

# Paint Chip Indians

M. Alexander Pearl



Greetings, non-Indian people!<sup>1</sup> Once again,<sup>2</sup> us tribal people (or “Native Americans” as our politically progressive white defenders demand we be called) must clear the air about the representations of Indians in popular media and mainstream culture. We must confront an age-old nemesis for the umpteenth time. Colonialism? Broken treaty promises? Diabetes? Undercooked frybread? No, worse: the continuing

---

· Enrolled citizen of the Chickasaw Nation of Oklahoma and Assistant Professor and Director of the Center for Water Law and Policy at Texas Tech University School of Law. I have to make special mention of the exceptional artist, Hannah Dean, who created the original artwork for this article. Hannah Dean's (MFA) exhibitions and publications include *New American Paintings MFA Annual #111*, *The Rising Eyes of Texas 2014 and 2015*, the *Hunting Art Prize 2014 and 2015*.

My thanks to Tracy Pearl, Cassie Christopher, Kristen van de Biezenbos, Howard Wasserman, Ezra Rosser, Dr. Jean O'Brien, Eric Carpenter, and Emma Scott, along with the other excellent *Unbound* staff. I also have to thank people whom I've never met but whose work has been an inspiration: the 1491s, *A Tribe Called Red*, Adrienne Keene, Louie Gong, and Jeffrey Veregee. Finally, this is for Veronica Brown, a brave young Indian girl no matter what anybody says, and all the Indian girls and boys just like her.

<sup>1</sup> Not just you white folks, now! This includes everybody who has never checked that American Indian/Alaskan Native box on a university or grad school application.

<sup>2</sup> Maybe give this a read first. Its short and worth it, I promise. M. Alexander Pearl, *How to Be an Authentic Indian*, 5 CAL. L. REV. CIRCUIT 392 (Nov. 2014).

degradation of our finely honed image. You may be familiar with my earlier commentary regarding the attack upon the image of the Authentic Indian.<sup>3</sup> As described previously, the work of the Unified Indian Image Steering Committee (UIISC) is never done. The entire purpose of the UIISC is to safeguard the image of the Authentic Indian and the stereotypical associations that white folks maintain about us tribal people.<sup>4</sup>

This time, however, our image is not undermined by that disgrace of a football team, the Washington Redskins.<sup>5</sup> Instead, we have to continue the uncomfortable conversation about race in America—but from a tribal peoples’ perspective. The UIISC’s work is never done. Monitoring these types of issues is a 24/7 job. Look, everyone gets all upset and uncomfortable whenever we have to talk about race in America. But the UIISC has already solved this problem for us tribal people through our use of something called the “Paint Chip Indian Principle.”

In a nutshell, if a person is to be considered an Authentic Indian, they must be brownish—and certainly cannot be white. We have a spectrum of acceptable shades of brown, including but not limited to Pecan Sandie, Burnt Butterscotch, Matted Bison Tail, and Skinny Half Caf Frappuccino.<sup>6</sup> But, before us tribal people go on any further here, let me ask that everyone turn off their cell phone cameras—us tribal people cannot risk any leaked footage of what we say or the songs we sing when we get together.<sup>7</sup>

On to the task at hand. A new show, co-written by Superwoman herself, Tina Fey, includes some Indian characters. The show is on Netflix<sup>8</sup> and is called “The Unbreakable Kimmy Schmidt.” Kimmy Schmidt is a delightfully uneducated white woman who was involved in a cult and held in an underground bunker for fifteen years. Upon her release, she moves to Manhattan to make a life for herself among the natives of New York City.<sup>9</sup> Eventually, she stumbles into a job as a nanny for a wealthy Manhattan socialite, Jacqueline Voorhees, played by Jane Krakowski. In episode three, we learn that Jacqueline is a Lakota Indian.<sup>10</sup> Now, no one has ever mistaken Ms. Krakowski for an Indian—few people are blonder or whiter. Plus, “Krakowski” does not exactly scream Navajo.

---

<sup>3</sup> No, really, give it a look. It’s short (and it has pictures!). M. Alexander Pearl, *How to Be an Authentic Indian*, 5 CAL. L. REV. CIRCUIT 392 (Nov. 2014).

<sup>4</sup> You know, like our innate horse riding abilities, propensity for turquoise jewelry, and expressions of wisdom during times of crisis.

<sup>5</sup> See, Pearl, *supra* note 2.

<sup>6</sup> Also a drink at Starbucks.

<sup>7</sup> Definitely learned this from those good ole boys at the University of Oklahoma SAE chapter.

<sup>8</sup> A true gift from the Creator. I’m sure She even binge-watches *Orange is the New Black*.

<sup>9</sup> No, not the Iroquois or Shinnecock. But, if you switch the gender add a boat, you’ve got the Christopher Columbus story, right?

<sup>10</sup> Of course. There were really only three options: Cherokee, Lakota, and Navajo. Beyond that, non-Indians tend to get confused. Do you know how many times I’ve been called a Chippesaw? Or a Chickahoo? If I had a wampum for every time THAT happened I wouldn’t need those checks from the U.S. government (which we don’t *actually* get).

Let me pause and remind everyone about how these Hollywood decisions are made. When a show wishes to include an Indian character, the television/film industry is supposed to consult with our liaison organization—the UIISC. Remember that movie, “The Unforgiven”? The one with Audrey Hepburn wearing “war paint” and a little chicken feather in her hair? That was our call. The UIISC *recommended* the incomparable British and Dutch national treasure, Audrey Hepburn, to play an Indian child adopted by white settlers in Texas. Frankly, us tribal people needed to get on the map.<sup>11</sup> Images of us tribal people in popular culture were sparse—we needed to make a splash. Also, we felt she qualified as an Authentic Indian since she was a descendant of *the* Pocahontas.<sup>12</sup> First thing we had to do was put a combination of paint on her (Paint Chip: Warm Cherry Brownie and Paint Chip: Koala Bear Fuzz). Voila! Instant Indian. This was born redface. This had the effect of allowing famous white folks to play Indians in major films, thereby enhancing box office draw. It sounds bad, perhaps, but these palefaces simply portrayed us tribal people as we really are—bloodthirsty, vengeful savages with a penchant for starring off into the distance and communing with the spirit world.<sup>13</sup>

Ms. Hepburn’s casting and redface usage further entrenched images and stereotypes of us tribal people in the minds of Americans. This is the core mission of the UIISC. The members of the Committee take this responsibility very seriously. All of the UIISC decisions must be in accordance with the Policies and Recommendations on Being an Authentic Indian. We have to ensure that the images, character, and actions reflect the traits that make us what we are today: mysterious, fierce, and completely incapable of changing with the times.<sup>14</sup> Fast forward to recent times, when the request from Ms. Tina Fey landed in our teepee,<sup>15</sup> we knew this would be big and we had to get it right. There was some discussion on whether to select a Native actor or not.<sup>16</sup> So, since there were three roles for Indians, we split it.<sup>17</sup>

---

<sup>11</sup> You know, since those Euros have such a hard time reading a map (at least while sailing a boat).

<sup>12</sup> \*shakes head\*.

<sup>13</sup> I do that while teaching the Rule Against Perpetuities sometimes, students accept it as weird-but-kind-of-cool-things-an-Indian-does.

<sup>14</sup> I drive a horse to work and am mystified by the “Iron Horse.” (Trains).

<sup>15</sup> The teepee is actually inside the office building we rent, right next to the Keurig. We had to have a technician show us how to set it up. I think he was from Delhi...I know, I know.

<sup>16</sup> Since some East-Coast educated non-rez Indians got angry about Mr. Depp playing Tonto in the “smash hit”, “The Lone Ranger.”

<sup>17</sup> Us tribal people are not good at math.



We recommended the incomparable Gil Birmingham (Paint Chip: Nutella Butter Croissant) and Sheri Foster (Paint Chip: Brown Bear Paw) to play Jacqueline’s parents, and the show agreed. Sheri Foster is wonderful in the show, while Gil Birmingham has long demonstrated incredible range as an actor. He has played a member of a fake Indian tribe on *House of Cards*, a member of the Quileute tribe in *Twilight*, an animated crow,<sup>18</sup> and now a Lakota.<sup>19</sup> As for Ms. Voorhees’s character, this is where our long and difficult history with Hollywood reared its ugly head.

We did *not* recommend Jane Krakowski for this role. Instead, our list included Salma Hayek (Cage Free Egg Shell), Sofia Vergara (Salted Cashew), Jennifer Lopez (Chocolate Chip Cookie Dough), Penelope Cruz (Malted Sunshine), and Eva Longoria (Coffee Froth). All of them have all the qualities of an Indian woman: gorgeous and brownish-skinned. Listen, Ms. Krakowski is great. But, the simple fact is that *everyone* knows Indians are brown with black hair. That’s it! No deviation allowed. Ms. Krakowski simply *cannot* be believed to be one of us tribal people, what with her Blended Almond Rouge skin.

Now, given the prominence of us tribal people using Dreamcatcher.com<sup>20</sup> we have some inter-tribal marriage. In other words, the shade of brown can vary within reason. Therefore, our UIISC had to come up with a spectrum of “browns” that were sufficient for Authentic Indian status. This furthers the mission of the UIISC—to

---

<sup>18</sup> Not, like, the Crow Tribe, but a kind of bird. See why we limit the categories to Lakota, Cherokee, and Navajo?

<sup>19</sup> Honestly, though, what is the difference between a Navajo and a Lakota? No, seriously? Proficiency in beading things? Time it takes to chase down a buffalo?

<sup>20</sup> It’s like eHarmony or Match.com for us tribal people but with more feathers and less “Photoshopped” profile pictures.

preserve our image and stereotypical associations. Skin color is certainly important.<sup>21</sup> This came to be known as the “Paint Chip Indian Principle” and some explanation of its origin warrants attention.

Early one morning in the Spring of 1958, the UIISC adopted a new section of the Policies and Recommendations on Being an Authentic Indian entitled the “Paint Chip Indian Principle.” That afternoon, Jeanie Smith and Gregory Andreas went to the local paint store and picked up a color wheel. This was our measuring stick. The rest is history. Our Authentic Indian spectrum begins on the dark end at Mocha Delight and ends on the lightest color eligible, Sandy Winds. For purposes of comparison, Ms. Krakowski is, as previously mentioned, Blanched Almond Rouge. While there are hundreds of brownish shades within the spectrum, Ms. Krakowski falls well outside acceptable hues.

The story of the first internal application of the Paint Chip Indian Principle is a good one. The UIISC convened for the start of a long working session to get through applicants for Authentic Indian status. First, in comes Howard Vizenor. His mother is from Acoma<sup>22</sup> and his father is from Muncie, Indiana.<sup>23</sup> Jeanie held the paint chips right up right next to Gerald’s cheek moving them one by one until she found a match. “Hedgehog Prickles!” she shouted. Most of the committee was *super* confused until they realized that Hedgehog Prickles was the name of the paint chip matching Gerald’s skin color. Throughout the rest of the day, the UIISC processed hundreds of applicants, denying some and approving others for Authentic Indian status, based on their position on the color wheel.

Why the obsession with skin color? America is post-racial now anyway, right? Well, as true as that statement is, a primary concern for us tribal people is image confusion. Here’s a quick thought experiment. Think of an Indian. What do you see? Us tribal people are all poor (or unfairly stinking rich from all that casino loot), we live on a dilapidated rez, look like the side of the Washington Redskins’ helmet, talk in that staccato, broken, Dances-with-Wolves-English, and play basketball.<sup>24</sup> I hate to reference myself,<sup>25</sup> but this is about maintaining a consistent level of “Indian flair.”<sup>26</sup> Without it, we have much greater difficulty being identified by non-Indians and our long-held associations wither away. Take Ms. Krakowski, for example. Viewers simply will not believe that someone as white as Ms. Krakowski is an Indian. If white people are viewed as having traditional Indian characteristics (able to track animals through the forest from birth<sup>27</sup> and get free government money)<sup>28</sup>, then who are we as a people? We

---

<sup>21</sup> How else are people supposed to be able to discern when it is appropriate to sing a racially offensive chant? Or how suspicious or dangerous a person is?

<sup>22</sup> You don’t know where that is (or what that is) do you? Think of them as Navajos.

<sup>23</sup> I don’t know where (or what) Muncie is...

<sup>24</sup> But not well enough to get into the NBA, except maybe for Bronson Koenig. See <http://www.thenation.com/article/201521/university-wisconsins-point-guard-says-change-mascot>.

<sup>25</sup> Indian dudes LOVE to do this, though.

<sup>26</sup> Pearl, *supra* note 2, at 396–98.

<sup>27</sup> Did it before I could walk.

<sup>28</sup> Well, I guess this already happens through farm subsidies, AIG, and the Detroit bailout. Wait, are white people really Indians?

lose those associations and we lose ourselves. So, of course, a major component of our Indian flair, and a threshold trait for Authentic Indian status, is skin color. It anchors us to our identity.

Another important point here is that racial identification should not be mixed up with citizenship. Just look at the recent United States Supreme Court case involving an alleged Indian child.<sup>29</sup> In *Adoptive Couple v. Baby Girl*,<sup>30</sup> the Court considered whether the Indian Child Welfare Act precluded the adoption of Baby Girl<sup>31</sup> by a non-Indian family.<sup>32</sup> Justice Alito began the opinion by framing the dispute in this way, “[t]his case is about a little girl...who is classified as an Indian because she is 1.2% (3/256) Cherokee.”<sup>33</sup> 1.2%?! Seriously? No paint chip necessary. With that amount of Indian blood there is no way she’s darker than Slightly Toasted Marshmallow. Her biological father wanted to retain custody of her. The Cherokee Nation, of course, also wanted the child to be raised within the tribal culture.<sup>34</sup> The adoptive parents are lovely white people from South Carolina who did not wish to interact with the child’s family, relatives, or tribal community. Fine by us—the Paint Chip Indian principle excludes her from being an Authentic Indian anyway.

---

<sup>29</sup> Most of what I’m about to say comes from a tribal lawyer so who knows whether it’s accurate or not. What I do know is that he billed me for the phone call. He’s also the tribal judge, so for the record I THINK HE DOES AN AMAZING JOB AND IS BRILLIANT.

<sup>30</sup> *Adoptive Couple v. Baby Girl*, 133 S.Ct. 2552 (2013).

<sup>31</sup> Her name is Veronica Brown. See also <http://www.nicwa.org/babyveronica/>.

<sup>32</sup> *Adoptive Couple v. Baby Girl*, 133 S.Ct. at 2557-58.

<sup>33</sup> *Id.* at 2556.

<sup>34</sup> Just to pad their census numbers to get more money from the Bureau of Indian Affairs. Everybody knows Cherokees are only sorta-Indians.



While *Adoptive Couple v. Baby Girl* involves a legal issue and therefore something that the UIISC does not typically deal with, we were certainly impressed with Justice Alito's on-point decision regarding eligibility as an Indian. Indian status is based on skin color (and appropriate levels of "Indian flair"). Indian-ness is purely a racial question. Fact is, us tribal people are exactly like African-Americans,<sup>35</sup> just lighter. The experience of our two communities is precisely the same.<sup>36</sup> Our identity as tribal people

---

<sup>35</sup> Not at all, actually.

<sup>36</sup> *Id.*

certainly has nothing to do with the sovereignty of our tribal communities.<sup>37</sup> Indian tribes are not *at all* like present-day nations like the United States or France. *Those* entities have constitutions<sup>38</sup> with provisions, and additional laws, concerning citizenship eligibility.<sup>39</sup> Us tribal people are not advanced enough to consider things like adoption or group membership before the birth of democracy through the Revolutionary War. Finally, it surely does not matter that the Supreme Court of the United States has said that us tribal people are not (legally speaking) a discrete racial group but instead we are “members of quasi-sovereign tribal entities.”<sup>40</sup> None of that matters. Us tribal people are brown—the Paint Chip Indian Principle is very powerful.

The other benefit of emphasizing only skin color is that it authorizes non-Indian brown folks and other minorities to represent us. Well, progressives get clearance to speak for us too, since they are our “allies.” That way, us tribal people are not bothered by media inquires, political discussions, or anything else. It *is* exhausting having to speak for yourself. Plus, this reinforces the idea that us tribal people don’t talk much—an important stereotype.

Take the recent media commentary on Ms. Krakowski in “Kimmy Schmidt.” Ms. Libby Hill is rightfully concerned about the authenticity of Ms. Krakowski portraying an Indian.<sup>41</sup> Fellow minority Ms. Yohana Desta also recognizes the primary problem that the character is “a white woman who plays an American Indian woman.”<sup>42</sup> Ms. Molly Sanchez gets it too. She says, “...the idea that Jacqueline, an obviously Caucasian woman, has two Native American parents is weird.”<sup>43</sup> Near the end of her article, Ms. Sanchez hits the nail on the head with charging the character as “another instance of a white person playing a culture they are not.”<sup>44</sup> Yes! Exactly! People with light skin cannot be Indians, so why is Ms. Krakowski perpetrating this fraud on the online viewing public? It does not require a bachelor’s degree in anthropology to understand this point. For example, take Mr. Ira Madison III: “I know next to nothing

---

<sup>37</sup> Which are, of course, limited to Cherokee, Lakota, and Navajo.

<sup>38</sup> See (Chickasaw Nation) [https://www.chickasaw.net/Documents/Long-Term/CN\\_Constituion\\_Amended2002.aspx](https://www.chickasaw.net/Documents/Long-Term/CN_Constituion_Amended2002.aspx); (Confederated Tribes of Siletz Indians of Oregon) <http://www.ctsi.nsn.us/uploads/downloads/Ordinances/Constitution%2004-17-09.pdf>; (Confederated Tribes of the Umatilla Reservation) <http://ctuir.org/ctuir-constitution>; (Chitimacha Tribe of Louisiana) <http://www.chitimacha.gov/tribal-government>; (Grand Traverse Band of Chippewa and Ottawa Indians) <http://www.narf.org/nill/constitutions/grandtraverseconst/index.html>.

<sup>39</sup> *Id.*

<sup>40</sup> *Morton v. Mancari*, 417 U.S. 535, 554 (1974).

<sup>41</sup> Libby Hill, *What’s Up With the Native American Subplot on Unbreakable Kimmy Schmidt*, VULTURE (Mar. 10, 2015) <http://www.vulture.com/2015/03/unbreakable-kimmy-schmidt-native-american.html>.

<sup>42</sup> Yohana Desta, *What ‘Broad City’ can teach ‘Unbreakable Kimmy Schmidt’ about racial humor*, MASHABLE (Mar. 28, 2015) <http://mashable.com/2015/03/28/broad-city-unbreakable-kimmy-schmidt-race/>.

<sup>43</sup> Molly Sanchez, *Unbreakable Kimmy Schmidt is a Great Show With a Big Race Problem*, THE BOLD ITALIC (Mar. 10, 2015) <http://www.thebolditalic.com/articles/7033-unbreakable-kimmy-schmidt-is-a-great-show-with-a-big-race-problem>.

<sup>44</sup> *Id.*



about the intricacies of Native American culture and even I was like, um, this doesn't seem...right?"<sup>45</sup> Mr. Madison is right in so many ways. Most importantly, despite his admitted ignorance, Mr. Madison *knows* that us tribal people certainly cannot look like that. In that regard, the UIISC is making progress.

So, thank you to every critic that has responded to the off-message idea that a light-skinned, blonde-haired, and blue-eyed woman could *ever* be an Indian.<sup>46</sup> Us tribal people appreciate your attempts to reinforce the point that unless Indian characters are doing what they are supposed to do (be brown, stoic, and silent) then they should not be represented on television and film. If we start peeling back the curtain and showing non-Indians that we eat twinkles, watch Family Feud, and vote Republican<sup>47</sup> then who are we? What happens to our identity? In other words, if the character on the screen doesn't match the Washington Redskins football helmet, then it needs revision.

Ms. "Blanched Almond Rouge" is no Authentic Indian. Why do you think we had to put Ms. Hepburn in redface? Believability. Ms. Fey and her staff must recognize the harm caused by undermining the connection between brown skin and us tribal people. Us tribal people are unwilling to start mortgaging our carefully tuned image in the name of the white-progressive-diversity-obsessed lead efforts of racial inclusion in Hollywood.

---

<sup>45</sup> Anne Helen Petersen, "*Unbreakable Kimmy Schmidt*" Has A Major Race Problem, BUZZFEED (Mar. 17, 2015) <http://www.buzzfeed.com/annehelenpetersen/the-unbreakable-kimmie-schmidt-has-a-major-race-problem#.vfzYx2z6DX>.

<sup>46</sup> See Hill, *supra* note 40; Peterson, *supra* note 44.

<sup>47</sup> Not really.