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Letter from the Editors

It was with great pride that we present the first issue of volume three of *Politicus* Journal. In this issue, we were impressed by the caliber of work submitted by students of both Queen's University and the Royal Military College of Canada, and are excited to present to you an issue highlighting three student's impressive academic pursuits in a variety of fields of study, which is indicative of the talent and academic rigour in Kingston.

This issue would not be possible without the dedicated Professors who contributed to the Review Panels, both from the Royal Military College of Canada and Queen's University. Their enthusiasm for student research and the time they spent reviewing articles was an integral part of the process, and something that we can not thank them for enough. Furthermore, our student Editorial Board spent numerous hours critically analyzing the articles to ensure the high academic quality and integrity of *Politicus*. To Ryan, Catherine, Juliana, Chris, Zoe, Daniel, Kelley, Nicole, and Kate, thank you so much for your critical dedication and respectful participation.

To our Management Board, we could not have published this issue without you. From the support of our Student Liaison, Daniel, who spent countless hours working with authors, to our copy and layout editors, Spencer, Kate, and Kole, who focused on the details to perfect the journal – we cannot thank you enough. We are also indebted to the members of our Management Board not directly involved in the publication of the issues, but who allow the Journal to innovate and strive to be the best it can be. Our wonderful marketing team, Shivani and Jenna, have driven innovation and kept us from complacency, while our financial director, Crystal, has reeled us in when we wanted to go slightly too big. Thank you also to wonderful workshop and lectures coordinator, Eric, for your creativity and positivity.

We would like to extend a special thank you to Professor David Haglund, Acting Head of the Queen's University Political Studies Department for his enthusiasm and for his invaluable advice. Your unwavering support has allowed for his to publish not only this issue, but to prepare for our next.

Finally, we would like to thank the Arts and Science Undergraduate Society for their dedication to our work, and for their logistical, operational, and financial support. Special thanks are due to Karim Hafazalla, Andrew DiCapua, and Brandon Jamieson.

We would also like to thank everyone involved, whether directly or not, for the opportunity to oversee a wonderful project such as this. We have learned many things in our roles, and look forward to applying our lessons in future editions for the betterment of the journal.

Warm regards,
Alexandra Green & Emma Jones

Can Campaign Negativity be Good for Democracy?

Alexandra MacKenzie

Political campaigns are critical to a party leader's political success or failure. In addition, campaigns, particularly those that lead up to elections, represent a rare time when politicians are not only reaching out to constituents, but when voters are paying more attention to the actions of politicians. Written prior to the 2015 Canadian federal election, at the height of the eleven-week campaign period, this paper investigates whether or not negative ad campaigns serve to bolster the quality of Canada's democracy. This paper takes the position that negative campaigns can actually be positive in terms of relaying information, engaging, and even mobilizing the electorate, but that this positivity relies on campaigns remaining negative, rather than resorting to 'mudslinging'—an extreme form of negativity involving harsh personal attacks unrelated to the candidate's performance. By examining past campaign messages, this paper demonstrates that, while negative ads are often criticized, they usually benefit the Canadian electorate.

Political advertising persists as the major form of communication between voters and political candidates, political parties, and other participants in the political system.¹

Lynda Kaid, *The Sage Handbook of Political Advertising*

For Canadians, in the midst of Canada's longest campaign period since 1872,² and for Americans, witnessing campaigns in preparation for the 2016 election, Lynda Kaid's statement is timely. Campaign periods, particularly those that precede federal elections, represent some of the most intense stretches of political advertising.³ As such, they are a critical time, in which the communication channels between politicians and the electorate widen. Political campaigns can therefore be used as powerful tools to influence electoral outcomes and to shape the relationship between the electorate and the elected. The influential nature of campaigns prompts an examination of the way in which the messages are framed. There has been much discussion regarding whether or not political campaigns have become overly negative.⁴ While some academics insist that politics are inherently adversarial,⁵ which serves to engage a larger amount of people,⁶ others blame negative campaigning for alienating the electorate, and argue that it ultimately contributes to the downward trend in voter turnout.⁷ Despite these criticisms, political campaigns are not overly negative. This paper will give a brief overview of campaign negativity in Canada, and demonstrate that—despite its prevalence—negativity, and its adverse effects, are often overstated. In reality, appropriate levels of negativity can play a positive role in engaging and even mobilizing the electorate, and in relaying informative, impactful information. However, this is only the case when negative campaigns remain

conducive to constructive dialogue. When campaign negativity crosses the line of civility and becomes “mudslinging,”⁸ negative campaigns lose their ability to benefit the electorate.⁹

The term ‘negativity’ may be broadly defined, and as such, it is important to set its boundaries of use within the context of this paper. Lynda Kaid offers the most appropriate definition for this purpose, describing negativity as “opponent-focused, ... concentrat[ing] on what is wrong with the opponent, either personally or in terms of issue or policy.”¹⁰ Building on Kaid’s definition, this paper will characterize negative campaign strategies as those that are competitive, that constructively critique opponents, and that call political decisions or actions into question. Negativity is not to be confused with another form of criticism, known as ‘mudslinging’—an extreme form of messaging involving “attacks ... about topics with little relationship to the affairs of a state or the nation.”¹¹

Despite negativity being a key feature of political campaigns for decades, the literature on campaign negativity, particularly in Canada, is limited. In an effort to provide a more complete examination of campaign negativity despite the limited literature, both American and Canadian studies will be examined. Due to the fact that similar modes of political messaging are used by campaigns in both countries, it is reasonable to assume that the effects of negativity on the electorates are also similar. This paper will also examine traditional campaign modes of messaging such as television and newspaper advertising, as well as newer modes such as websites and online advertisements.¹²

The Prevalence of Negativity

Politics, and the democratic practices that occur within certain political systems are, by nature, adversarial. David Easton characterizes political systems as “those interactions through which values are authoritatively allocated for a society.”¹³ According to this definition, politicians must not only compete with one another, but must also weigh the disparate needs of the electorate in order to allocate values and resources as they see fit. Similarly, John Rawls characterizes democracy as a particular type of political system in which a “diversity of conflicting and irreconcilable comprehensive doctrines” are “permanent feature[s].”¹⁴ John Greer, in his book *In Defense of Negativity*, furthers this idea, arguing that “the practice of democracy requires negativity,” because constant critique ensures that political leaders are held more accountable to the populations they represent.¹⁵ In democratic states, where the electorate, through individual votes, decides who leads, it becomes imperative that accurate and relevant information about candidate weaknesses are communicated.

Such antagonism is exacerbated during electoral campaigns, when candidates directly compete with one another to hold office. As such, negativity has been a feature of North American

electoral campaigns for decades. Examples include the 1828 distribution of ‘coffin handbills,’ which held Andrew Jackson responsible for the deaths of six militiamen, the 1964 ‘Daisy Girl’ ad, which called attention to nuclear proliferation, and more recently, Stephen Harper’s ‘He’s just not ready’ commercials, which attacked Liberal leader Justin Trudeau.¹⁶ Clearly, negative messaging has long been by candidates to highlight the possible shortcomings of their opposition in the hopes of making themselves appear like a more attractive option.¹⁷

The Positive Aspects of Negativity

Using negativity to relay political campaign messages can be beneficial for democracy because it piques the interests of audiences, and engages citizens who may have been previously politically uninformed.¹⁸ This attraction toward negativity is largely attributed to evidence that conflict-based messaging is often considered more eye-catching than positive messaging. Stuart Soroka and Marc Trussler found that “the rational voter is engaged by political conflict and bored with political consensus.”¹⁹ Their results conclude that, when respondents were asked to choose between fifty different political headlines on a website, those headlines describing negative news stories were “chosen 10.5% of the time, compared to 9.1% of the time for neutral stories and 8.5% for positive stories.”²⁰ Soroka and Trussler also attempt to explain the propensity toward choosing negative stories by stating that negativity signals to readers that the content is more important.²¹ According to the researchers, “when politicians form a consensus around a policy, that policy is likely to be implemented whomever wins an election or political fight,” whereas when “there is controversy... political support for one side may determine what is implemented, thus giving the individual an incentive to pay attention.”²² According to the study, when viewers feel that their vote can make an impact, they become more likely to tune into political activity in order to advance their knowledge or protect their interests. Liesbet Van Zoonen corroborates these findings through what he calls the “soap opera metaphor.”²³ According to Van Zoonen, political advertising that indicates that some kind of conflict exists can serve to engage citizens because of its ability to entertain through the drama of political conflict.²⁴ In addition to giving audiences the impression that they have a stake in the outcome of the political conflict, negative theatrics can pique the interests of a larger group of people.

Not only were negative ads chosen by respondents more often, they were also found to leave longer lasting impressions on the viewers.²⁵ Michael Meffert et al. explain the impressionability of negative information through what is called a “negativity bias.”²⁶ According to this bias, when both negative and positive information are presented at the same level of extremity, negative information

tends to be more resonant “from initial attention to information to its subsequent recall.”²⁷ This resonance is important, given the purpose of political campaigns. The goals of most campaigns are not only to attract an audience, but also to leave enough of an impression to ensure that the audience remembers the message being relayed. This lasting impression is significant, as candidates hope that their message will be recalled and considered when citizens are casting their votes.

In addition to more easily capturing the attention of audiences, research has demonstrated that negativity in campaigns is actually more informative than positively framed campaign messages. John Greer, in his study of campaign ads from 1960 to 2000, found that negative ads were four times more likely to be based on issues over personal traits.²⁸ As such, Greer suggests that competing candidates sometimes choose to “go negative” so that voters may better understand the strengths and weaknesses of other potential leaders.²⁹ He further explains this notion by likening it to the “innocent until proven guilty” doctrine.³⁰ According to this principle, in order for a negative accusation against another party or politician to be considered valid, the creators of the message must generally include more substantial information that is factually based compared to the information that creators of positive messages in their advertising.³¹ When competitors do this, they are improving the overall quality of criticism and debate leading up to an election, and are therefore helping to inform voters.³²

Not only does the quality of democratic debate improve when negativity is involved, but negative messaging has also been shown to contribute to a richer democratic state through its ability to mobilize the electorate on election day. Several studies have demonstrated that, when negativity is used in political campaigns, potential voters have an increased likelihood of actually voting.³³ These studies have determined that, without negativity, “campaigns rich in information do not automatically and uniformly heighten turnout.”³⁴ Rather, it is the information *and* the appeal of negative campaigning together that compel a larger portion of the electorate to visit the polls on election day. Clearly, negative campaigning has the potential to be largely beneficial for Canadian democratic health, which is especially important given the recent trend toward lower voter turnout, which reached an all time low of 59% in the 2008 federal election.³⁵

Crossing the Line: When Negativity Becomes Mudslinging

While many scholars suggest that negative campaigns are integral to a healthy democracy, others disagree with these assertions, and instead argue that negative campaigns alienate potential voters, reduce political campaigns to mere cynicism, and contribute to the degradation of political debate.³⁶ It has even been suggested that negative advertising has the potential to harm the reputation

of the sponsor, and may ultimately procure negativity not toward the target of the advertisement, but toward its creator.³⁷

Despite these criticisms, negative campaigns prove to be detrimental only in instances where the line of civility is crossed, when campaigns turn to “mudslinging” in order to relay information.³⁸ “Mudslinging,” according to Kim Kahn and Patrick Kenney, is identifiable as a “harsh and irrelevant” form of negativity, where “people may become alienated from the electoral process, ... depress[ing] turnout on election day.”³⁹ One of the more prominent Canadian examples of mudslinging is the 1993 ad-attack on the Prime Ministerial candidate Jean Chrétien. Rather than directly addressing the competency of Chrétien’s leadership, the ad focused on Chrétien’s speech impediment. This tactic resulted in subsequent backlash, not only by the electorate, but by many Conservative candidates as well.⁴⁰

While the line between negativity and mudslinging may seem blurry, as negativity is often viewed as subjective, voters are able to identify the difference between mere negativity and mudslinging in ad campaigns. Kahn and Kenney, in their 1999 study of whether negative political ad campaigns serve to increase or decrease turnout, examined 1990 NES Senate Election Study results.⁴¹ The researchers found that, when respondents saw ad campaigns as negative, turnout increased.⁴² On the other hand, if respondents identified the campaigns as mudslinging, identifiable by campaign managers using key words such as “smear,’ ... ‘relentless,’ ... ‘deceptive,’ ... [or] ‘un-warranted,’” turnout declined.⁴³

Conclusion

Ultimately, negativity is inherent in North American politics, and is a major part of political campaigns. Campaign negativity has been proven to be effective in attracting the attention of audiences, in relaying informative and impactful information, and in compelling citizens to vote. However, this is only the case when negative campaign tactics do not reach the level of mudslinging – a degree of negativity which is easily identified by audiences and which ultimately has a negative effect on audience engagement and voter turnout. When mudslinging is avoided, negativity is actually quite a positive feature of political campaigns.

¹ Lynda Kaid and Christina Holtz-Bacha, *The Sage Handbook of Political Advertising*, ed. Lynda Kaid and Christina Holtz-Bacha (London: Sage Publications, 2006), 52.

² CBC News, “Canada election 2015: Stephen Harper confirms start of 11-week federal campaign,” *CBC News*, August 2, 2015, <http://www.cbc.ca/news/politics/canada-election-2015-stephen-harper-confirms-start-of-11-week-federal-campaign-1.3175136>.

³ Jonathan Rose, “Are Negative Ads Positive? Political Advertising and the Permanent Campaign,” in

How Canadians Communicate IV: Media and Politics, ed. David Taras and Christopher Waddell (Edmonton: Athabasca Press, 2012), 159.

⁴ John Greer, *In Defense of Negativity: Attack Ads in Presidential Campaigns* (London: University of Chicago Press, 2006), 1.

⁵ *Ibid.*, 8.

⁶ Greer; Kim Fridkin Kahn and Patrick J. Kenney, "Do Negative Campaigns Mobilize or Suppress Turnout? Clarifying the Relationship Between Negativity and Participation," *The American Political Science Review* 93, no. 4 (1999): accessed September 21, 2015,

<http://www.jstor.org/stable/pdf/2586118.pdf?acceptTC=true>; Stuart Soroka and Marc Trussler, "Consumer Demand for Cynical and Negative News Frames," *The International Journal of Press/Politics* 19, no. 3 (2014): accessed September 21 2015, http://journals1.scholarsportal.info/pdf/19401612/v19i0003/360_cdfcannf.xml.

⁷ Richard R. Lau, Lee Sigelman, Ivy Brown Rovner, "The Effects of Negative Political Campaigns: A Meta-Analytic Reassessment," *Journal of Politics* 69, no. 4 (2007): accessed September 21, 2015, http://journals2.scholarsportal.info/details/00223816/v69i0004/1176_teonpcamr.xml; Joseph Cappella and Kathleen Jamieson, *Spiral of Cynicism: The Press and the Public Good*, (New York: Oxford University Press, 1997).

⁸ Kahn and Kenney, 881; Tamara A. Small, "E-ttack Politics: Negativity the Internet, and Canadian Political Parties," in *How Canadians Communicate IV: Media and Politics*, ed. David Taras and Christopher Waddell (Edmonton: Athabasca Press, 2012), 170.

⁹ Kahn and Kenney, 881.

¹⁰ Lynda Kaid, "Ethics in Political Advertising," in *Political Communication Ethics*, ed. R. E. Denton, Jr. (Westport: Praeger, 2000), 157.

¹¹ Kahn and Kenney, 881; Small, 170.

¹² *Ibid.*, 50.

¹³ David Easton, *A Systems Analysis of Political Life* (New York: Wiley, 1965), 21.

¹⁴ John Rawls, "The Domain of the Political and Overlapping Consensus" in *New York University Law Review* 64, (1989): 245-246, accessed October 4, 2015, <http://heinonline.org/HOL/Page?handle=hein.journals/nylr64&collection=journals&page=233>.

¹⁵ Greer, 6.

¹⁶ Small, 172; Clive Veroni, "Three Myths About Negative Campaign Ads," *The Globe and Mail*, July 22, 2015, <http://www.theglobeandmail.com/globe-debate/three-myths-about-negative-campaign-ads/article25609744/>.

¹⁷ *Ibid.*

¹⁸ Liesbet Van Zoonen, *Entertaining the Citizen: When Politics and Popular Culture Coverage* (Lanham, MD: Rowman and Littlefield, 2005), 10.

¹⁹ Soroka and Trussler, 363.

²⁰ *Ibid.*

²¹ *Ibid.*, 363.

²² *Ibid.*

²³ *Ibid.*, 21-25.

²⁴ *Ibid.*

²⁵ Michael F. Meffert, Sungeun Chung, Amber Joiner, Leah Waks, and Jennifer Garst, "The Effects of Negativity and Motivated Information Processing During a Political Campaign," *Journal of Communication* 56, (2006): 28-29, accessed September 22, 2015, http://journals2.scholarsportal.info/pdf/00219916/v56i0001/27_teonamipdapc.xml.

²⁶ *Ibid.*, 29.

²⁷ *Ibid.* 28-29.

²⁸ Greer, 68.

- ²⁹ Ibid., 6.
- ³⁰ Ibid.
- ³¹ Ibid.
- ³² Ibid.
- ³³ Kahn and Kenney, 887.
- ³⁴ Ibid.
- ³⁵ Nicole Goodman, Heather Bastedo, Lawrence LeDuc, John H. Pammett, “Young Canadians in the 2008 Federal Election Campaign: Using Facebook to Probe Perceptions of Citizenship and Participation,” *Canadian Journal of Political Science* 44, no. 4 (2011): 859, accessed September 21, 2015, http://journals2.scholarsportal.info/pdf/00084239/v44i0004/859_ycit2fppocap.xml.
- ³⁶ Lau, Sigleman and Rovner, 1183-1184.
- ³⁷ Stanley Cunningham, “The Theory and Use of Political Advertising,” in *Television Advertising in Canadian Elections: The Attack Mode 1993*, ed. Walter I. Romanow et al. (Waterloo, ON: Wilfrid Laurier University Press, 1999), 19.
- ³⁸ Kahn and Kenney, 881.
- ³⁹ Ibid., 887.
- ⁴⁰ Veroni.
- ⁴¹ Kahn and Kenney, 881-885
- ⁴² Kahn and Kenney, 883.
- ⁴³ Ibid., 881-883

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Still an African Anomaly: Politicised Ethnicity in Tanzania

David Orr

Tanzania traditionally represents an anomaly in the African political sphere. Ethnically grounded violence of the sort experienced in neighbouring Rwanda, Burundi, Kenya, and in the DRC has never materialized in Tanzania; indeed, the country is viewed as a relative haven of peace in the midst of a region often characterized by turbulent ethnic disputes. Drawing on policies of language, education, and agriculture,, the paper examines how Tanzania developed a political system largely free of ethnically grounded political allegiances, and how the introduction of neoliberal Structural Adjustment Policies in the 1980s has influenced this phenomenon. The paper also explores the possibility of applying Tanzania's unifying policies to states beset by ethnic strife. Ultimately, the paper finds that, although Tanzania sees fewer ethno-nationalist parties and political rhetoric than in neighbouring Kenya, the notion of ethnic umoja ('unity') as envisioned and developed by the country's first President, Julius Nyerere, is slowly fragmenting in Tanzania's neoliberal era.

Hekima umoja na amani; Hizi ni ngao zetu
Wisdom, unity, and peace; These are our shields

Tanzanian national anthem

The concept of *umoja* holds a special place in the Tanzanian psyche. Defined by Tanzania's first president, Julius Nyerere, as 'togetherness', it encapsulates the notion of national unity that has characterized post-independent Tanzania. The country's affinity toward *umoja* is an anomaly in sub-Saharan Africa, where ethnicity represents a potent and powerful political force. Whereas neighbouring Kenya and Rwanda have experienced ethnic-based violence and citizens typically define their political allegiances along ethnic lines, Tanzania is an exception. Indeed, Tanzanians are the most likely Africans to align themselves with a nationalist rather than an ethnic-centric identity.¹ Thus, the question arises of how Tanzania constructed a political culture in which ethnicity has not been a major source of conflict, and moreover, whether this culture has persisted in the wake of neoliberal economic reforms that the author argues, have exacerbated inequalities on the African continent. Although Tanzania's proliferation of 120 ethnic groups suggests that no one group has

sufficient size to dominate the political and economic discourse², politicized ethnicity also accounts for Tanzania's peace, and forms the focus of this paper. Moreover, the 2007-2008 ethnic-based riots in Kenya illustrate that ethnic grievances are a persistent problem. Thus, examining how Tanzania's unifying nationalist policies were created and how they can be transferred to other African states beset by ethnic strife renders this question worthy of investigation.

The paper is divided into five sections, and commences by providing a brief literary review of politicised ethnicity and neoliberal reforms in Africa. Next, the paper examines how constructed ethnic divisions were employed during Tanganyika's³ German and British colonial experiences, and assesses how Nyerere utilized the concept of ethnicity to promote nationalistic rather than ethnic fervour in his pursuit of independence. Next, the language, education, and agricultural policies of Nyerere will be explored to assess how they were used as vehicles to advance his vision of a socialist Tanzania, mobilized toward a collective nationalist vision. The final section examines how the imposition of neoliberal Structural Adjustment Policies (SAPs), –partly resulting from Tanzania's failed agricultural policies– exacerbated inequalities and has led to an emergence of class and ethnic-based grievances not present under Nyerere's rule. Ultimately, the paper's conclusion is two-fold. First, it finds that Tanzania's few ethnic conflicts leading to its independence, rendered it a colonial anomaly that aided Nyerere's pursuit of a nationally unified Tanzania, largely free of ethnic solidarities in the independence and post-colonial eras. Second, although Nyerere's language and education policies solidified the national identity during his tenure as President, the inequalities resulting from neoliberal reforms are slowly unravelling Tanzania's national identity, which is worryingly being replaced by heightened class, religious, and ethnic divisions.

Literary Review of Structural Adjustment Policies and Politicised Ethnicity in Africa

Following the collapse of socialist economies in the 1980s, the structural government interventionist argument—which focused on centrally planned economies with substantial government interaction—gave way to a more liberal economic model. Development scholars argued that government intervention hindered market agents that would otherwise have operated with pareto optimality if un-interfered with.⁴ Following the collapse of socialist economies, developing countries were unable to secure loans from private lenders and turned to the World Bank and International Monetary Fund. Although the World Bank and IMF provided loans, the loans carried neoliberal conditions which required: borrowing states to implement free markets, privatize state-owned enterprises, reduce subsidies, charge fees for social services such as healthcare and education, and

establish uncontrolled cross-border capital flows.⁵ Many developing countries, including Kenya and Tanzania, adopted these Structural Adjustment Policies (SAPs) with the goals of achieving economic growth and alleviating extreme poverty.

The results of SAPs have been controversial;⁶ International financial institutions including the World Bank argue that the SAPs have been successful in raising GDP growth rates, domestic savings, and export ratios.⁷ However, many scholars dispute this liberal institutionalist argument: Although growth rates have increased, Laurell argues that SAPs obstruct sustained growth because they impose a logic that favours speculation instead of production.⁸ Moreover, SAPs have been criticized for having a negative effect on wealth distribution, employment, and wages. Consequently, several developing states, including Tanzania, have seen an *increase* in poverty following the imposition of SAPs.⁹ This coincides with the Marxist interpretation of SAPs put forward by Amin, which suggests that the policies exhibit in-built distortions that favour the interests of capitalists over the proletariat.¹⁰ He argues that rich countries benefit from the imposition of SAPs in poor countries because they allow further exploitation of the poor country. Ultimately, despite much research on the topic, no clear consensus exists over the effectiveness of the original goal of the SAPs, which was to foster economic development.

The literature's focus on economic growth and development has generally eclipsed political development—and namely, the effect on ethnic politicization—when evaluating SAPs.¹¹ This paper seeks to expand this gap in the literature by examining the impact of the imposition of SAPs in Tanzania and on the degree of politicized ethnicity that follows.

Both Kenya and Tanzania exhibit significant ethnic diversity; Tanzania alone is comprised of 120 ethnic groups.¹² However, ethnic diversity is widely seen by scholars including Habyarimana et al., and Easterly as an impediment to development, because states with high ethnic diversity exhibit decreased provision of public goods.¹³ Although Berman defines ethnicity as a group of individuals with a shared culture and history,¹⁴ Nnoli's seminal study views ethnicity as groups with distinct materialist underpinnings, a definition that lends itself well to a discussion of how materialist-oriented SAPs impact politicized ethnicity.¹⁵

Jega compounds Nnoli's materialist definition of ethnicity by arguing that, because SAPs provide a decrease in social service expenditures, the state becomes unable to provide for the basic socio-economic needs of the people.¹⁶ Moreover, as the state disengages from critical basic social provisioning, only the constituencies and clients of those who control state power continue to have access to these scarce resources. Consequently, patronage and clientelism emerges upon ethnic lines. With SAPs hindering the availability of these social services, Jega argues, "groups have tended to

rely on identity-based politics to struggle for access to the state and the resources that it controls, in order to protest exclusion and oppression, as well as to demand basic rights and socio-economic provisioning.”¹⁷

The rational choice-based ‘selectorate’ theory proposed by Bueno de Mesquita et al. complements the argument put forward by Jega. It posits that leaders who lead small coalition governments enhance their chances of survival by distributing private goods rather than effective public policy.¹⁸ Leaders have the ultimate goal of remaining in office, and therefore will decide how many private and public goods to provide based on available resources. With the conditionality of reduced government expenditure, governments in countries that implement SAPs have fewer resources to provide. In this environment of scarcity and competition, selectorate theory holds that political coalitions are formed along ethnic lines, providing leaders with the incentive for leaders to distribute the limited resources to a segment of the population just large enough to maintain a majority during their re-election. Naturally, this fundamentally alters the way distributional politics works and creates the risk of cleavages and tension among groups that have been left out.

Scholars with a focus on East African politics concur with Nnoli that SAPs have had negative effects on the development of states’ political systems, albeit for different reasons. Focusing on Tanzania, Aminzade and Campbell argue that the introduction of SAPs has not only increased income inequality, but has also fragmented states’ national unity in favour of ethno-centric divisions.¹⁹ Traditionally bereft of ethnic cleavages prior to the imposition of SAPs in 1986, Tanzania now has thirteen political parties structured along ethnic lines.²⁰ Campbell’s study concludes that the government’s reduced provision of social services due to SAP conditionalities has left Tanzanians with no alternative but to establish identity-based political groups to secure access to these scarce resources.²¹

Rono’s study of the effects of SAPs in Kenya has a different conclusion. Although he argues that SAPs have heightened ethnic tensions, polarized communities, and “attenuated national leaders into a kind of tribal chief”, the unravelling of a national identity has not occurred in the same way as it has in Tanzania.²² Since independence, Kenya’s political system has been intensely divided along ethnic lines. Thus, although the introduction of SAPs in 1988 has heightened these cleavages, the effects are *relatively* less extreme than in neighbouring Tanzania. Ultimately, despite suggesting different degrees of politicized ethnicity due to SAPs, these three leading scholars on East African development concur that politicized ethnicity is one of the greatest obstacles to economic growth and expansion.

Colonial policy: Ethnicity in Tanganyika under the German and British colonial regimes

The political systems in pre-colonial Tanganyika ranged from complete statelessness to chiefdoms administered by appointed officers.²³ Although people belonged to a specific ethnicity, each individual lived an amorphous existence by belonging to numerous and fluid social groups, which included nuclear and extended families, and groups based on lineage or chiefdom. In a particular situation, a pre-colonial Tanganyikan could appeal to his kin, in another, to his ethnicity. Thus, Iliffe argues that a Tanganyikan's identity was largely shaped by circumstances, and not by an overbearing affiliation to a particular ethnic group.²⁴ Further demonstrating this fluidity of identity among individuals, Iliffe states: "the extent of specifically political authority must not be exaggerated."²⁵

Historical data on the number of ethnic groups in the pre-colonial period is scarce, but it is likely similar to 120, which is the number ethnic groups that comprise modern-day Tanzania.²⁶ However, unlike in post-independent Tanzania where affiliations to ethnic groups were forcibly abandoned during Nyerere's pursuit of a national identity, circumstances in pre-colonial Tanganyika stimulated ethnic groups to form ethnic identities. For example, successful warfare had encouraged consciousness of a Hehe identity. Furthermore, Shambaa clans had atrophied under unified Kilindi rule, and the Maasai had formed a strong pastoralist identity.²⁷ As these cultures travelled and mingled, ethnic groups became more distinct; ethnic identities were stressed by groups to differentiate themselves from 'foreigners'.²⁸ However, these ethnic distinctions would be shaken by the arrival of colonial powers.

A fear that Britain and France were conspiring to discriminate against German trade in West Africa, coupled with a desire to please a newly elected Reichstag, German Chancellor Otto von Bismarck established the German East Africa colony in August 1885.²⁹ The aim was to create a colony to provide raw products for the German metropole, not to produce a settler colony, as the British envisioned for Kenya.³⁰ The native population initially resisted the Germans' arrival, but was ultimately overwhelmed by the markedly violent and heavy-handed approach of the Germans—resistance was not limited to a specific ethnic group. Rather, Tanganyika's ethnic groups adopted a collective approach to counter the colonial state, symbolizing that ethnic distinctions could be placed aside in the pursuit of removing a common enemy, a tactic that Nyerere would use to appeal for Tanganyika's independence. For example, in 1888, the Hehe ethnic group, which had established a warrior identity from previous skirmishes³¹, resisted German rule and were supported by other ethnic groups' soldiers from the hinterland.³² However, the Germans ultimately prevailed and imposed a

coercive colonial structure upon Tanganyika.

Following their initial encounter with Tanganyikans, the Germans feared that Tanganyikans were constantly on the verge of revolt, which only vigilance could prevent.³³ Thus, colonial policies were enacted to actively suppress ethnic identities and to remove the pretext for ethnic mobilization against the colonial regime. With each administrative district ruled by German soldiers, German rule was centred upon the power and autonomy of the district officer.³⁴ Arbitrary imprisonment, hangings, and forced labour were the primary tactics used to cement the absolute power of the colonialists over ethnic affiliations.³⁵ Additionally, Kiswahili was declared the sole legitimate language, hindering the ability of ethnic groups to communicate in their native tongue. Moreover, the Germans' search for African collaborators disrupted local power dynamics by using African *akidas* ('administrators') as proxies to disseminate their policies and collect taxes. However, these collaborators were provided with a disproportionate amount of power compared to pre-colonial leaders, which fragmented the hierarchy of traditional ethnic groups.³⁶ The local populations saw these *akidas* for what they were: puppets of the German state, which undermined the role of native authorities. Thus, the colonial administration's focus on removing the threat of ethnic revolt meant that particular ethnic groups were not favoured over others, creating only trivial class divisions. This serves as a direct contrast to the subsequent British colonial policy of indirect rule, where ethnic and class divisions were established, not suppressed. Following the final effort by Tanganyika's old societies to destroy the colonial powers during the *Maji Maji* rebellion of July 1905 (in which 75,000 Africans and 15 Europeans died), German rule became more repressive until, the colony was handed to Britain under a League of Nations mandate in 1919.³⁷

The British policy of indirect rule changed the dynamic of ethnic group suppression. Indirect rule was based upon the historical misunderstanding that Tanganyikans belonged to ethnic groups with hierarchical structures, rather than the amorphous reality. These groups were seen as cultural units with a common language and law, and political and social systems that rested upon hereditary kinship.³⁸ This mistake meant that, although the policy of indirect rule was "conservative in origin, it was radical in effect."³⁹ To function within the colonial socioeconomic framework, Tanganyikans recognized that they had to abide by the British top-down approach of hierarchical ethnic group creation. Consequently, British colonial policy resurrected the notion of distinct ethnic groups in Tanganyika that had been suppressed by their German predecessors.

Under the assumption that Tanganyikan ethnic groups were hierarchical, indirect rule granted legislative and executive powers to native authorities, primarily chiefs or councils. Iliffe argues that the construction of tribes in Tanganyika was not undertaken cynically as a 'divide and rule' tactic, but

rather as an effort by the British to build a positive and modern society.⁴⁰ However, indirect rule's invention of hierarchical ethnic groups benefitted few Tanganyikans. Indeed, Tanganyikans resented the policy, and believed it provided chiefs with a disproportionate amount of power. The native chief authority's heavy-handedness alienated individuals from the rest of the populous, prompting Governor Sir Donald Cameron to write in 1925 that the "people were out of hand because the chiefs could no longer punish them."⁴¹ Nyerere would eventually leverage the artificiality of Tanganyika's colonial ethnic group construction by advocating for independence under a unifying and nationalist mandate.

The need for *umoja* (unity): politicized ethnicity during Tanganyika's independence movement

The organization that came to lead Tanganyika's independence movement began in 1929 as the African Association, a private social club where educated civil servants from diverse ethnic groups questioned the British system of indirect rule and challenged the authority of illiterate tribal chiefs.⁴² The African Association was open to all Tanganyikans, highlighting that under the colonial regime, ethnic divisions were surmounted by nationalist sentiments. Indeed, many Africans not native to Tanganyika were permitted membership.⁴³ However, in 1948 the Association's pan-African goals were abandoned when Zanzibar left, and the group was renamed the Tanganyika African Association (TAA). In 1951, led by "younger and more militant leaders" including Nyerere, the TAA explicitly demanded Tanganyika's independence in a petition to the UN.⁴⁴ The TAA existed for three years until its evolution in July 1954 into the Tanganyika African National Union (TANU), under Nyerere's leadership. TANU would be the vehicle for Tanganyika's independence in 1961.

TANU's primary demand was for the establishment of an independent nation-state. Signalling the party's commitment to foster national unity free of ethnic cleavages at even the most nascent stage, TANU's constitution called for "African self-rule, national freedom, and an end to racial segregation and tribalism."⁴⁵ Further, it called for the dissemination of Kiswahili in schools, an integral policy for fostering a national identity.⁴⁶ This language policy was borrowed from the German colonial experience and remains a continuing legacy in modern Tanzania. Whereas ethnic cleavages characterized other colonial states' politics in the pre-independence era, TANU was not predominated by one ethnic group, unlike Kenya's KADU which favoured individuals of Kikuyu and Kalenjin ethnicity. With over 120 ethnic groups, Tanganyika simply did not have any ethnic group with a sufficiently large population to dominate; the largest ethnic group, the Sukuma, comprised a mere 13 per cent of the population.⁴⁷ Rather, Tanganyikans were brought together by a shared

resentment toward colonial rule, a sentiment from which TANU profited. In effect, ethnic sympathies were surmounted by unity against a common enemy. TANU was therefore able to mobilize a collective “politicized national identity that cut across class, ethnic, and religious lines,” attested to by the 150,000 to 200,000 members TANU boasted by mid-1957.⁴⁸ Moreover, TANU drew on the multi-ethnic composition of Tanganyika’s capital, Dar-es-Salaam, which enabled the group to have a strikingly pan-Tanganyikan composition in both urban and rural regions. Such inclusion serves in stark contrast to neighbouring Kenya and Uganda’s pro-independence parties, which called for both self-governance *and* for addressing the grievances voiced by particular ethnic groups.⁴⁹ Thus, TANU’s nationwide popularity provided a collective vehicle for Tanzanian nationalist sentiment and renders it a positive anomaly in the African context.

Nyerere’s leadership of TANU helped to cement Tanzania’s political culture of ethnic peace. Despite calls for him to use violence in the pursuit of independence, particularly by elders with memories of the violent *Maji Maji* uprising at the advent of the twentieth century, Nyerere advocated for a non-violent strategy. He saw peaceful negotiations with the British as vital for two reasons: First, it would allow for swift and peaceful independence. Second, a peaceful approach would have significant benefits for accruing foreign capital, that he stated was needed to “fight against ignorance, poverty and disease.”⁵⁰ Nyerere also had the foresight to identify that TANU’s peaceful, national mobilization would foster international sympathy for Tanganyika’s independence, as it underscored the fundamental question of majority rule and democratic governance.⁵¹ Accordingly, Nyerere curried international support for Tanganyika’s independence by leveraging its UN trusteeship status, which entailed a 1947 commitment by the British to ready Tanganyika for independence.⁵² Nyerere revoked the assumption of the British that this independence would be at their discretion, and instead made numerous visits to the UN to advocate for Tanganyika to become a distinctive trust territory of the UN; Iliffe states that a UN flag was frequently flown alongside the Union Jack to highlight this distinction.⁵³ International opinion incentivized Nyerere to build nationalist sentiment for independence— By ensuring TANU’s policies were not directed towards select ethnic groups, but rather toward Tanganyikans as a whole. Nyerere’s success of mobilizing Tanganyikans of all ethnic groups toward the nationalist cause was championed by President Kennedy, who declared: “Tanganyika’s non-racial society is an outstanding example to all.”⁵⁴

African socialism: Nyerere’s aggressive suppression of ethnicity in the post-independence era

Nyerere possessed both a genuine concern for egalitarianism amongst Tanzanians and a

severe dislike of all forms of elitism. This concern had been compounded during his studies at the University of Edinburgh, where he had connected socialist Fabian thinking with the notion of African communal living.⁵⁵ Against the background of severe ethnic divisions in neighbouring Kenya and Rwanda, his invention of African socialism provided hope that an equitable society (of the type envisioned by nationalist leaders during the independence struggle), could indeed exist. TANU increasingly took up the idea of *kujenga taifa* ('to construct a nation') as the basis for garnering public support for its policies and programmes, by creating a range of policies to inculcate socialist values and foster popular affinity toward Tanzanian nationalism.

A fundamental tenet of Nyerere's efforts to foster a national identity free of ethnic cleavages involved the promotion and use of Kiswahili in public education and national politics. Tanzanians today are typically bilingual, learning their ethnic tongue, such as Chagga, before Kiswahili.⁵⁶ Tanzania is one of the few multi-ethnic countries in Africa with a *lingua franca*, which allows all Tanzanians to communicate readily with one another. Moreover, in modern Tanzania, Kiswahili is spoken by individuals of all social classes, effectively knitting ethnic communities together into a genuine Tanzanian unity.⁵⁷ Nyerere was a major driver of this 'unity through language' approach, and sought to leverage Kiswahili's collectivising and "purposive" force to reduce the risk of individuals' retreat toward ethnic divisions.⁵⁸ For example, when Nyerere addressed the newly independent parliament in 1962, he did so in Kiswahili, rather than in English, which Khamis argues represented an "important political statement about African culture."⁵⁹ Moreover, it foreshadowed Nyerere's indefatigable desire for a national consciousness.

Education reform was the primary vehicle Nyerere employed to aggressively disseminate Kiswahili. In 1967, TANU established the 'Education for Self-Reliance' policy, which called for major changes in the country's curriculum, to promote both TANU's socialist political philosophy and agriculturally based vocational training. In essence, Nyerere's education reform was intended to promote a national identity under the umbrella of Kiswahili.⁶⁰ Consequently, education at both the primary and secondary levels was required to be undertaken in Kiswahili by teachers who rotated through different schools across the country, which allowed Tanzanians from various ethnic groups to interact with individuals from other ethnic groups. This meant that private schools, which typically catered to particular sub-groups such as the Ismaili, Anglican, or Lutheran communities, and whose students tended to stem from wealthier families, did not fit into Nyerere's egalitarian Tanzania.⁶¹ Such schools were no longer acceptable, as they did not entertain ethnic mixing to the extent envisioned by Nyerere. In response, TANU's education policy nationalized all schools: Thus, those private schools once reserved for students of particular ethnic and religious groups were opened for

all, and classes were taught exclusively in the national Kiswahili language.⁶² Lofchie draws a comparison here to the language practice of the colonial German administration, which also required all Tanzanians to adopt Kiswahili as the common language.⁶³ Moreover, the new education policy transformed all secondary schools into boarding schools, allowing Tanzanian secondary school students to mix and to form friendships that transcended ethnic divisions, which fostered a greater sense of national unity during the era of the one-party state.⁶⁴

In a further move to break down “incipient tendencies towards ethnic mistrust”⁶⁵, the government established National Service for both male and female students, which Lofchie argues was held in high regard by the Tanzanian youth involved.⁶⁶ This policy required all post-secondary students seeking desirable civil servant positions to undergo five months of military training and eighteen months of community service. The National Service squads were ethnically diverse in composition which, coupled with their locations across the country, illustrates TANU’s success of using education and Kiswahili to proactively remove the pretext for ethnic divisions to arise. In effect, the opportunity of those in the National Service to meet, work, and inter-marry with Tanzanians from various ethnic groups enabled the construction of a collective identity of *umoja* (unity).

Nyerere should be commended for his education reforms. By using education as a vehicle to disseminate Kiswahili as the *lingua franca*, his policies shaped a generation of Tanzanians with a collective affiliation toward a pan-Tanzanian identity, rather than toward stronger ethnic affiliations. Moreover, National Service allowed these nationalist views to be appreciated first hand by the rural beneficiaries of National Service activities, regardless of their ethnic group, symbolizing that the theory of a collective identity could indeed be orchestrated in practice. Although Nyerere’s rapid nationalization of private schools decreased the overall standard of education, other education goals were achieved. Primary school enrolment increased from 25 to 95 percent under Nyerere’s rule, and adult literacy improved significantly, growing from 10 to 75 percent.⁶⁷ However, in post-Nyerere Tanzania, education policies have changed. As a result of Tanzania’s economic and political liberalization, private schools have returned, and the government has abandoned the policy of National Service. Nevertheless, Kiswahili’s continued use as Tanzania’s *lingua franca*, coupled with the country currently enjoying Africa’s highest primary school enrolment rate⁶⁸, attest to Nyerere’s legacy of ensuring that Tanzanians from all ethnic backgrounds continue to be afforded equitable access to education.

In the 1970s, Tanzania became a “political Mecca for liberal and socialist progressives from all over the world [who were] anxious to see a challenge to neo-capitalism.”⁶⁹ Nyerere was an ardent

member of the Non-Aligned Movement during the Cold War period, and used Tanzania's neutrality to curry favour with both the Americans and the Soviets regarding their provision of aid. Nyerere did not rule out foreign aid, but rather saw it as supplementary to his notion of *kujenga taifa* (nation-building). Indeed, by the 1970s, Meredith argues that Tanzania benefited from more foreign aid per capita than any other African country, despite having more plentiful harvests and more stable leadership than neighbouring states.⁷⁰ Coupled with the investment and accrument opportunities provided by aid, Nyerere's socialist experiment in Tanzania illustrates his commitment toward a more equitable distribution of income that, at least in theory, did not focus on particular ethnic groups' aggrandizement, but rather on creating a pan-Tanzanian and nationalist character of economic development.

However, Tanzania's dependence on foreign aid triggered policies that severely disrupted the country's social and economic stability. Fearful of the pressure that donor countries could exert on Tanzania, which would limit its ability to make independent decisions, Nyerere announced the Arusha Declaration in February 1967. The Declaration outlined the need for self-reliance and for development to arise from the grassroots level, rather than from the top-down. In effect, the Declaration codified the socialism that Nyerere had espoused since independence six years earlier. To advance both economic development and self-reliance, Nyerere believed the change had to arise in rural regions. His umbrella policy for creating this was *ujamaa* (familyhood), which involved educating and mobilizing Tanzania's approximately 120 ethnic groups around TANU to achieve agricultural self-reliance.⁷¹ Unfortunately, the success of Nyerere's education policies in constructing a national identity serves in stark contrast to the overwhelming failure of his agricultural reform policies, which fostered the resurrection of ethnic and class grievances.

Whilst *ujamaa* was intended to further nationalist sentiment by promoting rural cooperation among individuals of various ethnic groups, in reality it was an overwhelming failure. *Ujamaa* brought together Tanzania's scattered rural population into cooperative farms with the intention of raising agricultural productivity while simultaneously reversing the trend toward the development of unequal classes, underlining Nyerere's dedication to fostering a pan-Tanzanian identity composed of an equal citizenry.⁷² However, the initial introduction of *ujamaa* villages on a voluntary basis meant that they were established slowly. To expedite his socialist vision, Nyerere declared: "to live in a village is an order."⁷³ Thus, in what became the largest mass movement in Africa's history, eleven million people were placed in new villages between 1973 and 1977.⁷⁴ Force and coercion were also used, leading many Tanzanians to question whether TANU truly held their best interests at heart.

Although *ujamaa* villages helped disseminate pro-nationalist identity vis-à-vis the

introduction of a nationalist curriculum taught in Kiswahili, which traversed ethnic identities, Meredith argues that Nyerere ‘villagized’ people with “no knowledge whatsoever of the regions affected”, and agricultural output declined heavily.⁷⁵ The forced and arbitrary migration of individuals also impinged upon local leaders’ power, causing discontent. This serves in stark contrast to the success of his education policies, whereby Tanzanians warmly received National Service squads across the country, despite stemming from diverse ethnic groups. Thus, although *ujamaa* aimed to eradicate the importance of ethnic divisions, the seemingly random distribution of individuals to villages disrupted the equilibrium of local power structures. Moreover, the resentment directed toward migrants hindered the establishment of a population mobilized toward the notion of nationalism, undermining Nyerere’s vision. Additionally, the Arusha Declaration launched Nyerere’s commitment to nationalize the country’s industries that were primarily owned and operated by Tanzania’s small but wealthy Asian community.⁷⁶ Compensation was minimal, illustrating that, while Nyerere advocated for the equitable treatment of all Tanzanians, regardless of ethnicity, he was less partial toward Asians, who became the “primary victims” of *ujamaa*.⁷⁷

Ethnic strife rears its ugly head: the ethnic consequences of neoliberal SAPs in Tanzania

Following intense international pressure to democratize, Tanzania abandoned its one-party state model in 1995, paving the way for the liberalization of the political theatre.⁷⁸ The result has had both positive and negative consequences from an ethnic perspective. Positively, political liberalization has established stronger democratization frameworks and vehicles for expressing grievances, particularly through a thriving domestic press, which was liberalized following the abolition of state censorship, once pervasive under the one-party state.⁷⁹ Moreover, the law legalizing opposition parties explicitly prohibited the registration of any party based on race, religion, or ethnicity. Attesting to Tanzania’s commitment to reduce the risk of an opposition party appealing to a particular ethnic group, each party is constitutionally required to have at least 200 members from ten regions, and must be based on both the mainland and on Zanzibar.⁸⁰ Yet it is the negative consequences of Tanzania’s political liberalization that prove worrisome and that threaten the pan-Tanzanian collective identity envisioned by Nyerere.⁸¹ The liberalization of the political system has constructed a new vista of politics and identity formation, grounded in class and ethnic stratification. In this new climate of economic and political liberalization, Tanzanians increasingly confront each other over social, economic, and political issues on unequal terms.

Under Tanzania’s one-party system, the press was muzzled, and the Tanzanian political elite

remained impotent to the near catastrophe of *ujamaa* that enveloped the country in the 1970s and 1980s. In essence, Nyerere's policies were held as matters of ideological faith, preventing opposition groups from voicing their grievances. Moreover, despite Nyerere's vehement distaste for elitism, the Tanzanian political elite transformed into a wealthy and powerful group under his rule. Thus, the class divisions that resulted between the poor masses and the small but wealthy elite were exacerbated by the implementation of neoliberal policies in the 1980s. To fully examine how such liberalization arose, it is necessary to understand Tanzania's economic strife in the 1970s and 1980s.

By the end of the 1970s, Tanzania's economy was in dire straits. *Ujamaa* villages were inefficient; although by 1979, 90 percent of the peasant population had been moved to cooperative farms, their output accounted for a mere five per cent of Tanzanian GDP.⁸² Tanzania's foreign debt had soared, which, coupled with sharp increases in global oil prices, resulted in ever-decreasing terms of trade. Moreover, the cheap loans, which Tanzania had taken out from oil-producing countries in the mid-1970s needed to be serviced, yet Tanzania was unable to do so. In 1980, Tanzania's exports accounted for only 40 percent of imports, and the proliferation of stronger and more durable synthetic fibres dried up the market for sisal, Tanzania's traditional cash crop. The underproduction of the *ujamaa* villages was exacerbated by the gross inefficiencies of parastatal crop marketing boards, whose overheads were larger than the crops they managed. The consequence of such inefficiency proved almost catastrophic for Tanzania; in 1975, Tanzania required 200,000 tonnes of food aid from the World Bank.⁸³ Thus, Meredith argues that Nyerere's greatest achievement in power was persuading foreign sponsors that his policies were sincere, which allowed the Tanzanians to receive aid.⁸⁴ However, considering Nyerere's success in the fields of education and health, and his efforts to construct a national identity, this argument is too cynical to adequately encapsulate his legacy. Nonetheless, it can be agreed that, advancing self-sufficiency, Nyerere's agricultural policies made Tanzania more reliant on foreign aid than ever before.

In the early 1980s, the overwhelming failure of *ujamaa* forced Nyerere to recognize that Tanzania needed to return to its status as a major aid recipient. In 1981, Nyerere admitted that Tanzanians were "poorer now than [they] were in 1972."⁸⁵ With its trade deficit widening, Tanzania begrudgingly appealed to international financial institutions and Western donors to stymie its current account deficit, and received \$600 million in 1982.⁸⁶ However, this aid held conditions that required Tanzania to change. In 1985, Ali Hasaan Mwinyi was elected President, replacing Nyerere, who had been in power since 1961. In comparison to his predecessor, Mwinyi was keener to implement economic liberalization policies to rescue Tanzania's flailing economy. As part of the conditionalities that accompanied aid, Tanzania was required to accept neoliberal Structural Adjustment Policies

(SAPs), which served to liberalize the Tanzanian market and make it more welcoming of foreign investment. This included, above all, reversing the *ujamaa* villages and abolishing the gluttonous marketing boards, which were the bane of efficient agricultural production. However, although the SAPs improved Tanzania's terms of trade⁸⁷, their impact on ethnic politics has been less welcome. In effect, the failure of *ujamaa*, coupled with the imposition of SAPs, has caused the emergence of ethnic, class, and religious tensions and grievances, undermining national unity and the legitimacy of national institutions.

The imposition of SAPs in the late 1980s and early 1990s led to increased class-based ethnic inequalities. In 1991, to symbolize the new path of economic liberalization that Tanzania was embarking on, the ruling party, renamed from TANU to *Chama cha Mapinduzi* (CCM), repealed the Arusha Declaration, in effect allowing political elites to engage in private business activities.⁸⁸ Aminzade argues that this resulted in Parliament losing control to a technocratic policy elite and their transnational corporate allies, reducing the power of legislators to initiate bills with financial implications.⁸⁹ Thus, neoliberal economic reforms fostered the growth of a black Tanzanian elite by creating new opportunities in the private sector.

Yet while the African elite was wealthier than they were under Nyerere's rule, the SAPs had a devastating impact on the poor African majority. SAPs' conditionalities of smaller government led to sharp reductions in public employment, including the dismissal of 80,000 civil servants.⁹⁰ They also entailed the elimination of price controls on basic commodities and major currency devaluations, which reduced citizens' purchasing power and lowered wages.⁹¹ Social services were simply not provided and remained inaccessible to the impoverished black, African population. For example, SAPs introduced school fees and privatized many secondary schools, reversing the educational gains of Nyerere, as paying for schooling was a cost few poor Tanzanians could incur. Consequently, net primary school enrolment rates declined from 68 percent in 1985 to 57 percent in 2000.⁹² In effect, the neoliberal market could not provide for the majority of Tanzanians. Although Jakaya Kikwete's government (2005-2015) took proactive steps to increase enrolment, the lapse in accessible education and other social services between 1985 and the early 2000s fuelled ethnic and class grievances, threatening Tanzania's culture of ethnic peace.

In this environment of widening inequalities, elected leaders framed popular discontent in language that resonated with Nyerere's socialist notions of national self-reliance and citizen ownership of public assets.⁹³ Under the governments of Ali Hasaan Mwinyi, Benjamin Mkapa, and Jakaya Kikwete, the neoliberal economic reforms that created black African grievances, have been criticised in their search for votes. Campbell argues that this return to ethnically centred political

mandates feeds into elite efforts to organize supporters upon the tenets of ethnicity and religion to advance partisan goals.⁹⁴ The result has been an increase in populist race-centric platforms, which denounce the “growing inequality in rhetoric of race rather than in the language of class associated with the discredited socialist experiment.”⁹⁵ Characterized as wealthy, unpopular and oppressive, Asian-Tanzanians have been the targets of the masses’ discontent. Although in the 1990s Asian-Tanzanians comprised a mere 0.2 percent of the population, politicians targeted this unpopular and wealthy ethnic minority in their search for votes from a disaffected black African majority.⁹⁶ In effect, Asian-Tanzanians became a scapegoat for the grievances of two groups: the poor African majority angered by continuing poverty despite annual increases in GDP, and the nascent African elite who resented the economic power of the Asian-Tanzanian ethnic group.

Rhetoric against Asian-Tanzanians illustrates how Tanzania's collective identity is unravelling following the imposition of neoliberal policies. Although ethnic inequalities are indeed more pronounced following the imposition of SAPs, coinciding with Jega’s argument that SAPs breed ethnic divisions⁹⁷, party leaders have attributed the poverty of the black population to the wealth and power of Asian-Tanzanians. For example, Ally Sykes, a founding TANU member, called on the government to refuse business licenses to Asians, and to grant the right of parastatal shares to indigenous Tanzanians.⁹⁸ Illustrating the emerging populism of race-based politics in Tanzania’s neoliberal era, Sykes applauded the anti-Asian policies of Uganda’s Idi Amin, which arguably represent the worst treatment of Asians in East Africa, whereby 50,000 Asian-Tanzanians were expelled.⁹⁹ Moreover, the liberalized press has cemented this sentiment by “[planting] the seeds of hatred” against Asian-Tanzanians.¹⁰⁰ Although Sykes’ declaration is more radical than most politicians espouse, the result has been a move toward notions of indigenization, whereby: only those citizens who are Tanzanian by birth, are of black African origin, and whose origin in the country can be traced back at least three generations, can rightfully be considered Tanzanian.¹⁰¹ Consequently, the national unity of Nyerere's regime is unravelling and being replaced by a black African populace whose more vocal and aggressive mantra advocates against class-based inequalities.

Ethnic and religious violence has become more pervasive as a result of increased inequalities, furthering the notion that neoliberal policies threaten Tanzania’s traditional culture of ethnic peace. However, the ethnic grievances are, aside from Zanzibari Muslims, not directed against black Tanzanian ethnic groups, but rather against particular ethnic groups of non-black races. Racist nationalist politicians such as the primary opposition party’s MP, Christopher Mtikila, swiftly garnered support among disenfranchised Tanzanians by advocating against the perceived power of Asian-Tanzanians. A populist, Mtikila viewed Asians as the “enemy of the nation.”¹⁰² He routinely

denounced minority ethnic groups including Indians, Arabs, Somalis, and Zanzibaris, as thieves, fuelling the indigenization rhetoric that had come to characterize Tanzanian ethnic politics in the 1990s; Aminzade concurs that Mtikila's populist message was widely distributed.¹⁰³ Although the ruling CCM party classifies indigenization proposals as racist, it recognizes indigenization's widespread appeal. Indeed, the party has compromised by borrowing socialist-era language to announce CCM's policy of self-reliance to enable indigenous Tanzanians (*wananchi*) to control the economy.¹⁰⁴

In this context of populist resentment and rhetoric of indigenization, violence erupted against Asians and Muslims. Christian Tanzanians blamed Muslims for two arson attacks against Christian girls' schools in 1994, and alleged that Muslims had threatened to bomb a cathedral in Kibaha.¹⁰⁵ Campbell believes that such anti-Muslim sentiment was predicated by a popular fear of the rise of Muslim fundamentalism following the introduction of SAPs, coupled with a perceived need to contain the spread of Islam.¹⁰⁶ Although Tanzania's presidents have alternated between Muslim and Christian incumbents since Nyerere left power, which in theory attests to Tanzania's commitment to mediate disputes between Muslim and Christian believers, religiously-grounded attacks continue; three bombings against two churches and a mosque occurred in 2013.¹⁰⁷ However, due to the heterogeneity of Tanzania's Muslim population, Muslim sub-groups are spread across the country. Thus, Lofchie argues that adherence to Islam does "not markedly differentiate one ethnic group from another", limiting the risk of further polarization along ethnic lines.¹⁰⁸

Nyerere's secular national program has collapsed under the inherent inequalities produced by neoliberal economic reforms. A palpable chasm has developed in Tanzania between Muslim and Christian groups, a distinction that was non-existent under Nyerere's socialist rule. Affinities toward the common Tanzanian culture envisioned by Nyerere have been surmounted by a desire to redress the economic and social inequalities, which emerged in the neoliberal landscape of the past twenty-five years. Moreover, although a wealthy and frequently corrupt black elite has emerged from Tanzania's economic liberalization, politicians have been savvy in directing the grievances of the poor black majority against Asians, who are an appealing scapegoat. More positively, however, the fear of opposition parties who appealed to particular ethnic groups did not emerge; Tanzanian ethnic groups typically do not affiliate with one party more than another, but are rather class-based. This is to a great extent due to the Tanzanian constitution's intolerance of ethnically based platforms. Even against the worrying backdrop of widening ethnic and class grievances, Tanzania does not look set to become a failed state. The ethnic violence experienced in neighbouring Rwanda, Burundi, Kenya and the DRC has never spilled over into Tanzania; Tanzania is viewed as a relative haven of peace in the

midst of a region often characterized by turbulent ethnic disputes.¹⁰⁹ Moreover, although the delivery and quality of social services leaves much to be desired, the majority of the population has access to water, healthcare, and education, illustrating that Nyerere's notion of an equal Tanzanian citizenry lives on, albeit in a diluted neoliberal form. Additionally, Kikwete's former government and John Magufuli's recently appointed one is stable and respected abroad, as illustrated by Tanzania hosting the World Economic Forum in 2010. Although grievances have been stimulated following the country's liberalization, the nation's enviable stability is a source of pride for Tanzanians.¹¹⁰ Thus, such grievances are unlikely to compromise Tanzania's stability to the extent seen in neighbouring states. Indeed, other East African states should parallel Tanzania's constitutional and public intolerance of ethnically-based platforms in the pursuit of developing political systems free of ethnic cleavages.

In conclusion, the notion of ethnic *umoja* as envisioned and developed by former President Julius Nyerere is slowly fragmenting in Tanzania's neoliberal era. The imposition of neoliberal SAPs made social services unaffordable to the poor majority, which heightened inequalities between Tanzania's rich and poor. Consequently, the collective notion of national unity crafted under Nyerere's socialist rule has developed toward re-emerging grievances based on ethnic, religious, and class divisions, and has triggered language of indigenization and occasional violence. Yet unlike in Kenya, where ethnic grievances are typically directed against other black ethnic groups, in Tanzania the targets are the Asian-Tanzanian and Zanzibari populations whose minority statuses and unpopularity render them attractive scapegoats. Still, Nyerere should be commended for his policies of advancing national unity. His stewardship of TANU leveraged the anomalous lack of significant ethnic cleavages and the common resentment toward the colonial regime to successfully call for Tanganyika's peaceful independence. Moreover, his 'nation-building' education and Kiswahili policies effectively disseminated a collective nationalist vision that tied the country together. However, *ujamaa*'s failure and the subsequent imposition of SAPs changed this dynamic, and limits the effectiveness of applying lessons of Nyerere's unifying policies to other African states beset by ethnic divisions. As Fox argues, "a national culture is always 'temporary' because, whether antique or modern, its character and puissance are matters of historical practice: they are plastic constructions, not cultural givens".¹¹¹ Ultimately, this temporary national culture is what materialised in Tanzania. However, there remains hope for the country. Although class and ethnic grievances have reasserted themselves, political parties are constitutionally barred from campaigning along ethnic, racial, or religious lines, illustrating that, at least in theory, a political climate of ethnic peace is

possible. In the face of increased economic and political liberalization, it remains to be seen whether *umoja* can be wholly re-established in post-Nyerere Tanzania.

- ¹ Amon Chaligha and Robert Mattes, *Uncritical Citizens or Patient Trustees? Tanzanians' Views of Political and Economic Reform*, (Cape Town: The Institute for Democracy in South Africa, 2002), 2.
- ² Martin Meredith, *The State of Africa: a History of Fifty Years of Independence*, (London: Simon & Schuster Ltd., 2012), 157.
- ³ The mainland of modern-day Tanzania was known as Tanganyika until 1964, when it merged with the British protectorate of Zanzibar to become the United Republic of Tanzania.
- ⁴ Donna Read and Kevin Parton, "Economic deregulation and trade liberalization in Kenya, Tanzania and Uganda: growth and Poverty" *Journal of Economic Issues* 43, no. 3 (2009): 568.
- ⁵ Meredith, *op.cit.*, 259.
- ⁶ Justin Lin, "Should Industrial Policy in Developing Countries Conform to Comparative Advantage or Defy it?" *Development Policy Review* 27, no. 5 (2009): 484; William Easterly, *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics*, (Cambridge, MA: MIT Press, 2001), 7; Donna Read and Kevin Parton, *op.cit.*, 568.
- ⁷ The World Bank, "Economic Growth Rates," *The World Bank Group*.
<http://www.worldbank.org/depweb/english/beyond/global/chapter4.html> (accessed March 10, 2015).
- ⁸ Asa Laurell, "Structural Adjustment and the Globalization of Social Policy in Latin America," *International Sociology* 15, no. 2 (2000): 309.
- ⁹ Meredith, *op.cit.*, 259.
- ¹⁰ Samir Amin, *Maldevelopment: Anatomy of a Global Failure*, (Tokyo: United Nations University Press, 1990), 10.
- ¹¹ Axel Dreher, "IMF and Economic Growth: The effects of Programs, Loans, and Compliance with Conditionality," *World Development* 34, no. 5 (2006): 771; Mark Allen, "Macroeconomic and Structural Policies in Fund-Supported Programs: Review of Experience," *The International Monetary Fund*, <https://www.imf.org/external/np/pdr/2004/eng/macro.htm> (accessed March 12, 2015).
- ¹² Meredith, *op.cit.*, 157.
- ¹³ Easterly, *op.cit.*, 7; James Habyarimana et al., "Why does ethnic diversity undermine public goods provision?" *American Political Science Review* 101, no. 4 (2007): 709.
- ¹⁴ Bruce Berman, *Ethnicity and Democracy in Africa*, (Athens, OH: Ohio University Press, 2004), 51.
- ¹⁵ Okwudiba Nnoli, *Ethnicity and Development in Nigeria*, (Aldershot, UK: Avesbury, 1995), 78.
- ¹⁶ Attahiru Jega, "The State and Identity Transformation under Structural Adjustment in Nigeria," in Attahiru Jega ed. *Identity Transformation and Identity Politics under Structural Adjustment in Nigeria*, (Uppsala, Sweden: Nordic Africa Institute and Centre for Research and Documentation, 2000), 25.
- ¹⁷ *Ibid.*
- ¹⁸ Bruce Bueno de Mesquita, and James Morrow, Randolph Silverson and Alastair Smith. "Political Competition and Economic Growth." *Journal of Democracy* 12, no. 1 (2001): 58.
- ¹⁹ Ronald Aminzade, *Race, Nation, and Citizenship in Post-Colonial Africa The Case of Tanzania*, (Cambridge: Cambridge University Press, 2013), 321; John Campbell, "Nationalism, ethnicity and religion: fundamental conflicts and the politics of identity in Tanzania," *Nations and Nationalism* 5, no. 1 (1999): 110.
- ²⁰ Aminzade, *op.cit.*, 335.
- ²¹ Campbell, *op.cit.*, 122.
- ²² Joseph Rono, "The impact of the structural adjustment programmes on Kenyan society," *Journal of Social Development in Africa* 17, no. 1 (2002): 94.

- ²³ John Iliffe, *A modern history of Tanganyika*, (Cambridge: Cambridge University Press, 1979), 21.
- ²⁴ *Ibid*, 318.
- ²⁵ *Ibid*.
- ²⁶ Meredith, *op.cit.*, 157.
- ²⁷ Iliffe *op.cit.*, 318.
- ²⁸ *Ibid*, 80.
- ²⁹ *Ibid*, 89.
- ³⁰ Meredith, *op.cit.*, 79.
- ³¹ M. H. Y. Kaniki, *Tanzania under colonial rule*, (London: Longman Press, 1979), 104.
- ³² Iliffe, *op.cit.*, 92.
- ³³ *Ibid*, 149.
- ³⁴ *Ibid*, 118.
- ³⁵ Kaniki, *op.cit.*, 130.
- ³⁶ *Ibid*, 117.
- ³⁷ Peter Dumbuya, *Tanganyika under International Mandate, 1919-1946*, (Lanham, MD: University Press of America, 1995), 2.
- ³⁸ Iliffe, *op.cit.*, 323.
- ³⁹ *Ibid*, 318.
- ⁴⁰ *Ibid*, 325.
- ⁴¹ *Ibid*, 320.
- ⁴² Aminzade, *op.cit.*, *Race, Nation, and Citizenship in Post-Colonial Africa The Case of Tanzania*, (Cambridge: Cambridge University Press, 2013), 63.
- ⁴³ John Lonsdale, "Some Origins of Nationalism in East Africa", *The Journal of African History* 9, no. 1 (1968), 126.
- ⁴⁴ Aminzade, *op.cit.*, 64.
- ⁴⁵ *Ibid*.
- ⁴⁶ Lyndon Harries, "Language Policy in Tanzania," *Africa* 39, no. 03 (1969), 275.
- ⁴⁷ Electoral Institute for Sustainable Democracy in Africa, "Tanzania: Fact File", *Electoral Institute for Sustainable Democracy in Africa*, <http://www.content.eisa.org.za/old-page/tanzania-fact-file>
- ⁴⁸ Aminzade, *op.cit.*, 65.
- ⁴⁹ Meredith, *op.cit.*, 80.
- ⁵⁰ Aminzade, *op.cit.*, 67.
- ⁵¹ *Ibid*, 68.
- ⁵² Dumbuya, *op.cit.*, 261.
- ⁵³ Iliffe, *op.cit.*, 513.
- ⁵⁴ Aminzade, *op.cit.*, 82.
- ⁵⁵ Godfrey Mwakikagile, *Tanzania Under Mwalimu Nyerere: Reflections on an African Statesman*, (Minneapolis: InterContinental Books, 2006), 21.
- ⁵⁶ Harries, *op.cit.*, 277.
- ⁵⁷ C. Maganga, "Kiswahili: Language as a Cohesive Factor," *Tanzania Notes and Records* 83, 1978, 131.
- ⁵⁸ Harries, *op.cit.*, 279.
- ⁵⁹ A. M. Khamis, "Swahili as a national language", in G. Ruhumbika (ed.), *Towards Ujamma: Twenty Years of TANU Leadership*, (Dar es Salaam: East African Literature Bureau, 1974), 174.
- ⁶⁰ Harries, *op.cit.*, 278.
- ⁶¹ Michael Lofchie, "The Roots of Civic Peace in Tanzania," in William Ascher and Natalia Mirovitskaya, *The Economic Roots of Conflict and Cooperation in Africa*, (Basingstoke: Palgrave Macmillan, 2013), 17.
- ⁶² Harries, *op.cit.*, 278.

- ⁶³ Lofchie, *op.cit.*, 16.
- ⁶⁴ *Ibid*, 17.
- ⁶⁵ *Ibid*, 18.
- ⁶⁶ *Ibid*.
- ⁶⁷ Meredith, *op.cit.*, 259.
- ⁶⁸ Simwanza Sitta, "Towards Universal Primary Education: The Experience of Tanzania." *The UN Chronicle* 44, no. 4 (2007), "<http://unchronicle.un.org/article/towards-universal-primary-education-experience-tanzania>
- ⁶⁹ Meredith, *op.cit.*, 250.
- ⁷⁰ *Ibid*.
- ⁷¹ Campbell, *op.cit.*, 106.
- ⁷² Meredith, *op.cit.*, 253.
- ⁷³ *Ibid*, 255.
- ⁷⁴ *Ibid*.
- ⁷⁵ *Ibid*, 256.
- ⁷⁶ *Ibid*, 250. Asian-Tanzanians were typically of Indian and Pakistani origin and had arrived in Tanganyika as labourers during the British colonial regime.
- ⁷⁷ *Ibid*, 252.
- ⁷⁸ Edwin Babeiya, "Multiparty Elections and Party Support in Tanzania", *Journal of African and Asian Studies* 47, no. 1, 83.
- ⁷⁹ Campbell, *op.cit.*, 106.
- ⁸⁰ Aminzade, *op.cit.*, 249.
- ⁸¹ Richard Schroeder, *Africa After Apartheid: South Africa, Race, and Nation in Tanzania*, (Bloomington: Indiana University Press), 2012, 2.
- ⁸² Meredith, *op.cit.*, 257.
- ⁸³ Meredith, *op.cit.*, 257.
- ⁸⁴ *Ibid*, 259.
- ⁸⁵ *Ibid*, 258.
- ⁸⁶ *Ibid*, 259.
- ⁸⁷ Michael Hodd, *Tanzania after Nyerere*, (London: Pinter Publishers, 1988), 177.
- ⁸⁸ Aminzade, *op.cit.*, 247.
- ⁸⁹ *Ibid*.
- ⁹⁰ *Ibid*, 325.
- ⁹¹ *Ibid*.
- ⁹² Sitta, "Towards Universal Primary Education: The Experience of Tanzania," *The UN Chronicle* 44, no. 4 (2007), "<http://unchronicle.un.org/article/towards-universal-primary-education-experience-tanzania>
- ⁹³ Aminzade, *op.cit.*, 319.
- ⁹⁴ Campbell, *op.cit.*, 122.
- ⁹⁵ Aminzade, *op.cit.*, 321.
- ⁹⁶ *Ibid*.
- ⁹⁷ Jega, *op.cit.*, 25.
- ⁹⁸ *Ibid*, 324.
- ⁹⁹ Meredith, *op.cit.*, 237.
- ¹⁰⁰ Aminzade, *op.cit.*, 335.
- ¹⁰¹ *Ibid*, 327.
- ¹⁰² *Ibid*, 329.
- ¹⁰³ *Ibid*.
- ¹⁰⁴ *Ibid*, 331.

¹⁰⁵ Campbell, *op.cit.*, 114.

¹⁰⁶ *Ibid.*

¹⁰⁷ Fumbuka Ng'wanakilala, "Zanzibar mosque bombing kills one, wounds seven," *Reuters*.

<http://www.reuters.com/article/2014/06/14/us-tanzania-zanzibar-blast-idUSKBN0EP0IQ20140614>

¹⁰⁸ Lofchie, *op.cit.*, 30.

¹⁰⁹ *Ibid.*, 33.

¹¹⁰ *Ibid.*

¹¹¹ Richard Fox, *Nationalist Identities and the Production of National Cultures*, (Washington DC: American Ethnological Society Monograph, 1990), 4.

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A TRULY CANADIAN SUPREME COURT: INCLUSION OF ABORIGINAL LEGAL TRADITIONS AT THE FINAL APPELLATE LEVEL

Meaghan O'Connor

Aboriginal people have been in what is now Canada since time immemorial, and have played a crucial role in Canadian history as one of the three founding groups of the country. However, Aboriginal legal traditions have not been represented in Canadian institutions in a similar fashion as those of the English and the French. This fact is troubling in the judiciary, particularly at the level of the Supreme Court of Canada, due to its important role in the future of Aboriginal people. This paper will examine arguments in favour of Aboriginal representation based on both diversity and unique historical standing. This discussion concludes that Aboriginal representation on the SCC is justified analogously to requirements laid out in *Supreme Court Act* ss. 5 and 6, and that such changes must be made in order for the SCC to be a truly Canadian institution.

Introduction

Aboriginal people have played a pivotal role in Canadian history since before the arrival of European settlers. The Aboriginal-settler relationship varied from place to place and was at times one of mutual respect and cooperation, but at others one of disagreement and violence. These relationships have been affirmed in the form of treaties and laws, ranging from traditional Aboriginal agreements such as the Two Row Wampum Treaty of 1613 and European-style agreements such as the Royal Proclamation of 1763. Aboriginal people are one of the three founding groups of Canada, contributing knowledge, traditions and culture to the confederation. However, Aboriginal traditions are not included in Canadian institutions to the same extent as French and English traditions. This can be seen notably in the context of the judiciary, with disproportionately few Aboriginal people being called to the bench.¹ The lack of representation of Aboriginal legal traditions within the judiciary is particularly troubling at the Supreme Court level, because as the final appellate court of Canada, it addresses many questions relating to Aboriginal people and their rights. The fact that the Supreme Court currently only includes representatives of two out of Canada's three founding legal traditions brings the accuracy of the institution's name into question. Can it be called the Supreme Court of Canada if it doesn't truly represent Canada's founding traditions? This paper will argue that the distinct role of Aboriginal people in the formation of Canada provides for their representation on the SCC in a similar manner to current regional and legal system requirements as laid out in *Supreme Court Act* ss. 5 and 6.

To begin, arguments for diversity on the bench and for Québec's unique position on the SCC

are discussed. Pertinent aspects of the Aboriginal-Canada relationship are examined, followed by arguments for Aboriginal representation on the Supreme Court. The next section refutes counter-arguments against Aboriginal representation. This leads to the conclusion, where it is argued that, despite the improbability of such a reform occurring in the near future, it is imperative to include Aboriginal representation on the Supreme Court for it to be a truly Canadian institution. Before beginning, it is important to note that this discussion is occurring from within a state-centred, colonial framework.

The Case for Representation on the Bench

Much scholarship has been dedicated to outlining the benefits of diversity on the bench. Some academics, such as Richard Devlin, A. Wayne MacKay, and Natasha Kim put forth an equality-based argument, suggesting that equality before and under the law requires an equal opportunity to make and enforce the law.² Furthermore, Devlin et al. support a more diverse judiciary to allow for the inclusion of the different perspectives and contributions of marginalized groups.³ By including judges from historically excluded communities, the “judicial conversation [is]...broadened.”⁴ A more diversely representative bench also increases trust and legitimacy, as it allows for a symbolically representative judiciary.⁵ That being said, the authors acknowledge that symbolic representation should not be mistaken for substantive representation, and warn of moral virtue and essentialist arguments.⁶

Arguments for diversity can also be closely related to discussions of institutional legitimacy. Tom R. Tyler examines how an individual’s actions are shaped by the perception of legitimacy in an authority figure.⁷ Notably, Tyler’s work finds that people are more willing to defer to legal authorities when decisions are made in a fair manner.⁸ A lack of diversity and representation on the bench can hinder a perception of legitimacy and procedural fairness when the values being appealed to are unreflective of all the groups.⁹ Admittedly it is not feasible to have a completely descriptively representative Supreme Court, but maintaining the historically homogenous composition of the SCC will have adverse effects on the legitimacy of the judiciary in Canada.

While not discussing diversity on the Supreme Court specifically, Will Kymlicka’s exploration of group representation provides some compelling arguments in favour of increasing diversity. Kymlicka posits that group representation can be valuable and beneficial in “overcoming systemic disadvantage and securing self-government.”¹⁰ He suggests that diversity in governing institutions involving such disadvantaged groups may be the most effective way of addressing these

inequalities.¹¹

Lorne Sossin discusses the SCC's lack of diversity, claiming that Canada's Supreme Court Justices are unrepresentative of Canada today.¹² Sossin finds, as many others do, that identity and experience play a role in the decision-making process.¹³ Consequently, the SCC should include justices with different backgrounds and experiences to uphold "democratic legitimacy and the quality of adjudication."¹⁴ Angela Onwuachi-Willig concurs, and refers to the impact of professional and life experience on how an issue is approached.¹⁵ In fact, Onwuachi-Willig claims that diversity increases impartiality because it incorporates more than just one perspective on the issue being deliberated.¹⁶ The Canadian Association of Law Teachers' 2005 report came to a similar conclusion, asserting that increased diversity "complement[s] rather than detract[s]" from impartiality.¹⁷ The convention of diversity in SCC selections in the form of regional representation demonstrates that arguments for diversity are already accepted to a certain extent by the court.

Québec's position on the SCC exemplifies mandated diversity in action. In accordance with *Supreme Court Act* s. 6, three of the nine justices on the SCC must "be appointed from...Québec."¹⁸ Why does Québec have this unique legal position? Firstly, Québec has a separate legal system from the rest of Canada – the civil code – which stems from its origins as a French colony. Members of Parliament at the time of the Supreme Court's creation addressed concerns of representing civil law by setting a requirement for civil law experts from Québec to sit on the Court – two at the formation of the Court, and three since 1949.¹⁹ Although in earlier years the Judicial Committee of the Privy Council was the final appellate court for Canada, it was agreed that because of the SCC's jurisdiction over all of Canada, there needs to be effective representation of both civil and common law as Canada's founding legal traditions. As such, the three Québec judges are experts in civil law and are influential when dealing with cases in this tradition. Secondly, Québec is one of the founding members of confederation. Alongside the English colonies, Québec has had a strong influence on Canada's formation and growth. Finally, Québec's distinct history and culture necessitate appropriate representation at the highest level of the judiciary to incorporate such opinions in deciding the future of Canada.

The basis for a required Québec presence supports, and is supported by, the aforementioned arguments for diversity. Québec's different perspective is included and plays a role in judicial decision-making. Furthermore, the Court is seen as legitimate in the civil law tradition because of the inclusion of said law, with the Court also acting in an important symbolic, unifying role as a Canadian institution. Québec's position allows the province to have influence over Québec's level of

autonomy, as can be seen in *Reference re Secession of Québec*.²⁰ The example of Québec demonstrates that there is a long-held Canadian understanding of diversity arguments that, if expanded to Aboriginal traditions, would require Aboriginal inclusion on the SCC. Many of the arguments for diversity are based on the acceptance of the idea that it is impossible to have a completely impartial judiciary, as all judges bring with them identities that shape their perceptions of cases, and ultimately, their decisions. Québec's position on the Supreme Court is partly a result of such reasoning, but is also due to its historical significance as a founding nation and to its distinctive legal system. The aforementioned arguments for diversity on the bench and for Québec's unique place on the SCC can be extended to justify Aboriginal representation as well.

Aboriginal Relations with Canada

Canada's relationship with Aboriginal people has been a tumultuous one. When settlers first arrived, Aboriginal people populated the land. There is evidence that some of the settlers desired a more patriarchal relationship with Aboriginal people, whereas Aboriginal people saw the relationship as a more brotherly one.²¹ Initially, the relationship was often one of mutual acceptance and cooperation, which sometimes included a respect for Aboriginal legal traditions.²² In the Two Row Wampum Treaty, the two groups agreed to live alongside each other, but not to interfere in the other's customs or lives.²³ As Canada grew, the locus of power shifted solely to the hands of the settlers, now Canadians, obviating the importance of Aboriginal people. Some documents protected or upheld Aboriginal rights, such as the Royal Proclamation of 1763 and the *Constitution Act 1982 s. 35*, while others limited or removed them, such as the *Indian Act 1876* and its many amendments. Over the centuries there have been policies of assimilation and integration, which aim to expunge Aboriginal traditions and culture.²⁴ Notably, Aboriginal children were removed from their homes for generations and placed into Residential Schools, where they often suffered neglect and abuse while being denied the right to speak their language or practice their culture.²⁵

It is important to consider that Aboriginal people are not a homogenous group, and that Aboriginal people have made many attempts to protest and change their situation. Nonetheless, the relationship between Aboriginal people non-Aboriginal Canadians has largely been one of a power imbalance. In recent years this has shown signs of change, particularly since the patriation of the Constitution in 1982 and the entrenchment of Aboriginal rights in s. 35.²⁶ Aboriginal groups across the country have achieved self-governance in some instances and are reinvigorating traditions lost through institutions such as Residential Schools. Despite these advancements, Aboriginal traditions are rarely included substantively in Canadian institutions. Due to the critical role of the Supreme

Court in the future of Aboriginal people in Canada, it is imperative that the legal traditions of Aboriginal people be appropriately represented.

Aboriginal Representation on the Supreme Court of Canada

Arguments for Aboriginal representation on the SCC are distinct from arguments for the incorporation of diversity in the judicial decision-making process. Aboriginal people are different from other minorities due to their role as founding people, as explicitly recognized by the Supreme Court in *Reference re: Secession of Québec*.²⁷ Likewise, the fiduciary nature of Aboriginal relations with Canada demonstrates a different status from other minority groups.²⁸ Consequently, permanent Aboriginal representation on the Supreme Court can be justified in the same manner as that of Québec. The basis for Québec's statutory requirement of three justices on the Supreme Court under s. 6 of *Supreme Court Act* is due to historical relations and distinct legal traditions. Arguably, Aboriginal people and their historical relations with the other founding groups of Canada and their distinct legal traditions should be treated with equal deference as those of the English and French.

As previously discussed, Aboriginal people have had agreements attesting to their rights and title essentially since the arrival of settlers. While some of these rights have been disregarded or overwritten, the fact remains that Aboriginal people have substantial rights and traditions within Canada. In 1982 these rights were "recognized and affirmed" in the Constitution.²⁹ The Supreme Court itself has previously acknowledged the historical significance and unique role of Aboriginal people.³⁰ Therefore, Aboriginal people should have representation on the SCC on the basis of continuing historical relations and as a founding group of Canada.³¹

Aboriginal people across Canada have developed their own legal traditions suited to Aboriginal values and worldviews. Based in the multitude of Aboriginal cultures across Canada, Aboriginal legal traditions can encompass a wide variety of issues, ranging from dispute resolution to "government process."³² Aboriginal law is one of three founding legal systems within Canada, and as such should be included on the SCC alongside the other two founding legal traditions.³³ Incorporating Aboriginal legal traditions can provide an understanding of Aboriginal rights and worldviews that cannot be fully appreciated by the English and French legal systems. As Larry Chartrand, Lisa Chartrand, Bruce Feldthusen, and Sarah Han argue, the different legal systems at times converge and at others diverge.³⁴ These moments of divergence speak to the importance of integrating Aboriginal legal traditions, due to the necessity of considering other viewpoints. Allowing for Aboriginal representation on the Supreme Court creates an opportunity for the discussion and inclusion of values

held in the different legal traditions, a consideration which may not otherwise exist.

Canada's tradition of legal pluralism requires that for the Supreme Court to be the "final arbiter in cases" regarding Aboriginal people, Aboriginal legal traditions and Aboriginal representation must be included.³⁵ A Canadian Bar Association resolution acknowledges this pluralistic legal tradition, noting that Aboriginal legal traditions are insufficiently incorporated into the Canadian judiciary.³⁶ The Royal Commission on Aboriginal People 1996 report further supports this idea, stating: "without [Aboriginal] participation there can be no legitimacy and no justice."³⁷

In addition to justifications for Aboriginal representation on the Supreme Court established on the grounds of historical significance and legal pluralism, there is also a substantial argument based on self-government. Kymlicka suggests that it is imperative that a self-governing group have a seat on intergovernmental bodies that can "interpret or modify" the powers of that self-government.³⁸ The example Kymlicka uses is Québec, but such reasoning can be expanded to Aboriginal groups, as the number of Aboriginal groups that are either currently self-governing or in the process of becoming self-governing is growing. In order for decisions rendered by Canada in relation to Aboriginal rights to be truly legitimate, the legal systems and the Aboriginal people themselves must be incorporated into the judicial decision-making process. Although many Aboriginal people in Canada are not self-governing, Canada's fiduciary relationship with Aboriginal people requires the latter's representation on the SCC, because Canada can "interpret or modify" the rights of Aboriginal people.³⁹

The SCC has jurisdiction not only over civil and common laws, but also over Aboriginal people and consequently over Aboriginal legal traditions.⁴⁰ Since the entrenchment of *Constitution Act 1982*, this role has become more meaningful, particularly in regards to the interpretation of s. 35 that "recognizes and affirms Aboriginal rights."⁴¹ Some have gone so far as to say that the lack of Aboriginal inclusion on the Supreme Court, combined with the SCC's far-reaching powers over Aboriginal rights, go against substantive equality in s. 15 and impartiality and independence in s. 11(d) of the Charter.⁴² Despite the undoubtedly important role the SCC plays in shaping the future of Aboriginal people in Canada, there has yet to be a member of Aboriginal descent.⁴³

In addition to the arguments for Aboriginal representation noted above, there are arguments based on diversity that bolster the case for such mandated representation. Aboriginal people may have different perspectives to bring to judicial deliberations based on their identities and worldviews, which have resulted from personal experiences with Aboriginal traditions. Moreover, the inclusion of Aboriginal people would confer more legitimacy on decisions even if the outcome remains the same,

as more perspectives would have been considered.⁴⁴ The overrepresentation of Aboriginal people in the criminal justice system and the underrepresentation of Aboriginal people on the bench at various levels affect the perceived legitimacy of the judiciary, which would be ameliorated by having Aboriginal representation in the judiciary.⁴⁵ The underrepresentation of Aboriginal people is even more worrisome at the Supreme Court level because of the cases it hears, and because of the precedent it sets for Aboriginal rights in the country.

Aboriginal representation on the Supreme Court would also assist in “overcoming [the] systemic disadvantages” that have been a reality for many Aboriginal people in Canada.⁴⁶ By introducing alternative viewpoints, the Supreme Court would become a space that allowed for more advocacies from within by introducing viewpoints that may not have been considered. According to Rosemary Cairns Way, less than one percent of federally appointed judges are of Aboriginal descent.⁴⁷ The judiciary is a particularly effective branch in which to have substantive representation, as its independence means that it is not hindered by limitations on other branches, such as party discipline.⁴⁸ Additionally, although symbolic representation is not synonymous with substantive representation, symbolic representation of Aboriginal people on the SCC would be valuable. Including Aboriginal people on the Supreme Court would have significant symbolic ramifications in recognizing the importance of Aboriginal people in Canada’s history as well as in modern Canadian society.

Aboriginal people are acknowledged as one of the three founding groups of Canada in various areas of Canadian life, which range from ceremonies to textbooks to self-governing agreements. The other two founding groups, the French and the English, are statutorily recognized across all Canadian institutions. This then raises the question of why Aboriginal people are not recognized as being a founding group in the form of representation on the SCC. The issues inherent in a lack of Aboriginal representation on the Supreme Court are exacerbated when examining the importance of SCC decisions to the future of Aboriginal people in Canada.

There is an underrepresentation of Aboriginal people in all three branches of Canadian government, and arguments can be made for representation in all of these areas. However, the need for mandated Aboriginal representation on the Supreme Court is different from the need for diversity in the other branches, as it will not be achieved through any other approach. An examination of diversity arguments, and more importantly, equity arguments, makes it clear that Aboriginal people should be represented on the Supreme Court in accordance with current requirements in *Supreme Court Act* ss. 5 and 6.

Issues with Aboriginal Representation

Mandatory Aboriginal representation on the Supreme Court is controversial in many ways, one of the major issues being the implication for Aboriginal sovereignty. While SCC representation may be beneficial for Aboriginal people in pursuing legal action, there are still potential problems. Using Canadian courts requires a recognition of the sovereignty of the Canadian state, which may be seen as implicitly ceding Aboriginal sovereignty. Some Aboriginal people have signed agreements with the Canadian government, but many Aboriginal people have never ceded sovereignty. It is possible that accepting representation on the SCC could be interpreted by some Aboriginal people as tacit consent to and acceptance of the Canadian state as sovereign.

But would this kind of Aboriginal representation invalidate Aboriginal claims to sovereignty? Not necessarily.⁴⁹ For example, self-governing agreements between Aboriginal people and the Federal Government can allow for a level of co-existing sovereignties. Some self-government agreements acknowledge different areas of jurisdiction for the signatories.⁵⁰ Therefore, while Aboriginal representation on the SCC may be challenged by some as ceding sovereignty, there are already examples today of Aboriginal people and the Canadian government creating agreements without the former being required to cede Aboriginal rights.

Yet another major issue is the pluralism of Aboriginal people in Canada in terms of identity, views, and most pertinently, legal traditions. Unlike common and civil law, Aboriginal legal traditions are not represented by one cohesive system.⁵¹ It is unrealistic to imagine that one individual of Aboriginal descent on the Supreme Court could accurately represent the views of all Aboriginal people in Canada. Furthermore, having one representative of a group will make that appointee extremely controversial. For example, if a more left-leaning Aboriginal justice were to be appointed, there would be dissatisfaction with the appointment from many different areas of the political spectrum, and the same would be true of a more right-leaning appointment.

Due to the diversity of Aboriginal people and experiences across Canada, it is true that a representative of Aboriginal people will not reflect the ideas of all Aboriginal people. The traditional Aboriginal legal systems from Nova Scotia may be very different from those of British Columbia or Nunavut. As Devlin et al. demonstrate, identity is not perspective nor ability.⁵² However, that does not disqualify the necessity and utility of this form of representation. Other pan-Canadian Aboriginal organizations, such as the Assembly of First Nations, have addressed this problem and have chosen to have one main representative despite the fact that one representative cannot embody the views of

everyone. Arguably, it is more beneficial to have some form of Aboriginal legal tradition represented than none at all. In fact, there are many similarities between different Aboriginal legal traditions, noticeably in terms of their “similar structural relationships to government authority and the Canadian constitution.”⁵³ The contentious nature of appointing only one Aboriginal justice to the Supreme Court can also be remedied by having two required Aboriginal seats. Onwuachi-Willig suggests that such an arrangement would better represent the community and would make the appointment of Aboriginal justices much more palatable.⁵⁴ In doing so, the Supreme Court could also incorporate a wider variety of Aboriginal legal traditions.

There is further danger of essentialism inherent in the concept of Aboriginal representation on the SCC, because of the notion that people who identify as Aboriginal are automatically seen as having a shared experience and sense of identity.⁵⁵ Such arguments have also been levelled in regards to gender equality on the bench but have been proven to be inconsequential. As previously mentioned, Aboriginal people in Canada are not a homogenous group. Consequently, arguments of essentialism and the like are categorically untrue because an Aboriginal justice would be more inclined to speak out rather than to speak for Aboriginal people.⁵⁶ The variety of experiences of Aboriginal people precludes essentialism, because there is not one particular Aboriginal experience or identity.

It has been suggested that there are other ways to incorporate Aboriginal people on the Supreme Court aside from guaranteed representation.⁵⁷ One possibility is to address the barriers to Aboriginal advancement to the Supreme Court level, such as education and socioeconomic status. Other options include changing the appointment system, re-examining the definition of merit, or allowing provincial court judges to be eligible for the SCC under *Supreme Court Act* s. 5 (where the majority of Aboriginal judges sit).⁵⁸ Additionally, mirror representation is not always understood to be the best solution. This suggests that representation can only be genuine if the representative is descriptively representative, and it implies that groups cannot advocate on a different group’s behalf.⁵⁹

There are evidently other ways to incorporate Aboriginal people and legal traditions in the SCC besides mandated representation. However, the requirement of Aboriginal representation on the Supreme Court based on the recognition and inclusion of Aboriginal legal traditions cannot be accomplished in any other way. Solutions for increasing Aboriginal representation in the other two branches of government will not be effective in the judicial branch, and as such, the change must be made statutorily. Redefining merit, changing the appointment system, and tackling educational and

socioeconomic limitations to Aboriginal people would help to ameliorate the status of Aboriginal people within the legal system in general, but would not achieve appropriate representation of Aboriginal legal traditions at the Supreme Court level. While some might argue that instituting statutory Aboriginal representation would limit the ability or desire of members of other groups to represent Aboriginal viewpoints, this belief is misguided. The role of judges is to take into account a variety of different perspectives. Arguably, including people on the SCC with a range of perspectives would improve impartiality and legitimacy.

Conclusion

Is “Supreme Court of Canada” a misnomer? The lack of representation of the traditions of one of the three founding groups of the country – those of Aboriginal people – certainly challenges the validity of the court’s name. For the SCC to be a truly Canadian institution, Aboriginal legal traditions must be represented on the Supreme Court analogously to those of Québec’s civil law traditions.

Aboriginal representation on the Supreme Court similar to that of Québec under *Supreme Court Act* ss. 5 and 6 can be justified not only by the benefits of diversity within the judiciary, but also by the precedent set by Québec’s representation. One benefit of Aboriginal representation on the SCC is the inclusion of more voices in the judicial decision-making process, which could improve the impartiality of the institution. Québec’s permanent position on the SCC is validated by its practice of civil law and by the province’s role as a founding group of Canada. Distinct Aboriginal legal systems and the significance of Aboriginal people in the creation of Canada are widely acknowledged by academics, by historians, and by the Supreme Court itself. Since Aboriginal groups and Québec are comparable in these ways, Aboriginal people should be permanently represented on the Supreme Court. Moreover, Aboriginal people have a unique place in Canada, as some Aboriginal groups are self-governing, while others have a fiduciary relationship with the Federal Government. The Supreme Court heavily influences such relationships today, particularly as a result of *CA1982* s. 35. These relationships necessitate representation on governmental bodies, such as the Supreme Court, which can alter the status of Aboriginal people. Aboriginal inclusion on Canada’s final appellate body will also contribute towards a positive evolution of the relationship between Aboriginal people and Canada, as it will help the dynamic to change from one of “assimilation and integration” to one of “accommodation of...values.”⁶⁰

While there is a solid normative basis for mandated Aboriginal representation on the Supreme

Court, the recent *Reference re: Senate Reform* and *Reference re: Supreme Court Act, ss. 5 and 6* decisions have cast doubt on the viability of informal constitutional amendments. The Supreme Court justices opined in essence that the instituted formal process must be used for changes to be valid.⁶¹ Put differently, a simple constitutional convention or vote by Parliament alone is not sufficient to achieve a move to permanent Aboriginal representation. Since the heyday of mega-constitutional politics in Canada, politicians and the public alike have been reluctant to reopen constitutional debates. Opening up the Constitution for a single amendment, such as one to mandate Aboriginal representation on the SCC, would certainly be controversial, and would likely lead to other issues being brought forth that would preclude the passing of the amendment. Until such a time as Canadians are prepared to return to questions of constitutional principles, Aboriginal representation on the Supreme Court will be left up to executive prerogative.

¹ Rosemary Cairns Way, “Deliberate Disregard: Judicial Appointments Under the Harper Government,” *Ottawa Faculty of Law Working Paper* no. 2014-08 (2014): 11.

² Richard Devlin, A. Wayne MacKay and Natasha Kim, “Reducing the Democratic Deficit: Representation, Diversity and the Canadian Judiciary, or Towards a ‘Triple P’ Judiciary,” *Alberta Law Review* 38, no. 3 (2000): 790.

³ *Ibid.*, 792.

⁴ *Ibid.*, 795.

⁵ *Ibid.*, 796-97.

⁶ *Ibid.*, 792, 798.

⁷ Tom R. Tyler “Psychological Perspectives on Legitimacy and Legitimation,” *Annual Review of Psychology* 57 (2006): 379.

⁸ Tyler, “Psychological Perspectives on Legitimacy and Legitimation,” 379.

⁹ *Ibid.*, 380.

¹⁰ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 2nd ed., Oxford: Oxford University Press, 2003: 144.

¹¹ *Ibid.*, 151.

¹² Lorne Sossin, “Should Canada Have a Representative Supreme Court?” *Institute of Intergovernmental Relations: School of Policy Studies, Queen’s University*, 2009: 3.

¹³ *Ibid.*, 7.

¹⁴ *Ibid.*, 1.

¹⁵ Angela Onwuachi-Willig, “Representative Government, Representative Court? The Supreme Court as a Representative Body,” *Minnesota Law Review* 90, no. 5 (2006): 1253, 1261.

¹⁶ *Ibid.*, 1265.

¹⁷ Canadian Association of Law Teachers, “Report on SCC Appointments.” *Canadian Association of Law Teachers*, June 2005: 1.

¹⁸ *Supreme Court Act* 1985, c. S-26. <http://laws-lois.justice.gc.ca/eng/acts/s-26/>

¹⁹ Frank Iacobucci, “The Supreme Court of Canada: Its History, Powers and Responsibilities,” *The Journal of Appellate Practice and Process* 4, no. 1 (2002): 29, 33.

²⁰ Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 151; Dennis Baker and Mark D. Jarvis, “The End of Informal Constitutional Change in Canada?” Presented to International

Political Science Panel: Amending the Constitution: Politics, Process and Constitutional Meaning in Canada. Montréal, Québec, July 20, 2014: 1.

²¹ Tom Keefer, "A Short Introduction to the Two Row Wampum," *Briar Patch* 43, no. 2 (2014): 14-15.

²² Larry Chartrand, Lisa Chartrand, Bruce Feldthusen and Sarah Han, "Reconciliation and Transformation in Practice: Aboriginal Judicial Appointments to the Supreme Court," *Canadian Public Administration* 51, no. 1 (2008): 144.

²³ Keefer, "A Short Introduction to the Two Row Wampum," 14-15.

²⁴ Chartrand, Chartrand, Feldthusen and Han, "Reconciliation and Transformation in Practice," 146; UBC Indigenous Foundations, "Government Policy," Last modified 2009. <http://indigenousfoundations.arts.ubc.ca/home/government-policy.html>

²⁵ Truth and Reconciliation Commission *They Came for the Children* (Winnipeg: Library and Archives Canada in Publication, 2012), 1

²⁶ *Constitution Acts 1867 to 1982*, <http://laws-lois.justice.gc.ca/eng/Const/Index.html>

²⁷ James C. Hopkins and Albert C. Peeling, "Aboriginal Judicial Appointments to the Supreme Court of Canada," Report for Indigenous Bar Association (2004): 4.

²⁸ Hopkins and Peeling, "Aboriginal Judicial Appointments," 7.

²⁹ *Constitution Acts 1867 to 1982*, <http://laws-lois.justice.gc.ca/eng/Const/Index.html>

³⁰ Hopkins and Peeling, "Aboriginal Judicial Appointments," 5.

³¹ CALT, "Report on SCC Appointments," 21.

³² Andrée Lajoie, "Introduction: Which Way out of Colonialism?" in *Indigenous Legal Traditions*, ed. by Law Commission of Canada (Vancouver: UBC Press, 2007) 3.

³³ CALT, "Report on SCC Appointments," 8.

³⁴ Chartrand, Chartrand, Feldthusen and Han, "Reconciliation and Transformation in Practice," 144.

³⁵ Hopkins and Peeling, "Aboriginal Judicial Appointments," 2.

³⁶ Canadian Bar Association, "Recognition of Legal Pluralism in Judicial Appointments, CBA Resolution 05-01-A," August 2005. <http://www.cba.org/ABC/resolutions/pdf/05-01-A.pdf>

³⁷ Dussault, René and George Erasmus, *Report of the Royal Commission on Aboriginal Peoples*, Government of Canada, October 1996, 7.

³⁸ Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 142.

³⁹ *Ibid.*

⁴⁰ Iacobucci, "The Supreme Court of Canada: Its History, Powers and Responsibilities," 33; CALT, "Report on SCC Appointments," 23.

⁴¹ UBC Indigenous Foundations, "Constitution Act, 1982 Section 35," last modified 2009. <http://indigenousfoundations.arts.ubc.ca/home/government-policy/constitution-act-1982-section-35.html>

⁴² Cairns Way, "Deliberate Disregard," 12.

⁴³ Sossin, "Should Canada Have a Representative Supreme Court?" 7.

⁴⁴ Chartrand, Chartrand, Feldthusen and Han, "Reconciliation and Transformation in Practice," 146; Onwuachi-Willig, "Representative Government, Representative Court?" 1260.

⁴⁵ Tyler, "Psychological Perspectives on Legitimacy and Legitimation," 379; Cairns Way, "Deliberate Disregard," 11-12.

⁴⁶ Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 144.

⁴⁷ Cairns Way, "Deliberate Disregard," 11.

⁴⁸ Devlin, MacKay and Kim, "Reducing the Democratic Deficit," 789.

⁴⁹ George Williams, "Does Constitutional Recognition Negate Aboriginal Sovereignty?" *Indigenous Law Bulletin* 6, no. 3 (2012): 10-11.

⁵⁰ Council of Yukon First Nations, "Self-Government Agreements," *Council of Yukon First Nations*, accessed January 14, 2016 <http://cyfn.ca/agreements/self-government-agreements/>

- ⁵¹ CALT, “Report on SCC Appointments,” 23.
- ⁵² Devlin, MacKay and Kim, “Reducing the Democratic Deficit,” 803.
- ⁵³ CALT, “Report on SCC Appointments,” 24.
- ⁵⁴ Onwuachi-Willig, “Representative Government, Representative Court?” 1266.
- ⁵⁵ Devlin, MacKay and Kim, “Reducing the Democratic Deficit,” 793.
- ⁵⁶ *Ibid.*, 793-94.
- ⁵⁷ Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 133.
- ⁵⁸ Hopkins and Peeling, “Aboriginal Judicial Appointments,” 13.
- ⁵⁹ Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, 137.
- ⁶⁰ Chartrand, Chartrand, Feldthusen and Han, “Reconciliation and Transformation in Practice,” 147.
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