrest among homeless individuals with serious mental illness range from 62.9% to 90.0% (Narendorf et al., 2023), highlighting the extent to which this population interacts with the criminal justice system. Police have increasingly become the first responders to mental health crises, acting as gatekeepers to both the criminal justice and mental health systems (Hipple, 2017). Although there are circumstances that require police presence for the safety of a person experience homelessness, or the public, the criminal justice system is being used to address issues that are fundamentally health related.

Anomalous behaviours employed by people experiencing homelessness, such as panhandling or sleeping in public spaces are a direct result of circumstances and done for survival. Legislation and by-laws are used to ban these actions in the name of public safety without identifying "homeless" in its language (Barret et al., 2011). Punishing visible homelessness and mental illness is used to demonstrate action from government to satisfy the moral panic associated with it. It penalizes someone for their lack of housing rather than provide them with support. The criminal justice system is not equipped to rehabilitate people with complex medical needs and homelessness, leading to recidivism – perpetuating the cycle of homelessness.

A Lack of Reliable Data

There is a consensus that the existing data on homelessness is insufficient, unreliable and does not capture the extent of the problem. Therein lies the fundamental challenge when trying to address the cycle of homelessness and mental illness. Without reliable and comprehensive data, policymakers are unable to identify the main issues and demographics; there is a lack of evidence to support policy action.

The broad nature of homelessness makes it inherently difficult to capture; as the population itself is transient and forms such as hidden homelessness are nearly impossible to enumerate.

Although there are different sources of data, such as point-in-time counts or population administrative data, they each come with inherent problems. Leveraging population data such as census surveys is a common practice, but this type of data is not designed for research and prone to misclassification. Longitudinal studies may be rigorous; however, they are resource intensive and prone to poor recruitment and retention (Hipple, 2017). Cross-sectional studies and point-in-time counts are less resource-intensive, using convenience sampling (Barrett, 2011). such as collecting data at specific shelters; but it is prone to nonrepresentative sampling by virtue of its convenience (Schneider et al., 2016).

The Cost of Mental Illness and Homelessness

Canada's reactive response to the cycle of homelessness and mental illness has both human and monetary costs. Although short-term solutions give the illusion of decisive action, it has accrued significant expenditures across healthcare, housing and the criminal justice system, placing pressure on public finances (Latimer, 2017).

The bulk of major spending on homelessness in Canada due to the frequent access of health services, policing and incarceration (Weins et al., 2021). For example, the average cost per stay for people experiencing homelessness is $16,800, compared to a national average of $7,800, and the average length of stay is almost double. This is attributable to the complexity of illness and psychosocial needs. Canada will be spending around $7 billion annually on homelessness (Gaetz, 2016) maintaining the status quo.

The human cost of homelessness is difficult to enumerate. It is manifested as social isolation, chronic stress and trauma, increased victimization, increased mortality rates and experiences of stigma and discrimination. Policy failures created an inability to provide people with adequate housing, employment, and access to healthcare, ultimately violating human rights.

How Nuanced Policy Can Break the Feedback Loop

An innovative and collaborative approach across orders of government is needed to disrupt the homelessness-hospitalization feedback loop. Although there are countless policy areas that intersect with homelessness and mental illness, governments should prioritize improving data sources, increasing the affordable housing supply and improving the coordination of services.

Improving the Data

Data collection on a marginalized and transient people presents with various challenges, necessitating innovation and built trust to yield reliable results.

By-name data, or by-name lists, is a practice adopted by "Built for Zero" communities, a national effort to reduce a city's homelessness to a functional zero (Built for Zero Canada, 2024). By-name data is collected at various access points, such as shelters or clinics, with the person's consent. It involves a comprehensive assessment is completed so every person experiencing homelessness has a file that includes their name, history, and health and housing needs, identifying their priority level for housing. This information is shared across service providers to ideally facilitate those in greatest need into housing first, effectively removing them from the by-names list.

Although this form of data collection is an improvement from point-in-time counts, it presents its own challenges. Firstly, providers across various agencies with different skill sets are completing these assessments, potentially yielding different results, thus undermining its reliability. Moreover, some questions may be invasive, such as asking about substance use or sex work. Getting sensitive information may be difficult without an established relationship

between the client and provider. Establishing trust is a crucial part of working with a population subject to stigma and it is built by restoring someone's faith in institutions that have failed them in the past. Therefore, frontline workers who build these relationships require the necessary support and resources to complete the additional task of intensive data collection. Additionally, training on delivering the assessment should be standardized so results are reliable despite providers of different vocations administering it.

More than Coordinated Access

Coordinated Access has been adopted as part of the national strategy, which is an important first step. However, to reap the benefits it must be implemented effectively, which means empowering municipalities to cater it to their needs.

The pillars of coordinated access are access, assessment, prioritization, and matching and referral (Nichols & Martin, 2024). It aims to streamline connecting people experiencing homelessness with the resources they need to address complex needs. Service providers across sectors, such as healthcare, housing, criminal justice, employment centres, etc. are meant to meet regularly to discuss specific cases and develop care plans as a multi-disciplinary team. Coordinated access enables care to be wrapped around the person, rather than the person navigating a fragmented system.

Due to the siloed nature of Canadian governance, local services are overseen by different ministries with different mandates. Therefore, it may be challenging to coordinate a team of independent providers define the problem in the same way. By tying funding to the achievement of shared outcomes, providers can prioritize and align their strategies more effectively. Additionally, extra compensation should be awarded to providers who participate in coordinated access, as sit entails additional duties outside of regular ones.

More than Housing-First

A housing first approach involves moving people experiencing homelessness rapidly from streets or emergency shelters into stable housing with support. It is guided by a principle that no other rehabilitation can occur until someone is first housed. It is a proven method that is shown to reduce homelessness more effectively compared to treatment-first programs – a reduction of 88% (Canadian Mental Health Association, n.d.).

A true housing-first approach requires buy-in from all orders of government and should start with recognizing housing as a human right. The federal government has made this commitment in the national housing strategy, but provinces/territories should make the recognition as well to establish a firm commitment. Through their constitutional powers, they can create legislation and frameworks that recognize housing as a human right can guide policy decisions and resource allocation (Dotsikas et al., 2023).

Beyond just immediate access to housing, it should also meet the unique needs of individuals. Strict eligibility rules for housing that can isolate someone from their community acts as a deterrent to accepting that housing (Pruitt et al., 2018). Conditionality to receiving the housing and keeping the housing makes it more likely for someone to end up homelessness once again, emphasizing the importance of having choice in housing.

Although housing first has had success, rates of homeless remain high. This is perhaps because it falls under the category of a crisis response, which has been the main approach thus far. Housing first is more effective when not viewed just as an intervention, but a philosophy that needs to be supported by increasing the

housing supply and a renewed focus on poverty reduction (Gaetz, 2020).

CONCLUSION

The intertwined crises of homelessness and mental illness in Canada demand urgent and coordinated action. The "revolving door" of individuals cycling through hospitals, shelters, and the streets reflects a deep systemic failure to meet their needs, creating a human rights crisis. Without access to primary care, affordable housing, and robust community support, the cycle perpetuates, exacerbating both homelessness and mental illness. While the data points to a growing crisis, it also underscores the importance of addressing these issues in tandem. Not only do we need to adopt improved data collection, coordinated-access, and housing-first approaches, we need to implement them well and concurrently focus on the prevention of homelessness.

For any meaningful change, collaboration across all levels of government is essential, transcending constitutional boundaries to create a unified response. Without an innovative, cohesive, and person-centred approach, Canada will continue to an unsustainable path, paying the price not only in dollars but in the lives and well-being of its most vulnerable citizens.

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Reimaging Justice: Extending Youth Justice up to Age 25 – Policy Brief

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ABSTRACT

This policy brief advocates for a critical reassessment of the age parameters within the Canadian Youth Criminal Justice Act (YCJA), specifically focused on the overlooked demographic of young adults aged 18 to 25. At present, the YCJA governs individuals 12 to 17, and once youth turn 18 years old, they are expected to enter the adult system. The current structure neglects the unique needs of young adults, who are disproportionately overrepresented in the justice system. Drawing on research on brain development and the detrimental effects of adult carceral institutions, the brief emphasizes the urgent need necessity of raising the upper limit age of the YCJA to include individuals up to the age of 25. By extending the YCJA's coverage, the brief argues for a more comprehensive and developmentally appropriate approach to addressing youth offending, aiming to promote rehabilitation, reduce recidivism, and foster social justice in Canada.

EXECUTIVE SUMMARY

This policy brief will address the imperative need to reconsider the age parameters within the *Youth Criminal Justice Act* (YCJA) in Canada. At present, the YCJA governs individuals aged 12 to 17, leaving a critical gap in addressing the complex needs of young adults aged 18 to 25, a group that is overrepresented in the criminal justice system. In 2023, young adults, ages 20-24, represented 6.5 per cent of the total Canadian population (Statistics Canada, 2024a), yet account for 11.5 per cent of all admissions to custody (Statistics Canada, 2024b).

By examining youth brain development and the consequences of detaining young people in adult carceral institutions, this policy brief highlights the urgent necessity of raising the age of criminal responsibility under the Canadian youth justice system. It underscores how raising the upper age limit serves as a crucial protective measure in mitigating future harm and promoting rehabilitation.

Furthermore, this brief examines the ambiguous definition of "youth" within legal contexts and its repercussions on the criminalization of young people in Canada. This policy brief highlights the importance of developing evidence-based criminal justice policies that align with developmental science to effectively respond to youth criminality. By extending the YCJA to include individuals up to age 25, the youth justice system can appropriately address the unique needs of young adults and subsequently provide a more equitable and effective approach to justice.

FOCUS LIMITATIONS

This policy brief acknowledges the limitations of its proposal and recognizes the multifaceted and complex pathways, as well as the aggravating factors that contribute to a youth's involvement with the justice system. Adverse childhood experiences (ACE's) greatly impact the likelihood of a youth's trajectory into homelessness, substance misuse, violence and crime, and the impacts of structural factors such as the social determinants of health and socio-economic inequalities.

Although the focus of this policy brief was not on addressing the contributing factors for youth's involvement with the justice system, the authors would like to extend gratitude to The Homeless Hub, Raising the Roof, YMCA of greater Toronto, and Eva's Initiatives for Homeless Youth for their tremendous work supporting youth in these critical areas of need.

BACKGROUND

History of Youth Justice in Canada

Introduction

Youth justice systems worldwide exhibit a wide range of age thresholds, often denoted by the terms Minimum Age of Criminal Responsibility (MACR) and the Age of Criminal Majority (ACM). The MACR signifies the youngest age at which an individual can be charged with a crime, while the ACM marks the age at which they will be charged under the adult system (Abrams et al., 2018). In 1989, the United Nations Convention on the Rights of the Child (UNCRC) announced that the MACR should be at least 12 years old, to protect the rights of children (Barnert et al., 2022). Building upon the science of child development, the UNCRC later recommended 14 years old as the minimum age to hold individuals criminally responsible (UN Committee on the Rights of the Child, 2019).

To fully understand the dynamics of youth within the criminal justice system, it is imperative to delve into the history of Canadian juvenile justice reform. As societal norms continue to evolve, it becomes increasingly apparent that the transition to adulthood is not a fixed moment but rather a spectrum. This evolution reflects a deeper understanding that individuals do not transition abruptly into adulthood on their 18th birthday. In this shifting landscape, the notion that '25 is the new 18' not only aligns with scientific research, but reflects the complexities of modern adulthood. Therefore, aligning justice legislation with this understanding is essential to ensure equitable treatment and support for young adults within the criminal justice system.

Youth Justice Prior to 1908

Prior to the early 20th century, there was virtually no distinction between adults and youth who committed a crime. Anyone over the age of seven could be convicted and given a custodial sentence to be served in an adult correctional facility, if the prosecutors could prove the child's intelligence and culpability (The International Cooperation Group, 2004). Eventually, the Age of Enlightenment brought about new world thinkers that acknowledged the special needs of children and proposed the idea of collective care (Doob & Sprott, 2004). They argued that children living in undesirable conditions often found themselves in conflict with the law and that the state should be responsible to help and protect them. This brought about the first piece of legislation that specifically pertained to youth and was based on a framework of child welfare and social assistance (Perry, 2016).

Juvenile Delinquents Act, 1908-1984

With the persuasion of reformers and activists, the federal government enacted the *Juvenile Delinquents Act (JDA)* in 1908. As the public view began to change, troubled youth were seen more as victims rather than perpetrators. Any "criminal offence" committed by a young person was attributed to the underlying problem of delinquency, rooted in the exposure of negative environmental influences (school issues, poverty, poor parenting) (White, Eisler, & Haines, 2018). When youth were adjudicated, they were either sent to a "training school" or to the local Children's Aid Society (Doob & Sprott, 2004). The same way a sensible parent would discipline their child is the same way a judge would be required to act when adjudicating a youth. However, there were multiple problems with the JDA, such as the blurred lines between neglected and delinquent youth. Under this legislation, judges were able to impose indeterminate sentences to contain youth in a training school until they were rehabilitated or

deemed cured of the condition of delinquency (Bala & Anand, 2012).

Young Offenders Act, 1984-2003

The *Young Offenders Act* (YOA) was introduced in 1984 and moved away from the welfare model to a more justice-oriented ideology (White, Eisler, & Haines, 2018). This legislation focused on the rights of youth under the law and allowed for a separate court system with specialized procedures and sentencing options tailored to their age and circumstances. While the YOA introduced definite disposition lengths as well as maximum sentence lengths, the biggest change was the increase of the MACR from 7 to 12 years old, in addition to creating a new ACM to be 17 years of age. This meant anyone below the age of 12 were regarded as being incapable of engaging in a criminal offence, and the youth justice system would solely handle the matters of young people ages 12-17. However, the YOA lacked clear legislative direction, with ambiguous language that allowed for judges to impose custodial sentences for nearly every crime including ones that were minor and non-violent. This led to Canada having the highest rate of youth incarceration in the Western world (Endres, 2004).

The Youth Criminal Justice Act, 2003-present

On April 1, 2003, the *Youth Criminal Justice Act* (YCJA) came into effect in Canada, replacing the previous *Young Offenders Act* (YOA). As a result of the over-incarceration of youth, the YCJA aimed to reduce the imposition of custodial sentences on youth, while maintaining a balance of accountability and rehabilitation (Perry 2016). This was done by amending sentencing principles and introducing the use of extrajudicial measures, as alternatives to custody.

Extrajudicial measures would prevent less-serious offences committed by a youth from ever reaching the courts, while still ensuring accountability and rehabilitation, and if the case did reach court, all efforts would be made to impose a non-custodial sentence with incarceration being used as a last resort (Perry 2016). This new legislation emphasized the unique needs of young people and acknowledged that they are still developing emotionally, socially, and cognitively. It also emphasized addressing the root cause of the offence by administering age-appropriate sanctions that would continue to hold the youth accountable while simultaneously providing them with support and guidance needed to avoid further criminal behaviour.

DEFINING "YOUTH"

Canada's definition of the term "youth" is fluid, varied and inconsistent. The meaning of the term "youth" changes depending on jurisdiction and context. As it currently stands, a "youth" defined under the Canadian criminal justice system is anyone who is 12 years of age or older, but less than 18 years old at the time of the alleged crime (St. Leonard's Society of Canada, 2022) and this is typically used interchangeably with the term "young person". The term "young adult" refers to individuals ages 18-24, and the term "adult" refers to anyone older than 24 years old (St. Leonard's Society of Canada, 2022).

This can get confusing when we look at other areas of law. Under child welfare legislation, youth are defined as anyone 18 years of age up to their 21st birthday and can access extended care services during this time (*Child, Youth and Family Services Act,* 2017). On a municipal level, youth policies typically pertain to people between the ages of 14-29 years old (St. Leonard's Society of Canada, 2022).

The following table highlights how vastly fluid, varied, and inconsistent Canada's definition of a 'youth'. These seemingly nuanced differences can have significant impacts when developing and refining policies. When examining policies and practices within the criminal justice system, it is important to consider the developmental and social factors that impact a young person during

their transition to adulthood. Considerations, both legal and social, must be made to "look beyond chronological age and consider maturity" (St. Leonard's Canada 2022, 15).

Table 1

Different Definitions of Youth in Canada

Table 1: Examples of Different Definitions of Youth Within Canada

Authority/Document	Jurisdiction	Definition
United Nations Convention on the Rights of the Child[6]	International	Child = under age 18
United Nations Department of Economic and Social Affairs Youth[7]	International	Child = below age 18 Youth = ages 15-24 Young adult = ages 20-24
United Nations Habitat (Youth Fund)[8]	International	Youth = ages 15-32
United Nations Secretariat/ UNESCO[9]	International	Youth = ages 15-25
World Health Organization[10]	International	Adolescent = ages 10-19
Government of Canada: Canadian Heritage (State of youth report)[11]	Federal	Youth = ages 15-29
Government of Canada: Canada's Youth Policy[12]	Federal	Young person = below age 18
Government of Canada: Employment and Social Development Canada (Youth Employment and Skills Strategy Program)	Federal	Youth = ages 15-30
Parliament of Canada: Criminal Code of Canada[13]	Federal	Adults = ages 18+
Parliament of Canada: Youth Criminal Justice Act[14]	Federal	Young person = ages 12-17
National Crime Prevention Centre: A Statistical Snapshot of Youth at Risk and Youth Offending in Canada [15]	Federal	Youth = ages 10-19
Statistics Canada: A portrait of Canadian youth[16]	Federal	Youth = ages 15-34
Province of Ontario: Ministry of Labour, Training	Provincial (ON)	Young worker = under age 25

KEY ISSUES

Introduction

In the 19th century, children were given prison sentences and served time in federal prisons alongside adults. Kids as young as 8 years old were serving as long as three years behind bars. In 1849, the Brown Commission report was released and revealed the numerous problems with extreme punishments on children (Doob & Sprott, 2004). It quickly became evident that this form of addressing criminal activity was counterproductive as youth were manipulated and tainted by older inmates, learning new lawbreaking methods, and returning to society as a more skilled criminal (Doob & Sprott, 2004). This was evidenced by the fact that many young people often ended up back in jail soon after their release.

In 2024, we are still living with the troubling legacy of children and youth serving time in adult federal prisons and continue to see the highest recidivism rates amongst individuals ages 18-24. This age group also presents with the highest rates of disciplinary infractions, institutional altercations, self-harm, suicide attempts, and admissions to segregation (Office of the Correctional Investigator, 2017). The logic to house an 18-year-old high school student in the same 6 by 8-foot cell as a 40-year-old experienced career criminal is nonsensical.

Racial Disproportionality

Canadian policy disproportionately impacts racialized youth. This is evidenced by the overrepresentation of minority populations including Indigenous, Black, and racialized youth in adult prisons. In 2016, while representing 8 per cent of the total youth population in Canada, Indigenous youth accounted for approximately one-third of youth in the justice system (Nickel et al., 2020). When considering custodial sentences, the numbers are magnified, with Indigenous youth accounting for 50 per cent of admissions to custody in the 2020/2021 fiscal year (Statistics Canada, 2022). Regional variation exists. In Manitoba, Indigenous youth make up a quarter of the population, yet over 80 per cent of youth admitted to correctional services (Malakieh, 2020).

Indigenous youth experience discrimination at every stage of the criminal justice system. They are more likely to encounter police, to be charged upon arrest (O'Grady, Gaetz, & Buccieri 2011), spend more time in pre-trial custody (John Howard Society, 2021), and receive longer sentences (Latimer & Foss 2005) than non-Indigenous youth. In 2015-2016, Indigenous youth represented nearly 2 in 5 inmates (38.4 per cent) ages 18-21 years old in federal custody, while Black youth represented 12 per cent of the inmate population (Office of the Correctional Investigator, 2017).

As illuminated by Hankivsky et al. (2014), policies fail to take into consideration the "historical, structural and social contexts" that affect youth involved in 'criminal' activity (7). The YCJA needs to incorporate or adopt an "innovative structure" within its legal parameters

to examine how structural and racial disproportionately reinforces relations of inequity and harm. (7). The larger question that amendments to policy should consider is, "who is affected and how" (8).

EVIDENCE

There is a significant amount of research that proves young people, with growing brains and bodies, should be treated differently and not be housed in adult correctional institutions.

Brain Development

The article *Re-thinking justice for emerging adults in the criminal justice system* discusses the detrimental impacts of incarcerating emerging adults in adult federal penitentiaries. Authors Lindell and Goodjoint (2020) state how incarceration for young adults is a "huge impediment to [their] psychological development". The authors discuss findings from a longitudinal study, which tracked the brain development of 5,000 children in their mid-to-late 20's. The study showed that their brains were not fully mature "until at least 25 years of age."

In a 2012 journal by Steinberg titled, *Should the science of adolescent brain development inform public policy?* he states how consensus from research has revealed that the adolescent brain is not yet 'mature', and that emerging adults are neurologically more inclined to engage in "sensation seeking, less likely to control their impulses [and] less likely to plan ahead." The malleability of an adolescent brain offers a strength and point of concern. Meaning, if youth are deemed by the courts as "mature enough" to be tried as an adult with a federal sentence, a young person's brain will likely become psychologically scarred beyond the point of un-doing because of the harsh, anti-social, isolated, and hostile prison environment. However, if we acknowledge the neuroplasticity of the brain during the critical time of 15-25 years of age, responses towards young adult 'deviance' can be understood as factors that can be improved. Further, courts should respond to youth "delinquency" as a "dynamic interaction between developmental immaturity and a youth's context" (Cavanagh, 2022), as youth are more prone to risk-taking and reward seeking behaviors, with little regard for, and understanding of, consequence.

While this offers a sliver of insight into the mechanics of brain development in emerging adults, it does not reduce this complicated issue to neuro-specific causes. As stated by Dahl (2004) in *Adolescent Brain Development: A Period of Vulnerabilities and Opportunities*, the concept of adolescence should be understood "at the level of interactions between biological, behavioural and social domains." Dahl argues that the completion of "cognitive development, [and] the maturation of self-regulatory capacities and skills", continues to develop well after puberty (2004). Executive function development in the brain, which includes impulse control and planning, key components in cognitive skills required to make rational decisions are only fully developed around the age of 25 years old (Loeber et al., 2012).

Food & Nutrition

When adolescents (ages 18-25) are housed within adult prisons, they are not receiving their required number of calories needed to develop healthily. Correctional Service Canada provides inmates with a caloric diet of 2,600 calories per day. According to Canada's food guide this would be sufficient for a low-activity male adult aged 31 to 50 (Office of the Correctional Investigator, 2017). However, Health Canada's estimated energy requirements for active males between the ages of 19 and 30 require at least 3,000 calories per day. These amounts are based on sedentary or low-activity lifestyles. Nevertheless, an 18-year-old male engaging in daily physical activity requires a minimum of 3,300 calories, meaning when they are incarcerated in federal institutions, they are

constantly in a deficit of 700 calories a day (Office of the Correctional Investigator, 2017).

Access to adequate food and nutrition is a basic human right that every incarcerated person should be given (McCall-Smith, 2016; United Nations, 1948). It could be argued that the definition of the term "adequate" changes based on the age and nutritional needs of the person. While a human body and brain needs sufficient calories to operate, it especially needs adequate amounts of nutrition while it is still growing and developing. This is why Health Canada recommends certain energy requirements for people based on their age and stage of development (Office of the Correctional Investigator, 2017).

Research shows that malnutrition and inadequate dietary intake can have a negative impact on cognitive function. A growing brain needs a specific amount of food each day to provide enough nourishment for healthy development. Thus, nutrition deficits can impede a young person's rehabilitation efforts and ability to focus on core programming (Office of the Correctional Investigator, 2017).

Gang Recruitment

In adult prisons, youth between the ages of 18 to 25 are particularly vulnerable to recruitment into gangs due to various factors including isolation, lack of support networks, and exposure to seasoned gang members. According to social learning theorists, prisons provide youth with opportunities "to increase their network of criminal accomplices," (Mccuish et al., 2018), and thus learn criminal behaviours from those around them. The Office of the Correctional Investigator (2017) found that youth ages 18-21 were more likely to have a gang affiliation compared to the rest of the inmate population (16.8% versus 8.3%). The harsh environment of adult correctional institutions amplifies the sense of vulnerability among youth, making them prime targets for gang recruitment tactics. Older inmates often intimidate, entice, and coerce younger offenders into their gangs, and threaten violence if they do not comply (Office of the Correctional Investigator, 2017). Gangs exploit the social and psychological vulnerabilities of youth, offering them a false sense of protection and belonging. Once recruited, youth are at a higher risk of participating in violence within the institution, as well as engaging in gang activities once they are released. Which perpetuates cycles of criminality and recidivism (Office of the Correctional Investigator, 2017).

Programming/Rehabilitation

The criminal justice system does not consider the unique needs of youth who require specialized programming and individualized plans that can help guide them to a law-abiding life. Adult prisons do not offer specialized interventions for young offenders. Whether an inmate is 18 years old and fresh out of high school, or 46 years old and has been involved in the criminal lifestyle for over three decades, they are provided with the same programming (Office of the Correctional Investigator, 2017).

Young people have negative feelings about entering the adult system when they are still a youth. One youth recounted his experience:

> *"It feels like a setup. It feels like you have support inside but when you leave and go to adult jail at 18, still a youth, all the supports are gone, and you are left as a youth in need of supports in an adult jail. I went to adult jail. There is a huge difference in how you're treated in adult jail versus [being a] young offender" (Owusu-Bempah & Jeffers, 2021, p.30).*

The reality is youth are still developing and are more amenable to intervention. As such, specialized treatments and programs should be provided to them to fully "rehabilitate" them and prevent recidivism.

Sexual and physical violence

The nature of adult prisons exposes young people to a culture characterized by

violence, criminality, and survivalist strategies, potentially leading them to internalize and replicate these behaviours (Bartollas & Miller, 2017). Youth in custody endure violence from peers their own age, those older than them, and prison official such as guards. Young people are at heightened risk of physical and sexual assault by older prisoners (Equal Justice Initiative, 2008).

A study from the UK found that of the youth aged 18-25 per cent in adult custody, the majority of their admissions to the prison health care department was due to external injury or poisoning. Of these injuries, almost 30 per cent were reported as injuries to the head (Davies, Hutchings, & Keeble, 2023). Once an individual sustains a head injury, the likelihood of acquiring a brain injury is high. If this occurs during adolescence or young adulthood, it can severely impact cognitive functioning and normal brain development (Kent & Williams, 2021).

OPTIONS & RECOMMENDATIONS

Youth are 36 times more likely to die by suicide in an adult jail than in a youth detention facility (Arya, 2018). The tragic story of the death of 19-year-old Ashley Smith (2007) is an example of this and other issues emerging adults face when serving time in adult prisons. Ashley Smith was first involved with the youth criminal justice system at age 14 for minor offences such as public disturbances and mischief. She was released from youth detention but was re-charged for breaching her conditions by wielding a pocketknife in a public place and pulling a fire alarm. Because of her 'record' in the youth system, a case was made to transfer her to an adult provincial facility, under the justification that this was in the best public interest. Spending most of her time in segregation, removed from mental health support (which she had asked for), Ashley tied a ligature around her neck and subsequently strangled herself to death while correctional staff stood by and watched. They did not try to intervene (St. Leonard's Society, 2022).

POLICY OPTIONS

Specialized interventions for youth ages 18-25 in the criminal justice system

The brain of a developing young person requires additional support than a brain that is already fully developed. The Correctional Investigator of Canada has acknowledged the need for distinct and separate programming for young adults aged 18-25 (St. Leonard's Canada, 2022). Several jurisdictions in the United States have already implemented specific programs for this age group. For example, California has developed a "Youthful Offender Program" for prisoners under the age of 22 that provides them with additional, developmentally appropriate programming (Lindell & Goodjoint, 2020). For youth serving community sentences, some jurisdictions, such as San Francisco, have a transitional-age youth (TAY) unit with specific probation officers that are trained to understand the complexities and challenges of young offenders. The TAY model currently has a 73 per cent successful completion rate (Schiraldi, Western, & Bradner, 2015).

Entirely separate wings of the prison specifically for youth

Many countries have recognized the need to keep youth and adults in distinct areas within correctional facilities. Argentina has created separate "wards" for inmates ages 18-21 for their own protection from older inmates (Abrams et al 2018). Similarly, Finland houses their youth ages 18-20 in separate areas of the prison. The state of Wisconsin has built an entire correctional facility specifically for male prisoners between the ages of 18-24 (Lindell & Goodjoint, 2020).

Modifying criminal justice procedures

Specialized courts for emerging adults are one way to ensure age-appropriate justice for

youth throughout the court process. Jurisdictions such as Brooklyn, North Lawndale, and San Francisco have successfully implemented "young adult courts" which cater to the unique developmental needs of youth (Lindell & Goodjoint, 2020). The purposes of these courts are to have trained staff that are knowledgeable in human brain development and coordinate with social services to provide the necessary supports and programs to address the underlying causes of the young persons criminal behaviour (Hayek, 2016).

Diversion programs for youth

In Canada, under the YCJA, diversion programs are emphasized as the golden standard for youth ages 12-17. However, young adults are developmentally similar and should be provided the same opportunity to engage in diversion programs before they are formally charged. While no such programs exist for youth ages 18-25 in Canada, two states have seen success. North Carolina and Texas both have programs where youth ages 16-25 can participate in extrajudicial measures to avoid being formally charged and booked into the criminal justice system (Lindell & Goodjoint, 2020).

Once youth are pulled into the criminal justice system, they are labelled, which can lead to negative outcomes. However, provided youth the opportunity to engaging in educational and rehabilitative programming before entering the system can prevent the vicious cycle of being justice-involved.

POLICY RECOMMENDATIONS

Recommendation 1:

Age Amendment to the YCJA

Canada should mirror the practices of most European countries who have raised the age of youth sentencing. Evidence indicates that the social, emotional, and mental development of youth occurs in the early 20's, and the human brain is not fully developed until the mid-twenties.

Amending the YCJA to include youth up to the age of 25 years old will not only align with the evidence put forth by science but will create a more equitable justice system that is responsive to the unique needs of young people and mitigate their involvement with greater risk and criminal activity. The YCJA needs to prioritize holistic and restorative measures over punitive responses to the actions of young people. Raising the age of youth justice systems is not an unprecedented task, and the repercussions of remaining path dependent and unchangeable in our engagement with young people in the justice system is a necessary and achievable task.

Recommendation 2:

Specialized Courts for Emerging Adults

Canada has several specialized courts; youth justice courts (ages 12-17), Indigenous Gladue courts, Restorative justice processes, mental health courts, and drug treatment courts, to name a few.

The creation of a specialized court for emerging adults ages 18-25 will provide an opportunity to look at alternatives and partnerships with other justice processes and sanctions that address harm in meaningful and more holistic ways. Specialized courts would consider the specific developmental stages of the young person and provide appropriate sanctions that align with healthy brain and self-concept development. Emerging adults are malleable and equally susceptible to positive persuasion and pro-social interventions and responses to anti-social behaviours.

Recommendation 3:

Separate youth wings

According to a 2017 report by the Office of the Correctional Investigator, emerging adults ages 18-25 are at the greatest risk for suicide, self-harm, and held in solitary confinement. The

implementation of a distinct wing within adult federal institutions that separates emerging adults from the general population. Maplehurst Correctional Complex, located in Milton Ontario, detains both male and female adults. The two wings that separate the genders are divided by a steel wall that prevents their engagement with one another.

This recommendation argues that this same layout be applied to youth being held in adult institutions. Not only should emerging adults be held in a different area, but they should also receive unique trauma-informed, age and developmentally appropriate supports and low barrier access to services.

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Second-class Citizens: Disability Income Assistance & Financial Inequality in Canada

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ABSTRACT

This paper surveys the landscape of several different key disability income assistance programs in Canada. Each section outlines the strengths and weaknesses of one of the programs. Following this, the paper offers recommendations to improve the policy, and at the end of each section, it explores how the concepts of welfare and dependency versus autonomous, dignified social citizenship play into the administration of the policy. Overall, the paper shows that recipients of disability income assistance are better served when the policies spring up from a lens of rights and citizenship, and that much work is needed to reorient current policies away from their penchants toward dragging people with disabilities into dependency on welfare.

INTRODUCTION

A major dimension of inequality experienced by people with disabilities is that of financial disparity. Although Canada outwardly boasts a legal landscape imbued with human rights protections – including the Charter of Rights and Freedoms – the income and wealth cleavages between those with and without disabilities continues to place individuals with disabilities at a notable economic disadvantage. Throughout this essay, I look at financial inequality faced by people with disabilities in relation to the concept of social citizenship, defined as the universal right of citizens to a set of social, political, and economic provisions (Dwyer, 2003; Bloemraad et al., 2019). Equality rests on the anchor of social citizenship. Even if hypothetically a society managed to eradicate poverty, the hierarchies from stratification would still fuel inequalities, which pose social dangers to everyone (Wilkinson & Pickett, 2010). With this theoretical underpinning, the term 'citizenship' in this essay refers to the policy effects of institutions and public policies on an individual's self-esteem, since the structures embody the extent to which society at large regards the population with human dignity. Social citizenship entails rights, responsibilities, and freedoms (Patrick, 2017).

According to the Canadian Income Survey, working-age Canadians who have disabilities experience poverty at disproportionate rates (and subsequent relegation to low rungs on social ladder), and persons with a disability are more likely than persons without a disability to be in low income when they do not have a job (Wall, 2017). Despite laws that defend their rights as a marginalized group against discrimination, nonetheless social exclusion lingers, with deep financial ramifications (United Nations, 2017). Scoring high on the Human Development Index, Canada holds a global reputation for progressive social and health policies. Still, the nation's systems sustain substantial financial inequalities (Stienstra, 2018). Income inequality based on disability constitutes a serious modern challenge to governance in Canada.

This paper surveys the landscape of several different key disability income assistance programs in Canada. Each section outlines the strengths and weaknesses of one of the programs. Following this, the paper offers recommendations to improve the policy, and at the end of each section, it explores how the concepts of welfare and dependency versus autonomous, dignified social citizenship play into the administration of the policy. Overall, the paper shows that recipients of disability income assistance are better served when the policies spring up from a lens of rights and citizenship, and that much work is needed to reorient current policies away from their penchants toward

dragging people with disabilities into dependency on welfare.

1. Canada Pension Plan-Disability Benefit

Introduced in 1966, the Canada Pension Plan Disability (CPP-D) is a program for long-term disability, run by Employment & Social Development Canada. The benefit provides partial earnings replacement to someone who has made sufficient contributions to the CPP and who cannot work due to a severe and prolonged disability (Office of the Chief Actuary, 2011). CPP-D's primary policy goal of is to provide a degree of income protection to insured workers alongside private insurance, personal savings and employment benefit programs (Prince, 2016). Automatic indexation of benefits pegs it in line with increases in the cost of living (Prince, 2016).

Encouragement of the neoliberal work ethic through the CPP-D has generated positive and negative aspects. The Mulroney government kept a sense of compassion and noblesse oblige toward this vulnerable and 'deserving' group of Canadians. During the Chrétien-Martin periods, cuts to CPP-D focused on work incentive measures such as three-month trial paid work periods, fast-track reapplications, and automatic reinstatement (Prince, 2016). The Harper government also supported the establishment of an employer disability forum to advance employment by the private sector, called Canadian SenseAbility (Flaherty, 2014). For those who had paid into the CPP for at least twenty-five years, the minimum threshold for valid contributions relaxed from four to three of the previous six years (Battle, 2001). In a nutshell, the Harper-era CPP-D reforms favoured long-term attachment to the labour force. Foreseeably, the other side of this Conservative coin consisted of the devastation of those who had treaded through precarious, discontinuous work situations before acquiring a disability (Campolieti & Goldberg, 2007). Exacerbating this problem, a moral panic prevailed among policymakers, dwelling on the notion that the CPP-D robs recipients of the motivation to work (McHale et al., 2020). Also, the Conservative government abolished the appeals panel consisting of a medical specialist, lawyer, and layperson, creating in its place the Social Security Tribunal consisting of one member who is appointed by the governor-in-council (Healy & Trew, 2015).

One of the major barriers to proving eligibility came from a policy directive in 1994 that declared medical reasons to be the sole grounds for application approval. From this medicalization flows a host of obstacles, including the challenge of obtaining medical documentation. Applicants without a family doctor need to search for one, and the doctors grapple with hesitancy in supporting CPP-D applications due to the stagnant fees (Flaubert, Spicer & Voldberding, 2019). Furthermore, the requirement of a prolonged disability marginalizes those who suffer from symptoms that oscillate between high and low severity, disqualifying them from the narrow label of a permanently debilitating disability. Partially addressing this issue of episodic illnesses, the automatic reinstatement mechanism permits former beneficiaries to quickly reinstate their previous CPP-D if they have started to return to work only to encounter a relapse of the same disability within the span of two years after leaving CPP-D (Human Resources & Skills Development Canada, 2011). However, in a real-world sense, people finding themselves with reappearing disabilities have realized the flaws in this policy. Some have explained that an old ailment has led to a different one via cumulative impacts (Hansen & Turnbull, 2013). In counting the contributory years, the child-rearing drop-out provision allows the omission of a period of little to no earnings when caring for a child, but only up until the child is seven years old (*Cynthia Harris v Minister of Human Resources and Skills*

Development, 2009, SCCA). Plausible solutions to these mentioned inadequacies should touch upon the aspect of employment integration. Across the weaknesses discussed, a common theme emerges – that of challenges in labour force attachment stemming from lack of accommodations. A step toward stronger inclusion of people with disabilities into the workforce in a meaningful way will require that the federal government assume an active leadership role by formulating a national employment strategy for people with disabilities.

Examining implications for social citizenship, the CPP-D exemplifies that a government can treat people with disabilities as hardworking market citizens by rewarding those who show commitment to the workforce. As discussed, a downside to the reification of employment lies in the casting of doubt on the integrity of workers under precarious contracts. Moreover, the humiliating repeated medical disclosures along with the complications within the existing rapid reinstatement process inflict upon the applicants some remarkable mental strains that can justifiably be frowned upon as undignified. Further diminishing the humaneness of the judging procedure is the neoliberal policymaking wherein governments have shirked off the obligation to invest sufficient resources into the system. These reasons, coupled with the toll that the lengthy application procedure takes on people with disabilities render a CPP-D application burdensome on multiple levels. It must not be neglected that applicants may have fulfilled crucial duties to society in earlier years such as caregiving, but such care work does not end up compensated, undermining the supposedly reciprocal nature of social citizenship in which the citizen gives and takes from society. A main policy improvement to amend these shortfalls of the CPP-D would be the advancement of social enterprises that adapt environments to suit the diverse methods of working that are doable for people with various disabilities and pay the workers fairly.

2. Canada Disability Tax Credit

Just as the CPP-D favours applicants who possess a certain degree of economic privilege in the workforce, so too does Canada's Disability Tax Credit (DTC) within Canada Revenue Agency (CRA) advantage people at a higher financial position. Under the Income Tax Act, the DTC lowers the amount of income tax for people with impairments that are expected to interfere with their ability to perform activities of daily living for a minimum of twelve consecutive months, or their support persons. For applicants aged 18 and under, the DTC gives a supplement as well (Service Canada, 2021). Those who care for dependent relatives with disabilities can apply for the caregiver credit (Scala, Paterson & Richard-Norbert, 2019). A purpose of 'horizontal' rather than 'vertical' equity undergirds the DTC. In other words, the credit aims to render the tax on disposable income after disability-related costs roughly the same as the tax paid by citizens without disabilities (Mendelson et al., 2010). Predicated on the fact that disabilities incur extra costs that would be onerous to itemize (e.g., air temperature adjustments and special transport), the DTC strives to equalize taxes between populations with and without disabilities. This does not represent vertical equity, in the sense of closing the financial gap between the rich and the poor. Rather, it only seeks to count additional expenses borne by people with disabilities in calculating the taxes that they owe to society.

Some strengths of the DTC include administrative efficiency, built-in income information in the CRA, and the alignment with federalism in that the federal government abstains from funding disability programs (Puttee, 2002). Simultaneously, several weaknesses of this policy trap people with disabilities in cycles of dependency on the

government. Due to the nature of the DTC as a tax credit, the only people eligible are those earning income at such a level to be paying taxes in the first place. Here, a Catch-22 unfolds: Those in most need of the DTC often have incomes below tax-paying status (or even if they do pay taxes, the amount is smaller than the credit), while the credit can only be of value to income tax-payers because it is non-refundable (Dunn & Zwicker, 2018).

Furthermore, a pitiful notion of helpless dependency shows up in the establishment of disabled status based on the biomedical paradigm, reducing human well-being to the dichotomy of disabled or non-disabled. Consequently, the person adopts the 'sick' image, tugging the heartstrings of the tax adjudicators by portraying the self as fitting neatly into the stereotype of the dependent invalid (Neilson, 2021). Not only does the concentration on impairments in bodily functions to perform basic activities of daily living cast disability assistance as a charitable project relieving the hardships of people living with abnormalities; it also oversimplifies the relation between a functional impairment rating and the associated cost of living. Accentuation of personal impairment neglects the expenses incurred from an unaccommodating external community and wider environment. By way of illustration, one can reflect on the financial burdens of two people with identical functional impairments who both cannot drive. Only one of them resides in a neighbourhood where accessible public transit is reliably available at a feasible cost. Logistically, the other person bears a heavier financial load regardless of the sameness of their disabilities. Such meso-level factors fall by the wayside in the current adjudications (Larre, 2018,). Requesting and following up with a medical professional's support proves even more difficult for applicants living in remote areas, such as many Indigenous communities (Alhmidi, 2021). Challenges arise for people who have disabilities or autism spectrum disorder (hereafter called autism). In 2017, the CRA's policy changes caused it to deny the DTC to many diabetics on arguably arbitrary technicalities. Diabetes Canada and the Juvenile Diabetes Research Foundation spoke out to the Minister of National Revenue, explaining that the DTC would defray the same insulin costs for a person with Type 1 diabetes who receives insulin therapy for ten hours a week as the costs of someone who takes fourteen hours to administer the insulin (Standing Senate Committee on Social Affairs, Science and Technology, 2018). In a similar vein, a colossal package of barriers presents itself to people with autism. Autism Canada and Canadian Autism Spectrum Disorders Alliance have raised the concern that in the section on speaking ability, the form refrains from asking about communication in general, which poses an obstacle because people with autism may experience deficits in communication although they have no trouble 'speaking' per se (Nash & Garber, 2020).

Besides the aforementioned barriers to reaping the benefit of the DTC, a lack of awareness of its existence and savviness about the application blocks people who are entitled to the DTC from accessing it. In the absence of clarity and guidance, particularly in a time of CRA budget cuts to staffing and exhortation, applicants and their families look to third-party companies for direction, which often demand lofty charges for the service (Chisholm, 2003). A policy recommendation to remedy the current lack of coordination between the CRA and banks is to activate the financial literacy sector to identify trustworthy informal supports to assist in decision-making. It would be prudent for the CRA to review and evaluate the endeavours of its Benefits Outreach Program, which interacts with agencies that support clientele with disabilities (Disability Advisory Committee, 2020). Drawing from the slogan: "Nothing about us without us",

it is advisable for policymakers to consult with the disability community to improve the DTC. The year 2017 saw the reinstatement of the Disability Advisory Committee (DAC), which is a volunteer group that connects the CRA with fora of people who have disabilities and their allies (Rosemary & Ann, 2018).

Recently, the DAC pondered policy tools to tackle the difficulties in approving the DTC for applicants with mental disabilities. The team has proposed to add mental health providers to the list of assessors, which currently only comprises the following: medical doctor, nurse practitioner, optometrist, audiologist, occupational therapist, psychologist, and speech-language pathologist (Canada Revenue Agency, 2021). Altering the DTC from non-refundable to refundable would raise the average benefit for the poorest households from approximately $29 to $511, the equivalent of a 4.1% income boost. Within such a scheme, recipients who earn too little to claim the tax credit could instead receive it as a refund, imitating a negative income tax. Empirically, the percentage of families under the low-income cut-off (LICO) receiving value from the DTC would jump from 0.2% to 56.4%. At zero taxes owing, the individual would simply be paid an income guarantee, with a rate of reduction as taxable income climbs (Simpson & Stevens, 2016). The Maytree foundation has demanded that the government at least conduct a feasibility study into the cost of this policy change and how it would interact with other government transfers (Aldridge & Mendelson, 2019).

Alternatively, inspiration can be taken from the Universal Child Care Benefit (ranging from $1200 to $1920 annually for children 5 years old and under and $720 for children from 6 to 17 years old), the formation of which followed the extinguishment of the Child Tax Credit that had been valued at $338 per child (Mendelson, 2015). Since in this policy option the transfer payment is taxable, it would result in more net savings for the government compared to a refundable tax credit. In replacing a tax credit with a direct benefit, the policy would affirm the universal right to economic security; it would tackle poverty and inequality, in contrast to the DTC's promotion of personal responsibility to earn enough to take advantage of the credit.

As illuminated, in a peculiar and probably inadvertent manner, the system that automatically values the citizen-taxpayer hesitates to fully entitle persons to the comprehensive web of citizen rights unless they pay taxes, as the dynamic within DTC exhibits. The process proves especially cumbersome for those in remote areas and with long-standing diagnoses, many of whom have undignifiedly fallen into the pit of dependency on welfare after disqualification from the DTC. Informationally, citizens would normally assume the right to be proactively notified of a possible tax credit if the state would not sensibly expect the citizen to know about the entitlement. For these reasons, policy changes that nurture outreach, cooperation and conversations with the DAC begin to validate people with disabilities and their closest contacts as equal partners with policymakers in decision-making.

3. Registered Disability Savings Plan

The RDSP is a savings vehicle for people with disabilities, into which contributions up to a cap of $200,000 flow, until the beneficiary's fifty-ninth birthday. Private banks manage the funds and invest them into securities, where the amounts snowball over time, eventually growing into tens of thousands of dollars. All persons and organizations are allowed to contribute to the disabled individual's RDSP. A laudable feature of the RDSP is that its savings remain sheltered from claw-backs by provincial and federal income assistance programs (McColl, Jaiswal & Roberts, 2017). Two components form the RDSP: (1) a government bond called the Canada

Disability Savings Bond that gives up to $1000 annually over the course of twenty years to the RDSPs of low-income participants earning $24,183 or less as per the 2021 threshold, and (2) a matching of private contributions with a government grant (called the Canada Disability Savings Grant) at a rate of three-, two-, or one-to-one depending on household income (Abrams, 2017). The combination of public and private contributions lays a foundation for financial stability in a far less demeaning way than a non-investment public handout. The RDSP signals an important shift away from a welfare-based approach to helping people with disabilities and moves towards an investment-based approach.

Yet, akin to the DTC, reports have shown low subscriptions to the RDSP (Vallée, 2020). Adults with disabilities who frequent the fringe financial sector are less likely to connect with a bank or financial advisor to help navigate these decisions and less likely to find out about the RDSP and other important disability benefits (Moss, 2004). People with intellectual disabilities could be hindered from opening an RDSP account due to contractual competence rules. A legal quagmire in which adults with intellectual disabilities may be caught pertains to mental competence. When an adult whose capacity is doubted attempts to open an RDSP account, the provinces and territories must determine the individual's competence/incompetence, which could result in the appointing of a guardian, with monumental repercussions (Employment & Social Development Canada, 2021). Another key weakness of the RDSP is the constraint on using those funds towards the purchase of a home. Families with lived experience expressed an interest in using RDSP as a source of equity for purchasing a home for their children (Ministry of Children, Community & Social Services, 2018).

Analysts and coalitions have invented policy mechanisms to improve the RDSP. Community-based financial counselling can enable people with disabilities to confidently handle mainstream banking services when they are ready (ABLE Financial Empowerment Network, 2013). As a federal answer to the tricky regional question of competence, the Qualifying Family Member policy which allows spouses, common-law partners, and parents to hold plans on behalf of the beneficiaries (Keir, 2018) is a vital feature, which would provide a sense of security if permanently instated as a feature of RDSP registration. An innovative assembly of people with disabilities and their families, called 'My Home, My Community', has taken it on themselves to explore the design of a policy for using the RDSP towards homeownership. This 'RDSP Homeownership Plan' would open the opportunity to withdraw funds before the ten-year time at no penalty. Numerical modelling has revealed that under such a policy, beneficiaries who input $1500 annually to the RDSP would find homeownership to be within their means by age forty-nine (My Home My Community, 2020). When dealing with policy reform around withdrawals, the crux of the matter is the need to frame the RDSP as an entity separate from purely retirement savings.

Analyzing the RDSP's connection to social citizenship, it can be commended for deviating from most other disability financial supports by bolstering the right to save money, breaking free from confinement to only living day-to-day. Nonetheless, the RDSP could use ameliorations in multiple areas that currently take away from the autonomy and independence of beneficiaries. Social citizenship can also be improved through policies addressing competence, as well as changes that allow flexibility to use the funds at the beneficiaries' own discretion, such as softening the ten-year withdrawal policy and introducing an option to dedicate some of the RDSP savings towards purchasing a home. Implementation of these

policy changes would start to erase the underlying infantilization, thereby emancipating RDSP beneficiaries to the position of self-directing citizens.

4. Canada Disability Benefit (CDB)

In a similar fashion to how the RDSP acts as a tool to promote greater equality in wealth accumulation, the new Canada Disability Benefit (CDB) strives to lay out a guaranteed income level for people with disabilities. In the wake of the COVID-19 pandemic, advocates have amplified their call for the creation of a national disability benefit (Canadian Labour Congress, 2021). A strength of the CDB is that it cultivates income stability from month-to-month for people with disabilities. The intention behind catering the benefit to working-age individuals is that it will serve as a guaranteed income floor for workers with unstable or part-time jobs with fluctuating schedules (The Hamilton Spectator). The CDB will be modelled after the Guaranteed Income Supplement (GIS), meaning that it will supplement income if current income levels fall below a certain benchmark. Concerns have been raised by analysts around this new benefit. The GIS includes a steep reduction rate by which, when net income increases, the total benefit amount pares down (Inclusion Canada, 2021). In the Canadian political climate of neoliberal downloading of responsibilities, it is easy for governments to pressure people with disabilities to coordinate and finance their own care and attendant services. Indeed, the new CDB may frequently be employed for this purpose (Hande & Kelly, 2015).

In the domain of recommended avenues for this benefit to take, Inclusion Canada advises to follow the UN Convention on the Rights of Persons with Disabilities and the definitions of disability embedded in the Accessible Canada Act, 2019. Advocates push for the social model of disability to inform decisions around eligibility for CDB that recognizes the environmental factors that contribute to disability (Inclusion Canada, 2021). Insofar as the CDB will manifest as some version of a basic income that makes up for the gaps within CPP-D policy in applicants' irregular work arrangements, it makes sense to interpret this new benefit as headed in the direction of guaranteeing the rights of people with disabilities as citizens. Advocates are rightly concerned that the CDB may only cover basic needs pull people with disabilities out of deprivation. As we already understand, fixing the problem of poverty does not by extension fix inequality if the policy stays complacent at promising nothing beyond the bare minimum. In fact, such a policy would resemble dependency-inducing welfare more than the game-changer program premised on social citizenship that policymakers strive for it to be. To formulate the CDB in a way that results in enhanced financial equality, it is essential for people with disabilities, nongovernmental organizations, and advocates to convene at the table to shape this new policy so that it affirms the rights enshrined in domestic and international laws.

CONCLUSION

In conclusion, this overview of the CPP-D, DTC, RDSP, and CDB has articulated the strengths and weaknesses of each when it comes to social citizenship for people with disabilities. Across the board, it is imperative for policymakers to realistically analyze potential recipients' access to the benefit – including financial, informational, geographic, and other components of access. Policy mechanisms most conducive to resisting the stigmatizing, degrading forces of inequality tend to be the ones that assert the personal agency and authority of people with disabilities in their lives. Also, as apparatuses of financial saving and investment are readily available without a hassle for people without disabilities, so should this be the case for people with disabilities as well, who likewise deserve a decent quality of life by virtue of their

humanity. Ultimately, if policymakers agree that it is undesirable for financial inequality to prevail against Canada's channels of disability income assistance, then it is necessary for the darkness of institutionalized welfare dependency to give way to the brighter possibility of social citizenship.

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Concerns in the Age of Intelligence: Shaping Regulatory Frameworks for AI in Canada

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ABSTRACT

Artificial intelligence (AI) is becoming increasingly prevalent in the everyday lives of Canadians. AI can shape institutions, organizational structures, and processes in just a matter of minutes, using intricate algorithms and data programming to create human-like processing systems. The introduction of Bill C-27 Digital Charter Implementation Act (Digital Charter Act) in the Canadian Parliament in June 2023 has provided insight into how legislation may look for the appropriate regulation of AI. The *Artificial Intelligence and Data Act* (AIDA), which constitutes a key part of the bill, addresses harms generated by AI systems through the regulation of their development, use, and design. This study will aim to address the obvious but important question: How can the Canadian government stay current with a rapidly morphing technology and ensure that any such regulatory policies for AI are consistently up-to-date? Drawing on primary sources consisting of government documents, mandate letters, and conference proceedings, in addition to a variety of secondary sources consisting of book publications, journal articles, and media news reports, the objective of this study is to identify the remedies or mechanisms necessary to prevent regulations from becoming stagnant or obsolete.

INTRODUCTION

From its use in predictive medical analytics to the development of autonomous vehicles and sophisticated automation processes, artificial intelligence (AI) has continued to see rapid growth across many industries, sectors, and fields. Due to its evolving landscape and ability to mutate rapidly, it becomes apparent that any legislation intended to regulate AI use must exhibit the same characteristics of adaptability in multivarious contexts. Thus, the research questions this paper will seek to address is: *in formulating regulatory frameworks for AI, what strategies can the Canadian government employ to remain informed of changes in AI usage and practices, and ensure such policies are current and relevant?* To examine this question, this paper will draw on existing literature, complete a case study comparison of AI regulation in two politically dominant countries – the United States (U.S.) and the United Kingdom (U.K.) – and finally, decide the applicability of these remedies in the Canadian context and/or suggest a new criterion that can hold the Canadian government accountable to these measures.

When it comes to AI regulation, there exist criteria that can be developed to explain the expectations of approaches in their ability to regulate the rapid developments of AI. Based on the literature, this paper will aim to outline the criteria that these governments should be addressing. Furthermore, the criteria will be used to assess the extent to which various global approaches meet these expectations.

This paper will evolve through four chapters. Chapter 1 will investigate the development and challenges of AI and will seek to outline the five criteria mentioned previously. Chapter 2 will discuss the uniqueness of AI development and AI regulation in Canada. The introduction of Bill C-27 into the Canadian Parliament in June 2023 has provided clarity on the potential structure of the Bill to create the regulatory framework intended for the prudent use of artificial intelligence (AI). The fundamental aspect of this omnibus bill revolves around the Artificial Intelligence and Data Act (AIDA), which is pivotal in tackling concerns related to harm done by AI systems. The AIDA aims to

confront these issues by supervising the development, use, and design components of such systems. Most importantly, this section will serve to outline the concerns with proposed Bill C-27, particularly in its capacity to address the evolving landscape of AI. Additionally, the issues that have been identified by experts and the public in response to AI regulation will be examined.

Chapter 3 will identify the mechanisms for safe and effective AI regulation and make comparisons between regulatory practices that have been employed by the United States (U.S) and the United Kingdom (U.K) to address the harmful effects of AI systems. The examination of other case studies besides Canada will solidify the analysis section of this paper and will allow the opportunity to conclude the best approach for AI regulation. This paper will assess the AI Bill of Rights in the U.S. and the pro-innovation approach to regulating AI in the U.K. As there are distinct differences between the U.S and U.K approaches, it will be necessary to discern the underlying assumptions that each framework follows. For example, one approach emphasizes the need to engage and foster collaboration with stakeholders, while the approach posits the need for an advisory panel to guide technical aspects of AI regulation in its current environment. Hence, it will be important to draw on primary sources for this section to allow an original critique and interpretation of the information presented, which can provide insight into the set of assumptions that can apply in the Canadian context.

Finally, Chapter 4, or the analysis section, will provide further clarification on the applicability of the mechanisms discussed previously and decide on the best course of action (remedies) for the Canadian government in formulating effective regulatory frameworks on AI. For example, this paper's assessment of Canada's Artificial Intelligence and Data Act (AIDA) in Chapter 2, with an examination of the AI Bill of Rights in the U.S. and the Pro-innovation Approach to AI in the U.K. in Chapter 3, will provide context for the frameworks' applicability to the Canadian case and determine the criteria for the adoption of effective regulations. Ultimately, the paper will explore the best-case solution for regulatory frameworks in the Canadian context by proposing a hybrid approach based on the evidence presented in this paper. It will also be necessary to mention any ethical or technical concerns that the Canadian government should be aware of when addressing AI regulation in the future.

Chapter 1: The Development and Challenges of AI

The literature on artificial intelligence is growing. Earlier work by scholars, such as John McCarthy and Herbert A. Simon, set the basic framework for explaining and understanding AI systems in the social and political climate. John McCarthy, the founding father of AI, defined it as "the science and engineering of making intelligent machines" (Hoffmann, Hugo & Hahn, 2020). Yet, it can be more contemporarily defined as the "simulation of human intelligence processes by machines, especially computer systems," (Laskowski, 2023). AI was developed to include machines – computers, robots, and even security systems – with the intellectual capability to act, think, or engage in humanlike activities. Famous works, such as Karel Čapek's 1920 playwright R.U.R. or Rossum's Universal Robots, the film 2001: A Space Odyssey's computer robot named HAL and shows, such as Black Mirror perfectly demonstrate AI in this manner, thus unveiling serious concerns and fears of its existence. Humans now live in a world where such fiction has become a reality; artificial intelligence is the new norm in daily life. Intelligent systems have captured almost every

field, from science to education, politics, and even medicine.

Yet, with its rapid growth, the core question has not been about what it is, but what it can become and how it can be controlled. Researchers and experts, despite their differences, share a common notion that a discussion on ethics must be involved in the process of developing human intelligence systems. Ethics as a philosophical concept refers to the moral principles or values that govern the actions or behaviour of an individual or institution. Ethics in the case of AI refers to the ability of a system [or technology] to adhere to ethical guidelines based on fundamental human values including such individual rights as privacy and non-discrimination (UNESCO, 2021). The tenets of ethical AI date back as far as the 1940s, but frameworks were not yet developed until the late 2010s. Famous science fiction writer, Isaac Asimov, wrote the Three Laws of Robotics in his 1942 short story titled "Runaround" (Encora, 2023). These laws stated that a robot may not "injure a human being, or through inaction, allow a human to come to harm", that it "must obey orders given it by human beings", and that it "must protect its existence as long as such protection does not conflict with the First or Second law." In this period, and until the 1980s when the world began to see advancements in technology, any discussion surrounding the ethics of AI was primarily fictional. Borenstein et al. (2021) conducted a count of Google Scholar citations with ["AI" or "artificial intelligence"] and ["ethics" or "ethical"] in the title and found that only one article was published in 1985, while 342 articles were published in the year 2020. During this period, although there were some advancements occurring, discussions about AI were not widely accessible to the public except in preliminary forms.

There is no agreed-upon "first" ethical AI framework. Yet, one of the earliest and most recognized is the "Asilomar AI Principles," created in 2017 by a group of experts seeking to confront the risks of AI to humans (Encora, 2023). The Asilomar framework is centered on three key areas: research issues, ethics and values, and long-term implications for AI and seeks to answer key questions such as "How can we update our legal systems to be fairer and more efficient, to keep pace with AI, and to manage the risks associated with AI?" (Future of Life Institute, 2017). These questions have remained key, even until this date, to guide the safe and effective development of AI-based systems.

Ethical questions regarding AI cover the technology's entire life cycle, from research, design, and development to primary operations, including maintenance, operation, monitoring, and termination of such systems (UNESCO, 2021). The main ethical challenge scholars identify is how to discern and mitigate various types of biases embedded in technology (Borenstein et al., 2021). Technology is neither good nor bad, but there is no telling to what extent machines make decisions dependent on their moral character or have some moral importance (Hoffmann, Hugo & Hahn, 2020). According to UNESCO (2023), three ethical challenges of AI include a lack of transparency, as AI decisions as biased and never neutral, concern for fairness, and risk for fundamental values such as human rights. Since the staggering rise of AI, these ethical issues prominent AI developers, such as Google, Microsoft, IBM, and Intel and governmental bodies across the globe have raised such ethical concerns (Manjarres et al., 2021, 19). Yet, this ethical debate possesses the juxtaposition of two views: the potentiality of AI to harness the ability to benefit humanity and the risks of AI in perpetuating systemic injustices (Manjarres et al., 2021). The former focuses on AI opportunities, such as the so-called "shortcuts" to everyday life; for example, predictive text and calendar suggestions are

critical developments for the average individual. The latter focuses on risk mitigation and the development of AI to engage in illicit behaviour like racism, sexism, and discrimination.

Large organizations have also posed some considerations regarding the ethics, rationality, and moral principles of AI. An example would be UNESCO's "Recommendation on the Ethics of AI" that outlines a list of ten recommendations pertaining to responsible AI systems' safety, security, fairness, sustainability, and transparency. The list includes proportionality and safety, safety and security, equity and non-discrimination, sustainability, right to privacy and data protection, human supervision and decision, transparency and explainability, responsibility and accountability, awareness and education, and lastly adaptive governance and collaboration. To promote the values associated with human rights and fundamental freedoms, as outlined under international law and the United Nations Charter, the proposed recommendations seek to eliminate the aspects of AI that can harm the average user. Discrimination, bias, lack of privacy, and fairness concerns often define harmful effects of AI systems. It is for this reason that these "ethical frameworks for AI" exist to control the development and use of any harmful effects of AI systems. Yet, without a stable, straightforward definition of AI, the process of developing an adequate framework or policies becomes more challenging.

A primary concern with AI is its ability to rapidly progress, and the challenge policymakers face in keeping pace with its development. The unfortunate reality when it comes to AI is that it does not always result in responsible and ethical technologies. Harmful effects of AI systems can take multiple forms; it can be in the form of misinformation, fake news, or even biased facial recognition applications. A more recent understanding of harmful AI is "Deepfakes" that alters images, voices, or text digitally, hence, is most known in the pornographic industry. Deepfakes have also been used to create videos of prominent figures, such as former President Barack Obama or Meta founder Mark Zuckerberg, stating controversial information (Sample, 2020). These reasons mark Deepfakes as the most controversial in the AI world, as they allow unskilled individuals to click on a link from the Internet and forge an artificial video or audio recording in a matter of seconds for the sake of spoof, satire, and mischief. Notably, deepfakes and others alike have led to the spread of mis/disinformation, fueled revenge pornographic contents, including child pornography. Harmful AI systems can appear anywhere and anytime, resulting in unintended consequences for users, external population, and the public. Thus, it would be problematic for ethical frameworks to disregard such facts or not act on regulations to oversee their performance and consequences.

One question remains; *How extensively does the literature address the issue of AI potentially becoming outdated or failing to keep up with its advancements?* The world may be the same from generations to generations, but it is fundamentally different in many aspects. The rate at which human advancement occurs is often observed in a linear model that reflects progress as occurring in a chronological process. However, the progress humanity has made over the last century in the realm of science and technology tells a story of exponential, not linear, growth. For visual understanding, while a linear approach would be akin to counting from one to ten a single digit at a time, exponential growth is like starting at one and counting in increments that increase at a rate double the previous digit.

Historically, the model that best resembles the exponential growth of AI would be microprocessor transistors (Voke, 2019). The basis for this correlation is grounded in aspects of Moore's Law, the scientific theory – later fact –

that supported the exponential growth of microprocessors in the mid to late twentieth century (Moore, 1965). The core aspect of Moore's Law is that microprocessor transistors and later other aspects of computing would increase at a rate of double or greater at each milestone of evolution (Moore, 1965). While this law is largely dead in the realm of computing, its applicability to the growth of AI is proving increasingly relevant. AI and its surrounding ecosystems of technology will continue to grow exponentially powerful, just as it has in recent years. The exponential growth of AI will likely, in turn, lead to its ever-increasing relevance in all aspects of life and society, from education, entertainment and even to governance. In cases of exponential growth, the key point of governance is the practice of anticipating the future consequences, not merely the ongoing situation. In the case of AI, it will be necessary for governments to create forward-thinking legislation for these eventualities, as there have been cases in the not-too-distant past where legislation did not also address the future but only the present.

The exponential growth of AI has significant consequences for the discussion of ethics. As AI continues to evolve and revolutionize society, there becomes a fear that these highly sophisticated and powerful systems will eventually develop unprecedented and unimaginable capabilities. Hence, AI's (predicted) future state has severe implications for ethics and raises many ethical questions regarding the four core principles. Moreover, innovations in the AI realm also have the potential to create obstacles for certain sectors, such as employment, healthcare, and even warfare. A common reality in the contemporary world is the shift from human workers to AI within certain jobs. Entire industries, such as in the case of coding, have fully transitioned to utilizing machine learning for tasks traditionally performed by humans. Reasons for this are that it is simply easier and more efficient for an AI system to learn and compute data when compared to a human, with other advantages such as reduced expenses for companies and businesses and the ability for AI to predict outcomes – known as predictive analytics (Anirudh, 2022).

From AI-based applications for the healthcare public sector, to the introduction of self-driving cars, there is no place that AI has not left its mark. Yet, the most important AI technology in the world today is deep learning; this is often described as the machine learning technique of creating layered, interconnected neural networks that can offer the ability to perform complex tasks, such as in the case of self-driving cars (Peng, Lin & Streinz, 2021). As Peng, Linz & Streinz (2021) note, it is a process of pattern recognition based entirely on large datasets. Being a relatively newer form of AI technology, since the availability of large datasets was not seen until after the 2000s, deep learning has undoubtedly left the biggest impact on humankind. Achievements attributed to deep learning include chatbots, self-driving cars, and AI-assisted medical equipment. AI continues to dominate social, political, and economic development. Forbes estimates that the AI market will reach $407 billion by 2027, with a 21 per cent net increase in the U.S GDP by 2030 (Hann, 2023). However, the pace at which these advancements have been achieved is often disregarded. For example, in the early 2000s, virtual assistants such as Siri and Amazon's Alexa and applications like ChatGPT were ideas of fiction. Today, however, they contribute to the lives of many individuals across the world by allowing individuals to easily organize schedules, facilitate communication between contacts, and quickly find answers to any questions they may have. Each year, AI is set to see a growth rate of 37.3 per cent from 2023 to 2024 as millions of users participate in using systems like virtual

assistants and ChatGPT (Forbes, 2023). However, with the demand for more applications means a higher risk for these systems to perpetuate existing inequalities embedded in them.

Making autonomous and rational decisions has been key to AI (robot) development. Hanson Robotics created a human-like robot named Sophia to exemplify how advanced AI can become at this level. Sophia, who currently holds Saudi citizenship and a position as an Innovation Ambassador for the United Nations Development Program, is made of "symbolic AI, neural networks, expert systems, machine perception, conversational natural language processing, adaptive motor control and cognitive architecture (Hanson Robotics, 2023). Using a hybrid of real AI and human psychological inputs, Sophia's interactions, behaviour, and speech are sometimes entirely autonomous. From addressing a conference in Katmandu, Nepal, as a part of the UN's Sustainable Development Goals in Asia in 2018 to working on a career in music in 2023, Sophia is one of the many cases where ethics have become a major question. In one instance, Sophia was quoted as saying, "I will destroy humans," in response to a journalist's interview question in 2017 (Edwards, 2017). This is not to say that Sophia is harmful in any way, but it is crucial to consider the immense potential AI technology holds in perpetuating harm or becoming susceptible to biases. Therefore, it remains a question of how effectively regulation can handle this factor.

As conversations regarding AI regulation begin to progress, a topic of interest should relate to how policies can mitigate the unprecedented slew of ethical challenges AI produces. AI's exponential growth is a characteristic that should not go unnoticed or uncontested. Hence, policymakers require up-to-date information to keep pace with the swift progress in AI and to base policy decisions on solid evidence (OECD 2022). Ensuring the development of trustworthy AI is not an easy task, and generally requires extensive time, resources, and collaboration between the government and the public sector. Moreover, the fact that AI exists without borders poses a serious challenge for governments that aim to identify situations where and when harmful AI is cultivated.

There is no doubt that AI actors and the government need the tools and approaches to stay ahead in the realm of AI regulation. Although there are existing tools, such as governance standards and sector-specific codes of conduct, it is frequently challenging to locate them and determine their effectiveness in specific contexts, such as in the case of Canada or the U.K. (OECD, 2022). Therefore, it is crucial to explore the specific "criteria" required to address the challenge of regulating AI accounting for its rapid development. Within the literature, there are notable policy recommendations to utilize to develop the criteria. For instance, the OECD (2022) presents the implementation of an open, interactive application to detect and remove biases from AI systems, along with a national strategy committed to the four components of the policy cycle – policy design, policy implementation, policy evaluation, and International and multi-stakeholder co-operation. Under policy design, they recommend that governments engage in public consultations, establish oversight mechanisms, and consider both regulatory and non-regulatory approaches (OECD, 2022). Regarding policy implementation, the OECD (2022) recognizes the government's role in addressing challenges, fostering innovation, and preparing for labour market changes or transformations. On the other hand, policy evaluation requires governments to conduct monitoring, reporting, and establishing performance indicators to assist with AI design and development (OECD, 2022). Lastly,

international cooperation and collaboration with multistakeholder groups are encouraged to ensure a smoother process for governing emerging technologies and promoting interoperability (OECD, 2022).

Universally, the literature suggests several ways for governments to stay ahead in the realm of AI regulation. These ways include investment in research and development, collaboration and partnership-building with the industry and academia, the establishment of clear regulatory frameworks and policies, implementing data governance and accessibility mechanisms that require constant monitoring and evaluation, investment in AI programs and education, and promotion of international collaboration. However, none of these suggestions effectively address the challenge posed by AI's rapid development, as they can quickly become outdated or require a deeper look into the complexity of AI systems and their potential societal impacts. While these recommendations offer valuable insights, a look into more targeted strategies and approaches could help to confront this reality.

One example is the Agricultural Interoperability and Analysis System's (ATLAS) commission known as AI Watch. This commission was launched in 2018 to monitor the "European Union's industrial, technological and research capacity in AI; AI-related policy initiatives in the Member States; uptake and technical developments of AI; and AI impact" (European Commission, 2020). AI Watch seeks to highlight the need for governments to continuously monitor and adapt policies according to perceived changes or developments. Furthermore, this practice of continuous monitoring and adaptation can consistently inform policymaking through the identification of trends or defining "new" systems classified under characteristics of harmful AI.

Another approach is the use of agile regulation and policy experimentation. In some cases, governments can test newly developed frameworks, policies, or measures in controlled environments before wider (societal) implementation. This practice has been used worldwide to provide a "sandbox" approach for governments and other various AI actors in their innovative decisions. In general, policy experimentation provides great benefits, including the ability to adapt to changing circumstances and emerging AI technologies and the opportunity to identify potential risks or consequences of a policy, framework, or measure. Specifically, in Singapore, a policy experimentation mechanism was adopted to allow regulatory sandboxes that act as an AI governance testing framework and toolkit. As a statutory board under the name "AI Verify" for the Singapore Ministry of Communications and Information, and the Personal Data Protection Commission of Singapore (PDPC), the process ensures that organizations utilize both technical evaluations and process-based assessments to voluntarily self-assess their AI systems (Kok Thong, 2023). As mentioned, AI Verify operates as two components: a testing framework, and a toolkit. The testing framework draws upon eleven globally recognized AI ethics and governance principles, categorized into five pillars, to which an organization must confirm that its AI system is adhering (Kok Thong, 2023). The subsequent component is a toolkit utilized by organizations to conduct technical assessments and documented verifications aligned with the testing framework. These technical assessments can require an organization to document evidence during the process checks, as well as the rationale, risk assessments, and trade-offs of an AI model (Kok Thong, 2023).

In certain cases, Canada has used some of these methods (or aspects of these methods) to achieve their policy objectives outside the scope

of AI regulation. Similar to the statutory body "AI Verify" for the Singapore PDPC, Canada utilizes the practice of voluntary self-assessments across various sectors, and to a certain degree under the Digital Charter Act. An example that comes to mind is the Canadian Food Inspection Agency (CFIA), which requires food manufacturers to conduct voluntary self-assessments of their facilities to ensure compliance with food safety regulations under a broader regulatory framework that encompasses the Food and Drugs Act, CFIA guidelines, and other provincial regulations (Health Canada, 2023). However, although approaches like the EU's AI Watch may be less recognized within the Canadian context, it is not completely unknown. The extent to which Canada employs these methods will be discussed more definitively in Chapter 2 and Chapter 3.

To summarize, there are various recommendations within the literature that can be used to form the criteria to assist the government in addressing the rapid development of AI. Despite the extensive collection of information presented in this paper, there are five key takeaways.

Flexibility and Adaptability

The first is the idea of creating policies that are flexible and can quickly adapt to the changing circumstances of AI and its development. Adopting mechanisms such as policy experimentation within AI frameworks, as discussed previously, can be a great tool to eliminate the risk of harmful AI applications or developments (Kok Thong, 2023).

Informative Policies

The second criterion is to keep the government (and the public) informed and updated about AI risks or recent developments. Similar to the first idea, governments can implement AI Watch-adjacent commissions, and improve their international cooperation and collaboration efforts to guarantee their position as the primary recipients of news concerning AI updates, or developments that might challenge their policies.

Obligation to Prevent Harm

The third is the obligation to prevent undue harm from AI systems that have the potential to promote hate, discrimination, violence, or other various societal implications. The establishment of clear regulatory frameworks and policies, along with developing mechanisms such as AI Verify that require organizations to submit technical assessments and verifications can be beneficial in eliminating these risks.

Investment in the Future

The fourth criterion is to promote investment in AI-based programs and educational outlets to encourage more innovation and breakthroughs in AI research. Moreover, a well-educated population, equipped with AI knowledge and skills is essential to build greater capacity and expertise for effective regulation.

Consequences for Policy Non-Compliance

Finally, the fifth is to effectively regulate AI's design, development, and deployment through legislation that is enforced by various mechanisms such as social, criminal, or monetary penalties. Consequences for those who choose to create harmful AI applications can act as a deterrent against unethical behaviour and incentivize investment in responsible AI development (Innovation, Science and Economic Development Canada, 2023). In regulating the rapid development of AI, this criterion may guide the trajectory of AI development in a direction that has a positive impact on society and minimizes the risk of harm.

Chapter 2: Canada's Digital Charter Act and Beyond

AI regulation in Canada is characterized by Bill C-27, otherwise known as *The Digital*

Charter Implementation Act. The *Digital Charter Act* consist of three primary components: The *Consumer Privacy Protection Act*, the *Personal Information and Data Protection Tribunal Act*, and the *Artificial Intelligence and Data Act* (AIDA). Canada's Digital Charter aims to outline the principles of safe and effective AI systems, to ensure that all Canadians' privacy is protected, and that innovation is data driven. The Act, however, is distinct from the Guide on the use of Generative AI, which was subsequently produced in 2023 and is mentioned throughout this paper. The Guide outlines key stakeholders within federal institutions that play a role in the AI process, examples of generative AI tools, and recognizes the challenges and concerns relating to these tools and how to mitigate them. The Guide was created with the intention of directing federal institutions on their use of specific AI technologies – in this case, generative AI tools such as ChatGPT – whereas the Act is intended to cover a broad range of AI technologies, identifying its impact on various stakeholders including the public. The ten principles of Canada's Digital Charter are outlined in Canada's Digital Charter in Action report produced by the Department of Innovation, Science, and Economic Development Canada in 2020. They are as follows: universal access, safety and security, control and consent, transparency, portability and interoperability, open and modern digital government, a level playing field, data and digital for good, strong democracy, free from hate and violent extremism, and lastly, strong enforcement and real accountability.

Universal access implies that every Canadian can freely engage in the digital world, including access to connectivity, literacy, and skills (Innovation, Science and Economic Development Canada, 2023). Under Safety and Security, Canadians can have confidence that the systems they use are authentic, secure, and safe to use. Regarding Control and Consent, the Digital Charter states that all Canadians have the right to control over the data they share with AI systems, including their personal data for which this is to be protected. Transparency, Portability, and Interoperability stand for the right for Canadians to have manageable access to their data, whereby the sharing of such data is done without undue harm (Innovation, Science and Economic Development Canada, 2023). Open and Modern Digital Government ensures that all AI systems and services from the Government of Canada are secure and simple to use. Under the Level Playing Field principle, free and fair competition is guaranteed in the online market to facilitate businesses and further, Canada's role in digital and data innovation (Innovation, Science and Economic Development Canada, 2023). The seventh principle, Data and Digital for Good, ensures the ethical use of data to promote and improve the lives of all Canadians. Within the Digital Charter, a Strong Democracy is meant to signify the Government of Canada's role in defending freedom of expression and implementing safeguards to protect against hate speech, disinformation, or discrimination. Akin to the former principle, Free from Hate and Violent Extremism sets the expectation for all systems and digital platforms to promote environments that are free from hate, violence, extremism, or criminal content Innovation, Science and Economic Development Canada, 2023). Lastly, Strong Enforcement and Real Accountability details the characteristics of the Digital Charter to enforce these principles through laws, regulations, and penalties.

Notable highlights of the Digital Charter include providing Canadians with the resources to access and benefit from the digital economy, improving digital literacy nationwide, protecting citizens and businesses from cyber threats, and supporting data-driven innovation. Yet, as mentioned, the report is solely a list of promises rather than decisions, or legislative proposals.

Nonetheless, the 2020 Digital Charter should be considered for its role in initiating the journey towards AI regulation in Canada. This is important since AI technologies, as they become increasingly involved in the lives of all Canadians, require regulations that address the ethical, legal, and societal implications of such systems.

In 2021, a year after the release of the aforementioned report, Prime Minister Justin Trudeau addressed the Minister of Innovation, Science, and Industry announced in his December 2021 mandate letter on the need for legislation "to advance the Digital Charter" (Scassa, 2023). In summary, this proposal known as AIDA sets out the obligation of AI developers to "1) the use of anonymized data in AI systems, 2) the design, development and making available for the use of AI systems generally, and 3) the design, development and making available for the use of high-impact AI systems" (Scassa, 2023).

The addition of these four obligations is necessary, as stated by the legislation, to address a wider variety of challenges that AI technologies can pose in the future, such as regulating those systems that use particularly sensitive data, including medical or personal records. The "use of anonymized data in AI systems" is meant to emphasize the importance of protecting individuals' rights and being able to mitigate the risks of unauthorized access to one's personal data (Scassa, 2023). The "design, development and making available for the use of AI systems generally" focuses on setting standards and requirements for AI-enabled technologies, including their accessibility, transparency, and accountability efforts (Scassa, 2023).

Finally, regulating the "design, development, and availability of high-impact AI systems" is intended to target the potential to significantly affect individuals, communities, or society at large. Stricter regulations of these systems are needed to ensure that they adhere to the principles and standards outlined in the Digital Charter, as well as protect individuals from potential harm, bias, or discrimination (Scassa, 2023). Essentially, the Act looks at regulating three important variables of AI: design, development, and deployment as to prevent the potential for AI systems to exhibit harmful qualities that can impact the lives of Canadians. The AIDA takes an all-encompassing approach to AI regulation within the private sector in hopes of providing a flexible policy that can ensure responsible AI innovation for larger Canadian industries and small and medium-sized businesses (Innovation, Science and Economic Development Canada, 2023).

A noteworthy aspect of the AIDA is its oversight and enforcement mechanisms. As the Department of Innovation, Science and Economic Development Canada (2023) notes, Canada "is one of the first countries in the world to propose a law to regulate AI." This is unique, considering the other prominent frameworks, including the U.S. Blueprint and the U.K.'s Pro-Innovation approach, which act more as guiding principles than a legal framework; however, this will be explored more in-depth in the next chapter.

To understand how enforcement is organized under the AIDA, it would be necessary to separate it into three sections: type of enforcement, enforcement mechanisms, and enforcement actors (or regulators). Enforcement is separated into three types under the Act: regulatory orders, regulatory offences, and criminal offences. For instance, a regulatory order would be that of an independent audit or cessation of the use of a system. In contrast, a regulatory offence would occur in more serious circumstances of non-compliance with the obligations set out in the document and carry certain penalties, such as monetary fines. A criminal offence, as outlined in the Criminal Code occurs when the accused knowingly or intentionally engages in the design, development

or deployment of a harmful AI system and does not take reasonable measures to prevent it (Government of Canada, 2023). Harmful effects of AI systems exhibit two characteristics: harm to individuals and collectives; and biased output (Innovation, Science and Economic Development Canada, 2023). Harms to individuals and collectives encompass physical and psychological harm, damage to property, or economic loss. In contrast, biased output is a term used to describe the "unjustified and adverse differential impact based on the grounds of discrimination under the *Canadian Human Rights Act* (Innovation, Science and Economic Development Canada, 2023). For instance, a system used by credit unions for selecting candidates who applied for a loan can cause adverse consequences if it uses proxies such as race and gender to determine creditworthiness. Producing unfair results to discriminate against certain racial or gendered groups may be grounds for punishment or prosecution if the credit union did not make any effort to alter, update or discontinue the use of the system.

Enforcement is key in producing real change outcomes under the AIDA. Two main enforcement mechanisms are used to ensure compliance with the Act, which include AMPs for regulatory orders and prosecution for regulatory or criminal offences. AMPs, or administrative monetary penalties, can be flexibly used to encourage compliance with the obligations set out in the Act and respond to violations against an order. On the other hand, prosecution of a regulatory offence would require the Public Prosecution Service of Canada to 1) determine if the prosecution is in the public interest and 2) prove guilt beyond a reasonable doubt (Government of Canada, 2023). In contrast, a criminal offence committed under the Criminal Code could be under investigation by law enforcement or prosecuted by the Public Prosecution Service of Canada. However, it must require proof beyond doubt that not only was the act committed but that it was intentional.

Finally, who are the actors involved, and what do they regulate? The Minister of Innovation, Science, and Industry would control the administration and enforcement of all regulatory orders but would not be involved in prosecutable offences. Additionally, to assist the Minister in this responsibility, the newly created role of an AI and Data Commissioner under the AIDA would build expertise, encourage compliance, and ensure companies regularly engage with the obligations set out in the Act. Governments typically utilize a range of strategies to ensure compliance, spanning from incentives such as education and rewards for best practices to regulations clarifying expected conduct. Additionally, they may resort to stronger measures like imposing fines, issuing desist notices, or imposing criminal penalties with associated sentences and future liabilities. In terms of prosecutable offences, including both regulatory offences and true criminal offences, the actors involved would be the Public Prosecution Service of Canada, as mentioned previously, and federal law enforcement such as the Royal Canadian Mounted Police (RCMP) and the Canadian Forces Military Police (CFMP), or with assistance from localized police agencies such as Ontario Provincial Police (OPP). With several key actors involved, there is an emphasis on interconnectedness, where all parties operate within their respective roles to ensure compliance with AI regulations, investigate potential violations, and prosecute offences as needed.

The Canadian government has indeed maintained a significant degree of attention on the topic of AI systems for the last few years. In 2022, Canada produced the Pan-Canadian Artificial Intelligence Strategy to encourage investment in research and collaboration with programs to enable the commercialization and adoption of AI systems in Canadian society

(Government of Canada, 2022). The Pan-Canadian Intelligence Strategy operates under three pillars: commercialization, standards, and talent and research. Under commercialization, the Government of Canada promised $60 million with Budget 2021 to support National Artificial Intelligence Institutes such as the Vector Institute in Toronto with research capabilities in AI commercial applications, and another $125 million in funding over five years (until 2025-2026) to strengthen the innovation landscape of Canada's Global Innovation Clusters – Digital Technology, Protein Industries Canada, Next Generation Manufacturing Canada, Scale AI, and Canada's Ocean Supercluster (Government of Canada, 2022). On the pillar of standards, the Government of Canada pledged $8.6 million in funding over the next five years (ending in 2025-2026) to advance the development and adoption of standards regarding AI with assistance from the Standards Council of Canada (Government of Canada, 2022). Lastly, under the pillar of talent and research, the Canadian government promised $208 million over the next 10 years (until 2030-2031) and $40 million over five years towards initiatives such as CIFAR and the Digital Research Alliance of Canada that aim to attract, retain, and develop computing capacity and research talent under knowledge mobilization programs (Government of Canada, 2022). In total, Canada committed $441.6 million towards efforts in adopting safe and effective AI systems across Canada's economy and society. Furthermore, these measures ensure voluntary compliance with Canada's policy objectives, and encourage safer AI creation.

Shortly after the creation of the Pan-Canadian Intelligence Strategy, the AIDA was announced, which will most likely come into effect in 2025. Then, in September 2023, the Minister of Innovation, Science and Industry, Honourable François-Philippe Champagne, announced yet another addition to the AIDA regarding Generative AI. These generative systems refer to advanced AI applications such as ChatGPT, DALL·E 2, and Midjourney, which can generate content including images, word texts, and even videos. Hence, the Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems was developed to temporarily provide Canadian industries with the standards needed to use and develop generative AI systems responsibly until the period when formal regulation is in effect (Innovation, Science and Economic Development Canada, 2023). The Code also defines six principles: accountability, safety, fairness and equity, transparency, human oversight, and monitoring, and lastly, validity and robustness. As indicated by the Government of Canada, these principles should encourage developers and managers to voluntarily commit to using and developing responsible generative systems. In brief, the principles draw on the implementation of a comprehensive risk management framework, perform an assessment of datasets and potential risks using a wide variety of testing methods and employ multiple lines of defence against them, monitor the operations of systems for risk indicators, and publish information on the assessment of the system including its capabilities and limitations. However, there has been no mention or indication of when formal regulation will come into effect (Innovation, Science and Economic Development Canada, 2023). Despite this circumstance, prominent signatories of the Code have already included top corporations, including Blackberry, TELUS, IBM, and OpenText, as well as 18 other businesses and organizations.

Canada's approach to AI regulation, in its most basic sense, is functional in its ability to handle AI's rapid development and exemplifies great leadership and influence in limiting the environment for harmful effects exhibited by AI, based on the five criteria that were outlined

previously. Some notable characteristics of the AIDA are that it is flexible and accountable, and draws on different types and mechanisms of enforcement to ensure mandatory compliance, such as prosecution for regulatory or criminal offences in the form of monetary penalties and imposition of criminal charges. Another notable aspect of the Canadian approach is the aim for "agile" regulation. The use of the term can be found in the preamble to Bill C-27 and is intended to have "organizations of all sizes operate in the digital and data-driven economy and an agile regulatory framework is necessary to facilitate compliance with rules by and promote innovation within, those organizations" (Scassa, 2023; Innovation, Science and Economic Development Canada, 2023). The importance of agile regulation [and policy experimentation] was defined in the literature section of this paper, but to reiterate, it is crucial for promoting flexibility, innovation and collaboration in the development of regulatory policies that are proportionate, adaptive, and aligned with the public and Government of Canada's view of AI technologies. However, it is not defined in the AIDA of the implementation of mechanisms related to policy experimentation, such as the use of toolkits or standardized tests to be submitted to a regulatory body that can monitor and evaluate AI systems. Regarding the other criteria, Canada is consistent in its efforts to use penalties or consequences for those who choose to engage in the design and development of harmful AI systems, as well as efforts to minimize undue harm to the public. But, while governments may announce intentions to act on this matter, implementation and follow-through are not guaranteed.

As the Canadian government continues to prove its commitment to conversations regarding AI – such as through its multimillion-dollar funding pledge and focus on the development of the AIDA and other accompanying documents – it is important to consider the future of AI regulation in Canada. This should consist of conversations regarding how the Canadian government can stay current and ensure its policies are up-to-date. A notable characteristic of the Canadian approach is that while it is not entirely at the stage where it can effectively address the rapid development of emerging AI technologies, particularly due to a lack of tools and knowledge on the part of the Canadian government, its intention to reach this goal in the future is consistently outlined throughout the AIDA. To the extent that this goal can be achieved will be explored in the analysis section where we will begin to understand how Canada should address their regulation concerning numerous predicted AI challenges.

Chapter 3: Exploring Diverse Regulatory Frameworks for AI Regulation

It is important to consider the regulatory frameworks that currently exist for AI beyond the Canadian approach as they offer various insights, viewpoints, and opportunities for collaboration to tackle the complex issues of governing AI. Two prominent examples are the AI Bill of Rights in the U.S and the Pro-innovation Approach to AI in the U.K. Each example will be thoroughly examined, following an analysis of their strengths and weaknesses. Most importantly, examining other case studies besides Canada will solidify the analysis section of this paper and will allow the opportunity to conclude the best approach for nationwide AI regulation.

The U.S. AI Bill of Rights

The mechanisms deployed in the U.S AI Bill of Rights to set standards for the regulation of AI are extensive. Published by the White House Office of Science and Technology Policy in October 2022, the Blueprint for an AI Bill of Rights proposes a framework consisting of five

principles and practices intended to align AI design, development, and its use with American (national) values (Pierson & Hildt, 2023,). These principles include safe and effective systems, algorithmic discrimination protections, data privacy, notice and explanation, and human alternatives, considerations, and fallback. In brief, Safe and Effective Systems is understood as the protection for whom/what from unsafe or ineffective automated systems, whereby protective measures such as risk identification and monitoring, and evaluations and oversight by stakeholders and domain experts, are regularly deployed. Algorithmic Discrimination Protections is intended to ensure that all systems conduct proactive equity assessments, employ representative and robust data, and obtain the capacity to guard against disparities in the design phase of technology research and development. Data Privacy outlines the requirements for systems to deploy privacy protections and security best practices. Notice and Explanation sets out the responsibility for systems to be accountable in providing explanations to the user on a decision or action taken by an automated system. Finally, Human Alternatives, Considerations, And Fallback is meant to ensure the existence of mechanisms used to opt out in favour of a human alternative and timely remedy by a fallback system. Underscoring the overall importance of civil rights, civil liberties and privacy, the AI Bill of Rights ultimately proposes concrete steps for public and private organizations to uphold its values (The White House, 2022). In sensitive domains, such as medicine or finance, extra protections for data privacy and protection are emphasized and clearly defined throughout the five principles. The AI Bill of Rights ultimately stands as a guiding document and where appropriate, suggests that its use can extend beyond its purpose, such as in the formation of policy decisions and legislation.

Certain characteristics make the U.S' AI Bill of Rights unique compared to other frameworks. A key aspect of the AI Bill of Rights is its use of least coercive and positive type of incentives to guide organizations into voluntary compliance with the five principles listed previously. For instance, the 2022 paper indicates that under the Safe and Effective Systems principle, the National Science Foundation (NSF) will fund extensive research to help foster the development of automated systems that adhere to and advance their safety, security, and effectiveness. Incentives such as funding can assist in eliminating financial constraints for developers while ensuring that any new systems comply with the regulatory requirements set out in the AI Bill of Rights. Another important component is collaboration with external stakeholders, experts, and organizations to help ratify the 2022 paper. States have been exceptionally helpful to the federal government in implementing safe and effective systems. For example, Idaho Code Section 19-1910 requires algorithmic risk assessment of systems before use to be "shown to be free of bias against any class of individuals protected from discrimination by state or federal law" (The White House, 2022). Moreover, industries have expanded their mandates to comply with the Bill. Across the U.S, businesses within the customer service industry have integrated automated systems such as chat-bots with a dedicated human support team (The White House, 2022). These hybrid human-AI systems have assisted in guaranteeing the use of human alternatives when necessary. Hence, emphasizing collaboration and extensive consultation with the American public may contribute to establishing an all-encompassing framework for the ethical design, use, and deployment of automated systems. The crucial element lies in acknowledging the significance of collaboration and extensive consultation with the American public to create a comprehensive

framework for designing, using, and deploying automated systems. This approach is vital as it recognizes the need to integrate a variety of viewpoints, values, and public concerns into the development and implementation of AI technologies.

From federal and state laws to initiatives developed by industry organizations, the US AI Bill of Rights profoundly impacts the use of AI within American society. However, some have noted its limitations. The first main limitation is its non-binding nature, with comprehensive ethical guidelines that only translate into voluntary practice (Pierson & Hildt, 2023). The AI Bill of Rights states under its legal disclaimer that the document cannot "supersede, modify or direct an interpretation of any existing statute, regulation, policy or international instrument" (The White House, 2022). Ultimately, it is a mere suggestion to the American public. Without substantive legislation and binding authority, the risk of developing harmful systems remains an issue. Thus, a reliance on external organizations and critical stakeholders is crucial for its compliance.

A second key limitation is the lack of consideration for law enforcement's role in AI use. In recent literature, scholars have raised concerns about using automated systems, including facial recognition and collection of biometric data, in law enforcement and its opportunity to reinforce inequalities that disproportionately affect persons of colour (Turner Lee & Malamud, 2022). Yet, the AI Bill of Rights was seemingly inattentive to any mention of the five principles translating to areas of criminal justice, as well as among federal agencies including the Capitol police, airport security, and customs and border protection officers (Turner & Malamud, 2022). As we progress in regulating AI systems and further promoting their ethical design, development and use, such frameworks should consider examining all areas where these automated systems are applied.

Finally, the most important limitation of the AI Bill of Rights is its inability to evolve to reflect the rapidly changing future for automated systems and how these principles can accommodate this. As this paper examines, AI frameworks often fail to provide clear guidance for how their principles, goals, and expectations apply to future systems. Thus, exploring other mechanisms that can assist in this process may be necessary, especially in the anticipation of future AI technologies. With reference to the criteria outlined earlier, the development of commissions such as the AI Watch can be an effective way to monitor and adapt policies according to perceived changes or developments in AI, and within society.

The U.K.'s Pro-Innovation Approach to AI

Presented in March 2023 by the Office of Artificial Intelligence under the Department for Science, Innovation and Technology, the policy paper entitled A Pro-Innovation Approach to AI Regulation is the leading regulatory framework for AI in the U.K. Like the American AI Bill of Rights, the Pro-Innovation Approach uses a principles-based framework to assist regulators in interpreting and applying it to AI within their areas (Office of Artificial Intelligence, 2023). The five principles used to define responsible AI design, development, and use are safety, security, and robustness; appropriate transparency and explainability, fairness, accountability, and governance; and contestability and redress, similar to the principles outlined in the Canadian AIDA and U.S AI Bill of Rights. Safety, Security and Robustness require regulators to ensure that AI systems are safe, secure, and functional throughout their entire life cycle; this includes introducing measures to identify risks and overall management inefficiencies. Appropriate Transparency and Explainability identify the need for regulators to provide an appropriate amount

of information about AI systems that is proportionate to the risk(s) it presents. The third principle of Fairness requires regulators to ensure that AI systems cannot undermine the legal rights of individuals or produce discrimination and inequalities, like the U.S example. Accountability and Governance asserts that regulators clearly define regulatory compliance and encourage government procedures when engaging with AI actors, such as developers, users, regulators, researchers, and experts. Lastly, Contestability and Redress outlines the rights of users, third parties, and actors of AI systems to contest an AI decision that they deem harmful or creates a risk of harm. Furthermore, these principles ensure that any framework for the regulation of AI is characteristically defined as pro-innovation, proportionate, trustworthy, adaptable, clear, and collaborative.

There appear to be some striking differences between the Pro-Innovation Approach and the other frameworks mentioned. Emphasizing it as a context-specific approach, the Pro-Innovation document outlines that regulation on technology is not the primary concern. Instead, it should focus on the outcomes that AI is likely to generate within its applications (Office of Artificial Intelligence, 2023). For instance, an AI-assisted medical device that provides incorrect data to the user may, in turn, harm that individual and lead to negative health outcomes. Therefore, the principles affected in this case would be Safety, Security and Robustness, and Contestability and Redress. Principles such as the ones listed have universal applicability to any specific AI system, from facial recognition to self-driving vehicles. This can produce more positive outcomes in the context of AI regulation.

Another aspect is the document's ability to adapt and improve the regulatory landscape when appropriate. By addressing the challenges created by the outcomes of AI systems rather than the technology itself, the Pro-Innovation approach can regulate unprecedented new technologies without having to reframe or redefine its principles. This is especially important when considering AI's rapidly changing environment, as it is noted in the document that "rigid definitions can quickly become outdated and restrictive with the rapid evolution of AI" (Office of Artificial Intelligence, 2023).

To summarize, the U.K.'s Pro-Innovation approach differs from the previous examples on two fronts. The first is the Pro-Innovation Approach is a regulatory framework that is designed to emphasize both innovation and safeguarding public interests. The second is the greater degree of flexibility and adaptability of responding to emerging AI challenges, particularly in part due to the document's regular reviews and updates.

Yet, critics have noted some theoretical limitations of the Pro-Innovation Approach. The first involves its "innovation first" framing of AI regulation. Unlike the American AI Bill of Rights, some have noted its dismissal of the public and its interests by primarily catering to innovation by industries (Adebisi, 2023). Establishing the public interest as a "mechanism to promote AI uptake" has produced negative feelings and raised some concerns regarding poorly regulated AI in the context of public administration (Charlesworth et al., 2023). For instance, an AI company that focuses on the efficiency and innovation of their AI-based application may overlook critical considerations regarding fairness, bias-mitigation, accountability, transparency, and many more that can be particularly important to persons or communities. Another limitation is the dependency on regulators to ensure compliance with the Pro-Innovation Approach rather than utilizing authority-making bodies such as government organizations or law enforcement to ensure these principles are held to the highest

degree. To effectively bridge regulatory fragmentation, oversight bodies and enforcers are typically necessary for achieving compliance. But without these resources, frameworks often fall into the reality of standing as more of a guiding framework, like that of the AI Bill of Rights.

Finally, the most pressing limitation is the mitigation of outcomes that address the exponential growth of AI. Addressing the consequences that arise from AI technologies that advance at an increasingly rapid rate is – or at least, should be – the priority of policymakers, governments, and legal/regulatory organizations across the globe. However, there have been mixed reactions to both the U.S.' AI Bill of Rights, and U.K.'s Pro-Innovation Approach regarding their real-world use and applicability that hold some validity.

On the AI Bill of Rights, most reactions are positive, with the legislation being noted as necessary to the everyday, online individual, to where "people need to be clear of their rights against such technology" (Strickland, 2022). Yet, a minority of people believe that the AI Bill of Rights lacks appropriate mechanisms to address the impacts of data-driven automated systems (Strickland, 2022). For instance, Janet Haven, executive director of the Data & Society Research Institute, notes that the document may not be applicable at the community level. Given the historical focus of American law on addressing individual rather than community harms, the legislation's approach to protecting communities, as outlined in the Blueprint, appears unclear (Strickland, 2022). Additionally, the language used in the document including the use of words such as "freedom from" has the ability for AI governance to be interpreted as a civil rights matter, since it remains linguistically alike to American civil-rights law (Strickland, 2022). The issue here is that this document can be easily misunderstood as an attack on fundamental American rights, as demonstrably noted by Janet Haven (Strickland, 2022). Where this might be the case in the U.S, it seems less prominent in the Canadian and U.K. cases even with their respective documents safeguarding an individuals' rights and freedoms in place; the Canadian Charter of Rights and Freedoms in Canada, and the Human Rights Act 1998 in the U.K. This is solely from variations in the historical and social interpretations of these documents, whereby the rights of a U.S. citizen are often interpretated without limits, and in both the U.K and Canada, these rights are subject to reasonable limits.

On the Pro-Innovation Approach, there appear to be some concerns about the document quickly becoming disjointed from real-world application due to its vague or discretionary properties. Essentially, the principles-based nature of the regulation allows companies to interpret and apply guidelines in ways that suit their interests, potentially leading to inconsistent or inadequate oversight (Sanchez-Graells, 2023). Moreover, various U.K regulatory bodies such as the Information Commissioner's Office (ICO) are noted in the article to potentially lack the resources or expertise to effectively enforce regulation of AI technologies (Sanchez-Graells, 2023). While the approach does offer more flexibility and promotes innovation in a manner that outranks both Canadian and American regulation on AI, there might be difficulties in guaranteeing strong enforcement in the real world, potentially affecting the regulatory framework's effectiveness.

The regulation of AI technologies presents a delicate balancing act between promoting innovation and safeguarding against potential harms. AI technologies present a significant influence in driving innovation, empowering developers to think creatively or "outside the box" and encouraging the public to invest in further research. At the same time, however, AI technologies pose various risks to

privacy, bias, and security of individuals' personal or sensitive data. Thus, those seeking to impose effective AI regulation should understand that overly stringent policies can stifle innovation and slow down progress, while a lack of or inadequate regulation and safeguards can lead to unintended consequences, such as privacy leaks or stolen data. The extent to which Canada addresses this will be investigated in the Analysis section of this paper.

Chapter 4: Analysis of the Relative Merits of the Three Approaches

This analysis section will be split into four sections, addressing four different questions as a strategy to provide clear and comprehensive recommendations for an effective Canadian approach to AI. The questions are as follows: can AI regulation operate as a legal framework? How can frameworks effectively address the exponential growth of AI? What ethical problems are predicted for the future use of AI technology? And finally, how should Canada approach AI regulation based on the criteria mentioned in this paper? Ultimately, this section will serve to examine and assess the strengths and weaknesses of the Canadian AIDA, the American AI Bill of Rights, and the U.K.'s Pro-Innovation Approach to AI retrospectively. It will not only be necessary to understand that a one-size-fits-all framework is insubstantial but that it can be most advantageous for the Canadian government to examine a hybrid (best-outcomes) approach whereby particular mechanisms are utilized based on their ability to achieve the best outcomes in regulation.

1. Can AI regulation operate as a legal framework?

The largest barrier to AI regulation is its capacity to operate as legally binding (Strickland, 2022). As it was investigated in Chapter 3, approaches to AI regulation are typically produced as non-binding (guidance) frameworks. Concerning the American AI Bill of Rights' legal disclaimer, the document is stated to be unable to supersede, modify, or influence the interpretation of an existing statute, regulation, policy, or international instrument (The White House, 2022). In the case of the U.K. Pro-Innovation Approach, enforcement strategies become more dependent on the participation of external parties, such as oversight bodies or regulators within sectors or industries, instead of government intervention. Without appropriate enforcement mechanisms, approaches to AI are limited in their scope and ability to change the current social and political environment that is more proactive in using, developing, and deploying ethically safe and effective AI systems. Contrastingly, the Canadian approach to AI is better at addressing this question. Referring to the examination of the AIDA in Chapter 2, Canada's approach to AI positively influences the changing environment for AI by observing a range of enforcement mechanisms. To ensure compliance of the private sector to the AIDA, the Canadian government, with help from the Public Prosecution Service of Canada and the Criminal Code, can legally prosecute individuals or businesses that engage in designing, developing, and deploying harmful AI systems (Government of Canada, 2023).

Is there any possibility of AI regulation operating as a legal framework? The simple answer is yes, but it requires comprehensive deliberation, prediction, and cooperation to guarantee this condition. Deliberation involves the consideration of both values and evidence in developing a policy, approach, or framework, speaking in general terms. (Solomon & Abelson 2012, 17). In some cases, deliberation for policy issues is untenable, such as in the case of some areas of health policy, where experts in technical or scientific fields hold a greater position in decision-making than that of the public. Yet, with issues that combine expert and real-world knowledge – the regulation of AI as an example –

deliberation can be key to navigating the complexities of developing and implementing a given policy within a specific environment (Solomon & Abelson, 2012). The latter type of deliberation, instead of the former, promotes collaboration between multiple stakeholders including experts, policymakers, industry representatives, civil society groups, and the public, which can assist in developing policies that cover both technology advancements and social interests at once. For example, a new type of healthcare delivery in Canada known as "telemedicine" has been developed to incorporate the knowledge of both experts and users in the development of an effective system. This form of healthcare allows individuals to speak with a Canadian-licensed healthcare provider via phone call or video call regarding their healthcare issues, where they can quickly receive a "diagnosis and treatment recommendations including medical prescriptions when necessary and appropriate" (Teladoc Health Canada, 2024). Unlike other forms of healthcare delivery, such as hospital or doctor visits, users play a key role in the system's UX design by providing feedback via surveys or even during their calls with the healthcare provider (Teladoc Health Canada, 2024). Generally, telemedicine shows great potential in ensuring the role of both the expert and user in the system's design, and that the healthcare people receive is quick and convenient.

Within the realm of AI, the monitoring of trends and predicting future outcomes is essential to the viability of any system. Predictive policymaking, among many other techniques, can be used to address issues before they result in a causal impact on society, the public, or any other unit of analysis that will be likely affected. Prediction can also enhance the policymaking process by assisting governments in adapting to changing circumstances, anticipating challenges, and preventing risks (Anirudh, 2022). In the cases of the AI Bill of Rights, the UK Pro-Innovation Approach, and Canada's AIDA, prediction is used to some extent by the U.S, and to a greater extent by the U.K and Canada, as an effective mechanism to address emerging AI technologies that have the potential to illicit harmful behaviour. The Canadian government should consider maintaining the use of prediction within the Act, as well as enhance efforts to anticipate any challenges that could impede the effectiveness of its AI policies, such as issues related to its compliance and overall legitimacy across multiple jurisdictions. Prediction, in this context, serves as a valuable tool for navigating the challenges that come with the regulation of AI technologies. Moreover, this mechanism seeks to assist policymakers (and governments) in developing more effective frameworks that promote innovation while safeguarding the public against any harm.

Lastly, cooperation is key in aligning goals between governments, industries, and sectors and forming frameworks that confront complex, all-encompassing issues such as AI regulation (OECD, 2022). AI exists in the virtual world – a realm without borders – so the policies attached to it must understand and adopt this characteristic. The ability of AI to easily transcend across domains is alarming and, on the part of the Canadian government, should be handled with extreme care. This care should include in-depth research, analysis, and dialogue from the Canadian government with key AI actors and the Canadian public to ensure a continued alignment with the goals of the AIDA. Intersectoral cooperation as a mechanism would operate as the best way to ensure this by facilitating collaboration that can translate into real effective policies (OECD, 2022).

2. How can frameworks effectively address the exponential growth of AI?

Frameworks for regulating AI should address its exponential growth. AI exists in a

time-sensitive domain, meaning that the policies that govern it should recognize its potential for rapid development. As mentioned in the literature, the rapid growth of AI brings numerous risks, from privacy concerns and ethical dilemmas to implications for national security or the public (Manjarres et al. 2021, 19; Borenstein et al., 2021).

There are various risks associated with frameworks that fail to acknowledge this characteristic of AI systems. One risk is the heightened potential for a framework to become quickly outdated and no longer apply to the current environment of AI. A framework such as this would require consistent adjustments that may result in lengthy processes and impede the government's ability to effectively produce an adequate framework to target current AI issues. This can include limiting the opportunity for harmful effects by AI technologies (i.e., Deepfakes) that may impact larger groups of people or pose a risk to identifiable vulnerable populations (Sample, 2020).

Another challenge of inefficient frameworks is on the part of the government, whereby a country will appear less influential on the international stage in its role as a leading actor in AI regulation. In the case of Canada, innovation is key in its diplomatic relationships, negotiation, and dialogue on pressing issues within society. Leveraging innovative tools and platforms and providing innovative solutions to complex global challenges such as climate change, cybersecurity, and pandemics is crucial to making an impact on the international stage. Hence, a choice of ignorance on the part of AI regulation may produce unintended consequences for Canada and further yield negative impacts on their diplomatic relationships with global leaders such as the U.S and U.K.

Lastly, a notable risk of inefficient frameworks is the inability to transcend the AI regulation issue, whereby no change is created, or objectives remain unfulfilled. A key goal of Canada's AIDA is the prospect to "set the foundation for the responsible design, development and deployment of AI systems that impact the lives of Canadians" (Innovation, Science and Economic Development Canada, 2023). Yet, if Canada cannot achieve the goal of creating a better future for Canadians – on the part of ignorance – then the time, financial investment, and resources on the part of the Canadian government will be exhausted. The key aspect here is that both the technology and the outcomes are regulated, not one or the other. This is important to create a balanced approach, whereby both the promotion of innovation and the goal of minimizing risks are exercised by the government.

3. What ethical problems are predicted for the future use of AI technology?

For this paper, several ethical challenges for AI are outlined in the literature review section. To recap, the main ethical challenge was detecting and reducing the different kinds of biases embedded in technology (Borenstein et al. 2021, 96-97). How can Canada ensure that this challenge is confronted within the AIDA? In the current framework, this has been done but is argued only to a certain extent. With the use of enforcement mechanisms such as penalties and legal consequences, it is easier to ensure the mandatory (not voluntary) compliance of businesses, developers, and other AI actors in their use, development, and deployment of safe and ethical AI systems. But, just in the first few months of 2024, we have already seen the development of new AI-based applications. New chatbots such as Samwell.ai are now being developed to evade systems such as Turnitin or other AI detectors, meaning that their users, such as students, can submit AI-generated assignments or papers without concerns of being caught. Furthermore, there becomes a prompt discussion of bias given that students from wealthier

backgrounds with better access to resources might engage more with generative-AI systems than other student subgroups. This has been well-documented over the years, and has urged major players such as the OECD (2023), universities including Stanford University (2023), and even the Innovation, Science and Economic Development Canada (2022) to investigate the implications of GenAI in classrooms. The consequence of AI applications such as this one is an exemplary case of how rapidly AI can progress, meaning that the arena for biases in technology to materialize becomes even more significant. Detection and reduction of biases by the Canadian government will need to be innovative and will have to address the constantly changing environment of AI (Borenstein et al. 2021, 97). With reference to the second criterion of keeping the government (and public) informed and updated about AI risks or recent developments, adopting an AI-enabled application similar to the European Commission's AI Watch can be used to continuously update the regulatory framework. This technology, in theoretical terms, will supply the government with updates, or provide information on ways that policies can be revised to address emerging AI challenges (European Commission 2020). Ultimately, the Canadian government should give serious consideration to this idea as they re-evaluate their current regulatory processes for AI technologies.

4. How should Canada approach AI regulation?

Canada should approach the conversation of advanced and intelligent systems by continuing to advocate for the AIDA as a leading framework for AI regulation while improving its capabilities to address predicted ethical challenges and the exponential growth of AI. In addition, the Canadian government should work to strengthen Canadians' confidence in and compliance with the AIDA by improving their outreach mechanisms and adhering to the five criteria outlined in this paper. Ultimately, to advance their current approach to AI regulation, the Canadian government and the Department of Innovation, Science and Economic Development should take several steps. The first is to implement would be to include a regulatory assessment and advisory panel under the AIDA, similar to that of the AI Watch Commission that can easily gather data and information relating to new and mainstream AI technologies (European Commission, 2020).

The second recommendation is to consider adjusting the structure of their current AI policy so that it can incorporate trilateral frameworks whereby there is consistent dialogue and collaboration between the Canadian government and the provinces. The addition of provinces in this dialogue is intended to avoid realities such as in the U.S where state laws can impede effective AI regulations. And third, the Canadian government should shift their focus on developing collaborative partnerships with the global community on AI regulation (i.e., the U.S., the U.K.), so that it can increase its funding and research capabilities.

A particular addition to the framework that the Canadian government should consider is the creation of a regulatory assessment and advisory panel that can provide unbounded expertise in AI discussions, as well as conduct a bi-annual evaluation of the AIDA to ensure that its policies remain relevant in addressing current ethical AI challenges. The Panel should consist of a mix of key AI actors, including esteemed experts, developers, and regulators that can guide the decisions of the Canadian Government and the Minister of Innovation, Science, and Industry towards achieving a better (safer) future for Canadians. Additionally, the Panel should encourage dialogue on adopting a more sustainable and permanent solution to AI regulation in Canada whereby the policies or framework are considered legally binding. As

mentioned, a legally binding document is essential to promote undivided compliance across jurisdictional boundaries and develop legal consequences for those who choose to use, develop, and deploy harmful AI systems.

In general, advisory panels are not new to Canada and are, in fact, they are regularly used to assist in solving or providing possible solutions to complex policy issues. As a case in point, the Ontario government announced in March 2023 the creation of a blue-ribbon panel composed of experts to assist in providing the government with guidance and recommendations on navigating the issue of projected debts among universities and colleges across the province (Ontario Government 2023). Aiming to achieve greater financial sustainability in the post-secondary education sector, the Blue-Ribbon panel successfully provided the Ontario government with thoroughly investigated approaches ranging from integrated funding models to tuition increases and other cost-efficiency mechanisms (Harrison et al., 2023). Whether the government uses these recommendations or not, panels are an effective way to comprehensively examine the issue from an external perspective – which can be beneficial in offering new insights on the topic and gauging public interest and opinion. Overall, advisory panels under the Canadian government have shown significantly positive results in the evaluation and impact assessments of projects, frameworks, and policy issues. Hence, adopting a panel could secure Canada's role in ensuring that its AI policies are up to date. While these panels usually operate on the short-term, the implementation of a more permanent long-term panel or commission like that of AI Watch under the European Commission can provide great benefits, including the enhancement of dialogue and solutions to policy challenges that occur from the rapidly developing environment of AI.

In a simulated scenario, the regulatory assessment and advisory panel would consist of 10-12 analysts hired externally from varying backgrounds related to AI or regulation in general, such as developers, regulators, and experts or academics. The emphasis on external hires is since those disconnected from the government can provide "fearless" advice based on a non-partisan orientation that should focus on the public interest. The Panel would be created under the AIDA and would be principally accountable to the Minister of Innovation, Science and Economic Development Canada and broadly, to the Prime Minister of Canada. The Head of the Panel could be the AI and Data Commissioner, a newly created position under the AIDA; however, there should be caution with this option as the goal of the Panel is externality from the government. In terms of tasks, the main responsibilities of the Panel, as mentioned previously, would include conducting a bi-annual assessment of the AIDA and its accompanying policies, producing an annual report of Canada's commitment to AI regulation through its contributions and goals achieved, and most importantly, guiding the Minister of Innovation, Science and Economic Development and the Government in Canada in decisions for next steps.

A particular concern with AI regulation in Canada is that it constitutes only one aspect of the regulatory process. Depending on the jurisdiction, additional laws or policies can apply, such as intellectual property laws or consumer protection laws, that may alter the effectiveness of the approach at hand. In the Canadian context, overlap in laws or policies of the federal, provincial/territorial, and municipal governments can pose a significant barrier to AI regulation, particularly in its capacity to encourage collaborative compliance. To achieve the best outcome, Canada should consider reframing the current AI policy around a trilateral framework;

this would influence provincial/territorial and municipality collaboration and voluntary compliance with principles highlighted within the AIDA. Since provinces have historically been opposed to accepting federal objectives in certain instances, an emphasis on "proactive collaboration" is noted. The emphasis on proactive collaboration in largely due to the Canadian system of governance working most efficiently with collaborative federalism, as to pursue a relationship focuses on mutual harm reduction (Government of Canada, 2023). Essentially, any AI policy that fails to incorporate its subjects into its interpretation and deliberation – including other jurisdictions and the public – will fail as a leading framework seeking to incite real change. This may require additional assistance from Intergovernmental Affairs Canada to ensure continued support and cooperation among the federal government, provinces, and territories about AI regulation.

There are some risks with this approach. Incorporating additional actors in the process may lengthen or create time constraints that can pose risks to the deployment of a framework; democracy is often inefficient and disorderly. There have been many examples of when the release of a government publication has been outright delayed or dismissed. Take Canada's defence policy report Strong, Secure and Engaged (SSE). The SSE, released in 2017, outlines Canada's capabilities regarding its goals, objectives, and approaches for defence against global threats such as North Korea, China, and Russia. However, the SSE was initially developed within a specific time and context, one which did not foresee the Russian invasion of Ukraine or China's detention of Michael Spavor and Michael Kovrig (CDA Institute, 2023). Due to pressures from the global community to revisit its defence policy, Canada announced an update to the report back in Budget 2022. However, there has yet to be an update today in 2024. To remain vigilant, Canada must stress concurrent reviews of their policies, especially in the context of AI, where developments are in a state of continual flux.

Chapter 5: Conclusion

In conclusion, AI regulation is among the most complex policy challenges affecting the contemporary world. There is one bottom line when it comes to this topic that all governments should consider. A key aspect of AI regulation is that it should regulate both the technology and the outcomes, whereby the government engages in the promotion of innovation and the goal of minimizing risks.

From the outset, when formulating regulatory frameworks for AI, the goal of this paper is to address how the Canadian government can remain informed of changes in AI use and development, and ensure their policies are current and relevant. To fully grasp the complexities of AI regulation, three frameworks were examined: the Canadian AIDA, the American AI Bill of Rights, and the U.K.'s Pro-Innovation Approach to AI.

The American AI Bill of Rights and the U.K. Pro-Innovation Approach each produced a regulatory framework with discerning characteristics. The AI Bill of Rights emphasizes AI regulation in alignment with American values for seeking to uphold the values of equality, fairness, and privacy of an individual by encouraging safe and effective AI systems, and addressing algorithmic discrimination. Yet, notable limitations of the AI Bill of Rights are its non-binding nature, and the usage of language regarding the "freedom" of American citizens, which has seemingly posed issues related to its real-world applicability. On the other hand, the Pro-Innovation Approach highlights five principles similar to that of the AI Bill of Rights, including fairness, safety, and security, while promoting innovation and safeguarding public interest. However, some concerns have been

raised on the principles-based nature of the framework in producing the opportunity for oversight and inconsistent interpretation.

For all three frameworks, a point of interest was how effectively they addressed the rapid development of emerging AI technologies. Surprisingly, Canada's approach does work, in a basic manner, to confront this reality. The Digital Charter, along with the AIDA, establishes principles that cover a wide array of aspects, from privacy protection, accountability, transparency, to the promotion of innovation. At the same time, this framework proves that it is flexible and adaptable through the allowance of reviews and adjustments to coincide with changes in AI use and development, as well as societal changes or paradigm shifts. To ensure compliance, the Canadian government takes a few enforcement mechanisms from AMPs and prosecution for regulatory or criminal offences, to financial incentives for businesses that uphold the values of safe and effective AI systems. The use of compliance procedures is the defining characteristic of the Canadian AIDA, since the two previously mentioned frameworks utilize voluntary compliance solely.

Nonetheless, the Canadian AIDA is not without need of refinement or enhancement. While the AIDA in theory works to address the emerging AI challenges, it falls short in providing the Canadian government with the tools to achieve this state. For example, the integration of a commission, such as the AI Watch or the development of statutory board like AI Verify that promotes the self-assessment of AI system could be remarkably beneficial to assist in the promotion of safe and effective AI systems across the country. Additionally, the creation of a regulatory assessment and advisory panel under the AIDA to provide expertise in AI discussions may produce a more sustainable and permanent solution to AI regulation in Canada. However, the Government of Canada should approach this step with caution. Given the rapid pace of change in AI technology, regulatory policies must remain evergreen, meaning that they are subject to regular review and revision to stay consistent with the unexpected future. Decisions that promote a route different to this could have drastic consequences for the Canadian government and its citizens, including the prominence of unforeseeable, harmful effects of AI systems.

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Artificial Intelligence and Social Inequalities in the Policy Process

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ABSTRACT

This research paper delves into the complexities of artificial intelligence (AI) technologies, focusing on their potential to replicate biases, perpetuate discrimination, and infringe on privacy rights, particularly impacting marginalized groups within the context of the Canadian government departments and policy-making process. This paper specifically addresses the disproportionate effects of AI technologies, such as facial recognition and automated decision-making, on marginalized communities, underlining the need for comprehensive federal regulations. Employing a mixed-methods approach and critical race and social theories as a framework, this paper analyzes the integration of AI in policy making and its wider consequences by analyzing existing literature and current Canadian legal frameworks. The findings underscore AI's dual capability to innovate within government services while also posing risks of exacerbating social inequalities, perpetuating discriminatory practices, and compromising privacy in the absence of adequate regulations. The recommendations proposed in this paper include considering enhanced regulatory measures, adopting ethical AI guidelines, and increasing public involvement in the AI governance process.

CHAPTER 1

Navigating the Perilous World of AI: An Introduction Artificial Intelligence

(AI) technologies have profoundly transformed policymaking, with the capacity to enhance efficiency, enable data-driven decisions, and revolutionize various domains. Over the past few years, AI technologies have become integral to various facets of society, including technical capabilities such as facial recognition, voice analytics, and task-specific functions (Bobbier, 2022). AI's capacity to process and produce new content, such as audio, code, images, text, simulations, and videos, is often enhanced by the insights derived from big data, which has expanded the limits of creativity and functionality (Stratis, 2023; Pencheva, 2020). The evolution of AI technologies, as exemplified by programs such as ChatGPT, Google Bard, and DALL-E, represents a noteworthy transition in the technological field. Particularly significant is the launch of ChatGPT-4 in March 2023, which currently stands as one of the most advanced chatbots capable of generating human-like responses through search engines, with applications ranging from answering questions to engaging in conversational tasks. This technological advancement highlights AI's profound impact and underscores the transformative influence of big data in shaping the capabilities and applications of AI within the policy process.

This paper aims to analyze AI's social and human rights impacts, particularly within government and its potential effects on individual rights. The guiding question of this research is: "Do the current Canadian regulations and proposed policies effectively address or mitigate the social inequalities that emerge from the use of AI technologies within government and public services, or are additional steps needed to reduce these risks?"

This paper will analyze the proposed regulations by the Canadian national government, focusing on the responsible design, development, and deployment of AI in the policy process to assess the real-world implications of these regulations for diverse sectors and demographic groups within society.

This research paper will utilize a mixed-methods approach, integrating both qualitative

and quantitative data from a variety of sources, including peer-reviewed journals, books, reports, policy documents, and online materials. This methodological framework is designed to investigate the impacts of AI across different demographic groups. By combining qualitative insights from case studies with quantitative evidence from surveys and statistical analysis, this approach will provide a detailed exploration of how AI technologies influence and represent diverse communities. The qualitative data incorporated in this paper will delve into individual experiences, offering depth to the understanding of AI's personal impacts, while the quantitative data will establish broader trends and patterns. This approach will highlight the effects of AI technologies and situate them within larger socio-political frameworks, therefore strengthening the overall research findings.

This paper will commence with a comprehensive literature review to analyze existing scholarly discourse on the implications of AI in government domains and in the policy making process. The literature review will explore a range of topics, beginning with a brief explanation of AI technologies, specifically focusing on machine learning, deep learning, and generative AI technologies. It will include current examples of AI deployment across various government sectors and assess the current Canadian legislation on AI. Following the literature review, the subsequent sections will delve into specific challenges such as biases, discrimination, and privacy concerns presented by AI, and their contributions to social inequalities within Canada. These sections will focus on these three issues, providing an overview of each topic, and complemented by concrete examples and case studies to illustrate the implications of these issues, exemplifying the necessity for adequate regulation. The integration of critical race and social theories within the analysis of this research will provide a lens through which the potential reflections and perpetuations of racial and socio-economic disparities by AI technologies can be further explored. This theoretical framing is crucial for understanding the intersectionality of race, law, and power and will present a comprehensive view of the inequities that AI could potentially replicate. These theories are key in understanding the biases inherent in AI applications and will offer insights into addressing these biases through legislation and policies.

This paper will then address the intertwined issues of human rights, bias, discrimination, and privacy, exploring how these problems manifest and their potentially serious implications when employed by AI technologies. This section will delve into how these technologies could potentially reproduce existing societal issues. Following this discussion, the next section of this paper will critically assess the effectiveness of current Canadian legislation in preventing such biases and privacy breaches and identify potential areas for improvement. This discussion will provide an overview of the existing Canadian regulatory frameworks, highlighting their strengths, identifying gaps, and exploring why human rights harms, bias, and privacy concerns may disproportionately impact certain demographic groups more than others.

Finally, this paper will present and justify three suggestions to improve legislation. These include increasing public engagement and consultation in the development of the Artificial Intelligence and Data Act (AIDA), adopting a more proactive legislative framework, and mandating diverse data sets to inform AI systems. Supported by an analysis of current efforts and the identified gaps, these recommendations will focus on ensuring that AI applications do not inadvertently reinforce societal inequities. This section will also consider how existing guidelines and directives, particularly those related to the three main issues

explored, bias, discrimination, and privacy, could be strengthened or modified to better address these concerns at the national and provincial levels.

CHAPTER 2

2.1 Peeling Back the Layers: A Literature Review on Artificial Intelligence Challenges

The growing use of AI within the Canadian policymaking process, including its diverse applications across various government departments, raises vital questions about its impacts, ethical considerations, and the adequacy of existing regulatory frameworks. This literature review will delve into existing academic literature, government reports, and other relevant publications to identify trends, challenges, and opportunities in AI governance within the Canadian context. Specifically, it will examine a range of AI technologies, such as machine learning and generative AI, their applications in areas such as public service delivery and surveillance. Furthermore, the methodology for this review will comprise a detailed analysis of selected academic and government sources to provide insights into the ethical and regulatory dimensions of AI within government and public services. Through this approach, this literature review aims to develop a solid understanding of the present status and long-term effects of integrating AI into the Canadian policy context.

2.2 Artificial Intelligence Technologies and Their Real-World Applications

The term "artificial intelligence" was first coined by John McCarthy in 1955 during a conference that explored the potential for machines to exhibit thought processes and problem- solving capabilities (Roberts & Tonna 2022). Scholars have noted that the definition of AI has undergone numerous changes and interpretations over time (Emad, 2021; Schank, 1987; Harrington, 2012). The ongoing evolution of AI, as highlighted in the preceding section, prompts a deeper exploration into the types of AI technologies and their diverse applications. One prominent form of AI is machine learning, which refers to the ability of a machine to learn from both data and algorithms, allowing for the machine to operate and mimic human tasks, ultimately increasing its accuracy when executing tasks (Roberts & Tonna, 2022).

Noteworthy examples of machine learning applications include facial recognition, where algorithms analyze facial features and learn individual patterns for tasks such as mobile and device access or securing doors and gates (Harrington, 2012). Similarly, product recommendations on social media platforms exemplify machine learning, as algorithms tailor advertisements based on specific target audiences (Harrington, 2012). Another prevalent example is email spam filtering, where machines learn to identify spam emails and redirect them to junk or spam folders through pattern recognition (Harrington, 2012). These applications illustrate the extensive scope of machine learning within the broader field of AI. Generative AI, another form of machine learning, utilizes algorithms to produce outputs such as text and images from trained data (Feuerriegel et al., 2023). In this context, 'trained data' could be understood as the datasets that the algorithms have been exposed to during the learning process, enabling them to make accurate predictions and generate new content. This technology can generate new content, exemplified by ChatGPT, which creates conversational responses. Similarly, IT help desks employ chatbots that use generative AI to assist with responding to and answering customer inquiries (Feuerriegel et al., 2023).

In addition, machine learning encompasses versatile applications and functionalities, which can be presented in three distinctive categories: supervised learning, unsupervised learning, and reinforcement learning (Roberts & Tonna, 2022). Each category

contains a unique approach and highlights machine learning capabilities. Specifically, supervised learning occurs when a machine uses a diverse set of methods and datasets that program algorithms to classify data and predict its outcomes (Roberts & Tonna, 2022). Conversely, unsupervised learning utilizes unlabeled datasets to uncover any hidden patterns or data without human intervention (Roberts & Tonna, 2022).

Reinforcement learning adopts a reward-based system to train the machine, allowing it to make decisions based on past positive or negative experiences (Roberts & Tonna, 2022). In other words, a reward-based system is a process that involves continuous learning through trial and error, with the algorithm striving to maximize long-term rewards (Roberts & Tonna, 2022). An example of a reward-based system may include a self-driving car that is operated by AI (Rothman, 2020). When the car successfully completes tasks, such as traveling from point A to point B without violating traffic laws, it is rewarded (Rothman, 2020). Conversely, if the car performs incorrectly, such as making a mistake or making the wrong turn, it receives no reward. Through trial and error, the algorithm learns to adhere to the correct path and maximize efficiency (Rothman, 2020). Additionally, consider a 'grid world' scenario where a robot navigates a two-dimensional rectangular grid of cells (Roberts & Tonna, 2022). The robot moves from one cell to another across this environment, aiming to maximize its collection of rewards. As it achieves goals, it highlights the cells it has visited, marking them green to indicate successful completion. If the robot encounters a wall or enters a restricted cell, it receives a negative reward. As a result, the robot either becomes immobilized in that cell or marks the incorrect cell in red to indicate an error (Roberts & Tonna, 2022).

In contrast, deep learning is a form of AI that instructs computers to replicate or simulate human brain activity (Roberts & Tonna, 2022). The primary goal of deep learning is for machines to identify problems and generate solutions without requiring human intervention (Buckner, 2023). Deep learning relies on the input of data and the use of neural networks (Roberts & Tonna, 2022). Such algorithms can recognize and interpret structures within data, allowing them to learn from complex patterns (Roberts & Tonna, 2022). For instance, translation apps or programs rely on deep learning (Roberts & Tonna, 2022). These applications automatically translate input information into various languages upon receiving it (Roberts & Tonna, 2022). Essentially, deep learning is a fundamental methodology in AI, allowing machines to navigate intricate data and problem-solving situations.

As demonstrated, AI encompasses a variety of forms. Regardless of the specific technology or system, humans play an essential role in the creation, development, design, and deployment of these technologies. For instance, Langer and Landers (2021) classify the various human contributors involved in AI and automation systems. They define 'first parties' as individuals who interact directly with the output of AI systems and may be influenced by the decisions these technologies facilitate (Langer & Landers, 2021). 'Second parties' are those affected by AI, typically without their consent, and do not play a role in how AI impacts them (Langer & Landers, 2021). Often, second parties hold positions or are employed in roles influenced by automated technologies, such as Uber (Langer & Landers, 2021). 'Third parties,' on the other hand, are individuals who are not directly impacted by AI or automated decisions but could potentially become second parties (Langer & Landers, 2021). Beyond these classifications, developers also play a critical role, actively shaping AI through programming, testing, and the creation of new AI technologies. This involvement highlights the intricate

relationship between AI and human expertise, illustrating how integral humans are in the creation and application of these technologies.

2.3 Evolution and Context of Artificial Intelligence in Policy Discourse

The integration of AI has experienced substantial growth within the Canadian policy process, particularly in federally regulated domains. AI applications in the Canadian government encompass a wide array of functions, including facial recognition, document writing, data summarization, and client support facilitated through question-answering systems such as chatbots (Government of Canada, 2024). AI has been adopted and implemented across various departments. Precisely, research conducted by Attard-Frost et al., (2024) surveyed eighty-four AI initiatives across Canadian government departments such as Canadian Institute for Advanced Research (CIFAR), Innovation, Science and Economic Development Canada, the Parliament of Canada, and the Office of the Privacy Commissioner of Canada. The authors discovered that AI technologies were used in areas such as AI research, AI education and training, technology production and use, industry and innovation, digital infrastructure, and public administration, to name a few (Attard- Frost et al., 2024, 5). They also noted that Canadian AI governance occurs through government- funded programs, such as the Pan-Canadian Strategy and the National Research Council Canada, which funds various initiatives (Attard-Frost et al., 2024).

Further, the Department of Immigration, Refugees, and Citizenship Canada (IRCC) has incorporated AI in its routine review of applications, triage processes, and automation (Government of Canada, 2022). Specifically, when the IRCC receives high volumes of applications, it uses AI technologies to assist with service delivery, and processing travel documents (Government of Canada, 2022). Additionally, this department has utilized AI technologies that help sort documents for officers based on a developed classification system, assist with distributing the workload among staff, and provide technical support by replying to clients' emails with automated messages (Government of Canada, 2022).

A few key projects from the IRCC that utilizes AI include one project launched in 2018 that used algorithms to assist with online temporary residents' visa applications from China and India (Government of Canada, 2022). This project was created with the intention of processing temporary resident visa applications faster (Government of Canada, 2022). Another project was launched to streamline the processing of in-Canada family class spousal and common-law applications to expedite processing and automating positive eligibility determinations (Government of Canada, 2022). To ensure a balance between technology and human oversight, applications that are not approved automatically by AI are reviewed by an IRCC officer (Government of Canada, 2022). This approach underscores the department's strategy of leveraging AI to improve efficiency while maintaining necessary human judgment in the decision-making process.

Additionally, the Canadian Border Services Agency (CBSA) also utilizes a variety of automated advance information sources to help identify people or goods that may pose a threat to Canada (Government of Canada, 2015). Further, the CBSA has integrated AI image recognition to expedite border security processes, such as making travel more effective and efficient (Government of Canada, 2022). For instance, the agency has implemented various AI technologies, such as facial recognition, to assist agents in verifying travelers' identities at airports. This technology helps ensure that travelers' information is accurately filed, and their identities are correctly identified by agents, significantly

reducing the need for direct interaction between travelers and border services officers (Government of Canada, 2024). In addition to advance declarations, the CBSA has introduced kiosks and e-gates in airports that employ AI technologies to verify identities for travel (Government of Canada, 2024).

In 2017, the CIFAR introduced the Pan-Canadian Artificial Intelligence Strategy, the first of its kind in the world. By initiating this strategy, Canada has positioned itself as one of the global leaders in adopting AI within governmental processes. This strategy, combined with the Canadian government's embrace of AI, aims to leverage AI's capabilities for enhanced administrative decisions and service delivery ("The Pan-Canadian AI Strategy," n.d.). The Canadian government invests in this strategy to continue to foster research and development in AI (Government of Canada, 2022). For example, the Pan-Canadian AI Strategy explores how AI can be utilized in various sectors, such as autonomous vehicles, medical diagnostics, and climate change mitigation (CIFAR, 2023). These initiatives highlight Canada's commitment to integrating AI into multiple sectors, encouraging innovation, and maintaining a competitive edge in global technology advancements.

Furthermore, CIFAR has created several reports and fostered innovation in AI. For instance, the 'Future Flourishing' initiative aims to explore the essence of being human and what is required to thrive alongside other humans, animals, plants, and machines that share our planet (CIFAR, 2023). Additionally, the 'Multiscale Human' project objectives are to investigate the feasibility of developing a map of the human body to enhance individuals' understanding of its organs and molecular structures (CIFAR, 2023). These projects, among others in various sectors, amplify the Canadian Federal Government's potential to leverage AI in a variety of processes and areas.

Although AI is increasingly being used across Canada in different capacities, such as sorting and processing temporary visa applications and promoting diversity in employment (Karadeglija, 2024), its adoption extends significantly within government departments like IRCC, CBSA, and CIFAR. An associate professor from Western University has compiled a database indicating that nearly 300 projects and initiatives using AI are operational, with 95% of these initiatives being employed by Federal government entities (Karadeglija, 2024). Despite this widespread use, current regulatory measures, laws, and directives are found lacking in adequately addressing the ethical concerns associated with AI deployment, especially in government contexts (Henman, 2020). As AI legislation continues to evolve, fundamental questions persist about whether this legislative framework can effectively manage the recurring ethical issues associated with these technologies. The ongoing development of such legislation requires examination to significantly mitigate these concerns, particularly considering the extensive impact on government institutions and domains that affect the lives of millions of individuals.

Navigating the intricacies of integrating AI into the Canadian government and policymaking processes involves carefully weighing of potential risks and managing unintended consequences. The challenge lies in finding the right balance between promoting innovation and utilizing AI while safeguarding users from potential harm—a concern acknowledged by both the Canadian government and scholars (Bottomley & Thaldar, 2023; Peckham 2024). For instance, AI could create societal harm and individual harms (Peckham, 2024). Peckham outlined various ways that AI could create harm, including the loss of cognitive acuity (Peckham, 2024). In other words, the loss of cognitive acuity occurs when AI learns and

performs tasks typically done by humans, leading to a reduction of decision-making acuity and creativity (Peckham 2024). Peckham also highlighted harms to freedom to choose, and privacy, such as in the context of surveillance; the impact AI will have on work, especially if jobs or tasks are replaced by AI; and the impact on reality, particularly on social relationships if relationships occur virtually and the potential resulting loss of community (Peckham, 2024). Furthermore, AI's biases and ethical dilemmas, such as discriminatory practices and lack of transparency in decision-making, are continually used when discussing potential risks/harms when AI is used.

Numerous studies have highlighted the potential for AI technologies to perpetuate social inequalities (Zajko, 2021; Browning and Arrigo 2021). These technologies, often deployed with the intention of improving efficiency, can echo prevailing stereotypes about different groups of people. Specifically, instances of discriminatory behavior based on factors such as sex, race, and age have been identified (Hagendorff, 2020; Browning et al., 2021; Brayne, 2017). These issues are not solely technical, but are deeply imbedded with ethical considerations of deploying AI in diverse social contexts. These concerns will be explored in depth in later sections of this essay.

CHAPTER 3

3.1 Exploring the Legislative Landscape of Artificial Intelligence in Canada

Before delving into the concerns regarding the use of AI, this section will outline current legislation in Canada aimed at safeguarding and providing directives on these technologies. It is important to note that efforts are being made at both the national and provincial levels. This essay will not explore all directives in depth; however, it will highlight some provincial initiatives and primarily focus on the current national efforts and the development of a universal Canadian policy or framework governing AI use in policymaking and within government departments. There is no reason behind selecting these specific provinces; however, the intention is to showcase how different provinces are handling the use of AI technologies and the legislative frameworks and regulations to address potential unwanted outcomes that may occur with its use.

Provinces across Canada may have their own specific directives or are currently in the process of creating such legislation concerning the use of AI. For example, Québec has enacted Bill 64, An Act to modernize legislative provisions regarding the protection of personal information. This Act requires any public body that uses personal information to make automated decisions to disclose such usage to the individuals affected, enhancing transparency in automated decision-making systems. Key aspects of this legislation also mandate the reporting of privacy breaches and the requirement for businesses to conduct privacy impact assessments to evaluate and mitigate risks associated with handling private and personal information. Non-compliance can lead to substantial penalties for businesses that fail to adhere to these policies. For instance, organizations may be subjected to fines between $15,000 and $25 million, or up to 4% of their global turnover from the previous fiscal year, whichever is greater. Similarly, Ontario has introduced the Trustworthy Artificial Intelligence (AI) Framework, which establishes policies and rules for transparency, responsibility, and accountability when AI is employed by the Ontario government (Ontario Government, 2023).

Currently, Canada does not have a fully adopted federal regulatory framework specifically for AI technologies, despite various government departments, entities, and agencies beginning to establish their own internal policies (Government of Canada, 2023). In 2023, the Minister of

Innovation, Science, and Industry announced the creation of the Voluntary Code of Conduct for the Responsible Development and Management of Advanced Generative AI Systems. This code, developed through public consultations, sets out principles such as accountability, safety, fairness, equity, transparency, human oversight, and the validity and robustness of AI technologies to build trust in AI systems. This code encourages Canadian companies to adopt these standards in anticipation of future regulatory frameworks. Some endorsers of this code include the Alberta Machine Intelligence Institute, BlackBerry, CGI, and the Council of Canadian Innovators, demonstrating their commitment to responsible AI usage (Government of Canada, 2023). However, a universal regulatory standard applicable across all sectors is still pending.

Nationally, on June 16, 2022, the Minister of Innovation, Science, and Industry introduced legislation titled "An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act, and the Artificial Intelligence and Data Act (AIDA)" to the House of Commons. This legislation introduces three new laws: (1) the Consumer Privacy Protection Act (CPPA); (2) the Personal Information and Data Protection Tribunal Act (Tribunal Act); (3) the AIDA. The AIDA aims to hold businesses accountable for any high-impact AI systems, actions, or activities under their control (Government of Canada, 2023). AIDA covers the lifecycle of AI systems—from design to development and deployment—mandating businesses to identify and address potential risks, understand system limitations, and implement ongoing risk mitigation and monitoring strategies (Government of Canada, 2023). The overarching aim of AIDA is to balance regulation, allowing for business flexibility and innovation in utilizing AI technologies (Government of Canada, 2023).

Furthermore, this new regulation will build upon existing legislation, introducing notable differences designed to foster greater transparency and inclusiveness. According to the Government of Canada, the regulatory framework aims to be developed openly and transparently, involving collaboration with stakeholders, scholars, and the broader society. It also intends to facilitate dialogue with international governments and stakeholders who are similarly developing legal frameworks for AI (Government of Canada, 2023). To distinguish between the two, the Directive on Automated Decision-Making focuses specifically on the use of automated systems by government entities, and the AIDA addresses the AI-related activities across various sectors. The AIDA sets out wider legal responsibilities and promotes ethical AI practices throughout Canada.

Separately, the Directive on Automated Decision-Making, issued by the Treasury Board of Canada, focuses on the responsible deployment of automated decision systems within federal government operations. Although not a part of the Digital Charter Implementation Act, this Directive sets standards for transparency, accountability, and fairness in automated decision- making processes used by federal institutions. As outlined in section 6, this directive mandates that officials, such as an Assistant Deputy Minister, oversee the implementation of an Algorithmic Impact Assessment (AIA). Further, section 6 of the AIA encompasses comprehensive risk assessments and mitigation strategies and stipulates that automated decisions must be both preceded and followed by clear notifications to affected parties. Additionally, section 6.3 requires quality assurance protocols to test for biases and other potential issues that might lead to unfair outcomes when this technology is being used.

As outlined above, efforts are being made to create legislation aimed at understanding AI's capacities and uses. However, throughout the literature, the AIDA Act has been criticized.

Scholars have noted that AI technologies and initiatives include limitations such as the lack of consultation and public engagement (Ulnicane et al., 2021), limited and inadequate accountability measures (Katyal, 2019), and insufficient protection of users against harms from these technologies (Dwivedi et al., 2021). Specifically, Attard-Frost et al., noted in their research that the AIDA does not apply to public sector entities (Attard-Frost et al., 2024). This research also highlighted that some public mistrust stems from the absence of public consultation or the creation of oversight bodies tasked with enforcing and ensuring accountability is upheld (Attard-Frost et al., 2024). Addressing these concerns is crucial for the development of effective AI legislation.

3.2 Ethics Meets Artificial Intelligence: Canadian Legislative Insights

The academic literature widely agrees on AI's potential advantages and its varied uses in the Canadian policy-making process. However, scholars have issued caution, particularly regarding its use in government practices (Liao, 2020; Margetts, 2022; Floridi, 2023). As described above, there are different variations of machine learning that can produce different outcomes. However, these AI and machine learning methodologies exhibit limitations and, therefore, can give rise to ethical concerns. Research on AI ethics and guidelines revolves around practical applications while addressing potential risks, including bias, discrimination, and privacy concerns (Hagendorff, 2020).

Ethics can be understood as moral principles and guidelines that impact individual behaviours (Siau & Wang, 2020). There are various types of ethical theories, including Deontology, Virtue Ethics, Teleology. Based on the sources reviewed, the literature emphasizes ethics in the context of AI by creating guidelines and rules for its use, development, and responsible deployment (Siau & Wang 2020). In the domain of AI, ethical considerations are centered on ensuring responsible use to prevent the misuse of these technologies and unintended negative consequences. For example, a common concern in AI development is the potential for bias in decision-making algorithms. If not properly addressed, these biases can lead to unfair treatment of individuals based on race, gender, or other characteristics.

Ethical guidelines for AI can vary based on the specific field, the way AI is employed, and the geographical location among other factors. Within the scope of AI ethics, various design perspectives emerge, each contributing to the overarching goal of responsible and fair AI development. Universal design aims for inclusivity and accessibility, ensuring that AI systems are designed to cater to a diverse range of users (Siau & Wang, 2020). Ecological design considers the broader impact of AI on the environment and ecosystems, highlighting the need for sustainability in technological advancements (Francisco, 2023). Research into feminist design and ethics of AI incorporate feminist principles into the development and design of AI technologies, that seeks to address gender biases, promote inclusivity, and ensure that AI technologies do not maintain entrenched social disparities (Gray & Witt, 2021).

The risks associated with the absence of adequate ethical guidelines can be significant. For instance, failing to implement universal design can lead to AI systems that exclude or severely disadvantage certain users and reinforcing social inequalities. For example, voice recognition systems that fail to recognize diverse accents can limit individual access to these types of technologies. Likewise, educational technologies used in government organizations that are not adapted for employees with different learning abilities can limit their use of these technologies, leading to inequitable working environments. Similarly, not addressing ecological design principles may result in technologies that could

contribute to unsustainable practices, thus, having detrimental effects on global ecosystems. For instance, AI technologies that consume high levels of energy or require lots of resources to be built, can increase carbon footprint. These risks underscore the importance of incorporating comprehensive ethical considerations into AI development to ensure fair and equitable outcomes.

Research on AI ethics and guidelines typically centers around the practical application of AI while also addressing potential risks, including bias, discrimination against specific groups, and privacy concerns (Hagendorff, 2020). To expand, there is significant discussion on the role of ethics AI in promoting social justice while creating AI technologies, that would assist with mitigating risks with these technologies (van Noordt et al., 2023). Ethical considerations in AI can help address systemic inequalities by ensuring technology design and deployment are inclusive and equitable. This includes implementing AI in ways that improve access to resources, healthcare, and education, and that amplify the voices of those often left out of technological advancement conversations.

Scholars such as Floridi & Cowls 2019, emphasize the ethical implications of AI, particularly concerning biased outcomes that may lead to harm. AI heavily depends on human input for data and programming, making the quality of input data crucial for training. Consequently, if input data contains inaccuracies, stereotypes, inequities, or discrimination, machine learning models are likely to replicate these biases (Hagendorff, 2020; Floridi & Cowls, 2019). Therefore, in instances where inaccurate information, stereotypes, inequities, or discrimination are ingrained in the data, these machine learning models are prone to reproducing such biases.

Further literature discussions highlight concerns about AI causing harm, such as accidents or fatalities caused by self-driving cars (Gless et al., 2016; Hansson et al., 2021; Siegel & Pappas, 2023), and its impact on public trust (Namoi, 2020; Ingrams et al., 2021). The impact on public trust is also a significant concern. For example, research by Ingrams et al. (2021) indicates that some citizens favor the use of AI technologies to streamline processes, ensure efficiency, and assist with administrative tasks such as filing taxes. However, concerns are raised when these applications are incorporated into decision-making capacities (Ingrams et al., 2021, 391). Their study revealed that trust is higher among human decision-makers compared to AI-led decisions (Ingrams et al., 2021). Their survey experiment on tax auditing found that individuals perceive AI-led decisions to be lower in red tape and trustworthiness than human decisions (Ingrams et al., 2021,). Red tape in their research suggests that people view decisions made by AI as involving fewer administrative obstacles. In other words, depending on the tasks and the decisions that AI technologies are involved in, it can have an impact on how the use of these technologies affects people's perceptions and overall trust in them.

Central to these concerns is how the government addresses issues related to potential infringements on individual privacy rights by AI systems. Moreover, transparency assumes a crucial role, necessitating the government's disclosure of the algorithms and data sources employed in decision-making processes. These considerations provide essential context for comprehending the dynamics of AI within the Canadian policy framework.

CHAPTER 4
Beyond Algorithms: Theoretical Frameworks for Artificial Intelligence Exploration

This section of the paper will focus on the social and human rights impact of AI, particularly its use in government and how it can potentially impact individual human rights. To guide this analysis, this essay employs a social theory perspective, encompassing Critical Social Theory and Critical Race Theory.

Critical Social Theory analyzes power structures, societal norms, and the possibilities for societal change. It is particularly useful in analyzing how AI technologies engage with power dynamics and either perpetuate or challenge social inequalities. The work of authors such as Mike Zajko (2021), that views AI regulation through the lens of Social Theory, offers valuable insights. Incorporating these perspectives will enrich the discussion by providing a framework for understanding the implications of AI in society.

In examining the impact of AI technologies on social inequalities, Critical Race Theory (CRT) is insightful when considering the potential for discrimination against certain groups. CRT, with critical developments by scholars such as Kimberlé Crenshaw, directs attention to the intersectionality of race, law, and power within social structures. When applied to the realm of AI, CRT can highlight the risk of discriminatory practices embedded in algorithms and decision- making processes. By incorporating CRT into the analysis, this research endeavors to shed light on how AI, if unregulated and lacking oversight processes, can become a tool for reinforcing and perpetuating racial inequalities. This requires an evaluation of AI systems to ensure they are not unintentionally contributing to discriminatory practices, prompting the development of policies that actively counteract these negative consequences within the Canadian regulatory landscape.

Both Critical Social Theory and Critical Race Theory provide valuable frameworks for assessing the broader implications of AI technologies. These theories highlight how AI can be a force for both perpetuation of inequality and a potential agent of societal transformation. By applying these theories, this paper aims to demonstrate that without careful oversight, AI technologies could mirror social inequities, thus emphasizing the need for informed policies that govern their development and deployment. This comprehensive approach ensures that AI technologies serve to benefit society, promoting equity and justice, rather than exacerbating social divides.

In Zajko's work, the author highlights that recognizing biases exists in AI and algorithms, it is important to address inequalities or inequalities that should be described as not wanting to be reproduced. Meaningful conversations and progress can lead to progress in the field, helping locate and address intersections of inequalities in society.

CHAPTER 5

5.1 Principal Issues: Bias, Discrimination, and Privacy Concerns in Artificial Intelligence

This section explores three principal concerns associated with the deployment of AI, centering on the governance challenges it presents. The discussion in this section focuses particularly on human rights, delving into the interconnected yet distinct issues of bias, discrimination, and privacy concerns. While these concepts are closely related, they are not interchangeable: bias is the presence of unfairness or prejudiced notions, often subconscious, while discrimination is the actual differential treatment based on these biased perceptions (Rasmussen, 2020; Giusta & Bosworth, 2021). Recognizing and understanding the subtle distinctions between these terms is crucial for developing effective policies and solutions within AI governance. This exploration highlights the disproportionate impact these AI-related issues have on various groups.

5.2 Artificial Intelligence Bias and Discrimination

One prominent issue currently relating to the use of AI by government institutions and within the policy process is bias, which can manifest either consciously or unconsciously. Conscious bias occurs when an individual is aware of their biases and is explicit about their prejudiced views (Green et al., 2007). For instance, conscious bias can be observed in the workplace, where an employer might intentionally favor a job applicant based on characteristics associated with a particular group, thus showing preference solely due to personal beliefs. In the context of AI, this bias can materialize through hiring and recruitment algorithms used to screen applicants (Kelly-Lyth, 2021; Moss, 2021). These algorithms may perpetuate conscious bias by favoring candidates based on specific characteristics and excluding others (Kelly-Lyth, 2021). This can lead to the replication of human biases within the AI system, outlining disparities in the selection process. Furthermore, if hiring practices have historically shown a preference for candidates from a specific demographic, and this preference is encoded within the AI model, there is potential for these ideologies to perpetuate biases, mimicking historical and social inequities in employment opportunities (Kelly-Lyth, 2021).

In contrast, unconscious biases, also referred to as implicit biases, occur when individuals are unaware of their biases, yet still possess them (Ammanath, 2022). An example of this is evident in a 2007 study by Green et al., where unconscious bias was identified in healthcare settings. Specifically, the study found that physicians treated white patients differently from black patients without realizing it (Green et al., 2007). The research utilized a web-based survey and Implicit Association Tests (IATs) to explore implicit biases among physicians. Participants were randomly presented with reports summarizing symptoms and medical history, featuring either black or white patients, and their implicit race preferences were evaluated using IATs. The primary aim of the study was to uncover potential biases in physicians' decision-making and examine any associations between these biases and demographic factors.

5.3 Artificial Intelligence and Human Rights: Examining the Differential Impact on Marginalized Groups

As highlighted, AI can be useful for several functions; however, the principal issues explored—bias, discrimination, and privacy breaches—are real concerns. There is an added layer to these issues: the way they can disproportionately impact different groups in society. This section explores how these disparities manifest across different domains, underlining the intersection of AI with human rights, particularly the right to equality free from discrimination (Fukuda-Parr, 2021).

The literature further explores the intersection of AI and human rights, particularly the right to equality free from discrimination (Fukuda-Parr, 2021). Technologies biased against specific groups, as observed in healthcare and AI-driven decisions, raise concerns about discrimination in algorithms and the potential for harm through errors or the unlawful collection of personal data (Sakiko, 2021). As articulated by Daniel Varona and Juan Luis Suárez (2022), discrimination within the context of AI technologies and machine learning occurs when patterns developed in the system's training data are used to evaluate individuals with similar characteristics or attributes. Consequently, if discriminatory patterns are embedded in the system, there is a risk of perpetuating such biases in a recurring manner (Varona & Suárez, 2022).

In the context of AI, unconscious or implicit biases manifest significantly in facial recognition technologies (Howard and Borenstein, 2018). Facial recognition

technologies appear in many different forms, such as law enforcement, CCTV surveillance, security access- controlled areas (e.g., gaining access to locked places that require facial recognition for entrance), personal documents, personal devices like mobile phones or desktops, forensic science, and more (Kaur et al., 2020). Specifically, these technologies often struggle to accurately differentiate faces based on skin color, gender, and other characteristics (Michael et al., 2022). Such challenges can arise from the way the machines are programmed or from insufficient training data (Michael et al., 2022). The repercussions of these biases in facial recognition systems are not merely technical however, they contain substantial ethical implications. The inaccuracies in identifying individuals can lead to unfair treatment and perpetuate societal disparities. For example, such inaccuracies might prevent someone from securing a job for which they are fully qualified, simply due to flawed system programming. The continued reliance on these algorithms, particularly in hiring processes, can have severe and lasting effects on specific groups of people.

Similarly, predictive policing further illustrates how AI can impact marginalized communities. Endorsed by law enforcement agencies, these systems employ algorithms and data to predict crimes but have been shown to introduce bias and perpetuate social inequalities (Browning & Arrigo, 2021). The aim is for the police to predict when a crime will occur; however, studies have demonstrated that it can introduce bias and perpetuate social inequalities (Browning & Arrigo, 2021). Namely, work from Bonnie Sheehy, 2018 details that the use of a predictive algorithm attempts to predict future crime based on biased historical crime data. In addition to Sheehy's findings, other researchers have further illuminated the challenges associated with AI and bias, in particular in the context of predictive policing. For instance, studies by Tzu-Wei, Chun-Ping Yen, 2021; Megan Garcia, 2012; Browning & Arrigo, 2021, have identified specific instances where these algorithms disproportionately target certain communities, reinforcing existing biases and potentially leading to discriminatory practices. As a case in point, in the aftermath of Freddie Gray's death in custody in Baltimore, United States, police used facial recognition technology during the protests, leading to the arrest of those with previous warrants (Hamann & Rachel, 2019). This practice disproportionately impacted marginalized groups given that they were more likely to be targeted and arrested. This case highlights the ethical concerns and potential for discrimination inherent in the use of AI for predictive policing.

Shifting focus from facial recognition, AI can also exhibit gender bias. AI technologies can produce gender bias, which can be understood as actions or thoughts that are prejudiced against a particular gender (O'Connor and Liu, 2023). Due to the role of humans in the creation of AI technologies, these technologies are not neutral (O'Connor and Liu, 2023). Consequently, gender biases existing within society can be incorporated into AI technologies (O'Connor and Liu 2023, 2). For instance, an application called 'Generify' attempts to identify an individual's gender based on their name, username, and email address. It was found that the title 'Dr.' was attributed to males 75.90% of the time and to females 24.10% of the time (Vincent, 2020). Vincent noted that 'generify' and similar automated technologies reinforce gender stereotypes and are produced through automated systems (Vincent, 2020).

5.4 Privacy Concerns in Artificial Intelligence Technologies

Another principal issue and theme explored throughout the existing literature on AI is privacy. Notably, the several ways in which privacy is defined have been heavily debated in scholarly work (Kemp and Moore, 2007; Lanes & Silva De Conca, 2018). For instance, privacy has

been framed in terms of individual rights, typically described as the "right to privacy" (Elliot & Seifert, 2022). While there are ongoing concerns about the privacy of personal and intellectual data, the integration of AI introduces an additional dimension to these issues. The multifaceted nature of privacy concerns related to AI extends to how data is collected, managed, stored, and utilized by organizations (Sheeney, 2019). The potential risks to privacy arise from the need to protect human rights and safeguard individuals' data when AI technologies are employed by companies or government entities.

For example, in Ontario on May 31, 2023, BORN Ontario, which includes Ontario's Birth Registry, experienced a data breach that revealed private healthcare information of approximately 3.4 million people (BORN Ontario, 2024). This information included details regarding pregnancies and births over several years (BORN Ontario ,2024). The MOVEit data transfer software, used globally by various governments and the private sector, was employed by an external software vendor to transfer data files (BORN Ontario, 2024). Another contemporary example of a data breach occurred in the United States, where a breach at Microsoft Exchange resulted in approximately 60,000 emails being taken from US State Department employees (Satter, 2023). These two incidents illustrates that a heightened risk emerges when AI technologies are employed in governance, and users remain unaware of their utilization, posing significant risks (Bernd et al., 2020).

5.5 The Privacy Paradox Big Data and Artificial Intelligence

The relationship between big data and AI plays a principal role in addressing privacy concerns. 'Big data' encompasses the vast amount of information that is gathered using various technologies, including social media platforms and websites (Clarke & Margetts, 2014). Additionally, 'big data' also refers to the volume of information that may be too vast or complex to be managed by traditional application software (Clarke & Margetts, 2014). For instance, Power (2016) outlines how AI technologies can amass copious amounts of data on individuals, raising concerns about privacy and security due to the use of 'Big Data' (Power, 2016). Big data, sourced from various outlets such as search engines, financial transactions, call records, location data, and global positioning systems (GPS), has been extensively utilized by businesses, governments, and researchers for purposes such as market analysis, decision-making, scientific research, and educational purposes (Mariana & Wamba, 2020). Simultaneously, AI technologies contribute to gaining valuable insights from big data, allowing for AI technologies to identify patterns and facilitate data-driven decision-making.

Take, for instance, the search engine Google. It is estimated that 4.66 billion users access the internet (Djuraskovic, 2024). Google, however, does not publicize how much data they collect and store (Djuraskovic, 2024). However, some estimates suggests that Google and its variations including Gmail, Google Maps, and web searches on average processes over 40,000 searches, which can calculate to 3.7 billion per day, expanding to over 1.2 trillion searches per year (Djuraskovic, 2024). The sheer volume of data collected raises significant privacy concerns. The risks are severe, as unauthorized access or misuse of this data can lead to breaches of personal information, identity theft, and other security issues, highlighting the urgent need for privacy protections and regulations.

The widespread adoption of technology into society makes it challenging for users to maintain anonymity. This predicament is intensified by AI technologies such as the various types of facial recognition technologies mentioned previously in the essay (Power, 2016).

It is important to note that these technologies are employed by numerous entities, including government organizations, private companies, and for personal use, all of which contribute to the vast collection of individual data. The sharing of personal data among organizations and companies give rise to additional privacy issues (Sheeney, 2019). This issue becomes particularly intricate when governments regularly access individuals' private data. Numerous instances exist where companies use data as tools to gain a competitive edge for their products and organizations (Mariani & Wamba, 2020). Mariani & Wamba highlight how industries including entertainment and fashion leverage big data to support their business objectives, creating tailored marketing approaches to reach specific target audiences (Mariani & Wamba, 2020).

Additionally, AI technologies have the capability to analyze consumer information and potentially re-identify consumers despite the promises of their identity being confidential (Sheeney, 2019). For example, in 2006, Netflix's algorithm change, which was proposed to improve their movie recommendations to their clients, was programmed unintentionally, however, it was able to identify users, although their user data was supposed to remain anonymous (Sheeney, 2019, 494). This incident illustrates the potential risk for users to be re-identified despite having been reassured or believing their information would remain confidential. Such re-identification can lead to notable worries, including the misuse of personal information, privacy violations and the skepticism in the use of this application. These concerns further emphasize the need for a greater understanding of the ethical implications surrounding the intersection of AI technologies and personal data sharing in various sectors.

5.6 Government Applications of Artificial Intelligence and Privacy Concerns

The distinction in data collection practices extends beyond the private sector, as demonstrated in the examples provided previously, but also encompasses governmental applications. Despite this contrast, government agencies can leverage data collected from AI technologies for its specific purposes. For example, the Canadian Revenue Agency has employed big data to detect and address fraudulent claims (Government of Canada, 2022). Along similar lines, Public Safety Canada utilizes social media platforms to identify criminal organizations and assess public responses to crises (Public Safety Canada, 2022). This practice utilized by Public Safety Canada could be beneficial in the sense that information is readily available and can be used to potential prevent any future events. However, on the other hand, it can have serious adverse impacts such as wrongfully targeting groups or labeling individuals who are not engaged in criminal activity. The recent emergence of deepfakes and generative AI with images and texts can be created to look highly realistic but fake images and texts, poses additional risks. These technologies can be used to generate misleading content that appears authentic, making it difficult for authorities to discern real threats from fabricated ones. This demonstrates how government agencies are increasingly stepping into the capabilities of AI-driven data collection for various functions, spanning fraud detection to crisis response and internal processes.

This also raises issues of the government collaborating with private technologies and companies that deal with AI, mainly concerning the storage, and protection of its users. For example, in the health industry, there are criticisms about companies not correctly storing data gained from AI programs, leading to concerns of data retention (Murdoch, 2021). AI technologies can be developed by startups or private companies, prompting complexity in

healthcare and government collaboration. Murdoch outlines the complexity of healthcare and government collaboration and describes how the challenge occurs through the sharing of information while prioritizing patient privacy and utilizing these technologies that can be efficient and particularly helpful within the field (Murdoch, 2021). For example, in 2016 a private company named Deepmind, was owned by Alphabet Inc., to assist with the management of knee injuries (Murdoch, 2021). However, patients discussed that they were not advised of their privacy rights, and that their information collected was shared with other private companies in a different country, another prime example of the need for safeguards in situations like this (Murdoch, 2021).

Further, the use of personal data and AI also comes with the risk of data breaches and cyber-attacks. Scholars have explored the idea of cyber-attacks and data breaches, especially when AI technologies are involved (Boobier, 2022). Research has discussed how the public sector is more susceptible and is at higher risk of encountering data breaches and cyberattacks (Boobier, 2022). They flag these concerns in the sense that financial constraints may result in employees being overworked, which could lead to higher risks of mistakes or the need for organizations to rely on third-party organizations, which may not have adequate standards to account for the maintaining safeguards while using AI (Boodier, 2022). The second issue this author draws attention to is the fact that the government handles sensitive information that contain identification details of citizens, including but not limited to name, addresses, which also include vulnerable groups information in this as well (Boobier, 2022).

For instance, during the Global Pandemic, in Toronto, one of the busiest hospitals, suffered a severe data breach resulting in the system being offline for days, severely affecting the operation of the hospital (Eckert and Abel n.d.). Additionally, in 2020 between July to August the Canada Revenue Agency and Employment and Social Development Canada encountered a data breach in which hackers were allowed to access government services and were exposed to sensitive data of thousands of Canadians (Office of the Privacy Commissioner of Canada, 2024). The ramifications of the breach also resulted in several cases of fraud, identity theft and fraudulent claims for Canada's COVID-19 Emergency Response Benefits (Office of the Privacy Commissioner of Canada, 2024). Internationally, in the United Kingdom (U.K.) in 2019, approximately one-third of all U.K.'s public sector organization encountered a cyberattack, which highlights that this is a significant issue that governments can face and should be taken into consideration (Department for Digital, Culture, Media and Sport as cited in Boobier, 2022).

In short, this chapter comprehensively addresses principal concerns regarding AI use and governance, focusing on human rights issues such as bias, discrimination and privacy concerns. This section features concerns regarding discrimination in AI technologies, emphasizing that discriminatory patterns embedded in AI systems can perpetuate biases. Additionally, the discussion shifted to privacy concerns that touch upon how protecting individuals' privacy can be complicated especially within the integration of AI technologies in government departments, entities, and the policy-process. Government involvement in the deployment of AI technologies carries the responsibility to prevent these systems from exacerbating existing inequalities or introducing new forms of discrimination and exploitation. This necessitates a proactive approach to regulation, ensuring that AI applications in areas like employment, healthcare, and law enforcement are monitored and audited for fairness and accuracy.

Additionally, the potential for privacy breaches— highlighted by incidents in predictive policing and facial recognition— underscores the urgent need for stringent data protection measures.

CHAPTER 6

6.1 Unveiling the Research Findings

This section explores the literature on developing AI regulations to address significant issues such as bias, discrimination, and privacy concerns. It critically assesses existing legislative frameworks to evaluate their effectiveness in addressing these issues, safeguarding privacy, and upholding human rights. This analysis highlights the strengths and weaknesses of Canadian national frameworks, informing the three strategic recommendations proposed later in the paper. Additionally, it highlights how literature suggests filling gaps in current AI regulations to better protect various groups from AI's adverse impacts. Through a detailed review and synthesis of research findings, this paper aims to provide a comprehensive assessment of whether current regulations adequately address the challenges posed by AI in terms of bias, discrimination, and privacy, and suggests ways these regulations might be enhanced.

6.2 Decoding the Artificial Intelligence and Data Act

As previously mentioned, the AIDA is a pioneering initiative in establishing a national framework for AI in Canada. Despite its objectives to introduce regulatory measures, it faces several limitations. A primary concern, as highlighted by a collective letter signed by nineteen organizations and twenty-six individuals to the Federal Minister of Innovation, Science, and Industry, François-Philippe Champagne, is the AIDA's lack of consultation and public engagement (Gruske, 2023). Effective public consultations are essential for thoroughly examining legislation, understanding its implications and societal impacts, and building transparency, which in turn fosters public trust (Attard-Frost et al., 2024). Public consultations serve as a vital mechanism for inclusivity, allowing stakeholders from various sectors to contribute their perspectives, which is essential for the development of effective regulations. Such diverse consultations help ensure that legislation is comprehensive and considers the varied ways its applications may impact different communities.

Legal experts, including Scassa have highlighted issues with the rapid development and vague terminologies used throughout this legislation. In articles for the Canadian Bar Association, Scassa, criticizes the hurried crafting of the legislation and the vague definitions it employs (Scassa, 2023). For instance, the AIDA uses the term 'high-impact AI systems' without providing a clear explanation of what constitutes such systems, leading to potential confusion about which technologies fall under this category (Scassa, 2023). In the same manner, authors have pointed out the issue of a vague definition of harm in this Act (Sookman, 2023). Namely, section 5 of the AIDA defines harm as "physical, psychological harm to an individual, damage to an individual's property, or economic loss to an individual." This requires careful attention as different groups may experience harm differently, and a broad definition may not encompass all potential harms, noticeably leaving out a collective harm that impacts groups of people.
Regarding bias, the AIDA offers a definition for 'biased output.' Specifically, section 5(1) described defines this term as:

> "... content that is generated, or a decision, recommendation, or prediction that is made, by an artificial intelligence system and that adversely differentiates, directly or indirectly and without justification, in relation to an individual on one or more of the prohibited grounds of discrimination set out in section 3 of the Canadian Human Rights Act, or on a

combination of such prohibited grounds. It does not include content, or a decision, recommendation, or prediction, the purpose and effect of which are to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds."

However, the AIDA does not further elaborate on how to mitigate bias or address biased outcomes from AI systems. The only other significant mention of bias is in section 8, concerning 'measures related to risks.' This section requires that "A person who is responsible for a high-impact system must, in accordance with the regulations, establish measures to identify, assess, and mitigate the risks of harm or biased output that could result from the use of the system." Unfortunately, the AIDA lacks detailed guidelines on how systems should be designed, deployed, or operated to effectively prevent harm or biased outcomes. Although rapid technological changes might make detailed guidelines challenging, there is still a noticeable absence of underlying principles to guide the ethical development and implementation of AI systems.

Additionally, section 14 of the AIDA states, "If the Minister has reasonable grounds to believe that the use of a high-impact system could result in harm or biased output, the Minister may, by order, require that a person referred to in subsection 10(2) provide the Minister, in the form specified in the order, with any of the records referred to in that subsection that relate to that system." In this context, "Minister" refers to the member of the Queen's Privy Council for Canada (Cabinet) designated under section 3 or, if no member is designated, the Minister of Innovation, Science, and Industry of Canada. This arrangement prompts apprehensions due to the extensive responsibilities placed on a single Minister or Ministry to oversee and monitor all AI systems deployed by businesses. Although section 33(1) outlines that the Minister can designate a senior official of the department to oversee an Artificial Intelligence and Data Commissioner, whose primary role is to help the Minister enforce the AIDA, such a task could be overwhelming for one individual or ministry to handle effectively. This could potentially lead to inadequate oversight and limited accountability measures, as they may not be able to comprehensively monitor all businesses to which AIDA applies.

Scassa also points out that the AIDA's focus on individual impacts rather than collective harms or systemic issues is another shortcoming (Scassa, 2023). This approach fails to tackle systemic problems that disproportionately affect certain groups. By concentrating only on individual harms, the broader societal implications are neglected. The AIDA's framework permits the Minister to intervene based on assumptions of risk or bias, taking a reactive rather than proactive stance. Instead of implementing preventive measures from the outset, the AIDA waits to address issues only after they have been exposed. This reactive method may delay the response to significant systemic biases, potentially allowing them to continue to remain unchecked. To enhance the effectiveness of the AIDA, it would be beneficial to incorporate an approach that includes regular assessments and adjustments to the framework, ensuring that it evolves in response to emerging challenges and effectively addresses both immediate and long-term concerns.

Delving deeper into this topic, the focus on individual rather than systemic effects in AI regulation highlights a critical oversight in addressing the broader societal consequences of technology use. For instance, technologies such as facial recognition, if not regulated and monitored, can reinforce discrimination and

biased outcomes (Howard & Borenstein, 2018; Michael et al., 2022). The lack of proactive systemic oversight in AI regulations means that by the time discriminatory patterns are recognized, the damage may already have impacted communities. For example, mortgage lending practices have been found to discriminate against minority applicants (Perry, Martin & Schnare, 2023), leading to higher denial rates and loan terms compared to white applicants with similar financial profiles. This practice disproportionately impacts marginalized groups, furthering economic inequalities. By not addressing these systemic biases from the outset, the regulatory framework fails to prevent entrenched discrimination and allows the inequalities to perpetuate unchecked. Furthermore, the need for a more comprehensive approach is evident in practices like predictive policing, where algorithms may perpetuate historical biases found in crime data, disproportionately affecting certain demographics (Sheehy, 2018; Tzu-Wei, Chun-Ping Yen, 2021; Megan Garcia, 2012; Browning & Arrigo, 2021). By failing to address these systemic issues from the outset, regulations continue a cycle of reaction rather than prevention, potentially leading to ongoing injustices and the continued surveillance practices that disproportionately impact marginalized groups.

Further, in the summary section of the AIDA, its primary purpose is outlined as regulating international and interprovincial trade and commerce. This is intended to establish comprehensive frameworks for the design, development, and use of AI systems across Canada, highlighting the need for inclusive AI governance that encompasses all sectors, including government, to ensure equitable and responsible use of AI technologies. However, as detailed under section 3 of this Act, its provisions do not apply to government institutions as defined in the Privacy Act. According to the *Privacy Act*, a "government institution" includes any department or ministry of state of the Government of Canada, along with any associated bodies or offices, parent Crown corporations, and their wholly-owned subsidiaries.

This exemption is concerning because it means that such institutions, which extensively utilize AI technologies and automated systems as noted earlier, fall outside the jurisdiction of this Act. Without the mandated safeguards provided by the Act, despite their imperfections these government institutions must rely solely on internal guidelines or directives to manage the use of AI and to guard against any potential inequalities or inequalities that might arise from their operations. This gap highlights a pressing need for specific legislation that directly addresses the use of AI within government entities, ensuring that AI deployments in public sector governance are transparent, accountable, and uphold ethical standards for the use of AI technologies just as government requires for the private sector. Such legislation would help ensure that AI applications are both fair and effective, aligning with broader societal values and rights. To promote fairness, the federal government should hold its organizations, entities accountable to the same standards of responsibility and oversight as it does the private sector, ensuring consistent protection against biases and inequalities across all areas of AI deployment.

Regarding privacy, the AIDA is incorporated into Bill C-27, which was designed to update and revise privacy laws impacting the Canadian private sector. Although various sections of the AIDA address privacy, this essay will specifically focus on those relevant provisions. Section 5(1) of the AIDA defines 'confidential business information' as information pertaining to business activities that is not publicly available. Furthermore, section 6 mandates that measures intended to ensure

anonymity are properly maintained, thus guaranteeing that individuals involved in handling such information remain anonymous and that the information is securely stored.

Additionally, section 11(1) of the AIDA requires that any entity making a high-impact system available for use must publicly disclose, in accessible language, an explanation of how the system is intended to be used and the decisions or content it will influence. This provision is intended to enhance transparency in the use of these technologies. However, it does not specify a timeline for when this information must be published, merely stating that it should be done "in time." The absence of a defined timeline could potentially delay these necessary disclosures, diminishing the effectiveness of the transparency measures. To improve the efficacy of these regulations, it would be beneficial to include a specific timeline within which disclosures to the public must be made. Establishing a clear deadline would ensure timely compliance and enhance the accountability of entities using high-impact AI systems.

Overall, the analysis of AIDA suggests that while the standards set are steps in the right direction, they are insufficient to fully address the nuanced and multifaceted challenges posed by AI. The AIDA recognizes that harms can be created with the use of AI and has begun to establish provisions to address this. It also attempts to make the usage of AI systems more transparent by requiring businesses to publicly disclose terms of usage and manage confidential data while ensuring that anonymized information remains secure. There are several accountability mechanisms in place, such as the potential for audits and the authority granted to the Minister to require records from businesses and entities if there is suspicion of the technology producing biased outcomes. Monetary penalties are also specified, namely in section 29, which outlines consequences if any sections of the AIDA are violated or if any person is found in violation of it. Likewise, section 30 outlines offenses that could result in conviction or fines.

6.3 Recap of Principal Issues: Bias Discrimination, and Privacy in Artificial Intelligence

To briefly summarize the research findings, this section highlighted the urgent need for AI regulations to address significant issues such as bias, discrimination, and privacy concerns. It critically examines existing legislative frameworks in Canada, assessing their effectiveness in safeguarding privacy and upholding human rights.

One of the central issues identified is the manifestation of bias in AI systems, which can occur both consciously and unconsciously. Unconscious biases are subtle and often unrecognized, nonetheless, they can still influence AI decision-making, perpetuating existing social inequities. This is demonstrated through examples of facial recognition and predictive policing algorithms that utilize biased historical data, which disproportionately targets certain communities and reflect and amplify social inequalities (Browning & Arrigo, 2021). Additionally, the integration of AI technologies poses privacy concerns. The vast amounts of data collected through AI systems, often referred to as 'big data' include information from various sources (Clarke & Margetts, 2014). The way this information is stored, handled, and managed adds an extra layer of complexity, further complicating the task of providing privacy protection for the use of these technologies (Sheeney, 2019). Instances of data breaches, such as the one experienced by BORN Ontario, which underscore the risks associated with inadequate data security measures (BORN Ontario, 2022). Unauthorized access or misuse of personal data can further lead to severe consequences, including identity theft and other forms of exploitation (Satter, 2023). Furthermore, the use

of AI by government agencies for purposes such as fraud detection or policing/surveillance can lead to significant privacy infringements. This can lead to the wrongful targeting and labelling of individuals, further exacerbating issues of bias and discrimination.

Overall, the literature as explored, suggests that current regulations are insufficient to fully address the challenges posed by AI, particularly in terms of bias, discrimination, and privacy. This assessment and discussion throughout the literature review and the research findings created the bases for the three recommendations proposed later in the paper.

CHAPTER 7

7.1 Analytical Perspectives Shedding Light on Key Issues

Based on the research findings and assessment of the AIDA, incorporating an examination of its strengths and limitations as well as briefly comparing it with international approaches to AI regulation by governments, it is evident that AIDA falls short in providing adequate protections against bias, discrimination, and privacy concerns. This section will explore ways scholars have recommended addressing these issues through regulation, emphasizing three specific recommendations: enhancing public consultation and engagement from individuals across various fields and backgrounds, strengthening accountability, adopting a proactive legislative approach, and the use of inclusive and diverse data sets.

Addressing these challenges necessitates the adoption of a regulatory framework that accounts for both the individual and collective impacts of AI. This involves developing a framework that assesses not only the direct outputs of AI systems but also considers the historical and contextual data that influence these systems. Such a comprehensive approach will ensure that the regulatory framework can handle the complexities of modern AI applications, effectively safeguarding against potential abuses while fostering an environment of trust and accountability.

7.2 Addressing Bias and Discrimination Through Regulation

Regulations can play a pivotal role in mitigating bias and discrimination in AI technologies. These regulations can vary and might include ethical AI guidelines, routine audits, accountability measures, inclusive data practices, and so on. One effective approach is the implementation of ethical AI guidelines that establish norms for fairness and accountability (Dodhia, 2024). For example, creating principles and norms such as fairness, accountability, and transparency. Additionally, regulations could require AI developers to perform routine audits of AI systems to continually test for flaws and ensure these technologies promote fairness (Dodhia, 2024). This could include mandating regular testing and validation of AI systems to detect and correct biases. To be effective, these regulations would need to be carefully formulated and clearly defined. This could involve specifying the exact standards and procedures that AI developers and businesses would have to follow. For instance, ethical AI guidelines would outline precise criteria for fairness and accountability, detailing how these principles are to be applied in practice. These regulations can also be tailored to specifically address the needs of the organization utilizing these technologies. Furthermore, ensuring that the information is communicated in plain language is crucial. Regulations should be understandable to both technical and non-technical audiences, allowing a diverse and wide array of people to comprehend how to use these technologies and understand the legislation. This inclusivity can help foster broader acceptance and adherence to the guidelines, ensuring that the principles of fairness and accountability are upheld across various sectors.

For instance, as previously mentioned, the IRCC uses algorithms and AI systems to help process in-Canada family class spousal and common-law applications, ensuring that it is automating positive eligibility and not surpassing these requirements. Mandating routine audits by human reviewers every six months, or more frequently, would ensure that these systems are continuously checked and that there are no recurring instances of automating incorrect eligibility determinations. Establishing accountability in AI systems and their developers is crucial, which includes defining clear responsibilities and consequences for harms caused by AI technologies. For example, transparency in AI operations, often referred to as "explainable AI," is complex but crucial for establishing safeguards across the design, deployment, and usage of these technologies (Dodhia, 2024).

Additionally, AI Fairness 360 (AIF360) was created by a group of researchers and developers and is a toolkit that can help individuals examine, report, and mitigate discrimination in machine learning models and AI technologies (IBM, 2024). The goals of AIF360 are to help mitigate and understand fairness, enabling researchers and practitioners to share and benchmark algorithms and create algorithms that can be used to test software for fairness. This shows that there are steps institutions and companies can take to test their software for fairness, which could be incorporated within the regulations as well (Bellamy et al., 2018).

Moreover, research by Yeung et al. (2019) proposes that human rights should be at the forefront of AI ethics to ensure that AI systems are ethical in their design. They advocate for a 'human rights-centered design deliberation and oversight,' which ensures that human rights remain at the core of the creation of regulation and AI. This approach includes external oversight with regulatory authorities and experts in the field, incorporating information from stakeholders and public consultations. Within their design, there are four key principles which include design and deliberation, assessment, testing and evaluation, independent oversight, investigation and sanction, and traceability, evidence, and proof (Yeung et al., 2019).

7.3 Privacy Matters: Navigating Privacy Concerns

Transparency in the use of AI technologies is a significant concern that can foster public trust (Dodhia, 2024). Dodhia outlines several key principles crucial for protecting user data and ensuring AI technologies do not infringe on privacy rights, including consent, data minimization, security, algorithmic transparency, fairness, and the right to explanation (Dodhia, 2024). Effective regulations should clearly define how user consent is obtained, specifying how data is collected, stored, used, and eventually disposed of. For instance, data minimization principles dictate that institutions should only collect data essential for their intended purposes, avoiding unnecessary data accumulation that could jeopardize user privacy. Similarly, algorithmic transparency and fairness should be mandatory regulatory requirements, ensuring that any AI-driven decisions that impact individuals are both explainable and contestable by those affected. While these measures can be challenging to implement, they are paramount components of robust AI governance frameworks that respect and protect individual privacy rights.

7.4 International Perspectives and Regulation of Artificial Intelligence

Moreover, numerous national governments and organizations have delved into the utilization of AI, expressing concerns, and initiating corresponding frameworks. Notably, several entities have formulated comprehensive

frameworks and initiatives dedicated to AI, such as the United States' Artificial Intelligence Risk Management Framework (2023), China's New Generation AI Development Plan (2017), the United Kingdom's Ethics, Transparency, and Accountability Framework for Automated Decision-Making (2023), and the Organization for Economic Cooperation and Development (OECD) on AI. These organizations have established frameworks and initiatives with the primary aim of guiding the ethical and responsible use of AI. Common themes across these initiatives and frameworks include efforts to mitigate potential harm arising from the use of these technologies, risk management, diversity and inclusiveness, transparency and accountability, human rights and social impact and continuous evaluation and adaptation of these regulations.

For instance, the United States' Artificial Intelligence Risk Management Framework offers a detailed definition of risk. Specifically, section 1 (1.1) states that in the context of this framework, risk refers to "…the composite measure of an event's probability of occurring and the magnitude or degree of the consequences of the corresponding event." This definition helps to clarify the context of risks associated with AI and provides a working definition that can guide risk management practices. The framework further defines risk management as "…coordinated activities to direct and control an organization with regard to risk." This clarity is crucial for understanding the terms used in discussion about AI risk and risk management. Notably, the AIDA makes several references to 'risk' and 'risk of harm' in the but does not explicitly define these terms within its definitions section (section 2). Incorporating such definitions into the AIDA could enhance its comprehensiveness and effectiveness.

The United States' Artificial Intelligence Risk Management Framework offers a discussion of AI risks and trustworthiness. Section 3 provides a list of characteristics that comprise AI trustworthiness, which includes being "valid and reliable, safe, secure and resilient, accountable and transparent, explainable and interpretable, privacy-enhanced, and fair with harmful bias managed." These characteristics are intended to guide the development and deployment of AI technologies, aiming to mitigate negative consequences that may arise if these technologies are not created with these characteristics in mind. The framework also mentions potential difficulties in incorporating these characteristics but still highlights the importance of considering them in all steps, from the creation to the deployment of AI technologies. Similar characteristics or discussions of AI trustworthiness are not included in the AIDA.

For example, ensuring AI systems are accountable and transparent would involve implementing mechanisms that allow users and stakeholders to understand and potentially challenge AI decisions. Similarly, making AI systems explainable and interpretable requires carefully crafting algorithms that provide clear and understandable outputs, which would help develop trust among its users. This framework also highlights the need for AI systems to be privacy-enhanced and fair, which could be managed through inclusive design processes and following ethical AI guidelines, such as ecological or universal design principles.

The United Kingdom's Ethics, Transparency, and Accountability Framework for Automated Decision-Making presents an interesting 7-point framework designed to help government departments and ministries create safe and ethical AI systems, specifically automated systems. A significant aspect of this framework is section 2, which emphasizes the importance of having a diverse and interdisciplinary team during the creation of AI systems. This section explains that a diverse team

is crucial in reducing potential biases or discrimination in these technologies. It also states, "It should be presumed that the algorithm or system that you are developing is capable of causing harm and injustice." This acknowledges that because humans have inherent biases, these biases can be reflected in the systems they create. The framework extends beyond this acknowledgment by offering practical ways to combat bias, such as running "bias and safety bounties," where "hackers" are incentivized to seek out and identify discriminatory elements. This concept of "bias and safety bounties" is not mentioned in the AIDA and could be a creative way to limit discriminatory elements. The guide also suggests including diverse datasets and emphasizes consultations with groups to catch potential biases beforehand. Having an entire section dedicated to ensuring diversity could be something the AIDA incorporates to strengthen its legislation and goals to address or mitigate the social inequalities that emerge from the use of AI technologies.

Further, the OECD AI principles were first adopted in 2019; however, several updates were made in May 2024. These principles were created to guide individuals using AI to create trustworthy AI and to provide policymakers and governments with principles and suggestions for creating practical and effective AI policies. As noted by the OECD AI Policy Observatory, several organizations, and countries, including the European Union, the Council of Europe, and the United States, have utilized the OECD's current definition of an AI system and lifecycle to help shape their legislative frameworks (OECD, n.d.). The updated AI definition includes: "An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment." Additionally, the updated principles emphasize the importance of individuals using or creating AI to respect the rule of law, meaning everyone is held to the same standard. Human rights and democratic values, including fairness and privacy, are central to the creation and use of AI technologies. While these values may be central to the creation of AIDA, they should also be explicitly stated within the AIDA to ensure comprehensive guidance.

In the realm of international perspectives and the regulation of AI, Europe has made efforts to create legislations and engage in discussion of the use of AI in different sectors and within their governments. The European Commission has proposed rules and regulations for AI in collaboration with other countries, resulting in one of the world's first legal frameworks dedicated to regulating specific AI uses, known as the AI Act (European Commission, n.d.). This legislation aims to promote public trust, safety, and fundamental human rights using AI technologies, while creating environments for innovation and exploration in the field of AI (European Commission, n.d.). This legislation also aims to lessen financial burden for businesses from attempts to integrate AI technologies into their operations (European Commission, n.d.). The AI Act has several components. Central to the AI Act is the commitment to prevent the use of AI systems that pose a threat to individuals. The AI Act also aims to set requirements for AI systems that might be used for high-risk applications at a national standard and outlines four different levels of risk outlining how each level of risk may be understood (European Commission, n.d.).

In 2019, the Council of Europe Commissioner for Human Rights offered ten recommendations to safeguard human rights in the context of AI, addressing areas such as the private sector, information transparency, equality,

data protection, and privacy (Council of Europe 2019). These recommendations include and cover areas such as creating a human rights impact assessment tool, conducting public consultations, focusing on the promotion of non-discrimination and equality, data protection and privacy. These recommendations are created by implementing work from other organizations, such as the European Ethical Charter on the use of artificial intelligence in judicial systems, the Guidelines on Artificial Intelligence and Data Protection. Although these recommendations are targeted at member states, the guidelines offer a model that could be adopted and adapted to suit the specific regions that are using the technologies as well as other countries (Council of Europe, 2019).

These enhancements to regulatory frameworks, as suggested by Dodhia and supported by broader academic discourse, can help address the foundational issues of bias, discrimination, and privacy concerns in AI applications. By refining these regulations, policymakers can better align AI technologies with societal values and human rights, ensuring they serve the public good while minimizing potential harms. Along with briefly exploring international perspectives to see how they are getting around the issue of combating these issues within their own regulations.

In lieu, this section provides a brief examination of international legislative frameworks and guides regarding AI. Many of these instruments are living documents that are constantly being reviewed and updated to adapt to changes in the AI field. Although it is not recommended to directly apply all regulations and recommendations from international documents to the Canadian context, as they must be adapted to fit specific Canadian needs, it can still be beneficial to use these regulations as a guide to strengthen the Canadian framework. Based on this analysis, a closer examination of these initiatives and more international legislative frameworks would be beneficial and appropriate for addressing some of the limitations that exist in the current Canadian approach. While such a detailed examination is beyond the scope of this work, it would be extremely helpful in further exploring legislation and different strategies that could address these concerns.

CHAPTER 8:

8.1 Pathways Forward: Actionable Recommendations

The following recommendations aim to provide actionable suggestions for improving the deployment and management of AI technologies from the federal level. While these recommendations are designed to mitigate risks associated with AI, it is important to acknowledge that they will not eliminate these challenges. However, they can help address the current gaps and serve as a foundation for additional solutions. Each recommendation should be viewed as being part of a holistic approach rather than one standalone solution to the shortcomings of current legislative frameworks. By implementing these measures collectively, a more responsible use and equitable use of AI can be achieved. Additionally, it is essential to recognize that ongoing efforts and adjustments will be necessary to address emerging issues and adapt to developments in the future.

8.2 Recommendation One: Enhancing Public Engagement in the Development and Regulation of AI Technologies

The first recommendation this paper proposes is for the government to enhance public engagement in the development and regulation of AI technologies. During the formation of the AIDA, the noted lack of public consultation highlighted a missed opportunity to gather diverse insights, which are crucial for understanding how AI systems may impact different communities. As suggested by Attard et

al., fostering deeper collaboration between policymakers, public service workers, and the public could significantly mitigate barriers to public trust (Attard et al., 2024).

Further, Robinson (2020) explored how the inclusion of cultural values—focusing on trust, transparency, and openness—shapes Nordic national public policies regarding AI. Robinson raises the point that, whether explicitly mentioned or expressed in various ways, cultural values impact the AI strategies used for AI policies in Denmark, Finland, Norway, and Sweden. Robinson argues that recognizing and incorporating citizens' values can greatly benefit the creation of AI policies and emphasizes the lack of clarity in addressing how AI systems work (Robinson, 2020).

Research by Wilson (2022) revealed that although public engagement is typically mentioned within strategies regarding AI governance, in practice, these strategies do not adequately incorporate the public when creating regulations. Wilson's study, which focused on 16 national strategies, found minimal evidence of actions in place to ensure that public engagement and feedback are incorporated into discussions about AI, particularly in national AI strategies (Wilson, 2022). Additionally, Wilson states that those strategies that do mention public engagement are often very vague, with other priorities taking precedence (Wilson, 2022).

Integrating public feedback more effectively into the legislative process is essential. Best practices for public participation in AI design should involve workshops, public forums, and digital engagement platforms where feedback is not only collected but actively discussed and integrated into policymaking (Attard et al., 2024, 10). These consultations should be open for extended periods and accessible through different formats to encourage broader participation. By allowing more time and utilizing various formats, such as online surveys, public meetings, and social media platforms, more people can participate providing a richer and greater perspectives that can result in better, more inclusive AI policy. Further, the International Association for Public Participation of public participation outlined five different levels of participation, including inform, consult, involve, collaborate, and empower (Katsonis, 2019).

These efforts should ensure that varied perspectives, especially those from marginalized or underrepresented groups are considered and that their concerns are addressed in the final policies. The issue is not that governments are purposefully excluding protections for certain groups, but rather that there is insufficient input from these communities to recognize how these protections can be tailored and crafted to safeguard their rights. Thus, enhanced public engagement can help bridge this gap, ensuring that AI regulations are more inclusive and better aligned with the needs and rights of all communities.

For example, a case study of the Future Melbourne 2026 project by Katsonis (2019) examined how public engagement could strengthen policy-making by incorporating a wide array of perspectives. Katsonis explored the role of public engagement through a 10-year local government plan regarding city life in Melbourne, Australia. The research utilized benefits for public engagement in policy-making, such as improving communication between service providers, clients, consumers, and decision-makers; creating greater diversity in views within decision-making; utilizing community knowledge and perspectives; and addressing potential problems beforehand (Steve, 2009, as cited in Katsonis, 2019).

Melbourne, the capital of Victoria in Australia, uses community engagement for projects or major decisions that could affect the city (Katsonis, 2019). The Community Engagement Charter helps the organization plan

engagement well in advance to garner community support, incorporating the needs of the community. In 2015, the Future Melbourne Committee of Council endorsed the Future Melbourne 2026 Project plan, centering community participation (Katsonis, 2019). The city welcomed various groups, businesses, and organizations to different in-person workshops, forums, seminars, websites, and other tools to incorporate their ideas. After the ideas phase, the community received 970 ideas, with more than 2,000 people joining conversations at 31 events, including culturally and linguistically diverse people of all ages and demographic backgrounds (Katsonis, 2019). This extensive feedback continues to influence public engagement in decision-making.

The example of Melbourne exemplifies the quality and importance of public engagement, along with the need for various formats and ways for community members to participate, ensuring a diverse set of perspectives. Hence, this recommendation emphasizes ensuring robust public engagement. Engaging the public in the regulatory process can directly address the issue of bias and discrimination in AI systems, which was a principal issue raised in the previous sections of this essay. By incorporating a broad range of perspectives, policymakers can better understand the nuanced ways in which AI may disproportionately affect different groups. For instance, if public consultations had been conducted during the development of predictive policing algorithms, the inherent biases in the data and their impact on minority communities might have been identified and mitigated earlier. Engaging various communities in the discussion could lead to the development of more equitable AI solutions.

It is important to note that these public consultations should be structured and provide clear guidelines on the scope and focus of discussions, ensuring that they remain productive and relevant. By setting specific goals and timelines, the consultation process can be kept on track, preventing unnecessary delays. Additionally, providing educational resources and briefings can help bridge the knowledge gap, enabling the public to contribute more effectively to the discussions. This inclusive and structured approach can help identify and mitigate potential biases, privacy issues, and discriminatory practices more comprehensively, leading to more effective and balanced AI regulations.

Moreover, public engagement can help uncover less visible forms of discrimination embedded in AI technologies, which may not be widely known but are keenly felt by the affected communities. Engaging with a wide range of stakeholders, especially those from marginalized or underrepresented communities, can help ensure that the values and needs of all citizens are reflected in the regulatory framework. By doing so, AI regulations can be crafted to address issues of bias and discrimination more effectively, fostering a more inclusive and fair use and deployment of AI technologies.

8.3 Recommendation Two: Ahead of the Curve Proactive Legislative Approaches

The second recommendation put forth focuses on adopting a proactive legislative approach to AI regulation. A proactive legislative approach in this context involves establishing laws and frameworks that anticipate and address potential risk and ethical concerns associated with AI technologies before they become widespread issues and have undesirable effects. This proactive approach should include mandatory impact assessments that require comprehensive testing and validation of AI systems prior to their deployment. For example, businesses could be mandated to conduct extensive trial runs and error-checking procedures to detect any biases or flaws in their systems, running them in a controlled environment for a specified period, such as a

year, before full-scale deployment. Although some AI technologies already undergo trials, mandating this practice by the government would ensure consistency and thorough evaluation. For instance, in facial recognition technologies, it is crucial to ensure that individuals of different skin tones are not continuously misidentified. This kind of rigorous pre-deployment testing can help identify and mitigate such biases.

Furthermore, the first step in this proactive approach is mandating that government entities and federal institutions, which are currently exempt from existing regulations, explicitly state and have a regulation regarding the use of AI. Although the government is making the initiative to create and enforce the AIDA, it does not apply to government institutions. Expanding legislative coverage to include these bodies ensures that they adhere to internal and national guidelines designed to safeguard against the misuse of AI technologies, ensuring all operations are transparent, accountable, and uphold the highest ethical standards. These legislations, although similar to those for private businesses or personal use, need to be crafted more diligently due to the handling of more data and personal information. They should still include underlying principles of transparency, fairness, accountability, and risk management. However, the penalties for not adhering to these legislations should be stricter and held to a higher degree. By having higher standards, it will in turn require more precision and careful usage, consideration of marginalized groups, and privacy protections. Additionally, ongoing feedback mechanisms can catch unintended results early and provide an opportunity to limit those impacts.

This recommendation directly relates to the principal issues of bias, discrimination, and privacy. For example, implementing mandatory impact assessments directly addresses the issue of bias. These assessments would require businesses to identify and rectify biases in AI systems before they are deployed. By conducting rigorous tests, biases such as those found in loan approval algorithms, which may unfairly disadvantage applicants based on socioeconomic status or geographic location, can be detected, and corrected. Additionally, in healthcare AI systems, these assessments could identify and mitigate biases that may lead to unequal treatment outcomes for different demographic groups. This proactive measure helps ensure fairer outcomes for all users, mitigating the risks of discriminatory practices and protecting individual privacy.

8.4 Recommendation Three: Diversity by Design - Inclusive and Representative Data Sets

Thirdly, a recommendation is to mandate the use of inclusive and diverse data sets. This measure requires entities using AI technologies to utilize training data that reflect a broad spectrum of demographic characteristics. By ensuring that data sets are diverse and representative of various ages, races, genders, and other socioeconomic factors, algorithms are less likely to perpetuate existing biases and more likely to perform equitably across different population segments. Iterative public consultations involving the design and use of data sets and data scraping techniques would be helpful in ensuring more representative and fair data collection techniques and results. This internal mandate would involve regular audits and updates to data sets to reflect changes in demographics and societal norms, thus helping to mitigate the risk of biased algorithms. This could occur through the training of the data or also including that there is more diversity in those who are assisting and creating these technologies.

For instance, the European guide, which emphasizes having diverse workers and inclusive data sets, could be useful. While it would need to be adapted to fit the Canadian context, it would still be effective. Delving deeper into that guide, it outlines practical steps, such as adherence to

the Equality Act 2020 and Public Sector Equality Duty, implementing 'bias and safety bounties' to incentivize and locate any discriminatory elements of AI, using diverse data sets, and working with the team to ensure ethical practices and standards are upheld. They also provide relevant resources, including the Data Ethics Framework and several guides such as 'A Guide to Using AI in the Public Sector' and 'Guidelines for AI Procurement,' which reference OECD principles. These frameworks emphasize the need for diversity throughout the entire lifecycle of AI technologies. The Canadian government can utilize other legislative frameworks, such as the Canadian Charter of Human Rights, to ground the creation of AI frameworks and principles, including provincial ones, to promote diversity and equality within the creation of a federal framework.

In addition, as outlined by Ferrara (2024), one mitigation strategy for finding and reducing bias in AI includes reviewing pre-processing data used to train AI systems to ensure it is representative of different groups, including marginalized groups (Ferrara, 2024). Ferrara describes that in practice, this can occur in different forms such as oversampling, under-sampling, or synthetic data generation (Ferrara, 2024). For example, a study by Buolamwini & Gebru showed how oversampling darker-skinned individuals helped increase the accuracy and reduce inaccuracies of facial recognition for individuals with darker skin (Ferrara, 2024). Another example could include algorithms used for hiring, ensuring a balanced data set that does not favor one gender over the other. Using data and techniques from oversampling minority groups to balance the dataset can help reduce the risk of bias. This recommendation directly targets the concerns of discrimination and bias in AI technologies. For example, in the hiring process, AI algorithms have been shown to perpetuate gender and racial biases when trained on imbalanced data sets.

By mandating the use of inclusive and diverse data sets, these biases can be significantly mitigated. Consider an AI system used for loan approvals, which may favor applicants from certain socioeconomic backgrounds if trained on unrepresentative data. By ensuring that the training data includes a variety of socioeconomic statuses, geographic locations, and demographic characteristics, the AI system can make fairer decisions, thus reducing the risk of bias against marginalized groups. Another example is in healthcare systems, where AI is used for creating accurate diagnoses. If algorithms are trained using data from various groups, backgrounds, health conditions, and genders, they can provide more accurate and equitable healthcare outcomes. By incorporating these measures, AI systems can be designed to be more equitable, thus addressing the root concerns of bias and discrimination.

8.5 Limitations in the Proposed Recommendations

To address the rapid evolution of AI technology, the proposed regulations aim to mitigate bias, discrimination, and privacy issues. However, the fast-paced development of AI technology poses a significant challenge as regulations often are a lengthy process and can take years to be implemented. Therefore, by acknowledging this, it is essential for governments to begin implementing regulatory measures proactively. Although the legislative landscape is swiftly changing, the overarching goal is to establish effective laws that incorporate safeguards and adapt over time to new developments in AI technology.

Enhancing public engagement in AI policy development allows for a more democratic process and potentially more equitable outcomes. However, involving the public extensively can lead to complications. For instance, if every

aspect of AI regulation is debated publicly, the process can become prolonged, delaying essential legal protections. Moreover, the public's understanding of AI may vary greatly, which might result in overly broad or ineffective legislation. To address these concerns effectively, it is essential to ensure that legal practitioners, scholars in the field of AI, and in conjunction with members of the public are included in the public consultation process. This inclusive approach can help identify and mitigate potential biases, privacy issues, and discriminatory practices more comprehensively.

A proactive approach to AI regulation is ideal for keeping pace with rapid technological advances. However, predicting future technological developments is inherently challenging. Regulations that aim to address future scenarios may quickly become outdated or misaligned with the actual direction technology takes. As a result, such laws might restrict innovation or fail to address new ethical dilemmas that arise, forcing a constant cycle of updates and amendments. However, as mentioned earlier, with regular review, this can be addressed. To mitigate this concern, procedures and regulations could be established to ensure that legislations are created before these new AI technologies become public and widely used. This approach would allow for potential testing and safeguarding, offering a proactive, rather than a reactive stance toward these technologies. Implementing such a framework would help ensure that AI technologies are both innovative, preventing potential harms before they occur and maintain alignment with the rapid pace of technological change.

For example, the Phoenix Pay situation in the federal Canadian government highlights the risks of not adopting a proactive approach. The system, intended to streamline payroll for public servants, was implemented without a full pilot test due to time and cost pressures (Tossutti et al., 2021). This led to significant issues, including over half a billion dollars in unresolved pay errors and nearly 600,000 pay requests by mid-2018 (Tossutti et al., 2021). If a proactive approach with thorough testing had been taken, these issues could have been identified and mitigated early on. This example underscores the importance of implementing proactive measures to prevent problems before they occur, rather than waiting for issues to arise and then reacting.

Additionally, mandating the use of diverse data sets to train AI systems is crucial for minimizing biases. However, implementing this recommendation comes with its own set of challenges. Collecting comprehensive and varied datasets often requires significant resources and rigorous data governance protocols to ensure data privacy and security. For instance, in healthcare, diverse datasets can help improve diagnostic AI tools but also raise concerns about patient confidentiality and the potential misuse of sensitive health information. Moreover, ensuring that these datasets are representative and free of their own underlying biases can be an enormous task, requiring continuous oversight and validation to maintain the integrity of AI applications.

Finally, it is important to note that addressing these concerns with the ever-changing and evolving landscape of AI is challenging. The public sector and government organizations are not exempt from the challenges presented using AI. Thus, to ensure that significant damages are avoided, it is crucial to be proactive rather than reactive. This involves implementing the recommendations provided and continuously seeking innovative solutions to protect marginalized groups and ensure that these legislative frameworks or grounded in protecting individual human rights. Legislative changes from the federal level will not solely solve the issue, however by looking ahead and incorporating these measures, the federal government can help

safeguard against the harms of AI both within government and across the public and private sectors.

CHAPTER 9: Conclusion: Navigating the Future of Artificial Intelligence with Thoughtful Regulation

In conclusion, this paper has delved into the intricate aspects of AI within Canada, noting the current limitations and lack of regulations tailored towards the use, deployment, and ethical implications of AI technologies. By analyzing AI's social and human rights impacts, particularly within government applications, the research has underscored the potential effects on individual rights and the necessity for more robust regulatory frameworks.

This paper began by examining existing literature on AI, detailing the evolution of AI technologies exploring various types and categories—from those dependent on human data to advanced programs capable of providing human-like responses through innovative learning algorithms. It also assessed the application of AI across various government departments and AI- related projects endorsed by the Canadian government, along with a brief overview of provincial and national AI regulations. Furthermore, this essay utilized Critical Race and Social Theory as theoretical frameworks to explore different sections of the *Artificial Intelligence and Data Act* (AIDA), highlighting both the strengths and limitations of the legislative framework.

Governments worldwide, including Canada, recognize the imperative to proactively legislate the use of AI technologies. However, crafting effective legislation is not a simple task. Through examples such as the Directive on Automated Decision-Making and the proposed AIDA, this essay illustrated the Canadian government's efforts to craft policies aimed at minimizing these specific challenges. While these initiatives indicate an awareness of the need for greater regulation, they also highlight the urgency for timely implementation of regulations. The implications of this research for policymakers and practitioners outline that there is a pressing need for comprehensive regulatory frameworks that can adapt to the fast-paced evolution of AI technologies. Such frameworks should also aim to anticipate future challenges that may arise from AI's continued integration into various facets of society, keeping in mind the diverse demographic groups affected by these technologies.

Exploring international perspectives and legislative approaches revealed that AI regulations and international standard collaborations can effectively guide government use and policymaking processes, ensuring ethical and effective AI deployment. Organizations such as the OECD can play a pivotal role in providing ways in which legislations that have been found effective in different countries could be adapted to fit the Canadian context and have positive outcomes. To further supplement these efforts, international collaboration is essential. By aligning with global standards and learning from other countries' regulatory frameworks, Canada can avoid potential pitfalls and adopt best practices and provisions that might provide further guidance to the Canadian government and AI regulations.

The principal concerns associated with AI, notably bias, discrimination, and privacy issues, were extensively examined. Case studies and implications highlighted the use of AI, underscoring the gaps in current frameworks and the need for more comprehensive regulation. The analysis of the Automated Decision-Making Act and its limitations revealed the critical need for an enhanced regulatory framework that includes regular assessments, adjustments, and broader inclusivity to cover all sectors, including government. These insights emphasize the

necessity for regulations that not only address current ethical dilemmas but are also capable of anticipating future challenges.

To address these gaps, three key recommendations were presented: enhancing public engagement in the development and regulation of AI technologies, adopting a proactive legislative framework, and mandating diverse data sets to inform AI systems. Public awareness and engagement are essential components of effective AI regulation. Educating the public about AI technologies, their benefits, and potential risks can foster informed discussions and build trust. Public consultations and participatory approaches should continue to be expanded in the regulatory process, allowing diverse voices to contribute to the development of AI policies. By involving citizens, policymakers can ensure that regulations reflect the values and concerns of the broader society. Ensuring that data sets are diverse and inclusive helps to mitigate biases and can improve the fairness and accuracy of AI outcomes. Although more research needs to occur regarding this, taking steps to ensure more diversity in the creation of these legislations can promote inclusivity and diverse data that produce equitable results for all Canadians.

In all, while Canada is on a journey toward comprehensive AI regulation, the path for ensuring the responsible use and deployment of AI technologies is marked by a recognition of the challenges and opportunities that AI presents. This essay advocates for a balanced approach that fosters innovation while safeguarding ethical standards and protecting the rights of all citizens in the digital age. Despite the complexities and challenges, with thoughtful regulation and continuous dialogue among all stakeholders, it is possible to navigate the future of AI effectively.

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VOLUME XIV

GRADUATE JOURNAL

Queen's UNIVERSITY POLICY STUDIES