Centre for International Governance Innovation

Digital Policy Hub

Digital Policy Hub — Working Paper

Drafted in the Dark: When AI Regulation Forgets the People

Julian Lam

Fall term — 2025–2026 cohort

About the Hub

The Digital Policy Hub at CIGI is a collaborative space for emerging scholars and innovative thinkers from the social, natural and applied sciences. It provides opportunities for undergraduate and graduate students and post-doctoral and visiting fellows to share and develop research on the rapid evolution and governance of transformative technologies. The Hub is founded on transdisciplinary approaches that seek to increase understanding of the socio-economic and technological impacts of digitalization and improve the quality and relevance of related research. Core research areas include data, economy and society; artificial intelligence; outer space; digitalization, security and democracy; and the environment and natural resources.

The Digital Policy Hub working papers are the product of research related to the Hub's identified themes prepared by participants during their fellowship.

Partners

Thank you to Mitacs for its partnership and support of Digital Policy Hub fellows through the Accelerate program. We would also like to acknowledge the many universities, governments and private sector partners for their involvement allowing CIGI to offer this holistic research environment.

About CIGI

The Centre for International Governance Innovation (CIGI) is an independent, non-partisan think tank whose peer-reviewed research and trusted analysis influence policy makers to innovate. Our global network of multidisciplinary researchers and strategic partnerships provide policy solutions for the digital era with one goal: to improve people's lives everywhere. Headquartered in Waterloo, Canada, CIGI has received support from the Government of Canada, the Government of Ontario and founder Jim Balsillie.

About the Author

Julian Lam is a Digital Policy Hub (DPH) master's fellow and is currently studying law at the University of British Columbia (UBC). As a DPH fellow, he is exploring how civic-technology platforms can be used to enhance the inclusivity, legitimacy and effectiveness of artificial intelligence (AI) governance at both the national and international levels. His research builds on previous work leading AI policy initiatives at the Centre for Media, Technology and Democracy at McGill University, as well as developing the global strategy for Canada's digital supercluster. He holds a B.A. in international relations from UBC and an M.P.P. from McGill, where he was a McCall MacBain scholar.

67 Erb Street West
Waterloo, ON, Canada N2L 6C2
cigionline.org

Policy Memo

Drafted in the Dark: When AI Regulation Forgets the People

Julian Lam

Bottom Line Up Front

The development of Canada's Artificial Intelligence and Data Act (AIDA) is a hallmark example of AI regulatory formation driven by a narrow, expert-led process. While increasingly common globally, such approaches are deeply problematic given their pronounced democratic deficit — a factor that contributed to the death of AIDA on the Order Paper. More specifically, the deficit was manifested through the draft legislation's limited deliberative quality and inclusion, alongside major shortcomings around transparency and accountability during its formation. Civil servants failed to meaningfully consult a diverse range of AI-affected stakeholders, and much of the legislation was drafted behind closed doors. The case study offers an important lesson for Canada and other democracies in understanding what is needed to craft democratically legitimate AI governance that is inclusive and reflective of the interests of those most vulnerable to algorithmic harms.

Key Points

- AIDA's drafting process revealed a marked democratic deficit. Innovation, Science and Economic Development Canada (ISED) designed the bill through a largely restricted consultation process that appeared to weigh industry and expert consultation more heavily.
- A major structural issue with the bill's consultation process was the exclusion of many marginalized and high-impact communities, including civil society organizations, Indigenous governments, disability advocates, labour groups, racialized communities and youth.
- Deliberative quality was poor as the federal government introduced a fully drafted bill before the public was able to engage with it. This move limited the ability of individuals and groups to engage in contestation, co-creation and shared problem definition.
- There appeared to be systemic transparency and accountability gaps due to an opaque drafting process, limited disclosure of consultation outcomes and missing pathways to challenge the provisions of the draft legislation.

Recommendations

- **Recommendation 1: Establish early and accessible entry points for public participation.** The federal government should try to make the legislative development process as accessible as possible rather than introduce a fully drafted legislative package.
- **Recommendation 2: Embed structural inclusion of marginalized and highly impacted communities.** Substantive inclusion must go beyond open invitations to participate. There must be dedicated outreach and participation strategies that meaningfully target groups outside of industry and expert stakeholders, including civil society, Indigenous governments, disability communities and so forth.
- **Recommendation 3: Integrate deliberative mechanisms into policy design.** Deliberative mechanisms must be deeply embedded in any regulatory formation process. Mechanisms such as citizens' assemblies, multi-stakeholder round tables or workshops can allow for this.
- **Recommendation 4: Institutionalize transparency and accountability requirements.** The process and outcomes of AI regulatory development must be transparent and accountable, which can be achieved by establishing regular disclosure channels.

Introduction

While still in its early stages, global artificial intelligence (AI) governance has featured a dearth of meaningful public participation and consultation. Significant criticism was levied at the formulation of Canada's AIDA due to its "exclusionary public consultation process" (Attard-Frost 2025), with some scholars referring to it as inherently "anti-democratic" (Wylie and MacDonald 2023). Similar points have also been raised about the formulation of the EU AI Act, which has been attacked for moving from guiding principles to concrete legal texts without transparent citizen consultation and discussion (Coeckelbergh 2024).

This working paper highlights how regulatory approaches that privilege industry and expert group consultations over public input risk the democratic legitimacy of AI governance. The author aims to identify participatory gaps in regulatory design and surface specific solutions to address them. Using Canada's AIDA consultation process as a central case study, the working paper examines how many Western liberal democracies are designing broad, "horizontal" AI regulation.[1]

This study leverages a four-pronged analytical framework built around scholar Archon Fung's "democracy cube" to examine the democratic quality of regulatory development along the dimensions of access, inclusion, deliberative quality, and transparency and accountability. The working paper charts the Canadian experience in regulatory and policy formation processes and highlights how the democratic deficit manifested.

AI Governance and the Democratic Deficit

There is a growing global democratic deficit at the heart of AI regulatory formation. Despite governments and corporations often invoking broad, widely accepted principles such as human rights, fairness and sustainability when developing regulations and technical implementations, they fail to engage citizens in interpreting what those rhetorical commitments mean in context. Strongly contested issues lie at the heart of AI governance that cannot be resolved by merely consulting academic and industry actors alone. These issues may include questions around how to define the common good, or which groups should be prioritized (ibid.). It is increasingly common for citizens to play very little to no meaningful role in shaping the foundational building blocks that guide broader regulatory infrastructure and, more specifically, around technology (Coeckelbergh 2024; Unver 2024, 2025).

While it may be argued that citizens elect representatives to address societal challenges, such as regulating AI, this system is insufficient to meaningfully uphold democratic norms. The quality of a democratic order is most robust when citizens have agency to engage in addressing and solving their own problems. This means deliberating on public issues and participating in decision making in ways that complement the work

1 "Horizontal" AI regulation refers to a regulatory approach that establishes cross-sector, system-wide rules for AI technologies, applying consistently across industries and use cases rather than relying on sector-specific or application-specific regulation.

that elected representatives and civil servants engage in. Democracy is not merely a procedure to aggregate opinions or preferences, but it also lies in public debate and reasoning in decision making, which altogether undergird the quality of democratic functioning (Unver 2024).

AI regulation is still in its infancy and, particularly at the horizontal level, emerging cases have gestured at a democratic deficit in its formation. This strikes at the legitimacy and effectiveness of such a law, but, moreover, processes that devalue citizen input translate this devaluation into the regulation itself. To illustrate this concept, scholars argue that norms such as "transparency" in the EU AI Act operate as an empty signifier that rhetorically signals openness and trust while materially reinforcing the interests of AI providers, big tech and the European Union's single-market agenda (Svitych 2025). Transparency obligations are framed in procedural risk-management terms that privilege expert authority and product-safety logic.

Establishing an Analytical Framework

This working paper examines the participatory quality of AI regulatory development using a four-part analytical framework that builds on Fung's widely cited model of participatory governance review: the democracy cube (Fung 2006). This framework identifies three core dimensions: who participates, how they deliberate and how their input links to authoritative decisions. Adapting this model, the working paper differentiates Fung's first dimension into access and inclusion, his second dimension into deliberative quality, and his third dimension into transparency and accountability.

Who Participates — Dimension 1: Access

Access refers to the openness of regulatory and policy-making processes and, more specifically, who is able to enter the arena where decisions about governance are initiated and shaped. Drawing on Fung's first dimension, "who participates," access seeks to capture the participatory architecture that determines whether regulatory processes are restricted to technical experts and industry stakeholders, or whether they are open to citizens, civil society and marginalized groups (ibid.). This dimension is narrated by the work of democratic theorists such as Robert A. Dahl (1971), who emphasized that meaningful democracy begins with effective participation, which requires genuine and impactful opportunities for the public to enter decision-making spaces.

Who Participates — Dimension 2: Inclusion

Inclusion goes beyond who participates, focusing on assessing whether those who gain access to influencing regulatory development represent the diversity of affected groups. The work of democratic theorists Iris Marion Young (2010) and Nancy Fraser (2021) comes to the fore in arguments that formal access is insufficient without substantive inclusion of socially diverse perspectives and lived experiences. Inclusion examines the why of who is and who is not included, and, moreover, what voices can be added to the conversations that may depart from those of technical or dominant corporate actors.

How Participants Communicate and Make Decisions — Dimension 3: Deliberative Quality

Deliberative quality concerns the nature of communication, reasoning and decision making within regulatory processes once participants are assembled. It lies directly atop Fung's second dimension, which focuses on the modes by which participants interact, deliberate, negotiate and evaluate proposals. Deliberative quality takes root in the works of Jürgen Habermas (2018) and Jane Mansbridge (2009), whereby democratic legitimacy not only centres around who participates but also how they are able to engage. Specific factors that contribute to deliberative quality include reason-giving, reciprocity, contestation and mutual justification. High deliberative quality requires methods that work to mitigate power asymmetries, foreground public reasoning over technical jargon, and ensure that individuals can challenge assumptions and regulatory frames that underly a given policy issue.

How Inputs Connect to Authority — Dimension 4: Transparency and Accountability

Transparency and accountability assess how regulatory decisions are documented, justified, communicated and subjected to public oversight. This dimension aligns with Fung's third axis: the extent to which participant judgments are linked to authoritative decisions. A process may offer access, inclusion and deliberation, but it still fails to be democratic if the resulting decisions are opaque, rationales are undisclosed or there are no mechanisms for challenge, review or correction. Scholar Vivien Ann Schmidt's concept of output legitimacy further emphasizes that democratic policy making requires not only participatory fairness but also clear, answerable outcomes that citizens can evaluate and contest (Schmidt 2007). This dimension, therefore, closes the democratic loop: it asks whether regulatory authorities can publicly justify their decisions and remain accountable for them.

AIDA's Path and Collapse

Factual Background

AIDA was introduced in June 2022 as part 3 of Bill C-27, the Digital Charter Implementation Act. It sought to establish Canada's first horizontal, cross-sectoral regulatory framework with a dual mandate: outlining common requirements for AI systems across their design, development and deployment; and prohibiting specific types of system use that could result in harm to individuals and their interests. AIDA imposed obligations related to data governance, risk assessments, record keeping, transparency and the mitigation of potential harms, enforceable through fines and new criminal offences. Positioned as an extension of the federal government's 2019 Digital Charter, the act was intended to fill perceived gaps in existing laws by addressing algorithmic bias, opacity and safety risks in rapidly deployed AI systems. However, the process by which AIDA was conceived and drafted has been widely criticized for its lack of transparency and public engagement.

AIDA's drafting occurred within ISED, whose mandate includes both promoting and regulating Canada's AI industry. Multiple scholars emphasize that the legislation appeared largely without warning, failing to provide the broader public with any white

or green papers or opportunities for input prior to tabling (Clement 2023a; Wylie and MacDonald 2023; Attard-Frost 2025; Brandusescu and Sieber 2025). Instead, early policy development occurred behind closed doors, with consultations primarily limited to industry actors and academic experts. As a result, civil society organizations, labour groups, disability advocates, racial justice organizations, Indigenous governments and the public more generally were excluded from the formative stages of the bill (Clement 2023b). The primary rationale that ISED advanced was the need to introduce the legislation expeditiously, citing that Canadians believed that protecting against AI harms "takes priority over other considerations" (Clement 2023a, 11). However, after entering parliamentary study, the bill faced significant criticism from scholars, civil society and excluded stakeholders on its consultation exercises.

After the bill was tabled, ISED launched several "consultation" processes, including a voluntary code of practice for generative AI. However, these have been characterized as "consultation theatre" (Clement 2023a, 8). University of Toronto scholar Andrew Clement (ibid., 9) explained that workshops for the code of practice were invitation-only and framed around the government's predetermined priorities. During the 2023–2024 study of Bill C-27 by the House of Commons Standing Committee on Industry and Technology (INDU), procedural deficiencies came into sharper focus. More than 137 witnesses and 113 written briefs criticized the bill's opaque development, vague requirements, lack of independent oversight and exclusion of affected communities. Clement (2023b) noted that ISED's reported consultations with 300 stakeholders heavily favoured the business sector (216 meetings), with no noted public consultations and only a handful of meetings with civil society organizations. Multiple expert submissions concluded that AIDA's legitimacy had been compromised at the outset by its limited, industry-centric construction and that even substantial amendments could not repair its deeper structural flaws. When Parliament was prorogued in early 2025, AIDA died in committee.

Dimension 1: Access

Public access to the regulatory development process was severely limited. While ISED published a short consultation paper in 2021 with the introduction of Bill C-27 and later released technical amendments in 2022 because of the INDU study, these publications were not driven nor accompanied by broad public outreach, public hearings or accessible engagement tools. While ISED claimed it was primarily driven by the public's urgent demand for regulation, it was clear that consultation was highly selective. Many civil society groups and academics reported learning about the bill only after it was introduced in Parliament.

Despite significant initial criticism of Bill C-27's 2021 introduction regarding consultation, the INDU study failed to meaningfully go beyond what ISED had already done in terms of consultation prior to initial tabling. Granted, the INDU committee solicited witnesses and written briefs, but government-industry asymmetry remained entrenched. This was evident in the code-of-practice workshops and stakeholder meetings, which relied heavily on these actors' input from a primarily technical standpoint. Technical complexity, asymmetry and rhetorical urgency regarding the need to introduce legislation quickly all operated as structural barriers to meaningful access. These barriers reflect institutional norms around technology regulation whereby civic voice is decentred in favour of expert and industry expertise.

Dimension 2: Inclusion

While formal access was limited, the consultation process also failed to be substantively inclusive of those most affected or likely to be affected by algorithmic harms. Although the public was not meaningfully engaged, there were nonetheless opportunities for ISED to involve civil society organizations, including labour groups, disability advocates, racial justice organizations and Indigenous governments. These groups could have served as partial conduits for civic voice. Instead, inclusion was largely contingent on institutional proximity and existing policy networks rather than democratic relevance or social impact.

Although the open-submission format for INDU's review enabled participation, this was an embedded process that overlooked barriers such as insufficient awareness of submission calls, resource constraints and a lack of meaningful responses to submissions. These barriers are further pronounced for individuals. Moreover, the nine-to-one ratio of industry to civil-society stakeholders in the reported 300 meetings holds troubling implications. The limited diversity skewed AIDA's normative direction toward a technocratic, industry-aligned model of AI governance.

Dimension 3: Deliberative Quality

Examining AIDA through a deliberative-quality lens reveals a process characterized by limited depth, minimal dialogue and negligible opportunities for iterative public reasoning. Opportunities for public deliberation were virtually non-existent, and consultations appeared largely informational. Stakeholders responded to predetermined prompts, with few mechanisms for reciprocal discussion or co-creation of policy options, especially across stakeholder groups such as between industry and civil society.

Ideally, deliberation precedes the finalization of core policy choices. In the AIDA case, this sequence was reversed as a fully drafted bill was introduced in 2022 before any public engagement. This, in turn, meant that any subsequent consultees had their critiques constrained, as they could not shape the foundational architecture of AIDA itself. Deliberative theorists call this phenomenon "the preclusion effect," whereby the range of decisions is narrowed before dialogue begins. Consultation materials themselves further limited deliberation by presenting complex issues in legalistic, industry-oriented language. Community groups lacked the technical capacity to evaluate definitions of such terms as "high-impact AI systems," risk frameworks or exemptions on equal terms.

Dimension 4: Transparency and Accountability

Transparency

Significant opacity marked every major stage of AIDA's development. Key decisions, such as including definitions of "high-impact AI," evidence behind the risk framework and the rationale for ministerial powers, were formed internally without clear public disclosure. Background materials were minimal, and early-stage deliberations, stakeholder engagements and drafting assumptions were not released for public scrutiny. Even when consultations began, no transparent account was provided of who

participated, what issues were raised or how competing perspectives were evaluated. Consultation summaries and draft revisions were incomplete or unpublished.

Accountability

AIDA exhibited substantial weaknesses in its accountability to the public to contest its various provisions. High-quality mechanisms require avenues through which the public can evaluate how decisions are made and how input is incorporated. Examining the draft legislation itself, AIDA ultimately delegated broad authority to the minister of ISED and future regulators without embedding clear oversight obligations. Furthermore, there were no mandatory requirements for public reporting, publication of enforcement decisions or disclosure of compliance orders. After consultations on technical amendments, no traceable feedback loops were provided, leaving participants unaware of whether their concerns had any impact.

Policy Recommendations

AIDA's collapse illustrates that public participation cannot be an afterthought in AI regulation. Deficiencies across access, inclusion, deliberative quality and transparency collectively produced a regulatory process that was neither representative nor responsive. For AI to be governed in ways that reflect societal values and protect those most vulnerable to its harms, public participation must be structurally embedded early in the policy cycle.

- **Recommendation 1:** Governments could establish early multi-modal entry points for public participation before drafting legislation. These channels may remain open as policy is developed to solicit further comment. Entry points could include publishing accessible white and green papers, hosting open national consultations (in person and virtually) and using online platforms for public comment. Civic technology also offers a promising and cost-effective method of enabling further access and participation. From an institutional perspective, these steps can be sequenced within existing legislative timelines by releasing short, focused consultation papers and hosting time-bound online consultations rather than open-ended processes. This approach helps address time and capacity constraints inside ISED and Parliament while still broadening participation beyond the narrow, invitation-only model used for AIDA.

- **Recommendation 2:** Regulators should adopt structured outreach strategies to ensure participation from marginalized and highly impacted communities, including labour groups, disability advocates, Indigenous governments, racialized organizations and youth. This approach can include targeted recruitment, funded participation and diverse advisory panels. To remain feasible for departments with limited resources, targeted recruitment and funded participation can be piloted on a smaller scale for particularly high-risk AI applications or highly affected groups before being expanded. Mandating that at least a portion of advisory-body seats be reserved for civil society and Indigenous representatives would institutionalize inclusion without requiring new stand-alone agencies. Further, establishing participation channels for specific aspects of legislation, such as around addressing issues of inclusivity,

Indigenous inclusion and so forth, may offer a more direct means for these groups to participate in a meaningful way if broad-spectrum participation is not possible.

- **Recommendation 3:** Regulatory design processes should integrate deliberative mechanisms, such as citizens' assemblies, multi-stakeholder round tables and iterative workshops, that allow participants to challenge assumptions and co-develop policy options. Draft legislation should be released in stages to enable deliberation before key policy choices are finalized. Novel consultation methods, such as leveraging civic technology, can be piloted; these have been shown globally as a cost-sensitive means to increase deliberation in policy-making processes. This approach may help balance the need for deliberation and pertinence of policy, considering the technology's exponential growth. Given concerns that citizens' assemblies and multi-stakeholder processes can be slow and costly, governments can start with short, topic-specific assemblies or round tables that operate within a fixed number of days and feed directly into committee study.
- **Recommendation 4:** Governments should implement clear feedback loops, documenting how submissions influenced revisions, and publish participation summaries, rationale statements and draft-tracking matrices. Regulatory agencies should be subject to mandatory reporting requirements and transparent disclosure of enforcement actions. These obligations can be aligned with reporting cycles and regulatory impact processes that agencies already follow, limiting additional administrative burden.

Conclusion

AIDA's collapse shows how democratic deficits in regulatory design can erode the legitimacy and resilience of AI governance. Shortcomings across access, inclusion, deliberative quality, transparency and accountability produced an expert-dominated process with limited public engagement. These flaws shaped Bill C-27's normative direction and weakened public trust. More broadly, horizontal AI regulation cannot rely on expertise alone. Democratically legitimate AI governance requires early, inclusive and deliberative participation that allows citizens and affected communities to shape foundational choices. Otherwise, regulation will reproduce existing power asymmetries and undermine a nation's democratic order.

Works Cited

Attard-Frost, Blair. 2025. “The Death of Canada’s Artificial Intelligence and Data Act: What Happened, and What’s Next for AI Regulation in Canada?” Montreal AI Ethics Institute, January 17. https://montrealethics.ai/the-death-of-canadas-artificial-intelligence-and-data-act-what-happened-and-whats-next-for-ai-regulation-in-canada/.

Attard-Frost, Blair, Ana Brandusescu, David Gray Widder and Christelle Tessono. “AI Countergovernance: Lessons Learned from Canada and Paris.” Tech Policy Press, February 20. www.techpolicy.press/ai-countergovernance-lessons-learned-from-canada-and-paris/.

Brandusescu, Ana and Renée E. Sieber. 2025. “Missed opportunities in AI regulation: lessons from Canada’s AI and data act.” *Data & Policy 7*: e40. https://doi.org/10.1017/dap.2025.17.

Clement, Andrew. 2023a. “No AIDA is better than this AIDA: Canada should craft an ‘agile’ AI regulatory regime, but not short-change democratic deliberation to pass an ill-conceived bill.” Brief submitted to the Standing Committee on Industry and Technology (INDU) on Bill C-27, An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intellience and Data Act and to make consequential and related amendments to other Acts. November 8. www.ourcommons.ca/Content/Committee/441/INDU/Brief/BR12743452/br-external/ClementAndrew-e.pdf.

– – –. 2023b. “Preliminary analysis of ISED’s C-27 list of 300+ stakeholder consultation meetings.” December 6. https://doi.org/10.2139/ssrn.4658004.

Coeckelbergh, Mark. 2024. “Artificial intelligence, the common good, and the democratic deficit in AI governance.” *AI and Ethics* 5: 1491–97. https://doi.org/10.1007/s43681-024-00492-9.

Dahl, Robert A. 1971. *Polyarchy: Participation and Opposition*. New Haven, CT: Yale University Press.

Fraser, Nancy. 2021. “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy.” In *Public Space Reader*, edited by Miodrag Mitrašinović and Vikas Mehta, 34–41. New York, NY: Routledge.

Fung, Archon. 2006. “Varieties of Participation in Complex Governance.” *Public Administration Review* 66 (s1): 66–75. https://doi.org/10.1111/j.1540-6210.2006.00667.x.

Habermas, Jürgen. 2018. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. New York, NY: John Wiley & Sons.

Mansbridge, Jane. 2009. “Deliberative and Non-deliberative Negotiations.” Harvard Kennedy School Faculty Research Working Papers Series No. RWP09-010. https://doi.org/10.2139/ssrn.1380433.

Schmidt, Vivien Ann. 2007. *Democracy in Europe: The EU and National Polities*. Oxford, UK: Oxford University Press.

Svitych, Oleksandr. 2025. “Blind transparency: a critical discourse analysis of the EU AI Act.” *Critical Policy Studies* 20 (1): 127–43. https://doi.org/10.1080/19460171.2025.2496193.

Unver, Mehmet B. 2024. “AI governance: Compromising democracy or democratising AI?” SSRN. https://doi.org/10.2139/ssrn.4913658.

– – –. 2025. “Democratic AI governance: framing a vision for Africa in view of the EU experience.” *International Review of Law, Computers & Technology*, 1–23. https://doi.org/10.1080/13600869.2025.2506924.

Wylie, Bianca and Sean Martin McDonald. 2023. “Artificial Governance: AIDA Repeats the Failed Patterns of Digital Regulation.” Opinion, Centre for International Governance Innovation, December 18. www.cigionline.org/articles/artificial-governance-aida-repeats-the-failed-patterns-of-digital-regulation/.

Young, Iris Marion. 2010. *Inclusion and Democracy*. Oxford, UK: Oxford University Press.