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Taking Our Space: Women of Color and Antiracism in the Legal Academy
DRAFT
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LIVING IN TWO WORLDS

Anti-racism calls us to work toward ending racial hatred, bias, systemic racism, and the oppression of marginalized groups. For many of us working in higher education leadership, this means that we are actively creating space for marginalized voices both in classrooms and through research. But who should be included is not always a question with a clear answer. Additionally, because of the complexity of identity, not all members of a marginalized community may express themselves in a monolithic way. This essay examines such a group possessing a complex identity – Indigenous people, from my personal lived experience. The essay explores how Native identity intersects with higher education leadership in complex ways. Ultimately, while Native identity within the United States is complicated, we should not shy away from these conversations about identity, as our communities and institutions are ultimately better following such critical examination.

In Indian country,¹ we talk a lot about living in two worlds – our “traditional” Native communities and the majority communities of our colonizers. How I behave within the contours of my own Native community (both the broader Native community and my tribal community – Sault Ste. Marie Tribe of Chippewa Indians) can be very different from how I behave outside of those communities, especially when acting as an administrator at a predominantly white serving institution (PWI). Among other Native people, there is a relaxation that comes from knowing that they “get it.” We can collectively laugh at yet another person telling us that their great, great grandmother was a Cherokee Princess,² and we sigh and shake our heads when a major national

¹ The term “Indian country” has both colloquial and legal meaning. Colloquially, people will often use the term “Indian country” to refer to spaces that Natives typically occupy. For example, I think of our Urban Indian Center in Salt Lake City as “Indian country.” But, the term also has legal meaning. The legal definition of Indian country is: “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151.

² Apparently there were a lot of Cherokee Princesses running around in the 19th Century. I find it interesting that people always assume themselves to be descended from royalty. I have never someone say they are descended from a Cherokee indentured servant for example. I also find it interesting that most people claim a connection to the Cherokee Nation. I assume that this might be for a couple of reasons – either this is the only tribe most people have heard of as most Americans will learn about the Trail of Tears in their middle school social studies class, and/or, because citizens of the Cherokee Nation were forcibly marched from present-day Georgia to present-day Oklahoma, they were present in numerous states in the 19th Century. And, of course, the Cherokee Nation of Oklahoma is one of the most populous tribal nations within the United States. National Center for Education Statistics, Table 1.3. Largest American Indian and Alaska Native tribes according to number of self-identified members, by race and tribal group: 2000, available at: https://nces.ed.gov/pubs2008/nativetrends/tables/table_1_3.asp (last visited Jan. 25, 2021). See also Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 86 (Fall 2003) (“While the willingness for many Americans to

news outlet refers to us as “Something Else” rather than recognizing us as a political and racialized community within the United States.³ And, we are exhausted – exhausted at continually being ignored or unseen. There is some comfort in the collective exhaustion knowing that I am not alone, and others are “fighting the good fight.” So, I find it comforting and relaxing to be among “my people” – fellow Indians⁴ who understand, and who are equally tired but can still chuckle and shake their heads at the microaggressions we experience daily. This is part of my shared Native experience. My Native experiences goes beyond daily microaggressions, however, to encompass wonderful things about being Native in the United States – the joy⁵ of hearing my Indigenous language spoken during winter story telling with tribal elders (Aadizokaanan), watching my son learn traditional dances during weekly Lil Feathers gatherings for Native children in Salt Lake City, sinking my teeth into a piece of fry bread⁶ at the first Pow Wow of the year, returning to my tribal territory for summer ceremonies (when my schedule allows), and the list goes on.

Unfortunately, my reality (and I would assume that this is true for most Native academics) is that I only experience the joy and fellowship of being within a majority Native academic community a few times a year, and large gatherings of Natives generally are too few and far between. Personally, I consider myself “lucky” because I have the pleasure of working with two other Natives at the S.J. Quinney College of Law, and there are others within the larger University of Utah community who are either citizens of a tribe or have a strong tribal identity.⁷ However,

identify as part *Indian* or having *Indian* blood may be little more than their conscious (or unconscious) ability to recall a Indigenous ancestor, such self-declarations are a source of personal pride grounded in family history. But for the many Indigenous People who have heard endless stories about someone’s great-great-great Cherokee grandmother, it is little wonder that these assertions are greeted with suspicion.”) (citation omitted).

³ Laura Zornosa, *It appears CNN deemed Native Americans ‘something else,’ sparking a backlash* (Los Angeles Times, Nov. 5, 2020), available at: <https://www.latimes.com/entertainment-arts/tv/story/2020-11-05/it-looks-like-cnn-called-native-americans-something-else-theyre-not-happy>.

⁴ I use the term “Indian” for a couple of reasons. First, it is the term used by my Tribe, the Sault Ste. Marie Tribe of Chippewa **Indians**. Second, it is the legal term used in federal Indian law. See e.g., 25 U.S. Code Title 25 – Indians. See also Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 Indigenous Nations Studies Journal 74 (Fall 2003) (“I. Hernandez contends that Indigenous Peoples know that the term *Indian* is a misnomer, but they have made it their own, just as they have made *American Indian* and more recently *Native American* their own, even though in their original languages, each of their people had (and have) their own name for themselves and for this part of the earth that is now known as ‘America.’”) (citation omitted). Interestingly, by creating this “pan-Indian” identity, Indians have created a category that is more powerful than identifying as citizens of individual tribes. *Id.*

⁵ Something deep within me connects with my Native language and leaps for joy when hearing Native speakers use these powerful words. I am not fluent in my Native language, Ojibwe, but I hope to learn more about the language when I step down from my leadership position.

⁶ I acknowledge that much has been written about fry bread – that is it is not an indigenous traditional food and was a product of colonization as our ancestors only started making it when they had to make do with rations provided by the federal government. Devon Mihesuah, “Indigenous Health Initiatives, Frybread, and the Marketing of Non-Traditional “Traditional” American Indian Foods.” *Native American and Indigenous Studies* 3/2 (Fall 2016): 45-69. But, despite knowing this, fry bread still tastes so good.

⁷ A hierarchy of Native identity exists. As sovereign governments, tribes possess the authority to determine their own membership criteria. See generally *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Additionally, as a method of assimilation and classification, the United States encouraged tribes to adopt membership systems

except for my time as an appellate judge for my Tribe, I have never had the privilege to serve or work with someone who is a citizen of my Tribe – the Sault Ste. Marie Tribe of Chippewa Indians. As a result of this reality, I have spent most of my career largely alone (or lonely) in my political and racial identity as an Indian.⁸ I spend most of my life in the world of my colonizer, and, as a result, I have learned how to survive in that world – although certainly at great personal cost (and perhaps at cost to those who might look to me as a mentor).

I am a citizen of the Sault Ste. Marie Tribe of Chippewa Indians,⁹ and I have a very fair complexion. I am haunted by people commenting that I “do not look Indian.” Although a seemingly benign comment, these sorts of comments are a perpetual source of irritation, a daily micro-aggression – a reminder that my life’s work of educating people about Indian law has failed as people define who is “Indian” by phenotype rather than political connection to a tribe. As a law professor who specializes in Indian law, I have taught hundreds of students over the last 15 years that being Indian is a political and not a racial classification – yet, it is never enough. And, of course, these comments always give me pause – what does an Indian look like? Do people expect me to wear a buckskin, carry around a teepee, braid my hair and put a feather in it?¹⁰ The question of who is an “Indian” is a complicated one, as there are “conflicting policies

premised on “blood quantum” or the amount of genetic heritage possessed by an individual Indian. Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 South Dakota L. Rev. 2 (“Blood quantum is controversial among academics, policy makers, and affected individuals both inside and outside tribal communities. Some allege that the federal government applies blood quantum to eliminate its responsibilities to Indian people by legally defining Indians out of existence. In the tribal membership context, some see blood quantum as a negative force allegedly imposed by the United States and at odds with traditional forms of tribal membership. Others see it as a neutral method to define tribal membership when consistent with the policy goals of a tribe.”) (citations omitted). Taken together, some tribes today utilize tribal citizenship with very high blood quantum requirements, while some require lineal descendance. Paul Adams, *What is Blood Quantum?*, BBC News (July 11, 2011), available at: <https://www.bbc.com/news/av/world-us-canada-14108242> Some tribes also utilize patrilineal or matrilineal citizenship systems, and, as a result, even if someone possesses the required blood quantum, he or she may still not meet the citizenship requirements if they do not have the required parental lineage for citizenship. Additionally, many Indian children have been “adopted out” of tribes – “In the 1960s and 1970s, American Indian children were about six times more likely to be placed in foster care than other children and many were placed in non-American Indian homes or institutions.” GAO, *Indian Child Welfare Act: Existing Implementation on Implementation Issues Could be Used to Target Guidance and Assistance to the States* (Apr. 4, 2005), available at: <https://www.gao.gov/products/GAO-05-290>. And, because of being placed in the foster system or with a non-Native family, these Native people may be aware of their Native ancestry but may not know whether they have or are eligible for tribal citizenship. The result is that some Native people have tribal citizenship, some have significant ancestry but no citizenship, and some are uncertain as to the significance of their ancestry. And, this footnote does not even begin to examine the issue of race and tribal citizenship. For a more complete discussion, see Matthew L.M. Fletcher, *Race and American Indian Tribal Nationhood*, 11 Wyoming L. Rev. 295 (2011).

⁸ Because being Indian is both a racialized identity, as discussed in footnote 4, and a political identity as we have a relationship with a political entity – a tribal government, Indians possess a unique status among American racialized communities. *Morton v. Mancari*, 417 U.S. 535 (1974).

⁹ I meet the requirements for citizenship in my Tribe, as I am enrolled in the Tribe. Also, I meet the Bureau of Indian Affairs definition of an “American Indian person whose Indigenous blood quantum is at least one-fourth and who is a registered or enrolled member of one of the 500 or more federally-recognized tribes.” Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 Indigenous Nations Studies Journal 74 (Fall 2003). Not all tribes agree with this federal definition and different tribes will have different criteria for tribal citizenship. *Id.*

¹⁰ As an interesting aside, the stereotype of an 18th or 19th Century Plains Indian seems to be the one that pervades the collective memory of the United States, which is interesting given the comment above about people thinking that they are of Cherokee descent.

of tribal government acknowledgement, federal government blood quantum criteria, and a myriad of self-identifications contribute to this paradox of cultural identity.”¹¹ When I was younger, I let such comments get to me and would regularly wear bronzer so that I appeared darker skinned. With age came confidence in my identity and complexion.

Despite the confidence that comes with age and professional success, I still find myself reflecting on how my political identity as an Indian and paired with my fair skin may have helped me in my professional advancement. I suppose this is my personal version of imposter syndrome¹² – questioning whether I achieved professional success through my own merit or in part because of my identity.

“We’re more likely to experience imposter syndrome if we don’t see many examples of people who look like us or share our background who are clearly succeeding in our field,” “This is especially true for black and indigenous people, for whom overall representation across almost all white-collar fields is alarmingly low.”

This could not be truer of law school deans. To my knowledge, there has only been one other female tribal citizen who served as a law school dean in the United States – Stacy Leeds, who formerly served as Dean of the University of Arkansas School of Law – Fayetteville.¹³ If we include people who identify as male and are tribal citizens, that number doubles to two as Dean Kevin Washburn served as Dean of the University of New Mexico School of Law and currently serves as Dean at the University of Iowa College of Law.¹⁴ There have been other law school deans who affiliate with a tribe or identify as indigenous, but, to my knowledge there have only been three of us who are tribal citizens serving within the United States.

Not only is my imposter syndrome fed by the lack of peers succeeding in law school senior administration, but I am also aware of the lightness of my skin. I have found myself pondering whether I am promoted into leadership positions because I am an “acceptable” woman of color, as I lack the dark skin that may be subconsciously threatening to others in positions of power.¹⁵

¹¹ Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 73 (Fall 2003).

¹² “Imposter syndrome” refers to “an internal experience of believing that you are not as competent as others perceive you to be.” Arlin Cuncic, *What is Imposter Syndrome?*, Verywell Mind (May 1, 2020), available at: <https://www.verywellmind.com/imposter-syndrome-and-social-anxiety-disorder-4156469#:~:text=Coping,.What%20Is%20Imposter%20Syndrome%3F,perfectionism%20and%20the%20social%20context>. Research has demonstrated that women and women of color seem to experience the effects of imposter syndrome more than other groups. Sheryl Nance-Nash, *Why Imposter Syndrome hits Women and Women of Colour Harder*, BBC (July 27, 2020), available at: <https://www.bbc.com/worklife/article/20200724-why-imposter-syndrome-hits-women-and-women-of-colour-harder>. One reason that this may be true is that, because there are not as many women and women of color, succeeding in the highest placed positions – we may feel less worthy as we are not surrounded by peers.

¹³ Stacy Leeds, Wikipedia, available at: https://en.wikipedia.org/wiki/Stacy_Leeds (last visited February 10, 2021).

¹⁴ Kevin Washburn, Wikipedia, available at: https://en.wikipedia.org/wiki/Kevin_K._Washburn (last visited Feb. 10, 2021).

¹⁵ Ashley Simpo, *Its Time to Talk about Our Light Skinned Leadership*, Medium (Oct. 22, 2018), <https://medium.com/thsppl/this-is-a-blank-page-7a31b645e494> (explaining that being “lighter skinned” helps “messaging cross over”).

In this regard, I strongly identify with Cornel Pewewardy's examination of his personal interactions with Indigenous communities "as a 'privileged' educator" while fearing that "he missed the process by which he was being co-opted by the dominant English-speaking community to legitimate their discourse of Indigenous identity, race, and education as a 'problem.'"¹⁶ Have I been promoted by my PWIs so they can claim my indigeneity without opening their doors to someone who would make everyone else "uncomfortable?"¹⁷

I have also experienced push back from other Natives who question my indigeneity because of the lightness of my skin. Darker skinned Natives have accused me of not being Native because I am "too white."¹⁸ Many Indians still associate skin color with tribal identity. Additionally, as the federal government has increasingly allowed for self-identification (e.g., the Census), some are concerned that by allowing people to self-identify this may result in non-indigenous people claiming such an identity because of "emerging 'New Age' philosophies" and other lifestyles searching for a Native identity.¹⁹ Over the past several decades, there has been increased concern around ethnic fraud – people changing or falsifying their identities because it is believed that the change will professionally benefit them.²⁰ I certainly understand the concern and try not to be too offended when personally attacked in this way, although such questioning always stings.

I also may not be the voice of decolonization that others want me to be. I question what my "tribal voice of decolonization" is and whether I am doing enough.²¹ I struggle with fears that I have been so co-opted by the dominant society that I cannot meaningfully contribute to efforts to decolonize higher education. Because I was not raised steeped in my tribal culture, I question whether I can meaningfully contribute to decolonization efforts.²² I once read an article explaining how an institution does not address its gender equality problems by simply hiring a

¹⁶ Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* Abstract (Fall 2003).

¹⁷ I have been a senior administrator at two PWI institutions, and both have been very receptive to my feedback and suggestions for change, but, despite generally positive interactions with these institutions, questions do still linger in my mind.

¹⁸ Intertribal racism is not uncommon within Indian country, as there are historical conflicts between tribes and Indians will perpetuate "dysfunctions from the dominate society." Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 77 (Fall 2003).

¹⁹ Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 75 (Fall 2003) (citation omitted).

²⁰ Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 79-80 (Fall 2003). Specifically, "[p]erceptions of ethnic fraud, whether real or imagined, have spawned a debate among Indigenous People as to what constitutes legitimate identity and has resulted in regulatory practices requiring individuals to prove their identity." *Id.* at 80.

²¹ Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 70 (Fall 2003) ("recognize their position within their professions as transformational leaders and realize that they are their own tribal voices of decolonization.").

²² My grandfather actively sought to distance himself from his Indian identity. For example, despite his dark skin, he registered as "white" for the Army when he enlisted during World War II. His efforts to distance himself trickled down to my mother, who was not raised in a "traditional" environment. This is consistent with many other family experiences in Indian country. Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 76 (Fall 2003) ("I remember in the early 1970s family members and close friends say 'it's not good to be *Indian*.' Today, it's in vogue; many of those same family members and close friends are saying just the opposite that 'it's good to be *Indian*.'").

female leader. This is because female leaders do not necessarily promote more equitable policies merely because of their status as women. Also, leaders will suffer from institutional capture, as they find themselves promoting and supporting the institution's values by virtue of being co-opted as a leader. Have I been co-opted by my PWI?

Another female law school dean once explained to me that she believes we “lose” our academic freedom when we accept senior leadership positions. Although we can still technically express our opinions, should we choose to do so in a way that compromises the goals of the institution, the reality is that we may not hold our administrative positions for long. By accepting a leadership role in a PWI, I have accepted a role to make change from within the organization. To be effective, I will, therefore, not promote policies and actions that are inconsistent with the institution's goals. While I still believe that much can be done to decolonize higher education from within PWIs, I know that many will view me as just another tool of the oppressor because of the limitations I accepted when I entered a leadership role. For example, I am writing this essay in the language of my oppressor and colonizer.

I live in two worlds (or perhaps even more) – Indian country and my colonizer's world. Although I am finding my footing and confidence in my identity in the former, there is still much that I am learning and working through. Although I did not grow up learning Ojibwe or practicing traditional ceremonies of my Tribe, I have worked to learn about the customs and traditions of my Tribe, as well as ensuring that my son learns about his Indigenous identity through cultural experiences and weekly interactions with other Native children. My identity – tribal citizen, light-skinned, raised off the reservation—informs how I interact with and am viewed by Indian country. In the colonizer's world, I have been successful in my career – but at what cost? I have chosen to work from within the system and will try to make a difference in smaller ways, but perhaps not in the way that many would like me to. I have served in senior administrative positions for the past 6 years – first as an Associate Dean of Academic Affairs and then as Dean. In both roles, I endeavored to build pipelines to marginalized communities, hire and retain faculty and staff from diverse backgrounds, promote people from marginalized communities to leadership positions, and support diverse students in their efforts to succeed as law students. As an administrator, I do not have the same “depth” of relationship with individual students, but I very much hope that the policies I put into place will have a broader impact.

Further, as an administrator, I recognize the power in my position. “Contrary to some popular opinion and even some professional opinion, educators and systems are extremely powerful. We can choose either powerful positive or powerful negative effects, and we can bring either into being.”²³ Mine, and I imagine the same for many women of color in leadership positions, is a complicated reality and one I imagine I will still be navigating and learning when I leave this world. But, I cannot sit silent. Tribal cultures are not static, as they are “intrinsically dynamic and developmental.”²⁴ And, as with other women of color succeeding in the legal academy, I must find my way forward – navigating my two worlds.

²³ Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 86 (Fall 2003).

²⁴ Cornel Pewewardy, *To Be or Not to Be Indigenous: Identify, Race, and Representation in Education*, 4 *Indigenous Nations Studies Journal* 86 (Fall 2003).