

THE SUNDANCER: A Review Essay on
In the Spirit of Crazy Horse

by Peter Matthiessen. New York: The
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*by Peter d'Errico **

I

We grew up thinking that the conflict had been between cowboys and Indians. We weren't told whose interests the cowboys represented, and we didn't know how to ask. True, our deep sympathy might sometimes have been with the Indians, whose way of life looked often like perpetual vacation and camping, but when the covered wagons were drawn up in an embattled circle and the movie music made clear that the final fight was drawing near, we were thrilled and excited to hear the bugle and to see the regimental flags of the cavalry come flying over the crest of the hill, sure sign that the whites would win and the Indians be forced once again deeper into the sunset. It was cultural linguistic irony that someone called out in the darkened theatre, "Hooray! The Cavalry is coming!" The irony we could only understand after the movies and even the history books had been exposed as jingoistic sham,¹ and when, perhaps, our Bible study had expanded in the heat of real spiritual experience.

If we now know better, perhaps we can understand what it means to say that the Indian wars have not ended. Range-land is now less important than the minerals beneath it, and the cowboys have been supplemented by the forces of giant energy corporations. The overall coordination of the war is still in the hands of government officials whose vision of the world, as before, is dominated by the quest for ever greater accumulation of material wealth. In this context, a shoot-out between Indians

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and FBI agents at Pine Ridge reservation in 1975 becomes a battle and not simply a crime. Leonard Peltier, the Indian convicted of killing the agents, becomes something more than an ordinary prisoner. Indeed, the only "ordinary" event is the death of an Indian man in the shoot-out: his killer has never even been sought by the law.

II

Peter Mattiessen's In the Spirit of Crazy Horse is a momentous work. Coming as it does in a period of renewed agitation about Indian sovereignty and treaty claims,² and more than a decade after the last flowering of public interest in American Indians,³ In the Spirit of Crazy Horse would warrant the attention of scholars and teachers even if it were not such a detailed tome of investigative reporting on a topic of such inflammatory significance as the deaths of two FBI agents in a shoot-out on Sioux territory.

The express purpose of the book is to explore "the ruthless persecution of Leonard Peltier," (p. xx) one of the four men indicted and the only person convicted for killing the FBI agents. The opening words of the book's Introduction set the scene:

On June 26, 1975, in the late morning, two FBI agents drove onto Indian land near Oglala, South Dakota, a small village on the Pine Ridge Reservation. Here a shoot-out occurred in which both agents and an Indian man were killed. Although large numbers of FBI agents, Bureau of Indian Affairs (BIA) police, state troopers, sheriff's deputies, and vigilantes surrounded the property within an hour of the first shots, the numerous Indians involved in the shoot-out escaped into the hills.

The death of the agents inspired the biggest manhunt in FBI history. Of the four men eventually indicted for the killings, one was later released because the evidence was "weak," and two others were acquitted in July 1976 when a jury concluded that although they had fired at the agents, they had done so in self-defense. The fourth man, Leonard Peltier, indicted on the same charges as his companions but not tried until the following year, after extradition from Canada, was convicted on two counts of murder in the first degree, and was sentenced to consecutive life terms in prison,

although even his prosecutors would dismiss as worthless the testimony of the only person ever to claim to have witnessed his participation in the killings. This testimony was also repudiated by the witness, who claimed to have signed her damning affidavits under duress, as part of what one court of appeals judge would refer to as a "clear abuse of the investigative process by the FBI." (p. xx)

The introduction continues with a series of brief descriptions of the author's visits to several Indian communities. Matthiessen has learned about Indians through these visits and through conversations he was fortunate enough to have with medicine men in various places. He comes to the writing of the book, then, with an understanding of certain crucial features of Indian life: the identity of people with land--"very different from our 'environmental' understanding" (p. xxiii); the ongoing transgressions against people and land by government and corporations; the multi-faceted splits between "traditional" and "progressive" Indians, and the problems faced by those who, like many Indians in the American Indian Movement (AIM), have only recently resumed their traditions--"After four hundred years of betrayals and excuses, Indians recognize the new fashion in racism, which is to pretend that the real Indians are all gone. We have no wish to be confronted by these 'half-breeds' of today, gone slack after a century of enforced dependence . . ." (p. xxii).⁴ Matthiessen also understands the significance of the sundance and sweat-lodge, ancient ceremonies of purification and renewal that have been practiced continuously by traditional Indians despite church and legal opposition.⁵

Without Matthiessen's empathic understanding of Indian people and culture, the book never could have been written. No amount of "objective interest" alone could have sufficed to gain admittance to the homes, hearts, minds, and memories of the numerous Indian people whose interviews make up so large a share of this work. Too many Indians have been affronted by too many well-intentioned whites--from authors to missionaries to lawyers--for any Indian person to easily share information with a writer or reporter, especially on a topic of potentially lethal significance.⁶

Matthiessen's ability to enter people's lives gave him access not only to Indians present at the shoot-out and involved in previous and subsequent events, but also to crucial informants on the other side--most notably David Price, the FBI Special Agent whose aggressive surveillance of AIM leaders made him a key

figure in the prosecution of Leonard Peltier.⁷

Let me be clear that Matthiessen's empathy is not a romantic attitude. His honesty about his own feelings precludes any idealization of the Indians in this story. This point is especially important because of attempts by some reviewers to dismiss the book as biased and thus not sufficient basis for critical inquiry into Leonard's case.⁸ Matthiessen's even-handedness is made clear at many points in the narrative. Let these two serve as examples:

Although convinced that Leonard Peltier had been tried unjustly, I still lacked any strong sense of his innocence. The brutal nature of the agents' executions and the fact that Peltier and his men had eventually been caught with the dead men's weapons made me resist the Movement propaganda according to which "AIM Warriors at Oglala were defending the Native People against Genocide," as if the killings had somehow been sanctified by the sacred pipe. With the passage of time, the events of June 26, 1975, were being portrayed in the bright proud colors of Crazy Horse and the days of Lakota glory, when what had happened at Oglala was not glorious at all but sad and ugly. Three young men had lost their lives and the death list was still growing, quite apart from the many surviving victims whose lives had been contaminated and stained. (p. 478)

What I wanted to hear, I guess, was some sort of moral disapproval of the "execution," because try as I would to understand the event in historical and sociological perspective, it was still horrifying in terms of the live victims ("... a voice yelling for help, sounds like a scream. This voice was vague and appeared to be quite a long way off.") I could not get Ron Williams's last minutes out of my mind--that panic, apparently intensified by the sight and sound of his maimed partner, which was so painfully evident on those radio transmissions ("Come on, guys! Come on, guys!"), the knives of terror in heart and temple as the depthless hole of the rifle muzzle rose before him, as his hand flew up before his face in the shocked realization that he was about to be

killed right now by another man as crazed and frantic as himself. The long black hair, the sweating forehead, the wild eye squinced by the rifle stock--NO!--as Jack Coler, mercifully unaware (the experts say) of what was happening, sat slumped against the car, the light already fading from his eyes as the barrel of this gun or another turned toward him. As it had so many times before, this recurrent scene or something like it fled through my mind in that long moment while Robideau and I considered each other. (pp. 561-562)

But there is no need to idealize the Indians in order to conclude that Leonard Peltier's conviction and imprisonment are an injustice. Fabricated testimony, intimidated witnesses, suppressed evidence, these and other repeated prosecutorial wrongs are ample basis for such a conclusion. These wrongs are exposed not only through Matthiessen's interviews and investigation, but more formally through the 12,000 pages of documents obtained from the FBI under the Freedom of Information Act (FOIA) by Peltier's attorneys.⁹ Much of In the Spirit of Crazy Horse is devoted to a close analysis of these documents. It is the information gathered from these documents that eventually leads Matthiessen to conclude that ". . . Leonard Peltier deserved a new trial, not only because of dishonest proceedings . . . but because of accumulating evidence that the authorities had wanted him out of the way whether he was guilty or not." (p. 478)

III

As Matthiessen notes, ". . . the Peltier case, like that of Sacco and Vanzetti, had historic reverberations that went far beyond what happened at Oglala." (p. 478) In the historical context of white-Indian relations since European contact with America, and in the context of current political-economic domination of native peoples by governments around the world,¹⁰ this "reverberation" echoes loudly.

In the Spirit of Crazy Horse is divided into three parts ("books"), the first of which, comprising about one-fourth of the total, provides a history of the Oglala Lakota¹¹ from 1835 to 1975. This 150-year period spans the entire time from the first recorded pursuit of gold in the Black Hills¹² to the shoot-out at Pine Ridge. The major events in the early history are quickly described in a single chapter: Red Cloud's War against the

Thieves Road (Bozeman Trail) that forced the United States to withdraw and to guarantee "absolute and undisturbed use" of the Great Sioux Reservation to the Indians in the famous Fort Laramie Treaty of 1868;¹³ the continued white insistence on Manifest Destiny, expressed in construction of the Northern Pacific Railroad, Colonel George Custer's 1874 reconnaissance expedition into the Black Hills, and proposals in Congress to force a sale of the Black Hills; the extermination of Custer and his Seventh Cavalry in 1876 near Greasy Grass Creek (at a place called the Little Big Horn by the whites); the first formal abrogation of the Fort Laramie Treaty a few months later in the Black Hills Act, appropriating all of the Hills and 22.8 million acres around them in exchange for subsistence rations for an indefinite period;¹⁴ the surrender and murder of Crazy Horse; the 1889 dismemberment of the remaining Great Sioux Reservation into the seven reservations that exist today; the rise of the Ghost Dance; the killing of Sitting Bull while "resisting arrest" in December, 1890; and the slaughter two weeks later of Big Foot and over 200 men, women, and children at Wounded Knee (by the reconstituted Seventh Cavalry, which received for this avenging twenty Congressional Medals of Honor).

The turn of the century saw great effort by the Lakota to adjust to white rule, with much deprivation and disillusionment. Land allotment,¹⁵ leasing to whites, welfare,¹⁶ liquor, the declaration in 1924 that Indians were United States citizens, and the dedication of Mount Rushmore in 1927 were all part of an enforced cultural degradation process continuing into the 20th century. Even the 1928 Meriam Report, highly critical of the Bureau of Indian Affairs (BIA), and Franklin Roosevelt's subsequent new deal for Indians in the Indian Reorganization Act, no matter how well intentioned, cost the Indians more than they gained:

The traditional forms of tribal government were replaced by "Indian chartered corporations," complete with constitutions, set up for their benefit under the auspices of the Bureau of Indian Affairs, and an intensely democratic people were subjected to the undemocratic decisions of so-called tribal councils that mostly reflected the wishes of the white man's church and state.

Intended or not, the ultimate effect of the Indian Reorganization Act "was to use tribal culture and institutions as transitional devices for the complete assimilation of Indian life into the dominant

white society." (pp. 27 - 28)¹⁷

Similarly, the Indian Claims Commission in 1946 and the termination and relocation legislation of the 1950's, though ostensibly designed to "right the wrongs of the past" and to "get the government out of the Indian business," had the real purpose and effect of extinguishing Indian land claims by monetary settlement and transferring Indian land itself into the hands of timber, mineral, and other business interests.¹⁸

By the late 1960's, though the termination policy had been repudiated by Lyndon Johnson, Indian communities everywhere were suffering from this history of cultural genocide:

Despised and exploited, the traditionals--many of them full-bloods who spoke little English--were the people who suffered most from despair and apathy, poverty and unemployment, alcoholism, and the random angry violence that besets depressed Indian communities to a degree almost unimaginable to most Americans, who still suppose that "the government takes care of the Indian." In truth, the government takes care of the "progressive" Indian who does not resist the assimilating policies of the BIA. Among traditionals, it would be difficult to find a family without an alcoholic or a member in jail, a recent suicide or a car-wreck victim, a woman sterilized by the Indian Health Service without her consent, or a child removed to a government boarding school or foster home against the family's will. And almost everywhere, these people have been subjected to vicious racism that would not be tolerated by the public or the courts toward any other minority in the country. (pp. 29-30)

Moreover, uranium having replaced gold as the lodestone most attractive to the white power structure, the political and economic forces arrayed against Indians had not diminished but increased: huge energy corporations, interlocked with governments in a multi-national "military-industrial complex" were the new enemies.¹⁹

This survey of early history sets the stage for Matthiessen's much more detailed presentation of the origins and development of AIM in the late 1960's and early 1970's. Two chapters describe the rise of AIM to national prominence in the 71-day seige at Wounded Knee in 1973. These chapters in themselves

are a valuable addition to contemporary American history, for, despite the enormous publicity focused on AIM during its periods of high conflict, there has yet to be written a comprehensive account of the movement and its organization. Matthiessen's presentation, based on interviews with most of the key figures and many observers, is now the closest we have to a definitive history of AIM. The role of this history in the book, and my focus here, is to provide a closer context for the story of Leonard Peltier.

Formed in 1968 in Minneapolis/St. Paul to fight for civil rights in the urban Indian communities created by termination and relocation programs, AIM rapidly moved into the forefront of Indian protests around the country. On the one hand, the activist, confrontationist policies of AIM leaders like Dennis Banks, Russell Means, and John Trudell, while strongly appealing to young people, were suspect in the eyes not only of an assimilated older generation, but also of many traditional Indians as well. On the other hand, as AIM leaders gained experience, they began to see that treaty rights and not civil rights were the real issue for Indians--that the foundation for Indian struggle had to be the sovereignty of Indian peoples instead of the "rights" of individual Indians. This understanding led immediately to the problem that sovereignty is not simply a legal concept, but, more basically, a way of living: there could be no Indian struggle apart from an Indian way of life. Of necessity, therefore, AIM took on the task of protecting the traditional way of life. By the conclusion of the Wounded Knee siege, AIM had outgrown the framework of civil rights activism (though without abandoning civil rights alliances with other ethnic groups) and emerged as a "warrior society" in the manner of traditional Indian nations.²⁰

The link between AIM and the traditional Indians at Pine Ridge was created in early 1972 after the beating, sexual degradation, and killing of Raymond Yellow Thunder at an American Legion gathering in Gordon, Nebraska, an off-reservation town. Yellow Thunder's family, in the absence of any help by local or federal authorities, asked AIM to help. AIM's organization of the community and virtual occupation of the town of Gordon led to prosecution of two brothers who instigated the crime, dismissal of the local police chief, and public acknowledgement of racism in Gordon. As the nephew of Yellow Thunder later put it:

People here still talk about Yellow Thunder and what happened in Gordon. When A.I.M. came in and helped the family look into the death, that made the older people that are living out on the reservation, out in the country--they kind of lifted up their heads, and were speaking out then. And they been talking against BIA, tribal government, law and order system on the reservation, plus some of the non-Indian ranchers that are living on the reservation and been abusing Indians. (p. 61)

A second similar incident one year later led to an AIM-organized mobilization of people for a meeting with authorities in Custer, South Dakota, that ended in a riot.²¹

AIM was next asked to make a stand against the pro-BIA administration of Pine Ridge Tribal Council President Dick Wilson, a violent opponent of the growing bond between AIM and the traditional people. Wilson's regime, bolstered by a heavily-armed police force which was known as his "goon squad", and reinforced by a large contingent of federal marshalls shortly after the Custer incident, was widely regarded as corrupt, nepotistic, and involved in bootlegging. His tactics, in consort with the FBI and BIA, had turned Pine Ridge into an armed camp. The village of Wounded Knee, where Big Foot and his band were slaughtered, was chosen as the site for the symbolic confrontation. Within a day after the village was occupied by AIM people, it had been surrounded by a makeshift federal army created by the federal Justice and Defense departments, equipped with armed personnel carriers and other substantial military hardware.²²

Matthiessen's description of the events at Wounded Knee II is detailed and thought-provoking. He quotes, for example, from a Pentagon intelligence report submitted during the first week of the occupation:

The Indians do not appear intent upon inflicting bodily harm upon the legitimate residents of Wounded Knee, nor upon the federal law enforcement agents operating in this area, even though small arms fire has been exchanged between opposing forces. Because of its isolated geographical location, the seizure and holding of Wounded Knee poses no threat to the Nation, to the state of South Dakota or the Pine Ridge Reservation itself. However, it is conceded that this act is a source of irritation, if not

embarrassment, to the Administration in general, and the Department of Justice in particular. (p. 69)

Matthiessen then notes that "This sensible assessment was ignored by the Pentagon, which wished to try out its 'Garden Plot' operation (designed in 1968 for use against civil disorders such as protests against the Vietnam war) . . . The FBI was intent on 'neutralizing' its 'key extremists' . . ." (pp. 69-70)

The meaning of all this for Leonard Peltier's case is perhaps best understood from a comment about the Wounded Knee occupation made by Dennis Banks:

Of course, you can't go back to the old Indian way of life at this point. We have to deal with the mother earth in its present condition, which is pretty bad. . . .

Wounded Knee was an educational process for all Indians. Right there you had Indians from Los Angeles and San Francisco, New York and Chicago, Minneapolis and Oklahoma City--big cities where Indians live and become urbanized. They went into Wounded Knee and met there Indians who had never been off the reservations, who live in the traditional way. . . . They were still one people, still one race, and they can be together again. The urban Indians found out what it was to be able to worship their mother earth the way they want. They'll go back to their cities but they'll always have that religion in their hearts. They'll look at the city streets and buildings and cars and they're going to hate it. They're really going to hate it. So they're going to go back home to their people more and more. (p. 82)

Leonard had already lived in both worlds. He spoke Ojibwa as a child living with his grandmother and she taught him traditional medicine. At the age of fourteen, he went to the West Coast, where his mother and other relatives had been relocated by the BIA. In 1965, at the age of twenty, he was part owner of an auto body shop in Seattle, where he was already recognized for his kindness and dedication to Indian people. Leonard's involvement with AIM in the beginning of the 1970's thus built on a life already bridging traditional and urban Indian experiences. He was ready, willing, and able to understand AIM and to work within the organization it provided. More than anything else, I believe, it is Leonard Peltier's ability

to connect political action with spiritual tradition that made him especially antagonistic to the forces of law and order.²³ This ability gives Leonard the power to rally young Indians looking for a way to be Indian amidst the chaos and alienation of white culture, and elders looking to preserve the traditional way. Indian spiritual politics is all the more anathema to government and corporate forces because of its appeal to a growing number of white people who, particularly in areas targeted for intensive energy exploitation, are beginning to share the Indian attitude to land.²⁴

Matthiessen's tracing of the pre-history of the 1975 shoot-out at Pine Ridge also includes a very useful chapter on the Wounded Knee trials, showing the misconduct and political aspects of the prosecutions. Other chapters discuss the impact on AIM of COINTELPRO, the FBI secret counter-intelligence project directed against domestic protest groups--including a discussion of the activities of then South Dakota Assistant Attorney General William Janklow cooperating with the FBI's program to "neutralize" AIM. It is here that Matthiessen reports Dennis Banks' attempt to bring Janklow to justice for raping a young Indian girl. This portion of the book is the subject of a \$20 million libel suit by Janklow (now Governor of South Dakota) against Matthiessen, Viking Press, and South Dakota bookstores.²⁵

The bulk of In the Spirit of Crazy Horse consists of a very detailed presentation of the 1975 shoot-out and its aftermath in criminal prosecutions. Separate chapters present the shoot-out itself from the viewpoints of the Indians and the FBI. Extensive documentation and interview material is provided, and Matthiessen carefully reviews each aspect of each event in an attempt to come as close as possible to what may be said to be the truth of the event. In the course of several chapters, a full, moving history emerges, of clear scholarly and pedagogical value.

Events peripheral to the main story, but extremely significant to an understanding of the larger scene, are also explored with care and precision. The death of Anna Mae Aquash, for example--a Micmac woman who helped organize the Boston Indian Council in 1969 and who left her job at a General Motors plant in Framingham, Massachusetts, to help out at Wounded Knee--is discussed thoroughly for the light it sheds on BIA and FBI anti-AIM activity.²⁶ Similarly, the reader is reminded at appropriate points of contemporaneous events such as the fishing rights struggle in the Pacific Northwest that spawned anti-Indian citizens groups to fight "discrimination against the white majority," the proposals in Congress to limit

Indian jurisdiction on Indian lands, and the "Indian Equal Opportunity Act"--a bill that would have abrogated all treaties and broken up all Indian landholdings. Matthiessen integrates this material in text and footnotes to provide the overall context necessary to understand that Peltier's case, like other AIM cases and perhaps all Indian cases, was as much political and economic as legal.

The concluding section of In the Spirit of Crazy Horse contains the story of Leonard Peltier's escape and recapture from Lompoc prison when he fled to avoid an assassination attempt hatched by the authorities.²⁷ Leonard's treatment at Marion prison, the behavioral modification centerpiece of the federal penal system, and his activities on behalf of prisoners there are described in another chapter. This final section of the book also contains additional analysis of FBI documents obtained under the FOIA, a chapter on the role played by FBI Special Agent David Price in producing false testimony for the prosecution of AIM defendants, and a discussion of the U.S. Supreme Court's 1980 decision affirming the Court of Claims award of \$122,000,000 for the 1877 taking of the Black Hills--a monetary settlement opposed by traditional people, who have organized a continuing occupation in the Black Hills.²⁸ In the Spirit of Crazy Horse closes where it opened, at Oglala; this time a memorial gathering in 1981, a retrospective visit to the fateful location of the shoot-out, followed by a feast and giveaway in honor of a new baby, living testimony to the survival of the Lakota people amidst continuing struggle.

IV

Ultimately, the central message of In the Spirit of Crazy Horse is that the conflict between whites and Indians is now as it always has been a matter of attempted cultural genocide. The law has been useful, even key, in this process, primarily because of the image of neutrality, objectivity, and fairness that it offers to those who believe in it. Sometimes the Indians saw through this image:

They spoke very loudly when they said their laws were made for everybody; but we soon learned that although they expected us to keep them, they thought nothing of breaking them themselves. They told us not to drink whisky, yet they made it themselves and traded it to us for furs and robes until both were nearly gone. Their Wise Ones said we might have

their religion, but when we tried to understand it we found that there were too many kinds of religion among white men for us to understand, and that scarcely any two white men agreed which was the right one to learn. This bothered us a good deal until we saw that the white man did not take his religion any more seriously than he did his laws, and that he kept both of them just behind him, like Helpers, to use when they might do him good in his dealings with strangers. These were not our ways. We kept the laws we made and lived our religion. (p. 477)

In 1831, Chief Justice John Marshall--himself and his family actively engaged in frontier land speculation,²⁹ the sine qua non for success in which was control of relations with the Indians--set the legal foundation for federal dominance in this process in the famous dictum of the Cherokee cases: the Indians are a "domestic, dependent nation," subordinate not to the states, but to the United States,³⁰ President Andrew Jackson, elected on an anti-Indian states rights platform, and not to be cowed by the Supreme Court into losing the value of his own land speculation at the frontier, offered his own dictum: "John Marshall has made his decision, now let him enforce it!"³¹ No matter that one million citizens out of a total U.S. population of twelve million sent petitions to Congress in favor of upholding the treaty with the Cherokee.³² And no matter that public opinion in 1973 was substantially on the side of the Indians occupying Wounded Knee.³³ The political process of American government being what it is, power resides not so much with the citizens as with the officials and the instruments they have--including law--for manipulating and managing public opinion. This was acknowledged and argued for in the Federalist Papers, specifically in regard to the treaty power of the Senate and President; ironically, the argument was based in part on the supposed need to insulate the treaty process from the "supineness, the ignorance, and the hopes and fears" of the public.³⁴

Leonard Peltier is a symbol of resistance to genocide. The growing attention to his case in national and international circles is an indication that the victims of genocidal policies are coming to demand justice. As Matthiessen puts it, Peltier's "notoriety and growing stature as leader and martyr (are) increasingly embarrassing to the U.S. government." (p. 381)³⁵ Leonard stands as a teacher to whites and Indians alike. In the words of Wallace Little, Jr. ("June"), who, with his wife and two children

lived in a cabin near the site of the shoot-out, "Skins have a lot to relearn . . . a lot. We got too far away." (p. 544) And as the young medicine man Sam Moves Camp tells Matthiessen, "The white man will learn, too, they say, but we're not supposed to teach him everything at once, he must redevelop in a natural way." (p. 542)

Those of us who teach and study about law know only too well how complicated this redevelopment may get. We see how this system of government can ignore a court decision and yet cite the dicta from the decision as law.³⁶ We see how even (perhaps especially) the best of judges can pretend that the legal record is historical reality.³⁷ And we see too how the historical record can become a legal "Catch-22."³⁸

This is not to say that the problem is with the law alone. It is only that we who are close to the law in our work can see this aspect more clearly than others. We can fathom the paradox of a general who carries out his command yet does not believe it right.³⁹ We know the power of rules and roles to unmake people.⁴⁰ Here is the nub of the problem. And behind this nub lie the values that inform white civilization. The disparate attitudes toward gold show it clearly.⁴¹ We live in a society that has developed from greed and from a war of all against all that is both cause and effect of this greed.⁴² The state and government, which were supposed to have lifted us from this state of universal competition, have only enthroned it.⁴³ Senator Dawes, in arguing for passage of the Dawes Allotment Act--to break up Indian communal lands into individual and family plots and transfer the "surplus" to the government for sale to whites--stated forthrightly and self-righteously the values that lie behind white civilization and its conflict with the Indians:

. . . under (the Indian system of common land) there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates they will not make much more progress.⁴⁴

As we study law, we know that we must also study social structure; and as we study society, we must also study cultural values. Any political prisoner raises basic questions at this level. Leonard Peltier raises them for our time in the only way they

can be raised:⁴⁵ by one who has lived in and out of the dominant American culture, and whose commitment to life includes all life, whether it grows, flows, walks, swims, crawls, or flies. "Leonard Peltier is a sun dancer. . . ." (p. 522) His sacrifices give us strength.

FOOTNOTES

1. Rupert Costo and Jeanette Henry, Textbooks and the American Indian, San Francisco: Indian Historian Press, 1970. See also the special issue on American Indian education of Integrated Education, vol. 19, Nos. 1 - 2, 1982.

2. This agitation spans the continent and the cultural spectrum: from the fishing controversy of the Pacific Northwest (see U.S. v. State of Washington, 520 F2d 676 (1975), and Indian Tribes, A Report of the United States Commission on Civil Rights, June, 1981, pp. 61 - 103) to the land claims in the Northeast (see Oneida v. County of Oneida, 414 US 661 (1974), Indian Tribes, pp. 103 - 136, and Clinton and Hotopp, "Judicial Enforcement of the Federal Restraints on Alienation of Indian Land: The Origins of the Eastern Land Claims," 31 Me. L. Rev. 17 (1979)); and from the Youth and Elder Gatherings led by Muskogee (Creek) medicine man Philip Deere, to the World Court and Geneva Conference on Indigenous Peoples (see Native Peoples in Struggle and Basic Call to Consciousness, Mohawk Nation: Akwesasne Notes, 1982). These issues are now frequently presented in a global context of concern for government and corporate attacks on indigenous populations. October 12, "Columbus Day" in the United States, has been designated by the United Nations as International Day of Solidarity with Indigenous Peoples.

3. The early 1970's saw a large number of new books by and about Indians, and a generally positive political atmosphere at the national level, including restoration of the "terminated" Menominee tribe in Wisconsin and return of Blue Lake to the Taos Pueblo in New Mexico. White backlash increased in the mid-1970's. See Indian Tribes, pp. 1 - 15. Interior Secretary James Watt adopted the backlash attitude for the Reagan administration in his somewhat befuddled remarks about "BIA socialism." See "Watt Lies Behind these Remarks?" Akwesasne Notes, Late Winter, 1982, p. 24.

4. This "new fashion in racism" is perhaps the best explanation for the failure of the first Mashpee Wampanoag land claim, Mashpee Tribe v. New Seabury Corp., 592 F2d 575 (1979). Counsel for defendants demanded a jury trial on the "factual" issue of tribal existence and offered sociological and anthropological evidence of Indian intermarriage with American Blacks and Cape Verdeans as "proof" that the existing Mashpee people were not "Indians" within the meaning of the 1790 Non-Intercourse Act. For reasons not altogether clear plaintiffs' attorneys did not oppose this unprecedented line of argument. Mashpee II, Mashpee Tribe v. James Watt, 542 FSupp 797 (1982), is an attempt to re-open the land claim on different legal grounds.

5. ". . . in 1881, the 'savage rite' known as the sundance was forbidden on all of the Sioux reservations; suppression of other religious ceremonies soon followed." (p. 17) One of Leonard Peltier's activities in prison has been to petition, under the American Indian Religious Freedom Act, for the right to hold sweat-lodge ceremonies and a sundance. (see p. 506)

6. ". . . nearly one hundred people, most of them AIM members or traditionals, were victims of unsolved murders or 'accidents' during (anti-AIM Tribal Council President Dick Wilson's) terms of office, in a feudal nightmare that Senator Abourezk would describe as 'total anarchy.' By 1975, almost everyone on the reservation went armed. . . ." (p. 129)

7. Price's legacy includes both the conviction of Leonard Peltier and the acquittal of Dennis Banks and Russell Means in the Wounded Knee trials. Matthiessen quotes from the memorandum decision of Federal Judge Frederick Nichol dismissing the Wounded Knee indictments: "I am forced to conclude that the prosecution acted in bad faith at various times throughout the course of the trial and was seeking convictions at the expense of justice. . . . The waters of justice have been polluted, and dismissal, I believe, is the appropriate cure for the pollution in this case." (p. 99)

8. As of this writing, the Civil and Constitutional Rights sub-committee of the House Judiciary Committee, Don Edwards, chair, is considering an investigation into FBI/Indian issues, including the Peltier case. Matthiessen is taking an active role in arguing for such an inquiry. Note Matthiessen's report that a similar investigation by a Senate Select Committee on Intelligence in 1975 was tabled after the shoot-out at Pine Ridge. (p. 127) Two negative reviews of particular significance were in Newsweek magazine (March 28, 1983, p. 70) and The New York Times Book Review (March 6, 1983, p. 1). The Newsweek

reviewer, Peter Prescott, while finding the book "bloated" with interviews and documents, nevertheless says "Matthiessen argues convincingly that . . . Peltier . . . was railroaded into an illegal conviction. . . . The accounts he gives of federal lawlessness . . . become in time stupefying." In an odd turnabout, however, Prescott concludes that the Peltier case does not deserve further attention because it is "not particularly interesting. Its manifold injustices are in no way unique or even uncommon." He salves his conscience by adding ". . . the people the government unlawfully persecutes are not necessarily the good guys." It goes without saying that such an attitude hardly comports with the Bill of Rights. The New York Times reviewer, Harvard Law Professor Alan Dershowitz, is unimpressed by the evidence of an FBI frame-up: ". . . Matthiessen . . . fails to convince . . ." His review is studded with typical white guilt cliches--". . . impossible for any sensitive reader ever again to enjoy Mount Rushmore . . ."--which lead him, stereotypically, to conclude that while Crazy Horse was "a noble 19th-century leader of Indian resistance," Leonard Peltier and AIM are "violent . . . self-destructive . . . self-appointed . . . radical(s) . . ." who have "exploited their . . . heritage for their own personal ends." Dershowitz, having salved his conscience by confessing his guilt feelings, concludes like Prescott with the suggestion that Peltier has "ended where (he belongs)--in jail." Dershowitz' review prompted a protest in his office by Harvard students and members of the Massachusetts Indian community, accusing him of "insult" and "slander" of Indians.

9. An application, based on material discovered in these documents, to vacate Leonard's conviction and grant him a new trial is currently on appeal. It is interesting to note that the FBI retained an additional 6,000 pages of documents said to be "classified . . . in the interest of the national defense or foreign policy." (Matthiessen, p. 478)

10. The best source of information about ongoing conflicts involving native peoples around the world, and particularly in this hemisphere, is the bi-monthly Akwesasne Notes, the official publication of the Mohawk Nation at Akwesasne (mail address: via Rooseveltown, NY 13683).

11. This is a major sub-group of the "Sioux," located primarily in the Plains west of the Missouri River--in North and South Dakota and Nebraska.

12. The pursuit of gold is a basic theme in the history of white-Indian relations. "The association of the New World with unlimited riches is a commonplace in the history of ideas, but until one realizes how immediate, coarse, and brutal was the

response of European greed to the prospect of boundless wealth, one cannot understand how quickly the radiant image (of the New World) became crossed with streaks of night. . . . Columbus, his associates, his crew, and his rivals . . . could not conceive that the indifference of the Indians to what the Europeans thought of as tangible wealth was anything less than cunning or treachery." Howard Mumford Jones, O Strange New World, New York: The Viking Press, 1968, pp. 40-41. Black Elk, Lakota holy man, once commented on Custer's 1874 reconnaissance expedition into the Black Hills: "Later, I learned that Pahuska ("Long Hair"--Custer) had found there much of the yellow metal that makes the Wasi'chu ("greedy one"--white man) crazy." Black Elk, Black Elk Speaks, as told to John Neihardt, New York: William Morrow and Co., 1932, p. 79.

13. Matthiessen points out that the Fort Laramie Treaty is "the only recognition of unconditional defeat ever signed by the U.S. government." (p. 8).

14. The legal consequences of this Act were first litigated in 1920, under a special jurisdictional Act. Through a tortuous and protracted procedural history, the case finally reached the U.S. Supreme Court in 1980, which affirmed a Court of Claims decision that the 1877 Act was a "taking" for which compensation was required under the Constitution. U.S. v. Sioux Nation of Indians, 448 US 371 (1980). The award of \$17.5 million plus interest, to a total of \$122 million has been contested by Oglala traditionalists who oppose any monetary settlement. Attorneys for the tribe, who received over \$10.5 million as their fee, welcomed the decision. It has been estimated that \$8 billion worth of minerals are in the Black Hills. \$1 billion worth of gold has been removed from the Hills through the Homestake mine alone. (see Matthiessen, Chap. 19).

15. Various allotment acts were passed by Congress at different times, with the purpose of breaking up the Indian communal land base into "private" ownership. See text at note 44.

16. The bulk of Indian welfare is channeled through the standard federal welfare programs. Much of this is charged against the treaty promises of "subsistence." In some cases, the money actually consists of revenue generated from the leasing of Indian land by the BIA to whites.

17. Matthiessen's source for this analysis is Indian Tribes. That report relies in turn on Brophy and Aberle, The Indian: America's Unfinished Business, the Report of the Commission on the Rights, Liberties, and Responsibilities of the American Indian, Norman: University of Oklahoma Press, 1966. This report,

the first comprehensive investigation of Indian life since the 1928 Meriam Report, was prepared under the auspices of an independent commission operating under a grant from the Fund for the Republic. The commission was established in 1957 to appraise the results of the federal termination policy enacted by the 83d Congress in 1953. The report is generally critical of forced assimilation policies.

18. In a transaction Matthiessen characterizes as "a huge transfer of public wealth into private hands," (p. 105) billions of tons of coal on government and Indian lands were presented to the energy corporations at a cost averaging three dollars per acre. See also note 14. The most comprehensive, though somewhat polemical, account of the economic exploitation of Indian land and resources in the United States is Johansen and Maestas, Wasi'chu, New York: Monthly Review Press, 1979.

19. Beginning with President Nixon's plan for energy self-sufficiency, certain areas of the country were designated "National Sacrifice Areas," where strip mining and energy production would occur despite the conclusion of the National Academy of Sciences that these areas could not be reclaimed. See Johansen and Maestas, p. 170. "The authorizing legislation creating the Department of Energy allows the director of the agency to enter into a pact with the Department of Defense to seize unilaterally and hold areas of strategic mineral significance if such action is justified as being in the 'national interest.' For Indian nations that have enough energy resources to make a difference in the future direction of this country, such a stipulation is equivalent to a threat to call out the cavalry again." Ibid., p. 12, quoted in Matthiessen, p. 413. AIM leader Russell Means' comments detail some of what would be "sacrificed":

Right now, today, we who live on the Pine Ridge Reservation are living in what white society has designated a "National Sacrifice Area." What this means is that we have a lot of uranium deposits here, and white culture (not us) needs this uranium as energy production material. The cheapest, most efficient way for industry to extract and deal with the processing of this uranium is to dump the waste by-products right here at the digging sites. Right here where we live. This waste is radioactive and will make the entire region uninhabitable forever. This is considered by industry, and by the white society that created this industry, to be an "acceptable" price to pay for energy resource

development. Along the way they also plan to drain the water table under this part of South Dakota as part of the industrial process, so the region becomes doubly uninhabitable. The same sort of thing is happening down in the land of the Navajo and Hopi, up in the land of the Northern Cheyenne and Crow, and elsewhere . . .

We are resisting being turned into a National Sacrifice Area. We are resisting being turned into a national sacrifice people. The costs of this industrial process are not acceptable to us. It is genocide to dig uranium here and drain the water table--no more, no less. (p. 525)

20. At a national conference at White Oak, Oklahoma, following the end of the Wounded Knee occupation, "AIM pledged to continue its campaign to repeal the Indian Reorganization Act of 1934 and dismantle not only the whole system of government-sponsored tribal councils but the Bureau of Indian Affairs itself. . . ." (Matthiessen, p. 85) "Not long after the White Oak convention, a huge sundance was held. . . . For most of the AIM leadership, this sundance was the first real experience of spiritual training, and Peltier was among those pierced for the first time." (p. 86)

21. The prosecution of AIM leader Dennis Banks for arson, burglary, and malicious damage to a public building (even though he was inside the building with state officials at the time of the riot) is still hanging in the air. Banks fled the state after conviction and before sentencing because of threats that he would be killed in jail. Eventually obtaining sanctuary in California granted by Governor Jerry Brown, Banks left that state in 1983--a new governor having promised to extradite him to South Dakota. Banks is now on Onondaga territory, in sanctuary granted by the traditional chiefs. New York Governor Mario Cuomo has pledged to respect Onondaga sovereignty in the matter.

22. The scenarios presented for federal action would be ludicrous were they not also horrifying. The FBI requested that the 82d Airborne be brought in, a move refused by the Chief of Staff of the 82d, who himself, however, later ordered up rocket launchers, only to be countermanded in Washington. (See Matthiessen, Chap. 3)

23. Though I think Matthiessen would support this analysis, he does not always grasp the spiritual/political link. In a reference to Hopi traditionals, for example, he says he thinks of them as "aloof from activism and politics." (p. xxiii) In fact, Hopi

traditionals pressured President Nixon over the Peabody Coal Co. strip mine at sacred Black Mesa (see T. C. McLuhan, Touch the Earth, New York: Pocket Books, 1972, p. 170), led delegations to the Geneva Conference on Indigenous Peoples, and are actively cooperating with Navajo traditionals at Big Mountain to fight the fencing and relocation planned by the federal government in its "solution" to the supposed "Navajo-Hopi land dispute." (see Richard Clemmer, "Black Mesa and the Hopi," in Native Americans and Energy Development, Cambridge: Anthropology Resource Center, 1978, pp. 17-34.) The concept of a spiritual politics is lucidly presented in Basic Call to Consciousness: ". . . the narrow concept of human liberation . . . needs to be extended to the whole of the Natural World." p. 79.

24. One of the most visible and successful examples has been the Black Hills Alliance, supported by environmentalists, anti-nuclear activists, ranchers, and others. Its newspaper, Black Hills Paha Sapa Report, is available from the Alliance at P. O. Box 2508, Rapid City, S.D. 57709.

25. The suit has drawn opposition from library, publisher, and bookseller organizations. Janklow has a similar suit pending against Newsweek magazine for reporting the same events in an article about Dennis Banks (February 21, 1983, p. 28). In addition to spurring sales of the book, the suit seems sure to provoke deeper inquiry into Janklow's past, including his juvenile record, which was an issue in his race for Attorney General in 1974, and which he himself characterized at a press conference as "preliminary to that type of thing (rape). But there was no actual rape involved." Rapid City Journal, October 26, 1974, p. 15.

26. Identified only after her burial (by means of fingerprint analysis done on her hands which had been severed at the wrist for this purpose), Anna Mae was said by the official autopsy to have died from drunkenness and overexposure. A second autopsy done on the exhumed body by a private pathologist at the request of the family turned up the remains of a bullet "fired at point-blank range from a .38 handgun into the back of her head." (Matthiessen, p. 262)

27. The primary basis for the allegation of an assassination attempt is the affidavit of Robert Wilson, another Indian prisoner who was offered the job in exchange for the dropping of certain charges against him. As Wilson pretended to cooperate in the set-up, the charges were dropped. In fact, Wilson informed Peltier and subsequently resumed his own Indian name, Standing Deer. Matthiessen cites Standing Deer's actions as evidence of the strong affect Peltier has on Indian people. (See

Chap. 14)

28. Yellow Thunder camp has continued to be held, despite heavy and ongoing pressure from legal officials and vigilante groups. See "Yellow Thunder Indictments," Akwesasne Notes, Late Fall, 1982, p. 19. See also note 14.

29. "Speculator influence was nowhere greater than in the old southwest. Twenty-one speculators in 1800 claimed one-fourth of Kentucky. The Marshall family alone (including Supreme Court Justice John Marshall) held 400,000 acres." Michael Paul Rogin, Fathers and Children, New York: Vintage Books, 1976, p. 81.

30. "Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian." The Cherokee Nation v. The State of Georgia, 8 L. Ed. 25, 31 (1831).

31. Horace Greeley, The American Conflict, Vol. I, Hartford: O.D. Case & Co., 1864, p. 106.

32. Rennard Strickland, "The Absurd Ballet of American Indian Policy or American Indian Struggling with Ape on Tropical Landscape: An Afterword," 31 Me. L. Rev. 213, 219 (1979).

33. "... one poll declared that 51 percent of the American people sympathized with the Indians, with only 21 percent against." (Matthiessen, p. 70)

34. "The Federalist No. 64," in Henry S. Commager, ed., Selections from the Federalist, New York: Appleton-Century-Crofts, 1949, p. 90.

35. The international arena includes the Fourth Bertrand Russell Tribunal and the World Court. See Matthiessen, pp. 507, 529. See Native Peoples in Struggle for a report on the Fourth Russell Tribunal.

36. Marshall's dictum in the Cherokee case (see note 30) is still the foundation stone for federal Indian law.

37. "There may be instances in which Congress has broken faith with the Indians, although examples of such action have not been pointed out to us." Federal Power Commission v. Tuscarora Indian Nation, 362 US 99, 142 (1959), Black, dissenting. Justice

Black went on to say, "I regret that this Court is to be the governmental agency that breaks faith with this dependent people. Great nations, like great men should keep their word." Id.

38. See the discussion of Mashpee I in note 4.

39. Matthiessen reports the remarks of General George Crook as he prepared to embark on the 1876 campaign against the Souix (where he suffered his only defeat by Indians): ". . . the hardest thing is to go and fight those whom you know are in the right." (p. 11) Dee Brown states that Crook, by 1882, "had learned . . . that Indians were human beings, a viewpoint that most of his fellow officers had not yet accepted." Dee Brown, Bury My Heart at Wounded Knee, New York: Bantam Books, 1972, p. 377. Brown also quotes Major Edward Wynkoop after his conversations with two Cheyenne messengers whom he held hostage during a march to a council with the Indians in 1864: "I felt myself in the presence of superior beings; and these were the representatives of a race that I had heretofore looked upon without exception as being cruel, treacherous, and bloodthirsty. . . ." Ibid., p. 77.

40. "Roman law . . . could and did unmake persons. Legal education has often been education in the making and unmaking of persons." John T. Noonan, Jr., Persons and Masks of the Law, New York: Farrar, Straus & Giroux, 1976, p. 58. Referring to slavery, Noonan discusses "the power of the law to convert persons into personalty." Ibid., p. 60.

41. See note 12. Columbus, perhaps uneasy about mixing gold and Christianity, said: "With gold it is even possible to open for souls the way to paradise!" Johansen and Maestas, p. 16, Jones, in a somewhat different translation of the Spanish, p. 42. The Spanish were particularly clear about the problem of justifying war when greed was a motivation for the conflict: "If these conditions (an invitation and warning to accept the Christian faith and Spanish domination) are fulfilled, the war against the barbarians will be just, even though the individual soldiers or leaders may be moved by greed, and the booty they win need not be restored as would otherwise be the case." Lewis Hanke, Aristotle and the American Indians, Bloomington: Indiana University Press, 1959, p. 63.

42. Hobbes states this most succinctly: "Honourable is whatsoever possession, action, or quality, is an argument and signe of Power. Dominion, and Victory is Honourable; because acquire by Power. . . . Riches, are Honourable; for they are Power. . . . Timely Resolution, or determination of what a man is to do, is Honourable; as being the contempt of small

difficulties, and dangers. . . . To be Conspicuous, that is to say, to be known, for Wealth, Office, great Actions, or any eminent Good, is Honourable; as a signe of the power for which he is conspicuous . . . Covetousnesse of great Riches, and ambition of great Honours, are Honourable; as signes of power to obtain them. . . . Nor does it alter the case of Honour, whether an action (so it be great and difficult, and consequently a signe of much power,) be just or unjust: for Honour consisteth onely in the opinion of Power." Leviathan, ch. 10, quoted in C. B. Macpherson, The Political Theory of Possessive Individualism, Oxford: Oxford University Press, 1964, p. 38.

43. "The possessive market society . . . is a society in which men who want more may, and do, continually seek to transfer to themselves some of the power of others, in such a way as to compel everyone to compete for more power, and all this by peaceable and legal methods which do not destroy the society by open force." Macpherson, p. 59. But this is not to imply that a "marxist" state is any less abrasive of native societies of self-sufficiency. Indeed, a somewhat acrimonious debate has been launched by AIM leader Russell Means in his criticism of marxism as part of European culture. Russell Means, "Fighting Words on the Future of the Earth," Mother Jones magazine, December, 1980. p. 22. See also "Marxism: Perspectives from a Native Movement," Akwesasne Notes, Spring, 1981, p. 9.

44. Quoted in Wilcomb E. Washburn, The Assault on Indian Tribalism, Philadelphia: J. B. Lippincott, 1975, p. 17. It was not for want of a coherent opposition that Dawes' views prevailed in Congress. The minority report of the House Committee on Indian Affairs stated: "The real aim of this bill is to get at the Indian lands and open them up to settlement. . . . If this were done in the name of Greed, it would be bad enough; but to do it in the name of Humanity . . . is infinitely worse." Washburn, p. 39.

45. Another reviewer, though quite favorably impressed by Matthiessen's arguments and presentation, has not found in Peltier's story any basis for hope for justice. Noting that Matthiessen has elsewhere written of a "hope (for) an evolution in human values" and has said that "time and history . . . and passion" are on the side of those who prefer freedom to conformism and fear, the reviewer sees In the Spirit of Crazy Horse as containing "no such note of hope, no assurance that mankind will outgrow its orneriness . . . there is only prose hardened by unhappiness with a mean system that defies reform. In this respect, I guess, In the Spirit of Crazy Horse is a perfect book for our times." Robert Sherrill, "A Warrior's Legacy," in The Atlantic Monthly, March, 1983, pp. 112ff.