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Letter from the Editors

On behalf of the Political Science Graduate Student Association, we are pleased to introduce the fourteenth volume of *Inquiry & Insight*.

This volume's theme is "The World of Tomorrow," following our April 2024 graduate research conference. Across the globe, established norms, orders, and institutions are undergoing transformation. With the global COVID-19 pandemic, numerous attacks on human rights, genocides, democratic backsliding, rising inequality, inter-state warfare and increased political instability in countries around the world, life in the early 21st century seems markedly unstable compared to just a few decades ago. The world of tomorrow is not completely unknowable, and is shaped by the political, historical and social forces of yesterday and today. This volume explores several key themes that will likely be crucial to understanding the politics of the tomorrow – the political dimensions of insurgencies, online radicalization and reconciliation.

In her article "The Superiority of Political Strategies in Irregular Warfare: The Case of the Algerian War," Sarah Adouani explores the relationship between political and military strategies and tactics during insurgencies. Using the case study of the Algerian War, with a focus on the tactics of both the insurgency and counterinsurgency, she concludes that political strategies are at least as important, if not more so, than military strategies.

In "Radical Eco-chambers: Exploring Radicalization During the COVID-19 Pandemic," Mohamed Elgayar explores the connection between inequality and radicalization during the COVID-19 pandemic. Using the case studies of how the far right and Islamist radicals utilized the pandemic, he argues that online radicalization can translate into real-world threats, such as 2022 Canadian "Freedom Convoy."

The volume's third article, "The Recolonization of Indigenous Peoples Through Decisions from the Supreme Court of Canada" by Braedon McDonald explores how decisions by the Supreme Court of Canada can potentially recolonize indigenous peoples in ways that may be covert and at first glance seem to support reconciliation, such as the "duty to consult."

This volume of *Inquiry & Insight* would not be possible without the help of our faculty-advisor and reviewer Dr. Anna Drake, as well as our faculty reviewers Drs. Veronica Kitchen, Emmett Macfarlane, and Andrew Thompson. We would like to thank everyone who submitted their work to *Inquiry & Insight* this year.

Sincerely,

The *Inquiry & Insight* Editors
Ryan Catney, Mohamed Elgayar, Eleanor McGrath, and Michael Rossi

The Superiority of Political Strategies in Irregular Warfare: The Case of the Algerian War

Sarah Adouani

1. Introduction

Within international institutions, conventional warfare has been standardized by developing and expanding specific laws and conventions. However, the irregular nature of guerilla warfare poses the problem of whether the same rules and standards would apply. Since strategies employed in times of conflict continuously evolve over time, so too do the norms governing what is deemed acceptable or legal. In this context, how can warring parties ensure their victory? To achieve victory in guerilla warfare, an understanding of the irregularity of the conflict, the nuanced and ever-evolving rules and standards, and the interplay between different strategies is required. Given the unique challenges posed by guerilla warfare, it is generally understood that military strategies must be complemented with political strategies. This leads to the central question: what kind of balance must be achieved between military and political strategies for the counterinsurgent or insurgent party to emerge victorious? Is one more critical than the other? In today's era of human rights and democratic ideologies, I argue that political strategies are as important - if not more so - than the military strategies implemented by both the insurgents and the counterinsurgents. To support this argument, I will analyze the Algerian War, a case that epitomizes the dynamic of the struggles between military and political strategies implemented by the warring parties. This case reveals the essential role political strategies have had in determining the course of the conflict and the post-conflict legacy. Analyzing the Algerian War through this dual lens of military and ideological scopes clarifies the complex interaction between political ideologies and military tactics in counterinsurgency and insurgency strategies.

2. Current Hypotheses and Alternative Hypothesis

Conventional wisdom views the world and its conflicts through the back-and-white lens of realism or power politics. The realist theory, developed by Mearsheimer, works on the assumption that the world is anarchic and that states seek to maximize their power (Mearsheimer 2001,59). Today, this power can generally be attained through territory and economic means, political status in the international community, and military means. The more powerful a warring party is, the more likely it is for it to win wars, including irregular ones.

The idea that a powerful party can lose against a weaker party contradicts the notion that power politics determine victory (Merom 2003, 5-6). However, it has happened. We can all agree that power is essential in emerging victorious in a conflict, but what other component is necessary for victory to be achieved? Conventional wisdom would argue that a powerful party's loss can be explained by its decline in power and/or preoccupations that might prevent it from giving a conflict its deserving attention (Merom 2003, 6). Other explanations can stem from the disastrous consequences weaker parties might face if they lose, increasing their motivation and will to employ every possible means to win (Merom 2003, 13). Nevertheless, understanding the time frame in which the war is taking place might help us expand the scope of our understanding of the dynamic between power and victory. By understanding the human rights-sensitive era advanced since the Second World War through the development of international institutions and

ever-evolving international laws, a normative and legal perspective permits us to understand that power is not the only means to victory. The conventional wisdom would still argue that nothing can stop a powerful state from pursuing victory if it has the means to do so. However, international human rights laws have been established internationally as well as domestically in many states. These laws have set barriers around what a warring party - especially a democratic state, as we expect them to abide by the rule of law – can and cannot do even in times of war, whether conventional or irregular (Merom 2003, 15). This paper acknowledges that despite these laws, warring parties can still choose to dismiss or alter them to their advantage to ensure victory. Military victory, however, does not guarantee their political victory, and warring parties, especially a democratic state, risk suffering consequences through the loss of their legitimacy within the international community and on the domestic level. This political loss has much more dire consequences today than a military loss, as it would lead to the erosion of the warring party's relations on the international level, its lack of domestic authority, and a decrease in status within the international community. Thus, I hypothesize that a military victory does not guarantee victory unless associated with a political one.

Now, assuming that one of the warring parties is a counterinsurgent democratic state and the other is an insurgent non-state actor, what are the variables that could affect the trajectory of the conflict and, ultimately, the victory of either one? Political strategies encompass the control of narrative and ideas, while military strategies encompass means of control and repression. I reaffirm and establish that controlling narratives and ideas as political strategies is as crucial, if not more so, than the military strategies of repression and control implemented by both the insurgents and the counterinsurgents.

3. Military and Political Strategies Used by Counterinsurgents and Insurgents

Counterinsurgency and insurgency forces will use propagandist narratives to justify immorality and legalize their actions, creating and skewing terms to fit their interests. We might believe that laws and policies would limit the potential for the warring parties to break laws and commit crimes. We might also believe that laws develop depending on the environment's need for social change and state development into becoming more “civilized” and “democratic.” However, what if these social changes and developments are based on national interests, too? Norms and the need for change might inherently cause the development of many laws, but it would be false and erroneous to assume that national interests cannot also be part of this need for change. With the institutions we have in place, on a worldwide level, laws are generally developed on an international consensus and commitment to betterment and cooperation to maintain peace and security internationally. Still, on a domestic level, states can also implement those laws however they see fit and with definitions that fit their agenda.

Insurgents will generally use military and political tactics that lead to the dissuasion of the counterinsurgent to give up. In contrast, the counterinsurgents will use strategies like repression, isolation and the targeting of insurgency leaders to destroy the insurgents (Meron 2003, 34). These repressive strategies would include incarceration, deportation, execution and an array of intelligence systems to break down the insurgency (Merom 2003, 41-46). Counterinsurgents and insurgents will also attempt to get their population’s support and international support regarding their objectives and the strategies used to avoid having them believe that whatever they partake in to reach victory is either a threat to their safety or interests (Merom 2003, 66-76).

One of the most controversial means of repression is torture. Through the Torture Convention and the United Nations Charter of Human Rights, we know that torture is unlawful. Many states have also developed domestic laws surrounding this topic. However, the definition of

torture has been interpreted depending on a state's interest. Of course, legality does not equate to morality. However, for states, immoral acts can be made legal by justifying that they are a means to a more essential end. "Would you agree a dunk in water is a no-brainer if it can save lives?" states Scott Hennen while discussing the topic of torture in the context of the American use of it on Iraqis in the early 2000s (Simpson 2011, 1). Similarly, President Bush denied that the torturous form of interrogation used during the Iraq invasion was not considered torture but instead referred to it as "enhanced interrogation," which, in his legal opinion, does not conflict with American constitutional law and international law regarding torture (Simpson 2011, 1-2). This change in definition and narrative aids states, policymakers, and leaders in justifying immoral and technically unlawful acts as lawful and necessary ones. In cases like this, politicians will either deny that the immoral act in itself took place by redefining the boundaries of the term to emphasize its legality through "transparency and accountability" or admit to it but justify it with the idea that extraordinary measures should be taken for extraordinary circumstances (Macmaster 2004, 3-4), which could be regarded as organized unlawfulness. Through international and domestic law, torture is deemed as not only immoral and unethical but also illegal, but "Enhanced Interrogation and Torture that Saves Lives" (EITSL) or "coercive interrogation" is neither illegal nor necessarily immoral and even considered obligatory if properly justified (O'Donohue et al, 2015, 394). These newly defined means of interrogation are forms and methods that encourage forcefulness to extract the necessary information for a more significant cause. In contrast, torture is merely a means of oppression (Posner 2006, 672-673). What counterinsurgency forces fail to realize is that even if defined as "coercive interrogation," such repressive methods are still considered torture and are, therefore, illegal (Posner 2006, 672-688).

To logically justify acts of repression that would generally be considered immoral against insurgents, counterinsurgent forces also use the excuse that the Geneva Convention does not apply to non-state actors as they are not signatories to the Convention. However, the Hague did develop rules for irregular forces: the force must be appropriately commanded; the force must have a distinctive and recognizable emblem representing them; the force must carry arms openly; the force must follow the rules of war outlined in the Geneva Convention (Fischer 2007, 519-520). In this case, it is easy for counterinsurgents to nullify these rules when either of these aspects is missing and, therefore, justify the repression used. In addition, it is generally argued by counterinsurgents that international laws that cover the rules and regulations of war are not inclusive of the realities terrorism brings up (Macmaster 2004, 4-5). Therefore, withholding a person without the protections that habeas corpus encompasses and using coercive means of interrogation would be readily justifiable as not unlawful in the eyes of the counterinsurgents (Macmaster 2004, 6).

Both insurgencies and counterinsurgencies use repression as a tactic to scare a population into docility or to get support. Counterinsurgency forces may use repression to frighten a population from partaking in protests, boycotts, and rebellions that threaten their image and interests (Siegel 2011, 993). On the other hand, insurgency forces may use repression to scare more people into fighting for their cause. However, these methods have been proven ineffective as both sides end up with a pool of people who neither want to participate on one side or the other but instead seek to stay out of trouble and live in peace. A people's decisions to join insurgencies or counterinsurgencies inherently depend on decisions based on aspects of safety, economic and political interest, and leadership rather than simply the approval or disapproval of the cause (Siegel 2011, 993). In fact, unity and cohesion in leadership are essential in determining a population's participation on either side. Cohesion and unity in leadership have proven to trickle down to cohesion and unity in the population's want for resistance. Therefore, disunity in leadership decreases levels of participation (Siegel 2011, 994). In addition to unity, counterinsurgency or insurgency leaders must demonstrate a connection to the population.

People will not participate in resistance if the leadership cannot convey their messages and goals appropriately to fit the interests of the population at hand (Siegel 2011, 1008). These interests need to be sufficient to lead a population into wanting to give up their safety and peace for resistance. If repression is intense on either side, anger and dissociation can overpower the essential aspects of unity in leadership and a connection to the population, leading to a lack of participation in resistance (Siegel 2011, 1008).

Considering the military weakness most insurgencies present in comparison with counterinsurgencies, they instead highly focus on "morally disarming" the counterinsurgent by discrediting and delegitimizing them, which in turn would permit them to gain support on a local and international level (Thomas and Curless 2023, 7-9). This strategy would often involve the creation of an interim insurgent governmental body to represent the resistance at a broader level in international institutions and, through the development of relations with other supporting states and the development of media outlets to spread their message (Thomas and Curless 2023, 8-9).

4. Case Study: The Algerian War

The Algerian War is a unique case which brought up much debate on the international and the French domestic levels regarding the legality of colonialism and the repressions following it. The debate stems from the success of the French counterinsurgency forces' military methods paired with its complete political failure and eventual loss of French Algeria. Despite the sophisticated military techniques used by the French counterinsurgency forces, the specific repressive political techniques led to the French loss and, in turn, the success of the Algerian insurgency (DiMarco 2006, 64). The Algerian insurgency's success in pushing ideas and narratives immensely helped their cause as well.

The Algerian War (1954-1962) resulted in 1.5 million Algerian deaths, 18,000 French deaths and 2 million people claiming refugee status (Dingeman and Yacef 2008, 48). The root and purpose of the war stemmed from Algeria's will for independence from the French colonial state. The latter considered Algeria an essential part of France since 1848 and even a French territory. In fact, François Mitterrand, the French Minister of Interior, said, " L'Algérie, c'est la France" *Algeria is France*, emphasizing the importance of the colony to France. France colonized Algeria in the 1830s and conquered the Algerian forces of AbdelKadr in 1847 (DiMarco 2006, 65). By 1954, one million settlers, referred to as *pieds noirs*, making up 10% of the Algerian population (DiMarco 2006, 65), inhabited the country, a majority of whom were against Algeria's independence (Dingeman and Yacef 2008, 50). Native Algerians have been continuously politically and economically marginalized and subjugated to a second-class status. Along with such conditions, an agricultural crisis in rural areas and an unemployment crisis in urban areas, a lack of representation in political administrations, limited access to education and political corruption resulted in persistent banditry, uprisings, riots and accumulating animosity against the French (von Bulow 2016, 26-27). The French sought to accomplish a civilization mission, viewing Algerians as a subpar population unworthy of the same rights as the European settlers (DiMarco 2006, 65). The French army's violent suppression of the Algerian riots that took place in Setif in 1945 was a breaking point in the development of a separatist and essentially independence movement (DiMarco 2006, 66).

Algerian Insurgency

Many groups had formed from that point forward, notably the *Mouvement National Algerien* (MNA) and the *Front de Libération Nationale* (FLN). By 1954, after the *Toussaint Rouge,* the FLN was one of the insurgency groups, if not the main one, leading Algeria's fight for

independence and its fighting force, the *Armée de Liberation Nationale* (ALN). The FLN emphasizes its goal of leading a political campaign at the forefront and using military tactics as a secondary means through the ALN. It is theorized that the FLN's strategies were based on the Maoist insurgency theory, which encompasses a three-stage method (DiMarco 2006, 66-67).

A. The first stage was based on gaining support from rural zones first, expanding into urban zones, and eliminating rival movements (DiMarco 2006, 66-67). The FLN sought support by appealing to different audiences to promote their cause.

The FLN rivalled with the MNA, led by Messali Hadj, a prominent Algerian nationalist. since the 1920s (Aissaoui 2012, 228). The FLN and MNA sought the same independence goals for Algeria but had differing strategies. The FLN was more radical, while the MNA was centralist and sought to achieve its objectives through protests and strikes. Both insurgency groups had their respective newspapers to relay messages to their supporters - the MNA, *La Voix du people*, and the FLN, *Resistance algerienne* (Aissaoui 2012, 231). Both groups recruited young men, referred to as *djounouds*, to become combatants in the resistance (Aissaoui 2018, 231).

B. The second phase comprised hit-and-run guerrilla and terrorist tactics designed to get more supporters, undermine the French governmental institutions, and, in turn, provoke French forces (DiMarco 2006, 66-67).

C. In the third stage, the FLN sought to go into a conventional battle with the French forces through the ALN.

The FLN was known for its great strategies in publicizing the war. The FLN also used newspapers and radio stations to report the insurgency's activities and encourage Algerians to partake in the revolution (Dingeman and Yacef 2008, 62). The insurgency group also used propaganda strategies to gain international and French civilian support by attempting to delegitimize the French occupation and the apparent democratic values they maintained and promoted (DiMarco 2006, 66-67). It also permitted their provisional government, the *Gouvernement provisoire de la République algérienne* (GPRA), to gain legitimacy within the international community and, in turn, pressure France to yield to its demands (Best 1980, 310-311). These strategies led to the United Nations General Assembly's (GA) recognition of their right to "self-determination and independence," the GA's resolution on the Declaration for Decolonization, and their success in obtaining independence through diplomatic means (Best 1980, 311-312).

French Counterinsurgency

At the beginning of the Algerian war, the French did not understand the extent and severity of the independence movement taking place. Actions taken by the FLN were viewed as mere forms of small rebellions that the police could control (Merom 2003, 99). However, by 1956, the French realized that organized military actions to suppress and destroy resistance would have to be taken to maintain its control over Algeria (DiMarco 2006, 67). The French counterinsurgency was led by many generals, notably Paul Aussaresses and Jacques Massu, who led conventional military operations that, at first sight, failed against a by-then-experienced insurgency force. The French had quickly adjusted their military tactics by considering their previous experience in Indochina, where the insurgency had similarly applied the Maoist insurgency theory. They applied the tactics of the *guerre revolutionnaire*, which comprised five steps (DiMarco 2006, 67).

A. The first step was to isolate the insurgents from support. The insurgency would seek material support and human resources from the neighbouring states of Tunisia and

Morocco, which had just gained independence from France. To prevent such support from reaching the Algerian insurgents, the French forces built barriers fortifying the borders between Algeria's neighbouring states (DiMarco 2006, 68).

B. The second step was to provide civilian population security by creating a *quadrillage* system in the country with various checkpoints at every quadrant for patrol and control (DiMarco 2006, 68).

Third, to legitimize their institutions and policing, elite French military units were available in the case of insurgent attacks. Indigenous democratic political institutions were also developed along with a local educational system promoting democratic values (DiMarco 2006, 68).

C. The elite French military units were also responsible for training *Harka* forces, consisting of Algerian soldiers responsible for local security who served in the intelligence system since they were familiar with locals (DiMarco 2006, 68).

D. Finally, the French forces used FLN members and paid informers to their advantage for intelligence operations. The strategy of torture (organized and random) was mainly used to extract meaningful information that would help them crush the resistance (DiMarco 2006, 72-73). To dissipate and destroy the independence movement, French counterinsurgents also resorted to massacres, executions and abductions (Dingeman and Yacef 2008, 49-57).

Because of the tactics adopted by the French, the Algerian insurgents found themselves short of supplies and human resources; the insurgent forces would be broken down because of the *quadrillage* system in place to avoid being caught; Algerian insurgency's third phase would constantly fail because of the available elite French military unit and Harka forces; and finally, many leaders of the FLN were captured, tortured and even executed (DiMarco 2006, 70). Saadi Yacef, the military chief of the Autonomous Zone of Algiers, was captured during the Battle of Algiers in 1957 and, like many other revolutionary leaders, he reported being chained, segregated, systematically tortured, condemned to death and, for further isolation, transferred to a prison in France (Dingeman and Yacef 2008, 48-57). By 1960, the French counterinsurgency forces had effectively crushed the Algerian insurgency on a military level (DiMarco 2006, 70).

5. Evaluation and Findings

Despite the Algerian insurgents' failure on the military level, they still managed to obtain their objective: Algeria's independence. On the other hand, the French counterinsurgency fundamentally failed on the political-strategic level as its efforts mainly were, if not almost wholly, focused on military control and repression, which essentially led to its demise.

French Counterinsurgency

Through the Special Powers Act passed by the French government in 1956, counterinsurgent forces sought to use any means possible to re-establish their control over Algeria (Macmaster 2004, 6). Repressive methods were deemed necessary to reach their goal. The most powerful French politicians were committed to French Algeria, and the French Army could also not bear losing another colony since their loss of Indochina (Merom 2003, 83). Repressive methods were deemed necessary to prevent such a loss. To further justify their use of repressive methods, French forces used the "ticking bomb" argument to argue its need for the use of torture on the basis of extracting the necessary information to save lives and to avoid further insurgent terrorist attacks like the ones that took place in the European quarters in Algiers in 1957

(Macmaster 2004, 3-4). In addition, the French counterinsurgent forces propagated the questionable narrative of the communist nature of the insurgents (von Bulow 2016, 43), essentially seeking their North Atlantic allies to support their endeavours. The French forces also failed to take into account the nationalist and religious values of the indigenous population by attempting to force upon them their values (DiMarco 2006, 70-71).

The French counterinsurgency forces also did not consider the Algerian insurgency groups worthy of the laws of war of the Geneva Convention, or the ones accorded by the Hague regarding irregular wars, but instead considered them and labelled them as terrorists (Dingeman and Yacef 2008, 49). In fact, for some time, the French government did not want to recognize the events taking place in Algeria as a war because doing so would legitimatize the status of the Algerian insurgency as combatants rather than bandits or terrorists, who were, in their opinion not worthy of the human rights accorded to combatants in times of warfare (Macmaster 2004, 6-7). This led the French government to arrest, detain, extradite, torture, and execute insurgents without access to fundamental judicial rights like a lawyer and a court hearing (Macmaster 2004, 6). Again, although illegal through international law, the French counterinsurgents also used tactics of collective punishment to prevent the civilian population from protecting or aiding insurgents. These tactics included destruction, bombing and attacks on any villages near insurgent attacks (Macmaster 2004, 7).

Repressive methods did attain the French's military gain in the short term (DiMarco 2006, 71-72), but their actions delegitimized their positions in the international community as well as towards their own population and their colony. The use of torture, in particular, was referred to as "*la gangrene*" to compare it to a disease that revealed the corruption and fundamental disrespect of the human rights of a democratic state (Macmaster 2004, 8-9). It was also recognized as strategically inefficient on a political level because the violence drove many Algerians to the arms of the insurgency (Macmaster 2004, 8-9). In fact, by 1960, most of the civilian Algerian population refused French rule (DiMarco 2006, 70).

The intellectual population of France and the French media (mainly newspapers) had played a significant part in the French failure to maintain a solid political front regarding its destructive and disturbing counterinsurgent role in Algeria. Whether these intellectuals were directly affiliated with or in support of the FLN is questionable, but their role helped with the legitimacy of Algeria's will for independence and France's illegitimacy in wanting to maintain it as a French territory. Publications like *La Question* by Henri Alleg, supported by Jean-Paul Sartre's article "*Une Victoire*" in *L'Express*, and *Djamila Boupacha* by Simone de Beauvoir, Gisele Halimi and testimonies by many other intellectuals also uncovered the truth about France's dishonest face of a good, democratic, international, law-abiding state and its capability for unlawfulness (Vendetti 2018, 183). Both publications were accounts of atrocious torture suffered by Alleg and Boupacha in the hands of French counterinsurgent soldiers (Vendetti 2018, 179-180). Despite the will to censor articles of this nature, the continuous publications of accounts and testimonies of torture in Algeria by other newspapers made it possible for such information to be circulated. In Pierre Vidal-Naquet's words, an advocate against the crimes committed by France, "there is no example of a country responsible for such horrors having allowed such a quantity of information challenging the policies of its leaders" (Cohen 2001, 83).

Pressure was mounting regarding the allegations against the French army for torture. In 1957, to demonstrate goodwill to its population, the Commission for the Defense of Individual Rights and Liberties was established to investigate the allegations (Memor 2003, 124). The Commission, however, lacked a significant amount of power, failed to do the job it was established to do, and was, in essence, corrupt. The Commission did not have the legal authority to investigate the claims of torture but instead served as a diversion to avoid complaints from ending up in the newspapers (Branche 1999, 17-18). In addition, the Commission's synthesis of the complaints had

to be unanimous despite the differing ideologies and goals the administrators in place upheld. Some were there to clear what they believed were "fake accusations" against the French government, while others were there to uncover the truth (Branche 1999, 18-22). This prevented the Commission from coming to any real conclusions regarding their investigations.

Despite France's efforts to get its domestic population aboard its campaign against the Algerian insurgency, many of the French population in metropolitan France and some soldiers had turned against their government and protested the repressive methods used during the war (Merom 2003, 102-103). Many protests were broken down in violent and brutal ways by the police. A notable example would be the protests on October 17, 1961, otherwise known as the Paris Massacre, where many Algerians were killed and thrown in the Seine, and at least 11,500 protesters were arrested and 1,000 deported (Memor 2003, 129). Furthermore, many French soldiers refused to report for duty, which damaged cohesion within the French Army and, in turn, led to the institution's lack of legitimacy and authority (DiMarco 2006, 72-73). At this point, the Army did not have much regard for law or morality. In a memoir published in 2001, Paul Aussaresses admitted to ordering the execution of the revolutionaries Larbi Ben M'hidi and Ali Boumendjel and the staging of suicides to cover up the crimes (Dingeman and Yacef 2008, 48-49). The Army was even willing to take up arms against its own government when political decisions would cause obstacles to maintain French Algeria (DiMarco 2006, 73). In fact, they had attempted a coup when, in 1961, President Charles de Gaulle permitted Algerians to participate in a referendum to determine whether they wanted their independence or to remain part of France (Vendetti 2018, 178) (DiMarco 2006, 74). The political elite feared the extent to which it had lost control over its subsidiary bodies (Merom 2003, 146-147).

This separation between society and government regarding the policies the French population sought for Algeria versus those the government wanted was imminent. In a democracy, the people are the power. This divide led to the fear that the Algerian war was progressively destroying the French identity based on democracy and human rights (Merom 2003, 120). The French's legitimacy was also tarnished on the international level (Macmaster 2004, 8-9).

By the end of the Algerian war, France had the choice to either maintain French Algeria or risk domestic civil decay (Merom 2003, 91). Not wanting to admit to France's failure, de Gaulle says, " [...] decolonization is in our interest and therefore our policy. Why should we remain caught up in colonizations that are costly, bloody, and without end [...]" (Merom 2003, 110). Further to the 1961 referendum, which demonstrated a majority of French and Algerian will for the independence of Algeria, the Evian accord was negotiated and signed, making Algeria officially independent (Vendetti 2018, 178).

For the sake of moving past the grimness of the war crimes France had committed in Algeria, Charles de Gaulle passed multiple amnesty laws for the crimes committed (Vendetti 2018, 180). Amnesty was also granted to some revolutionaries who had initially been condemned to death in Algeria and France, including Saadi Yacef (Dingeman and Yacef 2008, 50).

Algerian Insurgency

The Soummam Conference in 1956, taking place in Cairo, gathered leaders of the Algerian *wilayahs* (provinces) to devise the best strategies to lead to Algeria's independence. It had essentially set the FLN's intention to primarily base its strategy on political, diplomatic, and relational ones due to its knowledge of France's superiority in military power (Stanton 2011, 59-60). It also recognized the necessity of exposing the French government to sympathetic governments and international institutions for its abuse of power and its crimes and, in turn, delegitimizing its rule and occupation of Algeria. These strategies were referred to as "moral

disarmament" (Thomas and Curless 2023, 8). Considering this decision, as previously explained, the FLN sought local support and international support to make "Algeria a problem and reality for the entire world" (von Bulow 2016, 30). On the international level, the support of Algerian immigrants in France, the Arab world and the West's support was the most important to the FLN (von Bulow 2016, 29). The FLN particularly relied on support from ex-colonies for its independence objective (von Bulow 2016, 31). The support of the Arab world was sought because the FLN wanted to demonstrate Algeria's distinctiveness from France; more specifically, the North African neighbours of Tunisia, Morocco and Egypt also proved to be very useful during the War in terms of political and material support (von Bulow 2016, 31-34). The post-1945 human rights period facilitated the development of these relations, emphasizing anti-colonialism (Thomas and Curless, 2023, 7). On a local level, the FLN sought to gain support by attempting to appeal to the majority Muslim population (Rabasa et al. 2006. 25). The FLN revolutionary leaders also still managed to lead and organize resistance and terrorist attacks from within their cells (Dingeman and Yacef 2008, 50). Despite the torture suffered by many Algerians, insurgent revolutionary leaders used tactics used by the French counterinsurgents to their advantage to further their goals of independence. Saadi Yacef explained that for every Algerian tortured and killed, many more would join the FLN to avenge these crimes (Dingeman and Yacef 2008, 57).

Despite the failures of its military strategies, especially after the Battle of Algiers in 1957, and despite the success the FLN had seen on a political level, its political failures must also be acknowledged. The rivalry between the MNA and the FLN was a political mistake that led to multiple Algerians dismissing both groups and abandoning revolutionary actions. While the FLN could avoid police infiltration initially, the MNA was infiltrated and repressed by the police (Aissaoui 2012, 230). Many of the MNA's leaders were arrested, and its newspaper was undermined. Naturally, the FLN gained popularity, authority over the ALN, influence in France and international support through economic and material means (Aissaoui 2012, 235). When some Algerians decided to change allegiances, they were pursued violently for the betrayal of the MNA and on the other hand, the FLN also violently pursued MNA supporters (Aissaoui 2012, 230-234). The rivalry reached a point where both groups would accuse each other of denouncing their supporters and militants to the police (Aissaoui 2012, 234). The rivalry between these two insurgency groups led to the violence unleashed on Algerians, who sought to support the resistance but decided to stop out of fear. This animosity towards the resistance caused by the violence experienced led to many Algerians disobeying the orders of the insurgents. For instance, the FLN called the Algerian population to boycott the Referendum, legitimizing Charles De Gaulle's Fifth Republic in 1958. Many Algerians purposely voted in spite of this call (Merom 2003, 87-88).

6. Conclusion

To conclude, political strategies are as crucial, if not more so, than the military strategies implemented by both the insurgents and the counterinsurgents. We learned from the Algerian War case that counterinsurgencies must be careful about their operations in this new day and age. Repression inherently conflicts with democracy, human rights, and the liberties related to it and, in turn, international laws. If democratic counterinsurgency forces, generally the pioneering states of international law and its promotion, cannot respect international law, how are insurgencies, typically non-state actors, expected to do so? Moreover, how can one expect democracy and international law to remain legitimate and survive if they are disregarded in times of interest? The use of propagandist methods to undermine illegal acts and justify them can still easily fall prey to the hands of insurgency propaganda to demonstrate the counterinsurgent's immorality and, therefore, undermine the counterinsurgent's efforts to reach its goals (Posner 2006, 689). In addition, picking and choosing what international laws to abide by or discard to fit national interests can erode domestic and international support (DiMarco 2006, 63), making the state at hand more vulnerable to failure at reaching its goal. Repression tactics might bring short-

term benefits in the success of a counterinsurgent force, but the lack of domestic and international support leads to the demise of its legitimacy (DiMarco 2006, 64). For that, counterinsurgency leaders must ensure that all tactics used fit a moral and strategic stance to be successful on all fronts (DiMarco 2006, 64).

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Radical Eco-chambers: Exploring Radicalization During the COVID-19 Pandemic

Mohamed Elgayar

1. Introduction

Global crises, such as the COVID-19 pandemic, tend to create unstable social environments that are fertile for radicalizing individuals. Understanding what results in an individual becoming radicalized begs the questions: How does increased inequality increase the propensity for radicalization? And what role do global crises play in exacerbating inequalities, feelings of insecurity, and uncertainty prior to radicalization? Based on the literature surrounding inequality and radicalization, I build a model that explores how COVID-19 exacerbated feelings of insecurity due to social, political, and economic inequalities prior to the pandemic. Radical groups exploit these circumstances to intensify distrust among the public and enhance individual grievances. I argue that radicalization in Canada increased during the pandemic due to increasing inequalities experienced by citizens, which increased their shared grievances and the feelings of insecurity they felt prior to the pandemic.

This paper begins by exploring the literature on radicalization, and current models by Doosje et al. (2016), before introducing how global crises exacerbate the phase of *sensitivity*. This paper then addresses evidence on the relationship between inequality and radicalization. This paper will then present the argument of growing inequality in Canada before introducing the increasing numbers of hate crimes during the pandemic, which I argue was a result of radical groups exploiting COVID-19 circumstances and increasing inequality. Finally, this paper evaluates how Islamist radicals and Far-Right extremists used the pandemic differently, and primarily how the latter was more prevalent in Canada. I argue that Far-Right extremism exploited the pandemic to gain support for the Freedom Convoy of 2022.

2. Pathways to Radicalization

Radicalization is a largely contested concept that often emerges with much controversy. Models have attempted to conceptualize the term in a more concrete manner; however, the term finds itself being used differently depending on disciplines and epistemological interests. The phrase “One man’s terrorist is another man’s freedom fighter” despite being a cliché, also embodies the discourse surrounding violent extremism literature (Ganor 2002). Radicalization, which should not be used interchangeably with terrorism, is one of the few concepts that unites all definitions of terrorism (Schulze et al. 2022). I used the definition outlined by Abay Gaspar et al. (2020) as the framework for the rest of this paper. He defines radicalization as “the increasing challenge to the legitimacy of a normative order and/or the increasing willingness to fight the institutional structure of this order” (Gaspar et al. 2020 p. 5). Another key component is understanding *online radicalization*, which is the aforementioned definition as it unfolds in the online realm. To my knowledge, only one paper has done a longitudinal study of social media radicalization and outlined indicators. Riebe et al. (2018) used conspiracy theories, anti-elitism, political activism, and support for violence as indicators outlined for online radicalization.

One of the primary indicators I use to measure radicalization in this paper are police-reported hate crimes from Statistics Canada. They are defined, "as a criminal violation against a person or property motivated by hate, based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or gender identity or expression, or any other similar factor" (Wang and Moreau 2022). A crime must be "in whole or in part, by a bias" to be considered hate-motivated (Department of Justice and Government of Canada 2022). The Canadian Department of Justice also cite a deficiency of statistics reports as under-reported. I will look at reported hate-crimes in Canada between 2014 and 2022 to measure increases in radicalization in Canada prior to and during COVID-19. Radicalization is an interdisciplinary concept that cannot be confined to one field. While many scholars have contributed to the field, a notable contribution has been a model of radicalization presented by Doosje et al. (2016). Figure 1 outlines their model, which presents the three phases for an individual to be radicalized.

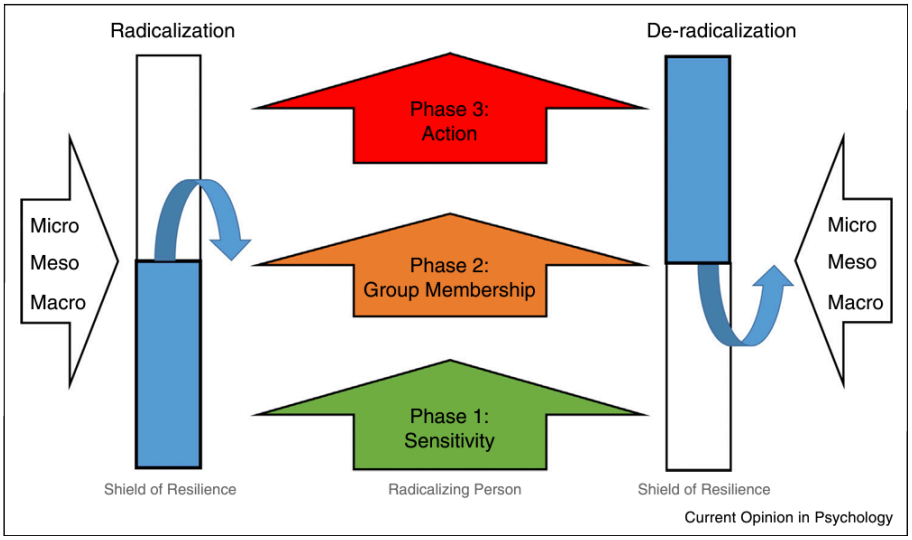

Figure 1 The (de)radicalization process and its determinants. From Doosje et al. (2016)

As this paper seeks to discuss how inequality leads to radicalization, I am primarily interested in how an individual becomes sensitive to radicalization under Doosje et al.'s model. In Phase 1, the *sensitivity* phase, individuals are prone to multiple factors, which lead them to becoming radicalized. I explore this further and seek to explain one of the key driving factors of sensitivity is inequality. In this phase, individuals are seeking significance, which they lost through a sense of humiliation, loss of status, and/or low potential for employment. Some of the key factors they outline as playing a key role in radicalization sensitivity are the feelings of uncertainty over belonging, the injustice felt towards a group with whom they identify, and the ability to socially engage with like-minded individuals. Furthermore, they outline that at the macro level individuals are influenced by larger societal factors, which threaten their way of life.

I seek to take this model a step backwards to include how social inequality during global crises exacerbate the feelings during the first phase. I present a model on how social inequality during times of crisis increases the grievances felt by individuals, which are exploited by radical extremist groups. Figure 2 outlines how I perceive global crises impact the sensitivity phase, which leave individuals vulnerable to radicalization. Global crises tend to exacerbate prior feelings of uncertainty and augment susceptibility to radicalization, particularly among youth (Drouin et al. 2020; King and Mullins 2021). During the COVID-19 pandemic, radicalization increased largely because of increases in perceived inequality, social isolation, and feelings of uncertainty.

Individuals tend to seek blame during global crises and COVID-19 was no different. In analyzing Spain's lockdown, Mondragon et al. (2022) found that upward and downward blaming was prevalent due to feelings of anger and emotional fatigue.

Global crises, as my model (Figure 2) predicts, increase grievances and social inequality, which in turn increases radicalization. These grievances are exacerbated and utilized by terrorist groups for recruitment purposes. The following section outlines how Islamist radical and Far-right extremist group utilized the pandemic and the increased sensitivity phase to radicalize and recruit individuals.

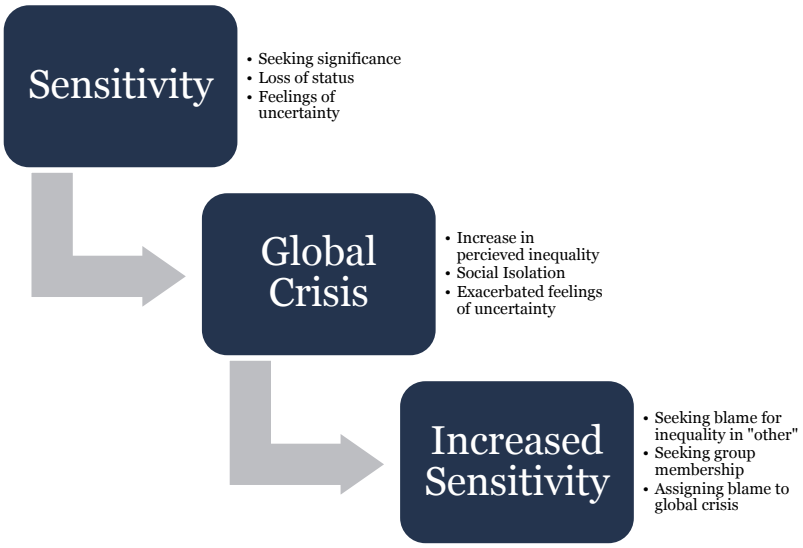

Figure 2 Global Crises and Sensitivity Model

3. Inequality and Radicalization

Inequality impacts public opinion and how individuals engage in social life. This is no different to radicalization. Income inequality impacts support for radical right-wing groups in and encourages those below the national average to vote more right-wing (Han 2016).

A key determinant of explaining radicalization is social inequality, and although it does not tell the whole story, it does influence individuals' grievances and group membership, which Doosje et al. (2016) outline as key factors in radicalization. Social inequality among youth predicts both poor health and increases both objective inequality and feelings of inequality among adults (Elgar et al. 2015). These social changes do not explain all increases in radicalization, but they do explain some of the increases of radicalization during times of increased inequality. Group grievances are heavily influenced by an individual's loss of status as they associate the injustices they face to personal failures because of increasing socioeconomic inequalities (Webber et al. 2018). Globalization shattered established identities and increased feelings of fear and uncertainty (Bauman and Haugaard 2008). As social grievances increase, they tend to be associated with in-group/out-group collective identity issues, which involve feelings of anger and resentment towards groups of different gender, race, religion, migratory status, and political affiliation (Rousseau and Hassan 2019). Both right-wing and religious radicalization offer strong group membership, and an opportunity to self-identify with a threatened group that needs to fight to survive.

The impact socio-political factors have on radicalization have yielded inconsistent results at best. However, in an evaluation of 141 publications, Franc and Pavlovic (2023) found that socio-political inequality is more consistently positively correlated with terrorism and cognitive radicalization. They found that there were too many inconsistencies in findings with how economic inequality impacts radicalization across both Islamist and Right-Wing extremists in existing research. However, in an evaluation of attributes of social and economic inequality, Nawaz (2024) found that the following were indicators of radicalization: 1) Economic prospects; 2) Political marginalization; 3) Relative deprivation; 4) Injustice; 5) Exclusion; 6) Inequality; 7) Oppression; 8) Sociodemographic control; 9) Robustness check.

Nawaz found that the inconsistency in results is due to constant emphasis on linear models of radicalization. Instead he presents a non-linear model of studying radicalization in Pakistan, which addresses the individual-level perceptions of fluctuating socioeconomic conditions in relation to radicalization (Nawaz 2024). Feelings of insecurity and uncertainty increase shared social, political, and economic grievances make youth increasingly susceptible to radicalization (Al-Badayneh, Al-Assasfeh, and Al-Bhri 2016).

I seek to build on the literature by addressing how perceptions of inequality are exacerbated by global crises, adding to the existing hypothesis that radicalization is not simply a linear process, but fluctuates depending on the perception of inequality and how they are utilized by radical groups.

4. COVID-19's Impact on Inequality and Radicalization in Canada

Inequality in Canada during COVID-19

Income wealth gaps became a focal point for many Canadians during and after the COVID-19 pandemic. According to Statistics Canada the income gap has widened even further in 2023 due to rising interest rates, which were impacted by their lack of job security during the pandemic (Statistics Canada 2024a). In 2023, the average income for the top income household increased by 3.2%, the highest of any group compared to the year prior; financial asset gains benefited the top 20% of Canadian earners, increasing the gap between them and the bottom earners to 64.6%. According to Statistics Canada, this is due to the increasing cost of living outweighing their income gains.

The pandemic also affected regions of Canada differently, with reported cases, hospitalization, and deaths being higher among low-income neighborhoods (Bambra, Lynch, and Smith 2021). The pandemic increased already existing social, political, and economic inequalities based on ethnicity and race; in Canada death rates among minority ethnic communities were higher than those of their white counterparts. This trend was also evident with income inequality, where low-income neighborhoods in Toronto for example, had significantly higher cases of COVID-19 (113 cases per 100,000) and hospitalizations (20 cases per 100,000). Furthermore, communities with a higher percentage of Black, Asian, immigrant, and other minority ethnic communities had higher COVID-19 related cases, hospitalization, and deaths. This reflected the inequalities in access to healthcare and COVID-19 treatment (*CBC News* 2020). High income jobs also had the privilege of being able to work from home and had less chances of catching the illness.

Canada's social inequality is reflected in its racialized wage gap and job market. Many racialized Canadians, despite having similar degrees, if not higher, to the national average, found it more difficult to gain employment two years after graduation (Galarneau, Corak, and Brunet 2023; Statistics Canada 2023b). Experiences of discrimination in the workplace were heightened by the pandemic, where Black Canadians reported being a victim of ethnic discrimination 8.4

times more than non-racialized populations (Statistics Canada, n.d.). In 2021, 25.9% of the Black population in Canada lived in unsustainable housing, in comparison to the rest of non-Black Canadians, where 9.7% of the population lived in unsustainable housing.

The gender wage gap in Canada has reduced since 2007 with women being paid higher salaries for the same jobs, however, this was not the case for all women, especially during the pandemic. Loss of employment during the COVID-19 pandemic had a greater impact on women working part-time jobs and in sectors like retail, food, and accommodation (Hou and Picot 2022). The pandemic was a setback for women in the work force as many of them lost their jobs when they were deemed "non-essential". The COVID-19 pandemic not only increased inequalities in Canada but also exacerbated the feelings of insecurity Canadians faced prior to it.

Hate-Crimes in Canada (2014-2022)

Hate crimes ranging from vandalism to violent assaults have only increased after the start of the pandemic in Canada. Hate crimes increased 72% in 2021 alone (DeLaire 2024). Statistics Canada reported that hate crimes in Canada have increased 7% between 2021 and 2022 (Bower 2024), while another report presented that the cumulative increase from 2019 to 2022 was 83% (Statistics Canada 2024b). Figure 3 shows the increase of police-reported hate crimes between 2014 to 2022. Much of the rise in hate crimes between 2019 and 2022 was targeting race and/or ethnicity, with crimes targeting Black population accounting for 57% of the increase in hate crimes based on race or ethnicity. Hate-crime based on religion is higher in 2022 than in 2019 but dipped from 2021. Violence based on sexual orientation increased 12% between 2021 and 2022, with a record high of 491 incidents in one year ("Brief on Statistics Canada's Report on Police-Reported Hate Crime in 2022" 2024).

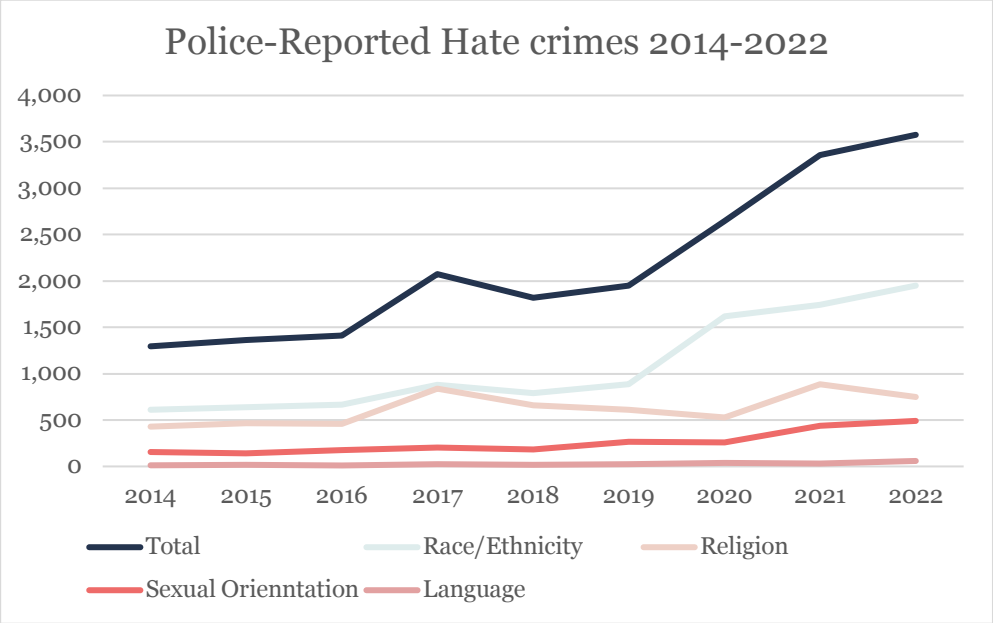

Figure 3 StatsCAN Police-Reported Hate Crimes

The pandemic brought about new challenges to combating hate crimes as the internet has been woven into COVID-19 life. With lockdown procedures in place, youth were getting most of their education from home and social media and online exposure had increased significantly. This exposure brought about new challenges through online gaming forums, social media, and online

hangouts. This is especially true for youth between the ages of 15 and 24, where 99% of them used the internet, and 91% used social networking sites (Statistics Canada 2023a). 71% of young Canadians between 15 and 24 reported seeing online hate and violence in 2022, alone. Social media posts were reported to be inciting hate or violence; Cyber-related hate crimes increased from 92 reported incidents in 2018 to 219 reported cases in 2022, primarily targeting Black people and a person's sexual orientation (Gowling 2024).

Police-reported hate crimes are often affiliated with radicalization; as outlined earlier, these crimes must have been committed with motivation against a specific group. What my data found was an increase in hate crimes during the pandemic, which correlates with increases in inequality and the feelings of insecurity individuals felt during the pandemic. This does not necessarily mean that inequality increases radicalization, however, it is a factor. Radicalization is often a result of a dyadic relationship where an individual's grievances are enhanced by external factors, leading them down a path to seek inclusion and blame for their circumstances – one of which is the feelings of inequality. These external factors are influenced by external factors, which leave individuals feeling more insecure over their circumstances and seek retribution to resolve, what they perceive, as unjust treatment.

As society becomes more unequal, they become more polarized; the poor will choose to vote for more radical right-wing politicians (Han 2016). It should not then come as a surprise that during the pandemic many individuals who were on lockdown sought to communicate with like-minded individuals whom they believed were experiencing the same grievances. The following section will illustrate how different groups used the pandemic to radicalize individuals from a distance to pursue their aims.

Weaponizing the Pandemic

The COVID-19 pandemic has posed unprecedented challenges to global health systems and economies, however, what is often neglected is the profound social and psychological impacts on individuals and communities. Of significant interest is the potential influence of the pandemic on radicalization. COVID-19 was especially utilized by Daesh to communicate, indoctrinate, and potentially recruit new members to their cause; a strategy that was utilized by assigning blame (Ackerman and Peterson 2020). Major incidents tend to polarize and divide society, this was no different to social restrictions that were designed to prevent the spread of disease.

People with mental health issues were deeply impacted by the pandemic. Many with a history of mental health treatment suffered greatly and lost their social support groups during the pandemic and became more vulnerable (Simon et al. 2021). This vulnerability resulted in many seeking social communication online. As outlined by Doosje et al. (2016), feelings of marginalization increase the likelihood of individuals being radicalized. It was however, the fear and insecurity that the pandemic caused, which exacerbated feelings of uncertainty and marginalization, which augmented their susceptibility to radicalization, especially among youth (Simon et al. 2021; King and Mullins 2021). With the time individuals have spent at home during the pandemic, there comes a heightened risk of being exposed to extremist content, and potentially becoming more radicalized (Malik 2024). Furthermore, lockdowns have given violent extremist groups a socially isolated captive audience rendered susceptible to radicalization strategies by violent extremist groups through their shared grievances (*The Economist* 2020).

Although global violent action was reduced during the pandemic, radicalization strategies and discourse increased. The pandemic disrupted normal lives and created senses of fear and insecurity among individuals (Kecmanovic 2020). These feelings were exacerbated by stay-at-home orders and social isolation individuals experienced. These conditions lead to increasing

feelings of paranoia, anxiety, and potentially, self-destructive behaviors (Panchal et al. 2023). The feelings of uncertainty made individuals vulnerable to radicalizing narratives, which blame "others" for their actions (McCauley and Moskalenko 2008).

Different groups utilized the pandemic differently to pursue similar goals. Although there may have been a decline of violent action, radicalization and recruitment strategies have increased. The following sections outline how Islamist Radicals and Far-Right Extremist groups utilized the pandemic differently by signaling the common grievances for online recruitment and radicalization.

Islamist Radicals

Violent extremist groups utilized the pandemic in a myriad of ways that reflected their goals. Radical Islamist propaganda sought to target opposition to their goals from a distance and utilized the pandemic to call for violence (Gunaratna and Pethő-Kiss 2023b). As the pandemic began to spread, Daesh was among the groups that utilized propaganda to demonstrate that the pandemic was punishment against nations who persecuted Muslims. In their statements on COVID-19's significant impact on China and the United States, Daesh proclaimed this had been due to the former's mistreatment of Uighur Muslims and the latter's interventions in Iraq, Syria, and Libya (Hanna 2020). The pandemic was seen as divine intervention to show how those who followed American aspirations were volatile and weak; Deash affiliates compared how in one week of the pandemic more Americans died than in the attacks on September 11, 2001 (Meek 2020). As-Sahab, an Al-Qaeda propaganda group, showed that the pandemic exposed the "brittleness and vulnerability of your [America's] material strength" (Meek 2020).

Twitter set the stage for many extremist groups; this was no different for Daesh. With individuals unable to communicate in person, many malicious actors used the pandemic as a means of increasing their support for their agenda (Comerford 2020). The pandemic's duration saw changes in online strategies by radical groups, which increased radicalization (Avis 2020). Daesh's social media teams utilized "X" (then Twitter) during the pandemic to further divide society, radicalize vulnerable, socially isolated citizens (Lee and Colautti 2022).

Daesh's campaigns were not limited to inciting violence; they took particular interest in attempting to recruit others for their own well-being. Their marketing teams made statements urging their supporters to stay clear of cities, and even welcomed them to join the Islamic State for their safety (Gunaratna and Pethő-Kiss 2023b). Citing how Muslims practice *wudu* (ablution) before prayer several times throughout the day and have laws regarding cleanliness in *Fiqh* (Islamic Laws) that were given by the Prophet Muhammad (Peace Be Upon Him), Daesh argued that they were best equipped to deal with a spreading virus (Gunaratna and Pethő-Kiss 2023b). They even presented isolation as a choice that would lead them to martyrdom for preserving human life.

Islamist radicals utilized the pandemic primarily for recruitment using a pronged approach in pursuit of their goals. First, they presented the weaknesses of Western society to their followers and the pandemic's role as a punishment towards infidels. Second, they presented their way of life as that which can prevent the spread of the pandemic, a way of life that is cemented in Islamic practices. This approach allowed Islamist Radical groups to not just show that many of them share a common grievance, but they offered marginalized peoples a group to belong to.

Right-Wing Extremists

Far-right extremists exploited the COVID-19 pandemic using in their own unique methods as a means of recruitment, amplifying their presence, and instigating public unrest. The first way they exploited the crisis was through inciting violence and urging their followers to commit armed assault against "cities, critical infrastructure, members of the military force, and black Americans" (Gunaratna and Pethő-Kiss 2023a). The Capitol riots of January 6th, 2021, are the most infamous of attacks that members of Far-Right extremist groups have taken credit for ("Capitol Riots Timeline: What Happened on 6 January 2021?" 2021). The event brought together members of various radical groups, however, one notable group was a group of far-right travelers who joined simply to witness and ended up joining the insurrection ("#StopTheSteal: Timeline of Social Media and Extremist Activities Leading to 1/6 Insurrection" 2021). Although distinct in their beliefs and goals, they overlapped in their actions and were bound on a spectrum of radicalization due to the spread of disinformation about the 2020 election results in the USA. This spread of disinformation was fueled by conspiracy theories prior to COVID-19 health restrictions and lockdown procedures, which were used by Far-Right groups as propaganda signaling that the government was taking away American citizens' freedoms.

The Freedom Convoy of 2022, which caused the Canadian House of Commons to invoke the Emergency Act on February 21st, 2022, symbolized the polarization among Canadians during the COVID-19 pandemic. American reporter Tucker Carlson went as far as describing it as "single most successful human rights protest in a generation" (Aleem 2022). Right-wing rhetoric was a driver for many of those involved, echoing sentiments from Canada's neighbors to the South from Fox News talking points on "First Amendment Rights." Social media echo chambers were filled with sympathetic voices that opposed a government that divided a nation during a time of crisis (Pinheiro 2023). Social media gives opportunities to out-group voices to share how they believe they have been marginalized and their grievances for other like-minded individuals. By its very nature, 21st century political life exists in the digital realm, with new populism being offered a voice due to the "Internet's immediacy, and social media's selection biases and ability to disseminate hate" (McGranahan 2017). The Freedom Convoy managed to successfully utilize anti-vax disinformation along with rhetoric from January 6th Capitol Hill insurrection portraying left-wing governments as enemies to the rights of individuals.

The insecurities caused by the pandemic led to increasing distrust of the media among Canadian citizens and anger towards government. The primary target of this anger was Justin Trudeau and media illiteracy led many Canadians to follow the mantra "do your own research," when challenging decisions and narrative surrounding the pandemic (Hoechsmann and McKee 2023). The most remarkable – and perhaps worrisome – feature of the convoy were the alliances forged around opposition to vaccine mandates, which polarized Canadians as they sought who to blame for their current circumstances. The flow of disinformation, along with time spent online by Canadians during the pandemic, have hindered the potential of preventing radical algorithms among individuals. As stated earlier, more youth are spending time online and many of them are witnessing hateful content.

Far-Right conspiracy groups emerged in Canada through access to new communication methods; far-right fringe platforms began to operate, especially those which prevented government surveillance – the most common being *Telegram*. The prevalence of conspiracy narratives calls for participation and activism, and anti-elitist discourse were in abundance one these platforms during the pandemic, showing an increase in both violence-supporting behavior and radicalization (Schulze et al. 2022). Support for violence was a key indicator of online radicalization, even if there was no action by individuals. It is important to note, that individuals may fit into a category of radicalization but fear to act due to its psychological taxation. Canada

experienced increased far-right extremism throughout the pandemic, with the majority of the victims being primarily targeted for their race and ethnicity.

5. Conclusion

This paper explored the relationship between inequality and radicalization. Models of radicalization have focused on how grievances influence the radicalization of individuals and other models explored how global crises exacerbate the perceptions of inequalities individuals experience. What I sought to explore was how global crises, such as the COVID-19 pandemic, increased feelings of insecurity individuals felt and how that led to an increase in radicalization. My research found that as inequality increased, so too did the number of hate crimes in Canada, especially those targeting different races and ethnicities.

Social, political, and economic inequalities do impact radicalization; my findings were consistent with the model of how global crises exacerbate feelings of insecurity. Of interesting note is that online activity was more prevalent by extremist groups, and this online activity is what drastically increased. Extremist groups were engaging with individuals more primarily because they were at home, and this could have been the determining factor in the increased radical activity. In further exploring practices by Islamist radicals and far-right extremist groups during the pandemic, I found that inequalities in Canada were used to recruit members primarily for the latter group. Far-right radical groups utilized social inequality, and the environment created by COVID-19 to spread disinformation about regulations, which are limiting their freedom. As people were spending more time at home with access to more online content, their algorithms presented them with other like-minded individuals with shared grievances.

Further research should investigate critical junctures and turning points that influenced individuals towards more radicalized perspectives. Furthermore, research should look at discourse used by radicalized individuals to analyze how feelings their common grievances and feelings of insecurity were heightened during the pandemic.

Appendix 1: Police-reported hate crimes from 2012-2022

	2014	2015	2016	2017	2018	2019	2020	2021	2022
Type of Motivation									
Total police-reported hate crime	1,295	1,362	1,409	2,073	1,817	1,951	2,646	3,355	3,576
Race or ethnicity	611	641	666	878	793	884	1,619	1,745	1,950
Religion	429	469	460	842	657	613	530	886	750
Sexual orientation	155	141	176	204	186	265	258	438	491
Language	12	18	13	23	14	25	37	33	59
Disability	10	8	11	10	9	3	8	16	15
Sex and gender	22	12	24	32	54	56	49	60	89
Age	6	4	5	4	9	8	5	14	7
Other	27	44	35	48	73	58	101	82	98
Unknown motivation	23	25	19	32	22	39	39	81	117

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The Recolonization of Indigenous Peoples Through Decisions from the Supreme Court of Canada

Braedon McDonald

1. Introduction

Canadian constitutional law is an implicit tool used by the colonizer to oppress Indigenous peoples and historically "Western law was foundational to the governing regimes of European states and to the cultivation of distinct identities built on racial understandings of superiority and inferiority" (Mawani 2015, 420). This use of the law to marginalize Indigenous peoples still occurs with court judgements that reinforce the role of the colonial state or that are purposely vague to avoid empowering Indigenous peoples. Thus, it seems counterintuitive for Indigenous peoples to ask a colonial institution, the Supreme Court of Canada (SCC), to help them get justice for the oppression they have endured. It appears even more counterintuitive when looking at the Supreme Court justices and realizing that, until recently, there has never been Indigenous representation on the bench. Some would argue that looking to the Supreme Court of Canada for reconciliation and justice is the only viable option because of the institution's power and legitimacy. However, this paper will argue that the SCC is a colonial institution that actually re-colonizes Indigenous peoples through some of its decisions. This will be demonstrated by examining interpretations of federalism that exclude Indigenous communities, a vague legal obligation known as 'the duty to consult', and SCC remedies—such as the Gladue principles—that may actually create problems for Indigenous peoples. Then, the paper concludes by suggesting that space should be made on the bench for Indigenous justices.

2. Federalism: A Division of Powers that Excludes Indigenous Communities

While analyzing federalism in Canada Richard Simeon explains that, "the problems of intergovernmental relations lie at the heart of the crisis of the Canadian federal system. Indeed that crisis can be defined largely as one not so much of our social or economic systems, but of our political institutions - of the relations between governments, of the division of power and responsibility between them, and of the ways in which they deal with each other" (Simeon 1980, 15). This crisis is exacerbated by the silencing of Indigenous voices in these political institutions, and the relations between provincial governments and the federal government certainly impacts Indigenous communities. It is important to examine federalism and the SCC's interpretation of it when looking at the oppression of Indigenous peoples in Canada because the division of powers excludes Indigenous authority. In fact, s.91(24) of the BNA Act of 1867 gives the federal government authority over Indigenous peoples and their reserve land (McCrossan and Ladner 2016). Interestingly, this component of the constitution was included as protection for Indigenous peoples against local settlers and Indigenous peoples were given 'distinct constitutional status' (McIvor and Gunn 2016). However, s.91(24) is not only problematic because it excludes Indigenous communities from having recognized autonomy under the constitution, but it also gives the federal government direct control over Indigenous peoples. Federal control over Indigenous peoples is what allowed colonization in Canada to occur in the first place, and this constitutional control allows the colonial powers to continue with the SCC's reinforcement.

R.v. Sparrow (1990) was a Supreme Court case that challenged federal fishing regulations. Sparrow was charged with using a longer net than was allowed under the Indian Food Fishing

Licence which he argued was against his Aboriginal right to fish under s.35(1) of the Charter (Dufraimont 2000). The court recognized that much of the exercise of Aboriginal rights is heavily regulated by federal legislation as required under s.91(24) of the BNA Act. Further, the SCC was unwilling to assert that all government regulation of Aboriginal rights is unconstitutional (Dufraimont 2000). The SCC's solution was to develop a test that would assist in determining the constitutionality of any federal legislation that infringes upon Aboriginal rights. When determining whether an infringement of Aboriginal rights has occurred, the court asks questions of unreasonableness, undue hardship, and preferred means (Dufraimont 2000). These questions seem purposely vague to avoid empowering Indigenous peoples and diminishing the federal power to regulate many of the activities that are included in Aboriginal rights. For instance, what might not seem 'unreasonable' to colonial institutions like the government or the SCC may certainly be unreasonable for Indigenous peoples trying to partake in their cultural practices. The government and SCC may also interpret undue hardship differently than Indigenous peoples. For instance, with something like fishing regulation, it may be argued that the environmental benefits outweigh the cultural harms that the regulations impose on Indigenous communities. Moreover, when looking at whether the regulation denies the holders of the right their preferred means of exercising that right, it seems unfeasible to determine what those preferred means are and how the government should approach demonstrating this. Thus, the *R.v. Sparrow* case reaffirmed the federal government's power over Indigenous peoples through s.91(24) of the BNA Act and asserted that the federal government can justify infringements on Aboriginal rights if they meet certain low-threshold criteria.

Delgamuukw v. British Columbia (1997) is an SCC case involving a land claim submitted by Indigenous peoples. While it is an important case for 'Aboriginal title', it also expands the power of provincial governments and allows for the continued subjugation of Indigenous peoples. In this case, Chief Justice Lamer suggests that Indigenous claimants should not focus exclusively on Indigenous laws to establish occupation of land and it now seems that Indigenous title is first determined through common law and then from Indigenous perspectives (McCrossan and Ladner 2016). This demonstrates a Supreme Court that is reaffirming the power of the state over Indigenous peoples by diminishing Indigenous legal systems and emphasizing the importance of the colonial common law. This common law includes the division of powers that grants provinces and the federal government their power, including the power of the federal government over Indigenous peoples. The *Delgamuukw v. British Columbia* case also asserts that the purpose of reconciliation is to align Aboriginal interests with the broader interests of society as a whole (McCrossan and Ladner 2016). This is problematic because if a proposed action goes against Indigenous interests, provincial governments or the federal government would be at an advantage when making an argument that something is in the broader interest of society. This is because power over people and space in Canada is divided between the provinces and the federal government and these governments are supposed to represent the interests of the people they govern. Consequently, it is evident that the SCC favours the existing power structure with governmental powers being divided between the federal government and the provinces while Indigenous peoples remain subjects of implicit colonial rule.

The *Tsilhqot'in v. British Columbia (2014)* was an SCC case where the Tsilhqot'in nation challenged provincial decisions to authorize forestry activities in lands that were traditionally used by the Tsilhqot'in people (McIvor and Gunn 2016). A key question in this case was whether a valid provincial law could ever justifiably infringe upon Aboriginal rights in the way the federal government can as determined in *R.v. Sparrow*. The Tsilhqot'in argued that the province did not have constitutional authority to infringe upon Aboriginal rights because these rights are at the core of the federal government's exclusive jurisdiction found in s. 91(24) of the BNA Act (McIvor and Gunn 2016). In the SCC decision, it was held that provincial legislation of general application would apply to land held under Aboriginal title up to the point of infringement. Furthermore, the court determined that provinces could justify an infringement and would now be entitled to use

the Sparrow justification and infringement framework (McIvor and Gunn 2016). Although this case was important for Indigenous peoples as the first time the SCC recognized Aboriginal title under s.35(1) of the Constitution Act of 1982, it also expands provincial power over Indigenous territory and avoids meaningfully empowering Indigenous peoples. A significant part of the case was examining provincial authority under the constitution and how it interacts with federal authority which demonstrates the SCCs focus on the division of powers. This focus on which colonial government has the power excludes Indigenous communities and illustrates that there is "…a clear judicial orientation towards present jurisdictional divisions which conceptually exclude and undercut Indigenous legal orders and territorial responsibilities" (McCrossan and Ladner 2016, 412). Furthermore, *Tsilhqot'in v. British Columbia* made it so that Indigenous peoples have to worry about provincial governments potentially infringing their rights as well as the federal government. This reduces Indigenous peoples' ability to rely on the federal government's legislative authority under s. 91(24) of the BNA Act when provinces attempt to pass legislation that affects Indigenous title and Indigenous rights (McIvor and Gunn 2016). Despite the fact that what Indigenous peoples truly desire and deserve is self-governance, the Tsilhqot'in nation argued that the federal government has exclusive jurisdiction over Aboriginal rights because this argument was preferred over an expansion of provincial power. However, this is problematic because Indigenous peoples should not have to choose the lesser of two evils and make a decision about which level of colonial government should control them. Thus, the *Tsilhqot'in v. British Columbia* case illustrates that the SCC favours jurisdictional divisions that exclude Indigenous legal orders and territorial responsibilities, and the SCC reinforces colonial power when it asserts that both the federal and provincial governments can justifiably infringe upon Aboriginal rights.
Incorporating Indigenous Voices: Treaty Federalism in Canada.

The division of powers under the BNA Act inherently excludes Indigenous input by only looking at provincial and federal powers; this is because, "First Nations of Canada had no input into the constitutional division of powers in 1867 nor in 1982. We have no sense of ownership regarding the federal and provincial laws that apply to us simply because those laws were forced upon us without our consent, consultation or input, especially the much despised federal Indian Act" (Robe 2011, 6). This is a very clear demonstration of how colonialism is still inflicted upon Indigenous peoples through the colonial legal system and the institutions, like the Supreme Court, that enforce it. Indigenous peoples are subjects of this system of control in which they did not consent to, and the courts are still making decisions based on these powers that the colonizers gave to themselves. It is understandable that the Supreme Court of Canada relies on the division of powers to make decisions where there are disputes between the federal government and the provinces. It becomes problematic when the courts utilize the division of powers to determine which level of government controls different aspects of Indigenous communities. These interpretations of federal and provincial power not only exclude Indigenous peoples, but they also conflict with the right to self-determination which is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (Henderson 2019). However, there are ways that Canada can incorporate Indigenous voices into the constitutional landscape, such as implementing treaty federalism and recognizing Indigenous governments as the third order of government in Canada.

Treaty federalism is a framework that can be used as a step towards resolving the issue where the courts only consider provincial and federal jurisdictions while simultaneously excluding Indigenous nations. Treaty federalism is situated within the idea of treaty constitutionalism which "…represents a transformative vision of a new way of living together within, the shared space we call Canada, which is grounded in the implementation of the treaties (honouring their original spirit and intent) and which responds to the persistence of constitutional pluralism and the need for political renewal within Indigenous communities, within Canada and in the relationship between" (Ladner 2019, 230). Treaty federalism attempts to go beyond the colonial binary of federal and provincial powers by creating a decolonized Canada where Indigenous governments are included in the cooperative federalism model

(Henderson 2019). Empowered Indigenous governments would be considered an equal and could negotiate directly with the provinces and federal government. This would not diminish the normal powers given to the federal and provincial governments under the BNA Act, but it would add in Indigenous governments as having the authority over themselves rather than the federal government. Thus, under this conceptualization of Indigenous governments as an equal in federalism, Indigenous governments would operate much in the same way as the provinces do. Indigenous governments would not be looking to break free from Canada and would only be interested in legislating for the purposes of Indigenous ways of living. The laws enacted and the jurisdiction exercised would be in regard to issues pertaining to Indigenous peoples, their resources and lands, without going beyond. This way of including Indigenous government as an equal in Canada's intergovernmental relations would be a way of fulfilling s.35 of the 1982 Constitution which asserts that Indigenous peoples have the inherent right to self-government (Robe 2011). It would also fulfill the right to self-determination that is enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Henderson 2019). An implementation of treaty federalism in Canada would demonstrate a true nation-to-nation relationship between the state and Indigenous peoples where cooperation would occur on a more level playing field without the colonial chokehold dominating Indigenous-settler relations.

The Supreme Court of Canada could move towards this framework and reduce its tendency to recolonize Indigenous peoples by solely using the colonial binary of federal and provincial powers to settle disputes over Aboriginal rights. By recognizing Indigenous self-government and implementing treaty federalism in Canada, the SCC would not have to worry about undermining their legitimacy and dismantling a colonial system because the division of powers would still guide the courts in making decisions about other non-Indigenous issues that occur between provinces and the federal government. Further, the Supreme Court of Canada would also garner international recognition for moving towards the goal of Indigenous reconciliation in Canada and achieving some of the objectives of UNDRIP. The SCC could embrace this framework of treaty federalism, or treaty constitutionalism more broadly, by providing clarity in its decisions to the federal and provincial governments on how to best implement the treaties that have gone unfulfilled. Moreover, in future Indigenous jurisdictional cases, the SCC could gradually move away from the binary division of powers to one that includes an Indigenous order of government and the court could make reference to UNDRIP to support this move. The SCC has already been increasingly framing the federation as requiring intergovernmental cooperation and has introduced collaborative norms in its jurisprudence which could be adapted to include cooperation with Indigenous governments (Harding and Snow 2023). This would be a turning point for the Supreme Court of Canada in which it would go from being complicit in the marginalization of Indigenous peoples, to being a promoter of Indigenous-settler cooperation and reconciliation.

3. Beyond Good Intentions: Examining the Limitations of the Duty to Consult

The duty to consult is not a poor legal mechanism for seeking to achieve reconciliation between the Crown and Indigenous peoples. In fact, the intent of the duty is to require that the Crown consult with Indigenous peoples before taking any action that threatens existing or potential Indigenous rights (Stacey 2018). The duty to consult is meant to foster the cooperative approach between nations that is discussed above in the treaty federalism section.

Crown consultation, or the duty to consult, comes under the 'honour of the Crown' and should always occur when Indigenous groups are affected and, if necessary, accommodate their concerns (Stacey 2018). The 'if necessary' is part of the problem with this vague Crown obligation because determining whether accommodations are necessary is subjective and thus gives the Crown the advantage in arguing that accommodations are not necessary when balanced against the broader interests of society. Another issue with the duty to consult is it does not meet the criteria for Free,

Prior, and Informed Consent (FPIC) which is a fundamental principle from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007). This is because the duty to consult does not require explicit consent for an activity or project to move forward, it only requires a good-faith consultation process (Haida Nation v. British Columbia 2004). The scope of this consultation is made on a case-by-case basis, often based on the potential adverse impact of the proposed action and the strength of the Aboriginal rights claim (Do 2020). Thus, the consultation may merely involve giving notice of a proposed action to Indigenous communities. This demonstrates that the duty to consult is not sufficient for addressing the oppression of Indigenous peoples and the intrusions in their lands, and it would be desirable for FPIC to be the standard for engaging with Indigenous communities as outlined by UNDRIP.

If the duty to consult was performed in a way that was genuine and had the goal of mitigating threats to Indigenous rights, it could help address Canada's failure to recognize Indigenous sovereignty in any politically meaningful way (Stacey 2018). Recognizing Indigenous sovereignty is important for reconciliation because Indigenous sovereignty refers to the inherent authority and self-governance of Indigenous peoples over their lands, resources, and people. However, directly recognizing Indigenous sovereignty would threaten Crown sovereignty and "the Supreme Court of Canada itself explains that the Crown's duty to engage honourably with Indigenous peoples flows from its unilateral assertion of sovereignty in the face of Indigenous peoples' pre-existing sovereignty over the territory of Turtle Island" (Stacey 2018, 408). This is an explicit denial of Indigenous sovereignty and a direct assertion of Crown sovereignty over Indigenous peoples in Canada. This reduces Indigenous peoples to subjects of the colonial state and demonstrates that the goal of the Supreme Court of Canada was not to bring Canada closer to recognizing Indigenous sovereignty, but to reaffirm the power of the Crown through the guise of reconciliation. The judiciary often mischaracterizes Aboriginal rights by focusing on cultural differences rather than treating Indigenous legal traditions as holding equal authority (Do 2020). Further, it is important to understand that the duty to consult and the honour of the Crown are judicial creations and the Constitution does not mention these legal practices. Thus, there is no clear account of the constitutional and theoretical basis for the duty to consult which has created a vague obligation for the Crown to fulfill (Stacey 2018). The SCC has avoided bold changes in its decisions like recognizing an Indigenous sovereignty. This is why the vagueness of the duty to consult is intentional: it is meant to avoid empowering Indigenous peoples and to preserve the colonial state with which the court is associated. Instead, the SCC has taken a cautious approach with the duty to consult that moves Canada towards a more cooperative settler-Indigenous relationship but does not go beyond dialogue and continues to reinforce the power of the Crown.

Haida Nation v. British Columbia (2004)

In the Supreme Court of Canada case, *Haida Nation v. British Columbia*, the court is tasked with deciding on an issue where the Ministry of Forestry in British Columbia replaced and transferred a tree farm license to a large forestry corporation named Weyerhauser (Barrie 2020). This replacement and transfer was done without the consultation of the Haida Nation and the SCC held that the government should have consulted the Indigenous community because the Crown is bound to act honourably in its dealings with Indigenous peoples (Barrie 2020). The duty to consult was expanded upon and established in this case because of the idea that the government had the duty to consult with the Haida Nation prior to moving through with the license transfer. This case combined with a few subsequent cases, known as the Haida trilogy, established a new legal doctrine that guides the relationship between the State and Indigenous communities when proposed government actions have the potential of affecting Indigenous land or culture (Do 2020). The duty to consult doctrine that came out of the Haida trilogy is significant because it brings Indigenous-settler relations in Canada closer to the principles of UNDRIP. In s.32(2) of UNDRIP it asserts that, "states shall consult and co-operate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and

informed consent prior to the approval of any project affecting their lands and territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources" (Barrie 2020, 3). There is no doubt that the duty to consult established by the SCC aligns with this component of UNDRIP, however, this SCC interpretation of consulting and cooperating with Indigenous peoples falls short of implementing FPIC. It is also immensely vague and ignores the resource and power imbalance between Indigenous peoples and the state in any consultation or negotiation they may have. Thus, it would appear that the SCC did not include a comprehensive interpretation of the duty to consult because it wanted to avoid diminishing the power of the Crown and empowering Indigenous peoples in a way that may undermine Crown sovereignty. This implicitly recolonizes Indigenous peoples because when they seek redress from the SCC, the court seems more concerned about undermining Crown power over Indigenous peoples. Thus, the SCC carefully crafted a Crown obligation that is misleading because it is only a surface-level remedy that looks to enhance the reputation of the SCC and the Crown. This cosmetic solution actually reinforces the power of the Crown and allows the Crown to move forward on projects that harm Indigenous communities as long as it can prove that proper consultation occurred. Some may perceive this stance on the duty to consult as an overly harsh criticism, however, the SCC has a history of making bold judgments where the court has actively taken a stance in controversial debates, thereby empowering various minority groups.

In *Haida Nation v. British Columbia*, there are certainly a few areas that are either vague or fall short of the meaningful change that Indigenous peoples require for proper reconciliation. In the decision, the SCC asserted that the scope of the duty is proportionate to the strength of the case supporting the right/title, and to the seriousness of the potentially adverse effect on the right/title (Haida Nation 2004). The 'seriousness' of potential adverse effects is subjective and this criteria could advantage the Crown because adverse effects that impact Indigenous cultural practices may not be considered 'serious' when weighed against the potential economic benefits of certain projects that interfere with Indigenous land. Furthermore, the SCC makes it clear that there is no duty to agree; rather, the obligation is to engage in a meaningful process of consultation (Haida Nation 2004). This is problematic because it essentially renders the duty to consult useless. Without the need to reach an agreement when the duty to consult is triggered, the Crown merely needs to listen to Indigenous concerns (at most) but then the proposed action can continue even with strong Indigenous opposition. The SCC even admits that the duty may only be to give notice, disclose information, and discuss any issues raised in response to the notice (Haida Nation 2004). Moreover, the SCC further describes the lack of power that Indigenous communities have when it says, "this process does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim. The Aboriginal 'consent' spoken of in Delgamuukw is appropriate only in cases of established rights, and then by no means in every case. Rather, what is required is a process of balancing interests, of give and take" (Haida Nation 2004, at para 48). While it is understandable that Indigenous groups would not have a 'veto', this statement by the SCC minimizes the importance of Indigenous input when the state takes action that impacts their land, culture, and identity. Further, when it discusses the 'balancing of interests', it is deceptive because the state's interests are always prioritized especially when Indigenous communities cannot change the proposed action and the Crown is not required to accommodate Indigenous peoples. When discussing the nature of the consultations the SCC also asserted that, "as for Aboriginal claimants, they must not frustrate the Crown's reasonable good faith attempts, nor should they take unreasonable positions to thwart government from making decisions or acting in cases where, despite meaningful consultation, agreement is not reached" (Haida Nation 2004, para 42). This statement is interesting and contradictory because it seems to imply that Indigenous peoples have some kind of power in these consultations that could potentially 'frustrate' the Crown's attempts but in reality, the Crown can proceed with the proposed actions despite Indigenous disapproval. Also, it seems to suggest that there is an equal onus on Indigenous peoples to act honourably even though it is the Crown that is proposing potentially rights-infringing actions and must reconcile with Indigenous peoples. Thus, the duty to consult does not limit the Crown's

authority over Indigenous peoples and it appears to simply be a box that the Crown can tick in order to move forward with actions that potentially infringe upon Indigenous rights. This duty also clarifies and reinforces the power of the Crown while vaguely providing guidelines for Indigenous-settler consultations.

4. (In)Justice for the Indigenous: Gladue Principles in Canada

The Gladue Principles and Gladue Reports came out of a Supreme Court of Canada case known as *R.v. Gladue (1999)* which was concerned with reducing Indigenous incarceration in Canada. This case was important because it introduced sentencing principles that took a substantive equality approach and requires Canadian courts to consider the 'unique background and circumstances' of Indigenous offenders (Dickson and Stewart 2022). These sentencing principles led to specialized Gladue Reports that are meant to consider the uniqueness of Indigenous offenders and should consider all available sanctions other than imprisonment. This is important for addressing the issue of disproportionate sentencing of Indigenous peoples in Canada. There is no doubt that there were good intentions behind these sentencing principles, however, this remedy appears to be another cosmetic solution that gives the courts another box to tick when confronted with Indigenous peoples. This is evident because "the Gladue requirements have been an active element of the criminal law in Canada for over two decades, yet Indigenous incarceration rates have continued to rise precipitously and established approaches to risk management in sentencing and corrections have relegated many Indigenous offenders to longer sentences served predominantly in higher security institutions" (Dickson 2021, 1). The longer sentences served in higher security institutions may be due to the net-widening caused from Gladue reports where criminal justice institutions are receiving more information about Indigenous offenders. Researchers have found that there is 'negative subjective contextualization of race and offending' in the Gladue Reports and that some of them reflected racist stereotypes of Indigenous peoples with regard to substance abuse, anger management, and family life (Dickson and Stewart 2022). These racist stereotypes portrayed in Gladue Reports are a reflection of the underlying issue that Indigenous peoples must endure when facing the courts; there is an inherent power imbalance when Indigenous peoples are forced to use colonial institutions to seek redress and reconciliation. Often remedies of the SCC become new tools for the marginalization of Indigenous peoples because even with the right framework and mechanisms in place, state institutions are responsible for implementing them. For proper reconciliation and redress, it needs to be realized that Indigenous issues require Indigenous solutions. Remedies created by the SCC have limited impact because they do not address the root cause of the oppression that Indigenous peoples face; rather, they provide an illusionary solution that can be helpful for some Indigenous peoples but only once the harm has already been inflicted. This is likely because remedies like the Gladue Principles are focused on recognizing difference which can be important for a substantive equality approach but it often has negative implications for Indigenous peoples because recognizing difference 'others' Indigenous peoples which may contribute to the racist stereotyping that was found in Gladue Reports (Murdocca 2018).

Admittedly, this criticism of the Gladue Principles created by the SCC is less harsh than that of their use of the division of powers and the creation of the duty to consult. Without a doubt, there are positive aspects of the Gladue Principles but like the duty to consult, the Gladue Principles implicitly reinforce the power of the state over Indigenous peoples. It allows the state to collect more information on these offenders which can further the bias that courts have when confronted with Indigenous offenders. This bias occurs in the courts while the root causes of disproportionate Indigenous criminalization are not addressed and continue to fester. The SCC needs to take an approach that is more aligned with the ideas of Indigenous self-government and Indigenous sovereignty. Under self-government, Indigenous peoples should be in control of their own peoples which would include things like administering justice through their own processes. This is in line with the third order of government argument that is made in the federalism section

of this paper. Indigenous peoples already have their own approaches to administering justice that emphasize restorative justice which is based on, "compensation of the losses suffered by the victims of crime, the reconciliation of the offender with the victim and community, and the rebuilding or 'restoring' of the just order" (Brunk 2001, 32). The Gladue Principles provide an opportunity for restorative justice but Indigenous offenders must first progress through the colonial system and are certainly not guaranteed a restorative approach in their sentencing. Much in the same way that the provinces are responsible for administering justice, Indigenous nations should have the authority to administer their own justice in ways that align with their culture and restorative thinking. Fully permitting Indigenous nations to administer their own justice may be perceived as naive and impossible, however, the SCC must be more creative in its remedies to at least get closer to achieving this ideal. It is evident that making the checklist longer for the state before they can continue oppressing Indigenous peoples, is meant to maintain the legitimacy of the SCC while not being too bold as to change the power imbalance between Indigenous communities and the state.

5. Reconciliation Roadmap: Indigenous Representation on the Bench

Much of this paper has been about the irony that Indigenous peoples need to go through colonial institutions to seek redress and reconciliation for the oppression they have endured as a result of colonization. The Supreme Court of Canada is the main institution that Indigenous peoples can utilize in their quest for justice but the SCC derives its power from the state and thus appears to be unwilling to empower Indigenous peoples if there is potential for undermining Crown sovereignty and state power. This reluctance to meaningfully empower Indigenous peoples leads to vague decisions that implicitly recolonize Indigenous peoples by reinforcing the status quo, that is, the colonial project. Some may dismiss the claims throughout this paper as intense and unattainable, especially a third order of government in Canada and allowing Indigenous nations to administer their own justice. These qualms are reasonable, especially the perception that the current constitutional arrangement does not necessarily allow for changes that would enable Indigenous peoples to live completely separate from colonial institutions. However, it is important that Canada continues working towards reconciliation and an Indigenous self-governance so that eventually Indigenous peoples will not have to rely on colonial institutions. A manageable reform that should be implemented immediately is requiring that one seat be reserved for an Indigenous justice on the SCC.

Requiring an Indigenous justice on the SCC would be a significant step forward because the main issue with colonial institutions is that they are missing Indigenous perspectives. Since September 2022 there has been an Indigenous justice on the SCC—Justice Michelle O'Bonsawin—but this has not historically been the case and is not required by law. This missing Indigenous perspective on the bench (until recently) could be one explanation for the lack of meaningful and bold change coming from the SCC when deciding on Indigenous issues. Reserving a spot for an Indigenous justice would not only be beneficial for Indigenous peoples, it would also benefit the SCC itself because having an Indigenous justice would enhance the legitimacy of the SCC. Further, Indigenous peoples' trust and confidence in the Supreme Court of Canada may be increased by having a justice that represents their identity and perspectives. An Indigenous justice would also help push the goal of reconciling Indigenous legal orders with Crown sovereignty. This is because "the ability of non-Indigenous judges to properly interpret Indigenous legal orders has not withstood scrutiny, as those judges are 'susceptible to the danger of only recognizing law within Indigenous societies if they find analogies to concepts within English law'" (Cheeke 2017, 102). This is a clear example of why Indigenous representation on the SCC is important, non-Indigenous judges are trained on common law and are ill-equipped to interpret Indigenous law. Moreover, only recognizing law within Indigenous societies that has resemblance to English law is reaffirming the problem that the SCC continues to implicitly reinforce the power imbalance between Indigenous peoples and the state. Having an Indigenous perspective on the bench would

at least allow for more insight into Indigenous legal traditions and legal orders. This reform, implemented either by convention or statute, is feasible because it is similar to the existing rule that reserves seats on the bench for the Quebecois. The reserved Quebecois seats on the SCC were meant to boost the legitimacy of the court by respecting Quebec's legal traditions and social values (Cheeke 2017). This legitimacy would be further enhanced by demonstrating that the SCC also respects Indigenous legal traditions and social values by reserving seats for Indigenous representation on the SCC.

Reserving seats on the SCC for an Indigenous justice may help address some of the issues raised in this paper without needing to undergo profound changes in the current system. It is evident that Justice Michelle O'Bonsawin already brings Indigenous perspective to the Supreme Court and she has experience teaching Indigenous law at the University of Ottawa's common law program (Supreme Court of Canada 2023). However, to see the necessary changes a long-term Indigenous perspective is needed on the bench with a required Indigenous seat. When examining how the SCC excludes Indigenous communities in land dispute cases by only interpreting federal and provincial powers under the BNA Act, an Indigenous justice would likely be more inclined to work towards treaty federalism. This is because an Indigenous justice would likely see beyond the colonial binary of the division of powers and would be interested in including Indigenous communities in debates about jurisdiction. Furthermore, an Indigenous justice would likely recognize the inherent power imbalance that pervades the Crown consultation process and may be interested in leveling the playing field in these consultations. Having Indigenous perspectives on the bench could change the duty to consult to a duty to agree or something closer to the FPIC principle in the UNDRIP. Lastly, an Indigenous justice would likely be sympathetic to the idea of moving away from reliance on colonial institutions to solve Indigenous problems, and moving more towards a system that incorporates Indigenous justice ideals like restorative justice. These possibilities are undeniably speculative without experiencing an Indigenous perspective over the long-term, however, including Indigenous perspectives is uncontroversial and can only improve the issues that Indigenous peoples currently endure. An Indigenous justice would understand the challenges addressed in this paper and could add perspective to the bench that may influence non-Indigenous judges and their implicit biases.

One current hindrance to appointing Indigenous judges to the SCC is the emphasis on bilingualism on the bench because it is uncommon for Indigenous judges on the shortlist to speak both English and French (Nasager 2020). However, a substantive equality argument would suggest that there should not be a bilingualism requirement for Indigenous candidates and that reserving an Indigenous seat on the bench is meant to level the playing field. Another criticism of this reform could be that Indigenous identity is not singular and that one Indigenous justice cannot possibly represent all Indigenous communities. This is a reasonable criticism, however, an Indigenous justice at the very least can provide some Indigenous perspective in deliberations and would likely have some familiarity with different Indigenous legal traditions. Thus, reserving space on the bench for Indigenous justices furthers the process of reconciliation and at the very least, it makes the SCC more respectable and gives Indigenous claimants more confidence and trust in the institution.

6. Conclusion

In conclusion, colonialism currently operates in covert ways in which are not necessarily intentional. This disguised colonialism is often the product of using colonial structures and institutions to provide redress and reconciliation to Indigenous peoples. Thus, it is not the heinous type of colonialism that has been seen in the past, but it is the result of applying a Eurocentric lens to issues that are uniquely Indigenous. The use of colonial law to marginalize Indigenous peoples still occurs with court judgements that reinforce the role of the colonial state or that are purposely vague to avoid empowering Indigenous peoples. This paper analyzed the

division of powers and how it excludes Indigenous communities in jurisdictional disputes. It also looked at the Supreme Court of Canada's innovation known as the duty to consult which is a misleading Crown obligation that reinforces Crown sovereignty and the power imbalance between Indigenous peoples and the state. Further, the paper explored the Gladue Principles and the effectiveness of this SCC remedy and determined that it may actually lead to net-widening and the further stereotyping of Indigenous offenders. Lastly, a potential reform was provided which suggested creating a requirement for an Indigenous justice on the Supreme Court of Canada to ensure the inclusion of Indigenous perspectives and potentially mitigate the covert colonialism that currently plagues our structures and institutions.

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