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Booknote. Indian Country by Peter Matthiessen

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ervation and communal solidarity; we all know the impossibility of completely controlling our conduct toward each other in a world that is beyond our control. The best we can do is constantly to reaffirm our connections in spite of their fragility. Like Sisyphus, we must renew our project even when its apparent futility overwhelms us. Complete success may be unattainable, but our efforts alone save us from complicity in the communal disintegration that we so fear.

INDIAN COUNTRY. By Peter Matthiessen. New York: Viking Press. 1984. Pp. xii, 338. \$17.95.

In *Indian Country*, Peter Matthiessen has collected eleven entries in his journal of travels among the traditional American Indians — those few who continue to reject accommodation with the dominant culture. With meticulous care, Matthiessen chronicles the efforts of groups in the Florida Everglades, along the Tennessee Valley, on the New York-Canada border, high in the Siskiyou mountains, and all across the West and Midwest that are seeking to maintain their traditional way of life — “Indian way” — by protecting their sovereignty and ancient land bases against governmental encroachment and industrial destruction.

Over against these sympathetic figures, who are seen most often at home with their families in informal conversation, Matthiessen arrays the forces of opposition, seen in their business offices in formal interviews. The enemies closest to home for the traditionals are the “tribals” — Indians participating in the representative tribal councils mandated by the Indian Reorganization Act (IRA),¹ who are willing to accept federal benefits and to surrender both their land and their proud isolation and to ignore the traditionals’ cries of loss. The worst villains of the piece, however, are the federal, state, and local governments. Detail after damning detail, Matthiessen recounts tales of corrupt officials acting in violation of the law and of Congress’s shocking insensitivity to the interests of the scattered and impoverished traditionals.

In its call for justice for these groups and its denunciation of all their enemies, *Indian Country* is at times militant, even strident. For example, Matthiessen caricatures Peter “McDollar” McDonald, tribal chairman of the Navajo, as an almost stereotypically corrupt “tribal,” one who drives a Lincoln Continental and “cooperates” closely with the Bureau of Indian Affairs while purporting to serve one of the poorest ethnic groups in the nation (p. 306). Similarly, Matthiessen harshly condemns the Reagan administration: the epilogue to the last essay concludes by noting that even the National Tribal Chairmen’s

¹ 25 U.S.C. §§ 461-479 (1982).

Association — a conservative group — has denounced the President “as ‘the great fork-tongued liar and the great deceiver, who sits in the White House’” (p. 330).²

The stridency of this plea is understandable: Matthiessen is using his access to the national media in these pieces — most of which originally appeared in magazines and newspapers — to publicize the plight of groups that usually attract little attention from the public and politicians. Indeed, pleas like Matthiessen’s may be one of the traditionals’ few sources of hope for protection because they cannot gain access to the conventional apparatus of interest group politics without sacrificing the very way of life they desire to protect. To people who reject the telephone, electricity, and even the English language, and who choose to live in physically isolated communities, lobbying the national legislature and the public at large is not an attractive option. For the same reason, treaty-making and representative tribal government under the IRA offer little protection: Matthiessen depicts instance after instance of the federal government’s negotiating with accommodationist “chiefs” or “duly elected” tribal councils who, under the domination of the federal Bureau of Indian Affairs, cede away land and rights to the later consternation of the absent traditionals.

And so the traditionals must seek protection through some other, perhaps less conventional legal or political mechanism. One possible but inadequate candidate is the fiduciary obligation, found in various statutes and the common law,³ that requires the Bureau of Indian Affairs and the federal government to safeguard the “best interests” of the tribes. Matthiessen’s stories illustrate one obvious flaw in that approach: its remarkable susceptibility to abuse. Again and again he displays the ease with which white organizations can produce “representative” Indians who will testify that the best interests of the Indians lie in accepting the deal that white industry or government has to offer.

But the real problem with the fiduciary obligation lies at a deeper level and suggests a more fundamental difficulty with all of Indian law and policy: no one, not even the Indians themselves, seems to know where the best interests of the Indians as a whole do lie amid the restricted range of options presented by the dominant culture. Tribals and traditionals may differ in good faith in their attitude

² Several times the call for justice becomes eschatological, as when Matthiessen promises near the book’s beginning that “[w]hen modern man has regained his reverence for land and life, then the lost Paradise, the Golden Age in the race memories of all peoples will come again” (p. 13); and the text closes on an apocalyptic note when an active traditional insists, “If this government keeps on [trying to take Indian land and kill the Indians], I think it’s going to be the end of the world” (p. 329).

³ For one philosophical consideration of the common law trust responsibility, see Note, *Rethinking the Trust Doctrine in Federal Indian Law*, 98 HARV. L. REV. 422 (1984).

toward white culture: Matthiessen recounts the story of a school-teacher who escorted her Indian students to the last stand of Bald Cypress Forest in Corkscrew Swamp in the Everglades, only to find them bored and eager to return to the television shows in their cinder-block houses (p. 49). And although the interests of the traditionals may be systematically ignored in the collusion between tribals and white governments, the interests of those who want to adapt to white culture may be systematically denigrated by naturalists like Matthiessen, who apparently believes that the best interests of the Indians correspond to his own goal: protecting the environment.

Indeed, most of the essays in *Indian Country* describe battles to save the land from pollution. At one point the author candidly admits to a sold-out Indian official that his own interest in reporting on Indians grew out of a belief that they would act as better stewards of the land than does a white government that often colludes with expanding industry (p. 44).⁴ This belief apparently shapes his understanding of the traditional culture as well: veneration for the land seems to be the single distinctive element of Matthiessen's "Indian way." Never does he give us a close vision of the communal life of traditional Indians, their means of production, their method of child-rearing. And never does he breathe a word of real sympathy for those Indians who have chosen to forgo their proud landed independence and the grinding poverty that accompanies it.

The concept of "best interests" of the Indians thus functions as an empty vessel, to be filled by the interests of those who hold it at any given time. A more prescriptive and avowedly substantive program is clearly needed to reconcile all the interests involved and to create conditions for a fulfilling existence for both tribals and traditionals. But such a program will probably never exist because traditional Indian culture and contemporary American politics may define political legitimacy and value in fundamentally incompatible ways.

The United States Constitution rests on the assumption that governmental legitimacy and political value depend on the expression of subjective individual wills in established fora, such as Congress, or in authoritative documents, such as the Constitution itself.⁵ But the tribes, by the Supreme Court's own admission, are preconstitutional and extraconstitutional bodies, never a part of the constituting "People"; hence what might be legitimate action under the Constitution may not constitute legitimate treatment of the tribes. The Indians,

⁴ Matthiessen has expressed a similar sentiment most recently in P. MATTHIESSEN, *IN THE SPIRIT OF CRAZY HORSE* (1983), and much earlier in P. MATTHIESSEN, *AT PLAY IN THE FIELDS OF THE LORD* (1965).

⁵ The alternative view — that value rests neither on the text of the Constitution nor on the language of the legislature, but on the dictates of natural law — has long been held in disrepute, although it is now enjoying a resurgence. See Soper, *Natural Law and Natural Rights* (Book Review), 50 U. CHI. L. REV. 1170, 1172 (1983).

on the other hand, originally defined value traditionally and religiously, as an objective and pre-set fact, varied only by direct mystical experience. And for the traditionals, this definition of value continues.⁶ The clearest and most comprehensive example of this view is the elaborate system of secret, orally transmitted Hopi teachings and prophecies that embody the Creator's Life Plan; the absence of the IRA form of government from that plan caused Hopi traditionals to reject it as early as the 1940s. These same teachings later became the basis of the nationwide Indian Rebirth Movement.

The difficulty, then, is finding a way to reconcile a value system based predominantly on process and will with one based on communal tradition and mysticism. This reconciliation is especially important because the Indians are not sovereign foreign nations: Congress regularly imposes its will on them under a claim of right. A people with aspirations to morality should find this situation deeply disturbing: the United States effectively exercises total power over a group that is outside the structure used to legitimate power. We have no ready definition of legitimacy in the extraconstitutional territory of Indian country.

In an effort at justification, the United States historically tried to treat with the handiest tribal representative or organize the Indians into majoritarian councils. But in so doing, Congress ignored the fact that the traditional Anglo-American concepts of contract, private ownership of land, unified tribal action, and representative democracy were alien to many traditional Indian cultures and were considered justifications for power in almost none. Some Indians adapted to the new regime and adopted the implied scheme of justification. Others simply ignored the proceedings, deeming them illegitimate; these became the traditionals.

Thus, the difficulty of reconciliation remains — in the form of a challenge to the dominant culture to develop a morality that is more than the aggregate of individual self-interests represented, more than the product of authoritative procedure. It is in the undertaking of this task that Matthiessen's book may find its greatest significance, for he elucidates with great power one potential common standard for the culture of the Indians and the whites: many of the traditional Indians and some members of the dominant culture share a reverence for the earth, a hope for renewed harmony with it, a dream of final grace.

At the emotional center of the work, Matthiessen recounts his expedition high into the Siskiyou to Doctor Rock, an ancient desti-

⁶ In a personal and touching passage, Matthiessen describes the efforts of his friend Archie Fire Lame Deer, a Lakota medicine man, to preserve traditional songs and ceremonies from popularization — because they have “no real spiritual foundation” if not performed in the old manner (p. 231).

nation for Yurok vision pilgrimages. He travels with two Indians: a young Yurok rediscovering the traditional way and an older nontraditional, who has worked as a logger in the region most of his life. They come within sight of the Rock but never finish the pilgrimage; they reach the last deep valley before the Rock only at dusk on the last day of food. On their way back down the mountain the next morning, they stop once and look down:

During the night, the ocean fogs had rolled into the Klamath gorge, pushing thick white tentacles into the canyons of Blue Creek, leaving the ridges all around like green islands in a sea of clouds; this silent world lay far below the rock where we sat perched like three unshaven angels. . . . [The older Indian] frowned and cleared his throat. "You're very close to heaven here," he muttered. He glared at us, as if daring us to laugh. Then he spoke about a time, high up in the mountains, when he had found himself quite suddenly in a beautiful, strange place where he had never been before and yet which seemed somehow familiar, as if remembered from another life. He had walked along as if entranced, weeping and laughing simultaneously, as if on the point of remembering something that would bring him instantly and forever a profound understanding of the world, of life and death. (P. 193).

This mystical veneration of the home of man, ephemeral as the fogs in the Siskiyou, may of course be too elusive a concept on which to ground a jurisprudence of Indian law. But Matthiessen has tried to stand witness to one possible element of that jurisprudence, shared by himself the white celebrity, the neo-traditional Yurok, and the old logger, and he has spoken from the heart. He has dared to insist that the law regulating an ancient culture that believes that all men bear relations to all the parts of the earth should be based on a love of the earth — and not on administrative ease, industrial profit, or other goals dictated by a majoritarian polity and a capitalist economy. It is a cry still in danger of dying in the wilderness, its home.