Public Indigeneity and the Logics of Membership and Identity Formation
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Introduction

This paper begins an examination of the implications of the way the state approaches the assessment and management of indigenous status (what Kirsty Gover calls "public indigeneity") in the United States and Canada. It approaches this question through a political theoretical lens, looking at the way that canonical theorists of multiculturalism have conceptualized the relationship between group-based identity differences and state intervention, and suggesting that Gover's work recommends a more thorough consideration of the effects of differing policies of recognition of indigenous status, and therefore a realignment in how political theorists think about the logics of identity formation. The goal of the paper is modest, and suggestive, rather than conclusive. At core, it suggests that political theorists should confront the shortcomings of the way identity is conceptualized by many theorists of multiculturalism. Grappling with this shortcoming will help political theorists to make more compelling normative claims about how the state ought to relate to identity groups.

The paper contains four main sections. First, I will contest the way in which many now canonical theorists of multiculturalism overlook (or conceive too narrowly) the role of the state and schemes for the legal recognition of difference in the construction of group-based identity differences. In general, these theorists either take group-based identities (more commonly,

cultures[1]) to be given exogenously,[2] or focus on the potential of state recognition to condone the domination of some members of minority identity groups ("internal minorities") by the leaders of those groups, thus constraining their autonomy.[3] The problem with this way of conceptualizing the role of state policies of recognition for group-based identity differences is that it fails to attend to the way in which *all* state choices, not just choices explicitly identified as having the goal of recognition, participate in the process of the construction of cultural meaning. That is, as is surely a familiar concept, there is no available neutral choice. As the extensive literature on the social construction of race suggests, it is misguided and dangerous to believe that contemporary formulations of group-based identity differences reflect essential, timeless, and authentic truths about the content of those identities. Rather, both broad social dynamics and specific state policies have contributed to the shaping of current meanings, and there is nothing essentially illegitimate about state policies affecting the content of group-based identities. Indeed, such effects are an inevitable effect of any state choice (and also, needless to say, of the refusal to make explicit choices). Looking at the effects of policies of recognition with this broader focus will allow an evaluation that better accounts for the full range of potential effects of such policies.

[1] It is worth noting that a terminological and conceptual difficulty regarding the nature of the relationship between cultural identities, racial identities, and ethnic identities is pervasive in this work. Excellent work calls attention to the way that the concept of ethnicity has been "continually positioned against older notions of difference, especially those of race" (Hattam 2007, 48), in a way that connects ethnicity with culture, and therefore language and religion, while race is associated with fixed bodily differences (Hattam 2007, 59), in order to valorize ethnic difference as a particularly American type of difference and simultaneously erase and defer consideration of race. The difficulty is that there is considerable conceptual confusion (conscious and unconscious) in the use of the nomenclature of race, ethnicity, and culture, though the terms are importantly both related and distinct. Cultural difference fails to convey the depth of difference often attributed to racial(ized) minority groups and elides its connection to bodily characteristics. But talking only about cultural difference is also insufficient, as it risks pretending that there is not a latent connection between the types of cultures that are often taken to be worth recognizing within liberal democracies and an historically particular relationship to place and nation that is often also connected to race.

[2] Kymlicka, Taylor, etc.

[3] Appiah, etc.

Second, the paper shifts to considering the relationship between public indigeneity (as regulated and constructed crucially through state intervention) and indigenous identity. It considers two brief examples of the regulation of indigenous identity and then moves through Kirsty Gover's extended exploration of the relationship in her 2010 book *Tribal Constitutionalism*. The goal of this section is to demonstrate that the effect of state regulation on indigenous identity suggests that the failure of many theories of multiculturalism to incorporate the influence of state regulation into their understanding of the processes of identity formation represents a significant shortcoming. While a major goal for Gover is to argue that states should incorporate the way that tribes think about and manage membership into the processes for state recognition of "public indigeneity," my focus in this paper is on the implications that understanding should have for political theory. As a result, the third section of the paper works to specify more precisely how Gover's work should encourage change in political theoretical conceptions of identity and identity formation. In particular, I argue that recognizing the limitations of the way identity formation is typically understood by theorists of multiculturalism recommends both more attention to the role of the state, and a method that includes examination of contemporary political dynamics. A fourth section concludes.

Logics of Identity Formation in Theories of Multiculturalism

Though identity and cultural difference are central to theories of multiculturalism, such theories examine to a greatly varying degree the way in which identity and cultural differences form and become important to the meaning-making activities of individuals. One of the key motivations for this paper is the desire to examine and respond to a problematic assumption in theories of multiculturalism about the way that group identities function. Specifically, many mainstream theorists of multiculturalism have not given sufficient attention to the *formation* of

group differences. The overall result is that these theorists seem content to treat group-based differences as exogenous, given, fixed, and occurring in naturally-associated clusters. That is, much of the multiculturalism literature seems to take both individual group identity affiliations and the existence of identity groups as given, from which it proceeds to ask how the state should recognize or accommodate extant differences.[4] These perspectives err in failing to explicitly consider the *politics* of identity – how group identities are constructed, maintained, and transformed, especially through political and legal institutions. To demonstrate the limitations of such approaches, this paper leverages insightful interventions that call attention to the role of the state in constructing the meaning and salience of identity from a variety of disciplines.[5] This section will explore the work of three now canonical theorists of multiculturalism to articulate the way they understand the process of identity formation, and then explore the limitations of those approaches.

One way to articulate the key motivations for this project is through a critique of the way Will Kymlicka (and others) argues for the need for group-differentiated rights. In *Multicultural Citizenship*, Kymlicka asserts as a premise that access to cultural meanings is required for freedom.[6] He then moves on to use the bulk of the book to consider whether and under what circumstances the liberal values of equality and equal respect demand "group-differentiated rights" for cultural groups. The problem is that this moves through the argument too quickly, failing to interrogate the relationship between (cultural) identity, freedom or autonomy, and the state. Kymlicka argues that most members of "ethnic" minorities have voluntarily chosen to leave their countries of origin and can therefore be reasonably required to relinquish ties to their previous "societal cultures," while "national" minorities should be supported in maintaining their

[4] See, e.g., Kymlicka 1995, Taylor 1994, Tully 1995.
[5] Haney-López 2006, Scott 2003, Wedeen 2002, etc.
[6] Kymlicka 1995, ch. 4.

societal cultures.[7] However, he does not consider the effects of law on constructing the nature and content of both of these types of cultural difference. Instead, Kymlicka considers culture and cultural meanings to be given independently of the majority society, leaving the state to consider after the fact whether to accommodate cultural differences, how, and on what grounds.[8]

The problem with this approach is that it elides the role of the state (and other social influences) in constructing cultural and other identities, particularly when those group-based identities have been the objects of oppression or subordination.[9] By taking cultures as given, Kymlicka fails to recognize that the relationship between autonomy, identity, and the state is not static, but malleable. That is, the way the state has approached difference in the past and the way it currently approaches difference both contribute to the construction of the content, social value, and salience of that difference. Understanding the relationship between autonomy, identity, and the state to be static errs by failing to appreciate how the state participates in the construction of identity-based differences and thus taking those differences to be objects constituted outside the realm of the state. In response to this observation, I aim to think carefully about the implications of the now commonplace observation that identity is constructed for political theories that aim to provide normative conclusions about how states should respond to cultural or other group-based identity differences.

A similar perspective is expressed in Charles Taylor's seminal engagement with the politics of recognition.[10] Taylor's central argument responds to the argument that identity is shaped by recognition, and, therefore, by misrecognition, and that misrecognition can "inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode

[7] Kymlicka 1995.
[8] Kymlicka 1995.
[9] This objection is closely related to the charge that Kymlicka's treatment of culture has essentializing and ossifying effects, but focuses slightly differently.
[10] Taylor 1994.

of being."[11] He takes seriously the insight that different cultures provide different contexts of meaning, and thus concedes that it might be useful to allow the insistence on the presumption that all human cultures have some meaning to offer. He therefore supports efforts to move toward a Gadamerian fusion of horizons, to allow for assessment of the contributions of the cultures under consideration through the transformation of both our understandings and our standards of value. But Taylor's conclusion that the best response to demands for equal recognition of cultural (and other) differences is "a willingness to be open to comparative cultural study" and "an admission that we are very far away from that ultimate horizon from which the relative worth of different cultures might be evident"[12] makes a move similar to Kymlicka's. Taylor also does not substantively engage with the question of how the state might be implicated in the construction of cultural differences within liberal democracies, and in their comparative valuation. The result is that his response offers little to members of groups historically constructed as inferior or subordinate, and ignores the significant role the state has played in that construction.

Similarly, James Tully's *Strange Multiplicity* asks: "Can a modern constitution recognise and accommodate cultural diversity?"[13] Tully criticizes a conceptualization of cultures as "separate, bounded and internally uniform," but seeks to replace that view not with one that attends to the central role of states, law, and other structures of authority in shaping the nature and content of cultures (and other axes of group-based identity difference), but rather with the view that cultures are "overlapping, interactive, and internally negotiated."[14] His view of cultures and cultural differences is enhanced by his recognition that cultures are "continuously

[11] Taylor 1994, 25.
[12] Taylor 1994, 73.
[13] Tully 1995, 1.
[14] Tully 1995, 10.

contested, imagined and reimagined, transformed and negotiated, both by their members and through their interaction with others," and that as a result "[c]ultural diversity is a tangled labyrinth of intertwining cultural differences *and* similarities."[15] But this version of cultural difference still elides the importance of the role of the state in the construction and maintenance of the cultural differences that persist today. That is, though Tully conceptualizes cultures as dynamic, he still focuses on the state (and constitutionalism) as an entity or process that arrives after the evolution and establishment of cultural differences.

That these now canonical theorists of multiculturalism and diversity err by promoting an "essentialist" conception of culture is by now a well-established critique. K. Anthony Appiah, Brian Barry and Jeremy Waldron, among others, have articulated this critique, arguing, as summarized by Alan Patten, that "[t]he theory of multiculturalism is founded on an 'essentialist' picture of cultures as determinate, bounded, and homogenous, a picture that is empirically false and morally dangerous."[16] The critique of essentialism asserts that a theory of multiculturalism that relies on an essentialist conception of culture risks recommending policies that harm members of minority groups by reducing them to cultural stereotypes, or fail to protect vulnerable members of minority groups from their groups' illiberal customs.[17] As a result, these critics often conclude that there are few situations in which policies of multiculturalism do not violate core liberal norms, and thus that theories of multiculturalism are fundamentally flawed. Though the charge of essentialism is an important one, my central concern in this paper is not to renew this charge. Rather, my focus is another important dynamic that is often overlooked: the role of the state and the law in particular in shaping the content and salience of identity group differences.

[15] Tully 1995, 11.
[16] Patten 2011, 735-8, drawing on, among others, Appiah 2005, Barry 2001, and Waldron 1992.
[17] Recall Okin 1999 "Is Multiculturalism Bad for Women?"

My point here is that an important dynamic largely ignored by theorists of the politics of recognition is the way that state action (or inaction) works not only to establish the terms by which group-based identity differences can be recognized by the state, but also to shape the nature and content of those group-based identities. That is, to conceptualize the state and the law solely as tools that can be used to recognize extant group-based identities is to misunderstand the historical processes through which group-based identity differences are constituted and given social meaning. When political theorists and policy makers take group-based identity differences as given, or at least constituted outside the realm of the state and the law, they fail to recognize the way that the use of state and legal powers to categorize groups and individuals shapes both the meaning and the salience of group-based identity differences. This lack of attention is problematic because it results in a failure to recognize an important implication of the now common belief that cultural and other differences are constructed. That is, it fails to interrogate whether and how the differences of which contemporary identity groups demand recognition have been or may be in the future shaped, perpetuated, or warped, by state and legal intervention.

This perspective contributes to the view of group-based identity differences that undergird many contemporary policies relating to identity diversity and lead to potentially troubling outcomes. For example, the way that the "existing Indian family" doctrine that emerges from the Indian Child Welfare Act is adjudicated, by often insisting on the demonstration of the Indian identity of the families from which or to which a purportedly Indian child will be transferred, leads to the establishment of a relatively narrow set of cultural markers being equated with "authentic" membership in an Indian tribe.[18] By understanding Indian identity to inhere in a specific set of cultural practices and putting the judiciary in the position of

[18] Jaffke 2006.

protecting these practices (or not), the efforts of legislators to protect and recognize the importance of maintaining Indian families, though sincere, risk reinscribing an essentialized version of Indian cultural practices in the law as "authentic."[19] These and other such laws are established without sufficient consideration of the ways in which efforts to use state and legal institutions to recognize group-based identity differences can affect the nature and content of those differences.

As discussed above, there is a broad and continually developing recognition of the idea that identities are constructed, and that that construction takes place in interaction with the state (as well as by other social institutions and influences). Anthropologists have long argued that cultures are constructed, sociologists advocate understanding, for example, the history of the formation of racial differences, and critical race theorists critique legal norms that naturalize racial differences. This type of approach to culture is commonplace in some disciplines, but has been unevenly incorporated in political science and political theory. Political scientist Lisa Wedeen argues that understanding culture as "semiotic practices," or "practices of meaning-making,"[20] will improve the ability of all political scientists to make more sophisticated arguments about culture, by recognizing the way these practices are affected by institutions and politics. She argues that cultural meanings should be understood to "exist inside historical processes, which themselves are always enmeshed in changing relations of power."[21] Understanding culture in this way will enable political scientists to better understand why cultural practices gain and maintain meaning, and will allow them to appreciate the way that the state and other institutions participate in the construction of those semiotic practices. Similarly,

[19] These types of dynamics recall the idea of "wounded attachments," as developed in Wendy Brown's *States of Injury* (1995).
[20] Wedeen 2002, 714.
[21] Wedeen 2002, 714.

anthropologist David Scott recommends that contemporary political theorists engage more thoroughly with the implications of the anthropological commonplace that culture is constructed, by critiquing widespread "inattention to the ideological history of claims about culture."[22]

This shift in understanding the provenance of cultural and other meanings can importantly expand the kinds of questions that are visible, or considered relevant. For example, critics of colorblindness jurisprudence argue that colorblindness discourse in American jurisprudence obscures, rather than eliminates, the contributions of legal and state institutions to construction of racial and cultural meanings. Proponents of a colorblindness approach to group-based identity differences argue that, now that we have recognized the harms caused by the explicit exclusion of certain people from a wider political body or community based on their ascribed membership in identity groups, efforts to resolve the associated harms should prioritize the removal of any explicit recognition of difference from law and public policy. Overt discrimination having been transcended, the belief is that the harm caused by racial classification is closely connected to the use of classification *as such* and that the appropriate response is to eschew anything that looks like formal classification.[23] Those holding this view are likely to find any policy that attempts to recognize cultural difference potentially suspect.[24] This point of view is appealing to many because of the torturous (to say the least) history of the effects of formal classification in the United States and elsewhere; certainly most historical efforts at classification can easily be called insidious. Nonetheless, the trouble with this anti-classification approach, as critics of colorblindness jurisprudence highlight, is that it neither prevents courts and other public

[22] Scott 2003, 111.
[23] Some of the most prominent examples of this kind of reasoning issue from the United States Supreme Court and what is often called "colorblindness jurisprudence." See, for example, *Parents Involved in Community Schools v. Seattle School District No. 1* 551 US 701 (2007).
[24] Several current and past United States Supreme Court Justices could be included in this camp, as could several theorists of multiculturalism.

institutions (not to mention private individuals) from categorizing people according to race, racially-associated cultural markers, or other group-based identities, nor alleviates the harms engendered by a history of racialized subordination.[25] The difficulty of endorsing the use of law and public policy to recognize group-based identity difference is that any explicit effort to recognize those differences requires acknowledging that the state, the law, and public policy are always already involved in the construction of the salience of difference; there is no available neutral posture for the state to adopt.

Public Indigeneity and the State

This section shifts away from the previous section's focus on the tendency of political theorists of multiculturalism to elide the role of the state in thinking about the politics of recognition. It uses brief examples of the relationship between the state and the recognition of indigeneity and the work of Kirsty Gover to argue that there is much left out by the approaches outlined in the previous section. More specifically, in her 2010 book, *Tribal Constiutionalism*, Gover argues that the way indigenous membership is regulated and managed by the state has had an important effect on the way that indigenous groups think about membership and what kinds of rules they use to regulate who counts as a member. The core goal of the book is to use a study of tribal constitutions to understand the tribal view of indigeneity. Gover argues that the way that *tribes* think about tribal membership must be a crucial component of the way that states recognizes that identity and membership.

In the United States, the legal relationship between tribal governments and state and federal governments allows tribes to run gaming operations on reservations, even when those

[25] See, e.g., Haney-López 2006 "A Nation of Minorities."

operations would not otherwise be permitted by the applicable state laws.[26] This has led to the establishment of a significant number of gaming operations on reservation land, administered by tribal governments or their delegates.[27] Often, the profits of these operations accrue directly to individual members of the relevant tribe. Entitlement to a share of these profits is tied to formal membership in these federally-recognized tribes, a status that is administered by the tribes themselves. Several tribes that have significant gaming operations have "disenrolled" a significant number of former members, excluding them from membership and therefore from profiting from gaming. These practices have prompted a variety of popular news sources to criticize the decisions of these tribes on the basis that they unjustly exclude individuals who are "really" members. As *This American Life* puts it, tribes are "doing exactly the opposite of what you'd think they'd do: they're kicking people out of the tribe, huge numbers of them, including people whose ancestors *without question* were part of the tribe."[28] This claim is problematic for a number of reasons. First, it fails to recognize that the authority to determine what is required to be a member of the tribe is part of the tribal government's legal authority.[29] But more importantly, it makes a claim about how we should expect tribes and their members to behave, a claim that is rooted in popular, unconsidered, understandings of what tribal identity inheres in. This is an example of how these conceptions act to make access to the various material benefits of public indigeneity contingent on adherence to a stereotyped vision of tribal identity, even within a politics that claims that recognition of group-based identities is valuable.

A similar example emerges from Canadian jurisprudence on aboriginal rights. In particular, in Canada, in order to claim "aboriginal rights" to land or special hunting or fishing

[26] King 2011.
[27] King 2011.
[28] *This American Life*, "Tribes," website description: http://www.thisamericanlife.org/radio-archives/episode/491/tribes, emphasis added
[29] Canby 2009, 9-11.

access, aboriginal groups must be able to demonstrate that the rights they are claiming can be traced to traditional pre-contact activities.[30] This means, for example, that groups that cannot demonstrate that they engaged in significant trade before the colonial encounter are not permitted to trade or engage in other commercial activities with the products of their exercise of their aboriginal rights.[31] This practice is vulnerable to the charge of essentialism, insofar as it reduces aboriginal identities to a particular set of practices at a time when they could be said to be unaffected by colonial influences. What I am more interested in examining is how state action has contributed to the continuing equation of Aboriginal identity with particular "traditional" hunting and fishing practices. For example, though Aboriginal identity today is closely associated with hunting and fishing, this association evolved in the context of a lengthy prohibition by the Canadian government of trade in agricultural products by Indians, and an exclusion of Indians from access to homesteading land grants.[32]

As Gover explores in *Tribal Constitutionalism*, these examples demonstrate that differences in the methods that states use to regulate tribal membership shape both which individuals qualify for tribal membership (and thus which individuals qualify for attendant public benefits) and the cultural significance of particular membership rules.[33] Thus the difference between the use in the United States of membership in federally-recognized tribes to regulate official recognition of individuals' indigenous status and the use in Canada of a separate register of "Indian status" to confer that recognition is not inconsequential. The difference in administrative policies constitutes a substantive way in which state policy intervenes in the

[30] Ladner and McCrossan 2009, 273 and throughout, discussing the test established in *R. v. Sparrow* (1990). Aboriginal rights must have also escaped extinguishment before 1982.
[31] Ladner and McCrossan 2009.
[32] Moss and O'Toole 1991, s.C. The prohibition in trade in agricultural products was in force from 1880 to 1951, and the prohibition on homesteading from 1862 to 1951.
[33] Gover, *Tribal Constitutionalism*, 2010

evolution of indigenous identity. Put another way, the way the state assesses who qualifies for official indigenous status affects not only which individuals are eligible for relevant state benefits (material and immaterial) but also how indigenous groups, though purportedly autonomous, conceptualize the material of their own identities. Gover's point is that state policies affect the *content* of indigenous identities, even when that modification is not their explicit intent. This dynamic, of the shaping of the content of group-based identities by law and policy, is one this paper aims to investigate. This dynamic is manifested, for example, in the way that struggles between the Cherokee Nation and the government of the United States over whether the Cherokee freedmen should be considered full citizens of the Cherokee Nation, with claims to the benefits of that membership, have affected the attributes and traditions that Cherokee individuals (freedmen and otherwise) understand to be central to Cherokee cultural identity.[34] Similarly, in Canada, the requirement in aboriginal law that aboriginal rights be tied to pre-contact practices works to delimit the range of practices that are understood to be sufficiently authentic to qualify for constitutional protection as aboriginal rights. This is what Maximilian Forte calls the "double-edged nature of 'recognition:'" it "seems to admit Indigenous difference into national discourse, yet simultaneously also limits and contains it."[35]

Implications for Political Theory

As discussed above, Gover's insightful work argues that the way that tribes manage membership should be incorporated into state systems for recognizing indigeneity. But Gover also explicitly challenges the way that political theorists have typically thought of tribes, as "insular, territorially discrete, culturally conservative, and ascriptively constituted."[36] This

[34] Sturm 1998.
[35] Forte 2013, 17.
[36] Gover 2010, 3.

challenge applies more broadly than only to questions of *indigenous* membership. Gover argues convincingly that the political theoretical conception of tribal membership is particularly fraught. Nonetheless, as discussed in the first section of this paper, theorists of multiculturalism conceive many kinds of difference in a similar fashion – particularly importantly for this project, in ways that elide the importance of the role of the state in the formation of group-based identity differences. In my view, this set of observations recommends two key shifts in political theory relating to cultural and other identity differences, the first relating to theoretical approaches to group-based identity differences, and the second methodological.

First, as a starting point, the dynamics examined in this paper suggest that political theorists interested in questions of cultural and other identity groups should insist on a conception of cultures, cultural difference, and identity difference that leverages Tully's conclusions about the malleability and contestability of cultures. In addition, they suggest that political theorists should use a conception of cultural difference that takes the role of the state seriously and examines the way that the state has in the past and should in future approach cultural difference. To expand on an example explored briefly above, the understanding of tribes that Gover critiques would be significantly challenged if political theorists recognized the extent to which indigenous groups' and individuals' attachment to traditional practices of hunting and fishing and a particular relationship to land are at least in part conditioned by the way indigenous identity has been forcibly connected with a particular relationship thereto by the state. This is not to suggest in any way that political theorists (or, likely, any other scholars) should take it upon themselves to use evidence of past oppression to argue that current practices are inauthentic, or would not have been chosen by un-oppressed peoples, and therefore to support extinguishment of aboriginal rights as they are currently recognized by Canadian law. The point

is instead that in addition to understanding that cultural and other differences are contestable and contingent, it is important to understand that the state that seeks (potentially) to recognize those differences has likely been significant in their formation and elaboration. By acknowledging the important role that has been played by the state, political theorists can work to articulate responses to the politics of recognition that better reflect the actual histories of the relevant differences.

Second, and relatedly, this formulation of the problematic recommends approaches to political theory that use a method that demands the use of concrete political examples to think through political theoretical problems and formulate solutions. For example, it recommends the type of political theory that Joseph Carens calls "contextual political theory."[37] This type of approach allows the consideration of philosophical and theoretical explorations of the normative principles at hand, the real effects of law and policy, and normative evaluations of those effects to support a more useful and robust discussion than would otherwise be possible. That is, it "entails the normative exploration of actual cases where the fundamental concerns addressed by the theory are at play."[38] The use of empirical examples to challenge and illuminate normative theorizing is important because, as Carens argues, "we do not really understand what general principles and theoretical formulations *mean* until we see them interpreted and applied in a variety of specific contexts."[39] In contrast to a style of theorizing that proceeds in a way that is only nominally concerned with contemporary political problems, a contextual approach provides the tools necessary for nuanced theoretical engagement and normative consideration of pressing contemporary political concerns.

[37] Carens *Culture, Citizenship, and Community* (2000) and "A Contextual Approach to Political Theory" (2004)
[38] Carens 2004, 118.
[39] Carens 2000, 3, emphasis original.

Conclusion

The primary goal of this paper was to begin think about the implications for political theory of the observation that many theorists of multiculturalism think about the formation of cultural and other identity differences in a way that elides the role of the state in the formation of those differences. By thinking through Gover's argument about the way state regulation of indigenous status affects tribal membership rules and tribal understandings of the meaning of tribal membership, against an exploration of the way that many canonical theorists of multiculturalism overlook the importance of the role of the state in the formation of identity differences, I suggested that political theorists of multiculturalism would benefit from more closely considering the role of the state in the politics of identity formation. In addition, I suggested that acknowledging this oversight in these and similar theories recommends the use of a contextually-sensitive approach to normative theorizing. As suggested at the beginning of this paper, the goals of the paper are modest and suggestive, rather than conclusive. The paper represents a partial scaffolding for a larger project. In particular, future research will work to more carefully explore (1) the variety of ways that theorists of multiculturalism understand the logic of identity formation, (2) the relationship between ideas of the politics of identity formation and the reasons cultural membership is argued to be valuable, (3) the alignment of these theoretical ideas with a range of detailed empirical case studies, and (4) the implications of this misalignment policies of recognition.

Bibliography

Appiah, K. Anthony. *The Ethics of Identity*. Princeton, N.J: Princeton University Press, 2005.

Barry, Brian M. *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge, MA: Harvard University Press, 2001.

Brown, Wendy. *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton: Princeton University Press, 2006.

Brown, Wendy. *States of Injury*. Princeton: Princeton University Press, 1995.

Canby, William C., Jr. *American Indian Law in a Nutshell*, 5th ed. St. Paul, MN: West Publishing, 2009.

Carens, Joseph H. "A Contextual Approach to Political Theory." *Ethical Theory and Moral Practice* 7, no. 2 (2004): 117–132.

Carens, Joseph H. *Culture, Citizenship, and Community: Contextual Political Theory and Justice as Evenhandedness*. Oxford: Oxford University Press, 2000.

Ford, Richard T. *Racial Culture: A Critique*. Princeton, NJ: Princeton University Press, 2005.

Forte, Maximilian C. "Introduction: 'Who Is an Indian?' The Cultural Politics of a Bad Question." In *Who Is an Indian? Race, Place, and the Politics of Indigeneity in the Americas*, edited by Maximilian C. Forte, 3–51. Toronto: University of Toronto Press, 2013.

Gover, Kirsty. *Tribal Constitutionalism: States, Tribes, and the Governance of Membership*. Oxford: Oxford University Press, 2010.

Haney-López, Ian. "'A Nation of Minorities': Race, Ethnicity, and Reactionary Colorblindness." *Stanford Law Review* (2007): 985–1063.

Haney-López, Ian. *White by Law: The Legal Construction of Race*. 2nd ed. New York: New York University Press, 2006.

Hattam, Victoria Charlotte. *In the Shadow of Race: Jews, Latinos, and Immigrant Politics in the United States*. Chicago: University of Chicago Press, 2007.

Jaffke, Cheyañna L. "The 'Existing Indian Family' Exception to the Indian Child Welfare Act: The States' Attempt to Slaughter Tribal Interests in Indian Children," in *Louisiana Law Review*, 66 (2006): 733-761.

Jung, Courtney. *The Moral Force of Indigenous Politics: Critical Liberalism and the Zapatistas*. Contemporary Political Theory. Cambridge: Cambridge University Press, 2008.

King, Matthew A. "Indian Gaming and Native Identity," in *Chicana/o-Latina/o Law Review* 30, no. 1 (2011): 1-41.

Kukathas, Chandran. *The Liberal Archipelago: A Theory of Diversity and Freedom*. Oxford: Oxford University Press, 2003.

Kymlicka, Will. *Multicultural Citizenship*. Oxford: Oxford University Press, 1995.

Ladner, Kiera L. And Michael McCrossan. "The Road Not Taken: Aboriginal Rights after the Re-Imagining of the Canadian Constitutional Order." In *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, edited by James B. Kelly and Christopher P. Manfredi, 274-283. Vancouver, BC: University of British Columbia Press, 2009.

Lovett, Frank. "Cultural Accommodation and Domination." *Political Theory* 32, no. 2 (2010):243-267.

Moran, Rachel F., Devon W. Carbado, and Ian Haney-López, eds. *Race Law Stories*. New York: Foundation Press, 2008.

Moss, Wendy and Elaine Gardner-O'Toole (Library of Parliament, Law and Government Division). "Aboriginal People: History of Discriminatory Laws." Parliament of Canada, Library of Parliament, Publication BP-175E, 1991. Accessed February 25, 2014 at http://publications.gc.ca/Collection-R/LoPBdP/BP/bp175-e.htm.

Okin, Susan Moller. *Is Multiculturalism Bad for Women?* Princeton, NJ: Princeton University Press, 1999.

Omi, Michael A. "The Changing Meaning of Race." In *America Becoming: Racial Trends and Their Consequences*, edited by Neil J. Smelser, William Julius Wilson, and Faith Mitchell, vol. 1., 243-263. Washington, DC: National Academy Press, 2001.

Omi, Michael A. and Howard Winant. *Racial Formation in the United States: From the 1960s To the 1990s*. 2nd ed. New York: Routledge, 1994.

Patten, Alan. "Rethinking Culture: The Social Lineage Account." *American Political Science Review*. 105, no. 4 (2011): 735-749.

Renteln, Alison Dundes. *The Cultural Defense*. Oxford: Oxford University Press, 2004.

Scott, David. "Culture in Political Theory." *Political Theory* 31, no. 1 (2003): 92-115.

Song, Sarah. "Majority Norms, Multiculturalism, and Gender Equality." *American Political Science Review* 99, no. 4 (2005): 473.

Song, Sarah. *Justice, Gender, and the Politics of Multiculturalism*. Cambridge, UK: Cambridge University Press, 2007.

Sturm, Circe. "Blood Politics, Racial Classification, and Cherokee National Identity: The Trials and Tribulations of the Cherokee Freedmen." *American Indian Quarterly* 22, no. 1/2 (1998): 230–258.

Taylor, Charles. "The Politics of Recognition," *Multiculturalism: Examining the Politics of Recognition*, edited by Amy Gutmann, 25-73. (Princeton, NJ: Princeton University Press), 1994.

Waldron, Jeremy. "Minority Cultures and the Cosmopolitan Alternative." *U. Mich. JL Reform* 25 (1991): 751.

Waldron, Jeremy. "Superseding Historic Injustice." *Ethics* 103, no. 1 (1992): 4–28.

Wedeen, Lisa. "Conceptualizing Culture: Possibilities for Political Science." *American Political Science Review* 96, no. 4 (2002): 713-728.

Winant, Howard. "Race and Race Theory." *Annual Review of Sociology* (2000): 169–185.

Young, Iris Marion. *Inclusion and Democracy*. Oxford: Oxford University Press, 2000.

Young, Iris Marion. *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press, 1990.