Jeffrey Insko

The Logic of Left Alone: *The Pioneers* and the Conditions of U.S. Privacy

Disgusted with the "wasty ways" of society, under suspicion of crime and armed with a rifle, Natty Bumppo stands at the entrance of his hut late in James Fenimore Cooper's *The Pioneers* (1823) refusing legal authorities entry into his home. "'I trouble no man,'" Natty complains, "'why can't the law leave me to myself?'"[1] Almost two centuries later, under eerily similar circumstances, Randy Weaver, the central figure in the terrible incident now known simply as Ruby Ridge, adopts Leatherstocking's defiant posture and language: "We were not looking to do battle with anyone," Weaver has insisted, "We did not hate anyone. We wanted to be left alone."[2]

It would be easy to dismiss this similarity as mere coincidence. Separated by time and space, neither products of a shared cultural moment nor embedded in a common social matrix, the events of *The Pioneers* and Ruby Ridge lack the temporal kinship that in so much recent historicist criticism legitimizes the link between literary texts and extraliterary history. But while the stories of Weaver and Natty in *The Pioneers* may traverse both historical time and the boundary separating fictional creation from social reality, they are also uncannily congruent: in each case the inhabitant of a remote wilderness cabin, an avowed racial separatist and gun enthusiast who disapproves of his society and harbors antigovernment sentiments, becomes engaged in a tense standoff with overzealous legal authorities that ends in violence and tragedy.

More to the point, a simple utterance generates and gives this story its shape: both men *want to be left alone*—a claim that exceeds the particular circumstances that provoke it. For Natty, the question "why

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can't the law leave me to myself?" functions as more than a protest against a magistrate seeking entrance to his hut. Rather, like the Weavers' claim, it registers a broader dissent, expressing the desire for a form of social withdrawal that ironically helps set in motion the series of events ultimately leading to his confrontation with government authorities. Rather than providing the solution to Weaver's and Natty's dilemmas, the right to be left alone turns out to be part of the problem. That problem, resonating from Cooper's day to our own, motivates the present essay. A familiar refrain in U.S. history, "leave me alone," along with its many variants, has long been the preferred locution with which one affirms what we now recognize as one's right to privacy. And because in U.S. social and legal history the locution both precedes and to some extent defines the right, an examination of the former's uses can help reveal what it is we affirm—conceptually and legally—when we affirm our privacy rights.

My focus in the following pages will not be on the similarities between Natty Bumppo and Randy Weaver in particular. They simply represent two of many spokesmen for a conceptual incoherence at the heart of the various incompatible definitions and applications of the right to privacy in U.S. history. Hence my subject is a persistent and paradoxical American cultural logic I call "the logic of left alone," a multiform logic best understood within a historical configuration not circumscribed by a discrete slice of historical time. Locating in Cooper's novel an inchoate discourse of privacy rights, the contours of which continue to define present-day philosophical and legal understandings of the relations between privacy and personhood, my reading opens a new vein of inquiry into *The Pioneers* by exploring its role in the prehistory of the late-nineteenth-century right to privacy. In what follows, I begin with recent Supreme Court and U.S. military legislation concerning privacy, move on to the keeping of secrets in early America, and turn, finally, to *The Pioneers*—a novel that presciently narrates the fraught conditions of the right to privacy in U.S. history.[3]

Concealment and Disclosure

In June 2003 the U.S. Supreme Court issued its most recent ruling on the right to privacy in *Lawrence v. Texas*. Answering a disturbance call, police in Houston, Texas, entered the house of John Geddes Law-

rence and found him engaged in an intimate act with another man, Tyron Garner. Lawrence and Garner were arrested, tried, and convicted under Texas's state statute prohibiting "deviate sexual intercourse" between persons of the same sex.[4] The two men challenged the law, seeking protection under the Due Process and Equal Protection clauses of the Fourteenth Amendment. The court ruled in their favor, striking down the Texas law and overturning the court's 1986 ruling in *Bowers v. Hardwick*. Writing for the court majority, Justice Anthony Kennedy issued a statement described as "theoretically ambiguous," "remarkably opaque," and "famously obtuse"—one that displays much of the confusion that has long beset articulations of the nebulous right to privacy.[5]

The court chose not to decide the case on the basis of Equal Protection, in part, Kennedy argued, because such a ruling might invite questions as to whether a similar prohibition applying to opposite sex couples would pass constitutional muster. For Kennedy, the case hinged on the violation of a substantive right to due process. Yet having decided that a question of liberty was at stake, Kennedy still faced the question of what, precisely, the court ought to protect. Was it the right to engage in certain conduct free from government intrusion, or the right of individuals to be the sorts of people they wished to be? Was Texas's law against sodomy a restriction of liberty or of autonomy? Kennedy would have it both ways:

> Liberty protects the person from unwarranted government intrusion into a dwelling or other private places. In our tradition the state is not omnipresent in the home. And there are other spheres of our lives and existence, outside the home, where the state should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. The instant case involves liberty of the person both in its spatial and more transcendent dimensions.[6]

From the beginning, Kennedy's opinion invites both narrow and more expansive readings. In the narrow reading, the *Lawrence* court simply held that the government has no right to criminalize certain activities taking place within the home or other protected spheres of privacy—a finding consistent with earlier rulings in favor of the constitutional right to privacy.

Yet while Kennedy appears to limit the scope of the decision to little more than "the full right to engage in [private, intimate] conduct without intervention of the government,"[7] his rhetoric, especially the invocation of "other spheres of our lives and existence, outside the home" and, more abstractly, the "transcendent dimensions" of liberty, also provides room for broader readings. For example, describing the right at stake in both the instant case and *Bowers*, Kennedy looks beyond the privacy of the home just as he looks beyond the particular form of sexual conduct in question, arguing that both cases involve fundamental questions regarding the "dignity" of homosexuals. "When sexuality finds overt expression in intimate conduct," Kennedy writes, "the conduct can be but one element in a bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice."[8] The terms framing Kennedy's opinion here are *liberty* and *choice*, rights related to, but also distinct from, more traditional zones of privacy.[9]

Kennedy's argument inscribes two different sites of privacy: first, there is the home or bedroom, where government should not be allowed to intrude; and second, there is the self. In stating that "[f]reedom extends beyond spatial bounds," Kennedy shifts from one site to the other. But his assertion that the sort of freedom the court is obliged to safeguard exceeds merely spatial bounds is belied by the consistently spatial conception of the self he goes on to offer. He imagines the self, like the home, as its own kind of enclosed space, one that encompasses thoughts, feelings, beliefs, and expressions.[10] The government no more belongs in your head or heart, policing your ideas and feelings, than it belongs in your bedroom. On its face, this seems perfectly reasonable, but in Kennedy's formulation, the zone of protection provided by the law exceeds the boundaries of the self; what his decision seeks to protect against is not just government intrusion on thoughts and beliefs. Rather, it seeks to protect against government restraints on the *expression* of those beliefs, including "intimate conduct."[11]

Kennedy claims, for instance, that criminalization of homosexual conduct "is an invitation to subject homosexual persons to discrimination *both in the public and the private spheres*" (575, my emphasis). Slipping effortlessly from conduct to personhood, he no longer confines his decision to the private sphere narrowly conceived but addresses the moral status and, presumably, the public lives of the individuals

who engage in certain conduct. That is, Kennedy takes intimate conduct as a sign of one's thoughts and beliefs—presumably because homosexual conduct is crucial to the self-definition of gay persons. In this case we might say that *Lawrence* gave constitutional protection to a signifier, insofar as your intimate conduct expresses—or signifies—what you think or believe, or who you are. In *Lawrence*, privacy is understood in terms of identity.[12]

So while one significant aspect of the *Lawrence* ruling is the relation it inscribes between conduct and identity, a second is that having entered, however tenuously, into the area of identitarian claims, any strict distinction between private and public realms becomes increasingly hard to maintain. Indeed, such slippage inheres in the very term upon which Kennedy's decision turns: "intimate conduct." Adjectivally, according to the *Oxford English Dictionary* (*OED*), "intimate" suggests that which is "personal, private, or inmost." But as the noun form of intimate—"a close friend or associate"—suggests, "intimate conduct," as we ordinarily understand it, rarely takes place in isolation. Moreover, the verb form of intimate can mean "to make known or announce." These multiple, even discrepant, meanings of intimate reveal the difficulties of locating the boundaries of the private self and expose the complex ways that intimate conduct, construed as an expression of personhood, can perforate the same spatial boundaries that privacy (or intimacy) means to protect in the first place.

Consider another privacy case: the military policy "Don't Ask, Don't Tell" (DADT), which, in the wake of *Lawrence*, has been challenged anew.[13] At first glance, the logic of DADT runs counter to *Lawrence*'s conception of privacy and, in that regard, is perfectly coherent. The first half of the policy, "don't ask," aims to constrain government from intruding into the private lives of enlisted persons, while the second half, "don't tell," tries to constrain the expression of one's personhood. Unlike the decision in *Lawrence*, DADT does not seek to promote autonomy; it promotes (in fact, requires) concealment. Yet in the topsy-turvy sphere of privacy discourse, the policy's simplicity turns out to be the very source of its failings. Its opponents argue that the policy violates the right to privacy—in part by enforcing concealment—while its proponents argue that it is designed to *protect* privacy. However, the persons whose privacy the policy protects, according to its supporters, are not those who are required to *conceal* their sexual identity (homosexuals) but those whose sexual orientation may be

freely expressed (heterosexuals).[14] But why isn't promoting concealment promoting privacy? Why isn't a protection of concealment (don't ask) a protection of privacy? How can a privacy *requirement* (don't tell) be an invasion of privacy?

The answer for some opponents of the policy is that it forces gay persons to conceal the expression of their identities.[15] DADT permits homosexuals to serve, but prohibits homosexual conduct. Yet the policy also states that an expression of homosexual orientation may provide grounds for investigation into one's "propensity" to engage in homosexual acts, forcing gay servicemen and women to hide their sexual identities.[16] Hence DADT simply reverses the structural relationship between conduct (or expression) and identity found in *Lawrence*: whereas *Lawrence* holds that certain (intimate) conduct is a sign of identity, DADT holds that identity is a sign that a person will likely engage in that same conduct. *Lawrence* permits the conduct in order to respect the identity; "Don't Ask, Don't Tell" devalues the identity because it prohibits the conduct.

Here we see again the trouble that arises when the site of privacy is understood as the self spatially imagined. The spatial metaphor of personhood is inapt because, unlike your house, presumably your identity stays with you wherever you go. What's more, both *Lawrence* and DADT fail to account for the possibility that what we do (privately or publicly) is *not* always an expression of what we think and believe or who we are.[17] In fact, if privacy has any meaning at all, it is because what we do often *conceals* our thoughts and beliefs. Our actions and expressions as often as not hide, rather than disclose, our identities. Yet this form of concealment is just what the logic of Justice Kennedy and both the proponents and opponents of DADT would have us deny. They insist upon the commensurability of, or transparency between, expression and identity. But to so insist is to construe privacy as essentially a public matter.[18]

Now we have seen two antithetical conceptions of privacy: the right to conceal one's conduct, thoughts, feelings, and beliefs; and the right to disclose that same conduct, those same thoughts, feelings, and beliefs. The former considers privacy a matter of protecting one's home and one's self from outside intrusions, while the latter construes privacy as a matter of safeguarding, even promoting, liberty of expression and autonomy of personhood. The former takes as its conceptual model the home, a zone of protection with boundaries that ought not

to be violated, while the latter takes as its conceptual model a system of representation in which one's expressions are transparent signs of one's selfhood or identity.

The latter conception of privacy, linked to autonomy, is a relatively recent development. It is, in part, the result of changing understandings of the self that are themselves the result of a host of interrelated historical transformations: the shift from personal rights grounded in property to a rights discourse linked to freedom of contract; the rise of the middle class and the division of social life into separate spheres of public and private; and more recently, increasing demands for various forms of identitarian recognition.[19] What interests me, however, is not tracking the curve along which American notions of privacy transformed during the antebellum period and after, but rather exploring the extent to which the often contradictory coordinates that delineate this curve animate modern philosophical and legal conceptions of privacy in the same ways they animate Cooper's novel in 1823. To bring those coordinates into view requires a brief look at the prehistory of the legal right to privacy, including the history of secret-keeping in the early United States.

The Prehistory of Privacy

In the early U.S. republic, privacy designated the need for a sanctuary—such as the home—where individuals and families could be free from the scrutiny of other members of the community. Noah Webster's 1828 dictionary, for instance, defines privacy as "[a] state of being in retirement from the company or observation of others; secrecy."[20] Privacy thus concerned two areas of life: the sanctity of the domestic sphere and the ability to keep personal facts from public view. Among the most aggressive threats to privacy was gossip, a problem serious enough to warrant a number of essays and articles in didactic magazines warning against the disclosure of secrets. An 1809 article titled "Prudence as to Secrecy," for example, warns that "[t]o reveal the secret, either of a friend or of any other person, is disposing of another man's property. . . . You ought to lodge another person's secret in the most impenetrable recess of your bosom. You should conceal it, if possible, from yourself, for fear of being ever tempted to make a bad use of it."[21]

Similarly, the *Juvenile Port-Folio*, a magazine "devoted to the instruction and amusement of youth," contains an item on "Secrecy," which

provides an astute, if somewhat Byzantine, explication of the interplay of concealment and disclosure:

> The vanity of being known to be trusted with a secret is generally one of the chief motives to disclose it; for however absurd it may be thought to boast an honour by an act which shews it was conferred without merit, yet most men seem rather inclined to confess the want of virtue than of importance, and more willingly shew their influence, though at the expence of their probity, than glide through life with no other pleasure than the private consciousness of fidelity; which, while it is preserved, must be without praise, except from the single person who tries and knows it.[22]

Given the choice between the purely private experience of one's own virtue and public acknowledgment of one's importance, the writer suggests, most of us will opt for the latter, even though, in doing so, we prove that such acknowledgment is undeserved. Compare this to John Adams, in his journal, addressing the defensive measures necessary to fend off the public desire for personal information about individuals. The "first Maxim of worldly Wisdom," Adams writes, is "a constant concealment from others of such of our Sentiments, Actions, Desires, and Resolutions, as others have not a Right to know. . . . This kind of Dissimulation, which is no more than Concealment, Secrecy, and Reserve . . . is a Duty and Virtue."[23] Keeping secrets about ourselves *from* others may not appear to be quite the same as keeping the secrets *of* others. But as the writer of "On Secrecy" suggests, when we keep others' secrets, what we're actually concealing—what we only get to enjoy privately—is not the secret, but our own "probity." To make that probity public would be to violate that (private) knowledge. To give up someone else's secret, then, is, paradoxically, to violate your own privacy. In both of these statements, that which is essential to your personhood—like moral rightness—is kept private in the sense that it is concealed. As such, Adams's notion of "Dissimulation" runs counter to the modern relationship between privacy and autonomy. Unlike Justice Kennedy, for whom expression is fundamental to identity, Adams suggests that concealment is essential to the preservation and protection of personhood. And unlike the architects of "Don't Ask, Don't Tell," the writer of "On Secrecy" suggests that one ought to refrain from asking and telling not only to protect the privacy of others, but to protect one's own private virtue.

As early conceptions of privacy associated it with personal concealment, secrecy, and reserve, domestic space provided a haven for such discretion. Antebellum courts and legislatures offered a number of protections against unwarranted intrusions into the home: legal redress against intrusive landlords seeking to recover property, protection from officers of the law executing legal judgments, and defenses against eavesdropping.[24] Cooper himself was especially sensitive to the apparently insatiable curiosity of the public about the private affairs of individuals. In *The American Democrat* (1838), he portrays the general public as a snooping, meddlesome, and dangerous body. Indeed, for Cooper one of the chief threats to democracy is the susceptibility of the public to falsehoods and manipulations by the press, which the public "sustains in its tyranny and invasions on private rights . . . ."[25] "Newspaper establishments," Cooper argues in his chapter "Rumour," are a "principal reason" for the spread of "interested falsehoods" (230–31).

The public desire for information about private individuals is one area where Cooper proves especially prescient. The tort right to privacy in the United States arose out of just this kind of public inquisitiveness. In their influential article "The Right to Privacy" (1890), Louis Brandeis and Samuel Warren describe "the right to be let alone" as a legal protection of "the sacred precincts of private and domestic life" against "the unauthorized circulation of portraits of private persons."[26] Concerned about the publication of personal facts by an increasingly intrusive press, Brandeis and Warren sought to provide legal remedy against "idle gossip." The press, they write, was "overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade," leading inevitably to "intrusion upon the domestic circle." Turning to the common law and distinguishing privacy from property rights, the two lawyers argue that "the principle which protects" from exposure facts contained in productions like letters and diaries "is in reality not the principle of private property, but that of an inviolate personality."[27]

By severing the right to privacy from its traditional associations with property rights, Brandeis and Warren helped to democratize privacy, reconceiving it as something all persons possess in equal amounts. In doing so, they also laid the foundation for the right to privacy to cross over from the law of torts into the sphere of constitutional law

by rooting privacy in a particular conception of personhood: "inviolate personality." Of course, the tort and constitutional rights to privacy do provide distinct protections—grounded in common law and the Bill of Rights, respectively—against violations from other private parties, on the one hand, and against violations by the state, on the other. Furthermore, tort privacy focuses principally upon the disclosure of information, whereas constitutional privacy focuses upon restraining government from intrusion into individuals' intimate affairs and matters of choice or decision making.[28] Yet considerable overlap exists between these two areas of privacy law, which share a common origin in Brandeis and Warren's article. In fact, Brandeis himself, as a justice of the Supreme Court, provided one of the first major pronouncements on the right to privacy in constitutional law: his important dissent in the 1928 federal wiretapping case *Olmstead v. U.S.*, which draws explicitly on the language of the 1890 article, arguing that the framers of the Constitution "conferred, as against the Government, the right to be let alone—the most comprehensive of rights, and the right most valued by civilized men."[29]

Tort and constitutional privacy also share crucial conceptual affinities. In defining the tort right, Brandeis and Warren employ a rhetoric that implies the need for protection, not just of the sanctity of the home or simply of the nondisclosure of information, but also of the "inviolate" self. A similar rhetoric informs Brandeis's *Olmstead* dissent, which argues that "the makers of our Constitution . . . recognized the significance of man's spiritual nature, of his feelings and of his intellect. . . . They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations."[30] Kennedy, as we've seen, draws upon this language almost precisely in *Lawrence*, adding to Brandeis's "feelings" and "intellect" the terms "expression" and "intimate conduct."

Both rhetorically and conceptually, the tort right to privacy seems to have exerted a heavier influence on Kennedy's conception of privacy than even *Griswold v. Connecticut* (1965), the first Supreme Court decision to give explicit constitutional protection to the right to privacy. In *Griswold*, the court overturned a law banning the use of contraceptives by married couples, affirming the comprehensiveness of a right "older than the Bill of Rights." Taken together, the First, Third, Fourth, and Fifth Amendments, the *Griswold* court argued, constitute a "penumbra" of rights protecting privacy.[31] But as Michael Sandel notes, the

court's justification for their decision in *Griswold* reflects an "older" view of privacy defined as protection of domestic space from outside interference, rather than affirming the right of autonomous individuals to make reproductive choices.[32]

However, as Deborah Nelson observes, "Griswold's zone of privacy quickly expanded beyond the home and domestic autonomy."[33] In a line of decisions following *Griswold*, such as *Eisenstadt v. Baird* (protecting the right of nonmarried persons to use contraceptives), *Roe v. Wade* (affirming the right of women to choose when to terminate pregnancy), and *Planned Parenthood v. Casey* (reaffirming a woman's right to choose an abortion under the Due Process Clause of the Fourteenth Amendment), the court defined privacy largely in terms of personal decision making. *Casey*, for instance, emphasizes the Constitution's protection of matters "involving . . . choices central to personal dignity and autonomy. . . . At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." For the Casey court, these beliefs "define the attributes of personhood."[34]

So the same movement from the home to the self that animates tort privacy in its inception also characterizes the development of the constitutional right to privacy. And while I don't mean to suggest that the plaintiffs in the cases I have cited (whether Lawrence and Garner or the pseudonymous "Jane Roe") sought publicity or disclosure, I do mean to suggest that once privacy is conceived as "inviolate personality" or "the right to define one's own concept of existence," it is only a short leap to conceive of it in terms of (public) self-expression.[35] Laurence Tribe acknowledges as much when he defines privacy as possessing both an "inward-looking" aspect and "equally central outward-looking aspects of self that are expressed less through demanding secrecy, sanctuary, or seclusion than through seeking to project one identity rather than another upon the public world."[36] Like the *Lawrence* court and Brandeis and Warren, Tribe understands these two facets of privacy as compatible rather than essentially contradictory. As Richard Posner puts it, "Very few people want to be left alone. They want to manipulate the world around them by selective disclosure of facts about themselves."[37] Judge Posner's statement, as we'll see, might be taken as one of the central themes of *The Pioneers*.

Privacy in *The Pioneers*

Of course, Posner's economic analysis of the (tort) right to privacy has its limitations, not the least of which is that it treats the right to privacy as yet another species of property—even though the deficiencies of traditional property rights provided much of the impetus for privacy recognition in the first place. Nevertheless, Posner does identify a contradiction at the core of so much privacy discourse: that the right of disclosure or expression so dear to recent understandings of privacy often seems blind to the manipulations of selective disclosure or—which amounts to the same thing—of expressions that are not transparent signs of one's personhood or identity but actually serve to conceal rather than disclose.

The historical emergence of a right to privacy distinct from both property rights and the conceptual notion of (selective) disclosure that conceals will prove germane to my analysis of *The Pioneers*. Critical discussions of the rights discourse in the novel have focused almost exclusively on its attention to rights of property.[38] And while a few critics have taken note of the novel's preoccupation with secrets, none has displayed a sustained interest in its concern for privacy.[39] Yet as I will argue, the discourse of privacy in *The Pioneers* is distinct from its discourse of property and, insofar as it narrates the contradictory relations between concealment and disclosure, bears more than a passing resemblance to the conceptual entanglements we have already seen at work in analyses from the article in the *Juvenile Port-Folio* to its present-day counterparts. So what can Cooper, of all people, have to say to us about the right to privacy?

The Pioneers oscillates between the home and the self, secrecy and autonomy, as the loci of privacy. It is no accident, for instance, that Leatherstocking issues his complaint—"'I trouble no man, why can't the law leave me to myself?'"—while standing at the threshold of his hut. Protecting the sanctity of his home, protesting against intrusion by government authorities into his domestic space, Natty guards his secrets. Indeed, the keeping of secrets—both of Oliver Edwards's identity and of what is in Natty's hut—provides one of the central dramatic tensions in the novel. Rather than being stock plot devices or mere subtexts, secrecy, gossip, and rumor actually constitute the novel's central conflicts and its narrative form.

As Natty's standoff with Templeton's legal authorities illustrates,

one locus of privacy is Natty's hut, a domestic space whose interiors are unavailable to the other characters and, as we'll see, to the novel's narrator. Yet the very inaccessibility of the hut fosters speculation. As Elizabeth Temple remarks, it "'is the only habitation within fifty miles of us, whose door is not open to every person who may choose to lift its latch'" (304). And Louisa Grant wonders, "'Is it not strange that he is so cautious with his hut? He never leaves it, without fastening it in a remarkable manner'" (263–64). And when wandering villagers "seek a shelter there from the storms," Natty drives them away "with rudeness and threats" (264). The pains Natty takes to seal his hut from public intrusion clearly constitute unusual behavior in Templeton, which explains why the snooping masses that Cooper so feared are amply represented in the novel. Gossip, in the form of speculation and conjecture regarding Natty and Oliver, runs rampant in Templeton. As Oliver puts it, "'curiosity . . . is an endemic in these woods'" (289).

Indeed, gossip and conjecture in *The Pioneers*—the spread of what Judge Temple calls "idle tales"—are inseparable from the novel's theme of secrecy. Oliver, for instance, is "an object of peculiar suspicion" for many characters (282); he is a frequent subject of the villagers' conjectures (110–11, 279, 322). Early in the novel, when Judge Temple accidentally shoots him, Temple takes him into his own home, a gesture that leads, inevitably, to speculation about the relationship between Oliver and Leatherstocking. Ben Pump, Judge Temple's majordomo, offers the first of numerous rumors recounting suspicious activities on the part of Leatherstocking: "'That Mister Bump-ho has a handy turn with him in taking off a scalp; and there's them, in this here village, who say he larnt the trade by working on Christian-men'" (112). To this, Temple replies:

> You are not to credit the idle tales you hear of Natty; he has a kind of natural right to gain a livelihood in these mountains; and if the idlers in the village take it into their heads to annoy him, as they sometimes do reputed rogues, they shall find him protected by the strong arm of the law (112).

Here, Temple—as he often does—delivers a strangely inapposite response. After all, it is hard to see how the "idle tales" that circulate about Natty threaten his livelihood. At no point in the novel do annoying rumors prevent him from hunting.

This fact makes Temple's reply not only inapposite, but ironic. The

only real threats to Natty's "natural right" to earn a living in the mountains come from the law itself: Temple's game law and the actions of his officers, who, having themselves crafted idle tales about Natty (they suspect a smelting operation), engage in surveillance of his home. The magistrate Hiram Doolittle snoops around Natty's hut and cuts loose Natty's dog, Hector, which leads directly to the one crime Natty does commit (shooting a deer out of season). And Richard Jones's first action upon receiving his appointment to the post of sheriff is to eavesdrop on a conversation between Leatherstocking and John Mohegan (183). When Elizabeth Temple tells her uncle that they "'have no right to listen to the secrets of these men,'" Jones replies, "'No right! . . . you forget, cousin, that it is my duty to preserve the peace of the county, and see the laws executed'" (184). Later, Jones voices his suspicions about Leatherstocking's association with Oliver to his brother, claiming that Oliver is "'said to be the son of some Indian agent, by a squaw.'" When Temple asks about the source of these rumors, Jones replies, "'Who! Why common sense—common report—the hue and cry'" (318).

Despite Temple's bombast concerning Natty's right to earn a living through his labor and the protections afforded Natty by "the strong arm of the law," such matters have little to do with the villagers' speculations about Natty. Rather, if any law existed in Templeton that would protect a citizen against idle tales, that law would be the tort right to privacy, which offers protection against persons presented in a false light to the public.[40] And if any law existed in Templeton that would protect citizens against illegal surveillance of the sacred precinct of the home by government authorities, it would be the constitutional right to privacy. But no such laws exist in Templeton.

Yet however much *The Pioneers*' preoccupation with keeping secret the contents of Natty's hut links privacy with the home, Natty's and Oliver's behaviors link privacy with the self. Oliver, for example, is very careful in deciding which facts about himself to disclose. He offers vague answers to direct inquiries about his past and speaks equivocally about his "lineage" (143, 280)—not quite lying, but certainly misleading others into believing he has Indian blood. Natty, too, carefully projects a particular identity in public. Despite his professed desire to be left to himself, he never really—until the novel's end—withdraws from the Templeton community altogether. To the contrary, he remains a steady presence, and often a participant, in the novel's numerous

public gatherings, carousing at the local tavern, taking his turn at the Turkey Shoot competition. Even during the events of which he disapproves, like the fishing expedition or the slaughtering of pigeons, Natty's nonparticipation takes the form of engaged nonengagement, by which he airs his objections to the "wasty ways" of the settlers and his disdain for Temple's laws as a matter of public record. Natty never misses an opportunity to make a show of his superior virtue.

So Natty's "intimate conduct" drives the novel in more ways than one. On the one hand, speculating upon the activities taking place inside his hut proves something of a popular pastime in Templeton. On the other hand, this fact can be attributed in part to Natty's rather conspicuous circumspection about his intimates, his personal associations. Just as important is Natty's tendency to intimate. That is, while Natty and Oliver both attempt to prevent disclosure of the contents of Natty's hut and Oliver's identity, they are also frequently on the verge of letting slip the truth. Natty repeatedly engages in a kind of doublespeak, stopping just short of revealing his secrets. In the opening scene, he tells Judge Temple that "'There's them living who say, that Nathaniel Bumppo's right to shoot on these hills, is of older date than Marmaduke Temple's right to forbid him'" (25). And near the end of that chapter, when Oliver entreats Natty not to say where Oliver is going, the older hunter replies that "'he hasn't lived fifty years in the wilderness, and not learnt from the savages how to hold his tongue'" (27). Yet he is rather less discreet than his boast suggests: later in the novel, Natty speaks of the "'right owner'" of the land, "'who is not too old to carry a rifle and whose sight is as true as a fish-hawk hovering—'" (156). During the shooting of the pigeons, he claims that "'right will be done to the pigeons, as well as others by-and-by—'"(246). In each of these statements, Natty's not-so-thinly veiled references, marked by the dashes that truncate his remarks, refer not to his own "natural right" to hunt game, nor, on behalf of Chingachgook, Native American rights to ownership of the land. Rather, they refer to the person hidden in his hut, Major Effingham. Natty all but tips his hand at the Bold Dragoon when he asks the drunken John, who has taken to singing songs in his native language, "'Why do you sing of your battles, Chingachgook, and of the warriors you have slain, when the worst enemy of all is near you, and keeps the Young Eagle from his rights?'" (165).

Equally telling is the way Cooper's narrator likewise oscillates

between concealment and the disclosure of secrets. For instance, the narrator appears to be the one character in the novel who respects the privacy of the old hunter's hut. As Natty and Oliver return home at one point, the narrator breaks off Natty's dialogue in midsentence, noting only that "[w]hat more was uttered by the Leather-stocking, in his vexation, was rendered inaudible by the closing of the door of the cabin" (315). Yet it turns out that the narrator is no better at keeping secrets than anyone else and all but reveals the truth of what Natty and Oliver are hiding. It isn't hard to figure out—especially when, in the third chapter, Temple tells "the stranger" that his "face is very familiar" (38), and certainly when, a few chapters later, it is revealed that the stranger goes by the name of "Edwards"—that this mysterious Edwards, hostile to the Judge and testy on the subject of his rights, has some connection to Edward Effingham.[41] Moreover, the reader is privy to a number of clues that the novel's characters are not. Natty poses his question to Indian John at the tavern, for instance, "warmly, in the Delaware language" so that the other patrons cannot hear it. But the reader does hear it, thanks to the narrator, who "render[s]" it "freely into English" (165).

The narrator's translation here marks a striking moment in the text, one that Eric Cheyfitz, in another context, has explored brilliantly.[42] More important for my purposes, this moment also reveals the novel's formal investment in the very system of concealment and disclosure, discretion and intimation, that is its subject. Although we might want to dismiss these two instances as either signs of Cooper's awkwardness as a writer of fiction (the sort of thing that made him such an easy target for Twain) or melodramatic devices designed to create an atmosphere of intrigue and suspense, I want to suggest that they implicate even the narrator, like so many of the novel's characters, in the text's process of penetrating veils of secrecy. Of course, novels like *The Pioneers*, which end in revelation, depend upon the judicious parceling out of information; they are built on structures of gradual disclosure—on intimations. But Cooper's handling of such well-worn romance conventions is not simply a matter of withholding information from the reader that the narrator already possesses while implicitly promising eventual disclosure. Rather, *The Pioneers* practices a paradoxical sort of discretion: narrative concealment in this novel—the announcement of the keeping of secrets to which the narrator appears not to be privy—*is* a form of disclosure.

So the narrator's respect for the privacy of Natty's hut and its inverse, his willingness to disclose that which Natty and Chingachgook would otherwise conceal by speaking in the Delaware language, are linked by more than just narrative convention. They are connected, for one thing, by a word: Natty and Oliver's conversation is "*rendered* inaudible" when the cabin door is shut, just as the narrator decides to "*render*" their conversation at the tavern "freely into English" (emphasis mine). Cooper's use of the verb "to render" is, to some extent, simply idiosyncratic, a stylistic tic, a term used literally dozens of times in *The Pioneers*, usually as a synonym for "to make" or "to cause to be" (*OED*), as in "The gentleness and suavity of his manners rendered him extremely popular" or "While the snow rendered the roads passable . . ." (97, 218). But in using the term as a synonym for *translate*, Cooper also brings into play yet another meaning of render: to be present or to present (oneself) at a certain place. If the narrator must translate (or render) Natty's remarks, then his relationship to the action—his omniscience—undergoes an unexpected redefinition for the reader. It is as if, rather than functioning simply as the conveyor of information—the textual presence for whom all events, actions, and facts of the plot are simply freely available—Cooper positions his narrator as a silent, invisible witness; a stand-in for the reader, he is literally present.

This curious placement of the narrator as if he is actually present at certain places is even more striking at the moment when Natty and Oliver enter the cabin, preventing further disclosure of the contents of their conversation. There, the narrator is again positioned as a kind of eavesdropper—as if he is literally standing beneath the eaves of Natty's hut—thwarted in his attempt to render (in still another definition of the term, "to repeat" or "to relate, or narrate") the conversation "for the benefit" of his readers. After all, what sort of omniscient narrator can't hear through the walls of a rude hut? What this means, in the logic of the text, is that the narrator is all too willing to share privileged information with the reader; if anything, he renders a bit too "freely." The narrator's limited access to crucial information, to the novel's primary secret, is for Cooper at once a kind of moral imperative—insofar as the narrator proves as meddlesome and indiscreet as the worst of the novel's privacy invaders—and a structural impediment, insofar as the fundamental function of a narrator is to disclose. Hence privacy in *The Pioneers* is not just a latent theme, obscured by a more explicit

textual and historical interest in property, but a determinant of the shape of the novel's discourse. *The Pioneers* is not just *about* the right to privacy; it enacts the conditions of the right to privacy.

The Logic of Left Alone

Those paradoxical conditions are evident in the interplay between concealment and disclosure, discretion and declaration, and liberty and autonomy that we have seen in the history of privacy law, in the early American discourse on secrecy, and in *The Pioneers*—the conditions informing the logic of left alone. What Natty and Oliver appear to want is not so much to be left alone in a literal sense as for others to be aware of their desire, because such awareness is essential to the identities they want to project and because otherwise their desire would have no meaning. To put this another way, to want to be *left* alone is not the same as to want to *be* alone. To want to be alone is to posit a space of isolation, a sphere removed from the regulation, company, gaze, even the knowledge of others. To want to be *left* alone, by contrast, invokes, paradoxically, a regulated space of isolation, a sphere, to recall Webster's definition, of secrecy. But of course, as *The Pioneers* makes clear, there can be no secrets without someone to keep them from. Indeed, the subject invoked by the phrase "left alone" is not the person who would be alone, but the agent who would allow it. What the person who wants to be left alone actually wants is to have his or her solitude permitted, acknowledged, and respected by others. But in order to respect your desire to be left alone, others must be aware of you; they must know who and where you are.[43] On this logic—and according to his own actions—in wanting to be left to himself, Natty actually wants to be watched. So *The Pioneers* asks, what kind of person wants to be left alone? and answers with a paradox, with the peculiar logic of left alone: a person who wants to be left alone is a person who has something to hide, but who nevertheless wants his secret revealed.

The trouble for Natty Bumppo in *The Pioneers* is not simply that Jones, Doolittle, and the gossiping masses infringe upon his right to privacy. The problem lies in the desire to be left alone in itself, for it is a contradictory desire, which posits two competing versions of selfhood: one removed from society, protective of the inviolability of the private self and one's intimate associations, and the other embedded in

society and in want of public recognition. That Natty himself embodies this paradox is evident in the way he inveighs against man-made law and the "wasty ways" of the settlers while at the same time participating in the life of the community.[44] It is similarly evident in the way that Temple, at times, regards Natty as an "exception" to the laws of restraint he deems necessary to keep the settlers in check, while at other times regarding him as a citizen who is subject to those same laws. Temple's response to Hiram Doolittle's request to search Natty's hut illustrates the point: "'The habitation of a citizen,'" he says, "'is not to be idly invaded on light suspicion'" (329). The fact that Temple does, finally, grant Doolittle his warrant suggests that Natty does not quite fit the Judge's definition of a citizen. And the fact that Natty and Temple seem to hold the same contradictory view of Natty as citizen suggests that the novel's apparent conflict between Natty's desire for a free existence in a state of nature and Temple's insistence on the need for the order supplied by civil law is somewhat less stark than critics have for many years maintained.

Of course, Temple is the novel's citizen par excellence, so it is worth considering his relationship to privacy as well. Temple has secrets, too, not the least of which is how he came into possession of his wealth and land. But Temple shrewdly preempts invasions of his privacy; unlike Natty, he freely invites people into his home, which seems to operate more like a public space than a haven of nondisclosure. Judging by the number and frequency of Temple's visitors, his domestic space appears to be open to everyone. In contrast, Natty opens his hut to no one—not the reader or even, as we've seen, the narrator. The Judge tells Edwards, "My doors are open to thee, my young friend, for in this infant country we harbour no suspicions," an absurdly false statement he repeats later—"this is not the land of suspicion"—despite all of the text's evidence to the contrary (201, 325). Thus, Judge Temple protects his privacy by appearing to his fellow citizens not to have any secrets. This appearance, like Natty's and Oliver's frequent public intimations that they do, in fact, harbor secrets, is Temple's means of manipulating the world around him, not by warding off the public gaze, but rather, like Dupin in Edgar Allan Poe's "The Purloined Letter" (1884), by appearing to subject himself to it willingly. The very architecture of his house reflects this: its "chief merit . . . was to present a front, on whichever side it might happen to be seen; for as it was exposed to all eyes in all weathers, there should be no weak flank, for

envy or unneighborly criticism to assail" (44). Temple's house appears to be an extension of himself: by "presenting a front" and appearing to relinquish one kind of privacy (the home as a haven of nondisclosure), Temple gains another: autonomy.[45] And he does this by concealing concealment.

The Judge, in other words, proves better than Natty at keeping secrets.[46] Late in the novel, Temple receives a mysterious letter, which causes him obvious distress. Cooper grants neither the reader nor, once again, the narrator complete access to the contents of the letter because, while Richard reads it aloud, "a long passage was rendered indistinct, by a kind of humming noise" (276). Upon receiving the news, Temple summons the lawyer Van Der School to help prepare some papers, reluctant "'to employ Oliver in a matter of such secrecy and interest'" (277). Aware of the Judge's uneasiness, Oliver offers assistance, to which Elizabeth, Temple's daughter, responds by claiming that the affair "'is such as can only be confided to one we know—one of ourselves'" (278). Elizabeth's statement suggests that the Temples' identities are transparent. The same cannot be said of Oliver, which is why this episode of Temple's secret-keeping leads only (and oddly) to further speculation on Oliver's identity. A brief interrogation by Elizabeth and then the narrator's speculation about the reader's speculations on Oliver follow:

> It must have been obvious to all our readers, that the youth entertained an unusual and deeply-seated prejudice against the character of the Judge; but, owing to some counteracting cause, his sensations were now those of powerful interest in the state of his patron's present feelings, and in the causes of his secret uneasiness (283).

It might appear that the "counteracting cause" here is simply Oliver's unselfishness—he has set aside his own "prejudice" out of concern for the Judge's "present feelings" of "uneasiness." But in fact, this marks another instance of the narrator's indiscretion: he gives away Temple's secret. In retrospect, the key phrase here turns out to be "powerful interest," which implies not curiosity or concern for Temple on the part of Oliver but an awareness that the "secret" of Temple's right to the land is about to be revealed; and in that, Oliver most certainly has a "powerful interest."

Of course, Judge Temple has his own powerful interests, not the least of which is appearing to be *dis*interested. Here we can see most

clearly how Temple successfully protects his privacy: like John Adams, Temple practices the art of "dissimulation." It is no coincidence, for instance, that the narrator describes Temple's house as having "four faces" (44). Nevertheless, some readers take the Judge at face value, praising him for his impartial administration of justice, most evident when he presides over Natty's trial.[47] The fact that Natty has saved Elizabeth from the jaws of a vicious panther complicates the execution of this office. But that turn of events simply provides Temple with a platform from which he can insist that such circumstances will not mitigate the administration of the law (344, 382). Temple takes great pains to ensure that his private feelings do not interfere with the administration of his public duty. However, in my reading, Temple's version of justice has almost nothing whatever to do with Natty's crime but serves instead the Judge's own self-interest. The old hunter must be tried and punished, not because of his offense, but because his prosecution offers the Judge an opportunity to publicly demonstrate his impartiality. Temple may claim to be bound by the dictates of the law, but his performance of impartiality is clearly self-serving—hence his concern over how it "'would sound . . . to report'" that he had extended Natty any "'favour'" (382).

At stake for Temple in the trial is his ability to appear, in public, as the sort of person he wishes to be. That he seeks to present a front becomes apparent during a dispute with Oliver over how best to deal with Natty's crimes. As Oliver argues for leniency, Temple asks his young interlocutor rhetorically: "'Would any society be tolerable, young man, where the ministers of justice are to be opposed by men armed with rifles? Is it for this that I have tamed the wilderness?'" (344)—justifying his prosecution of Natty based on a specious logic whereby civil justice is somehow effected through natural conquest. Because he has tamed the wilderness, the Judge reasons, ministers of justice are not to be opposed. This is another of Temple's strange arguments, not only because it relies on a falsehood—Temple has not, in fact, tamed the wilderness, as Oliver's pointed rejoinder makes clear: "'Had you tamed the beasts that so lately threatened the life of Miss Temple, sir, your arguments would apply better'" (344)—but also because of its incoherence. What has taming the wilderness to do with the administration of the law?

The answer is that both acts relate to Temple's sense of his public self. His authority, his social identity, depends upon the appearance

of his having tamed the wilderness—as opposed to his having come into possession of the Templeton lands by questionable means—for the latter would erode his moral authority and consequently, in the eyes of the villagers, his ability to execute his public office. In fact, Temple's rhetorical question is as close as Natty ever gets to an answer to his own question, "why can't the law leave me to myself?" The law can't leave Natty to himself precisely because he refuses to be tamed. Therefore, in Temple's mind, Natty represents not so much a threat to social order and the administration of civil law as he poses a threat to the crucial appearance of conquest itself—the precondition, according to Temple's logic, for civilization. After all, as we have already seen, one of the obvious ironies in *The Pioneers* is that it's not men with guns, but men with badges, who need taming. Natty's famous opposition to civilization, then, does not so much conflict with Temple as serve Temple's interests.

While the dilemma for Judge Temple appears to be reconciling his sympathy for Natty with his role as judge, in actuality the dilemma is that his authority depends upon maintaining the appearance, if not the fact, of some measure of control over both man and wilderness. The Judge displaces his lack of control over his own enterprise—he watches helplessly during the pigeon shoot, gets caught up in the fishing expedition, and is easily manipulated by Hiram in his plea for a warrant to search Natty's hut—onto Natty, the only character in the novel with any self-control. This might explain why the particulars of Natty's case become incidental during his trial, secondary to the Judge's need to maintain his appearance of control and to demonstrate publicly his command over his private feelings.[48] Lost in the confusion of the verdict—and the sensational events that follow—are the mitigating factors of Natty's situation: not his prior right to the land and its use nor even the service he has performed for Temple's daughter, but the facts of Doolittle's role in Natty's deer hunt and Natty's right to resist the invasion of his privacy. By making a spectacle of his own (private, inward) conflict between his sympathies and his (public, outward) civic duty as Judge, Temple obfuscates the more troubling issue Natty's persecution and prosecution raises: the paradoxical interestedness of Temple's impartiality.

Temple is thus like the person who gives up a secret to make a public show of his virtue and in so doing violates his own privacy. What this contradiction suggests is that he is not so much at odds with Natty, as

a long tradition of criticism has held, as he is his verso. What Temple wants is to put his private feelings on public display—he wants to be watched. For Temple, disclosure functions as a form of concealment. For Natty, by contrast, concealment functions as a form of disclosure. He imagines his private dealings as an important public matter, and this gets him watched. The management of such paradoxes likewise shapes the history and development of American privacy, a concept stretched beyond its limits by the competing claims of threatened interiority and our cultural devotion to identity.

Oakland University

Notes

I am grateful to Christopher Hanlon and Susan E. Hawkins for helpful comments on earlier versions of this essay.

1 James Fenimore Cooper, *The Pioneers; or the Sources of the Susquehanna, A Descriptive Tale*, ed. James Franklin Beard (1823; reprint, Albany: State Univ. of New York Press, 1980), 336. Further references will be cited parenthetically in the text.

2 Randy and Sara Weaver, *The Federal Siege at Ruby Ridge* (Marion, Mont.: Ruby Ridge, 1998), 16. See also Jess Walter, *Every Knee Shall Bow: The Truth and Tragedy of Ruby Ridge and the Randy Weaver Family* (New York: Regan Books, 1995).

3 The Patriot Act and reports of wiretapping of U.S. citizens have heightened public concerns over federal invasions of privacy in recent years. Privacy has also been the subject of important recent studies of American literature. See Deborah Nelson, *Pursuing Privacy in Cold War America* (New York: Columbia Univ. Press, 2002); Michael Gilmore, *Surface and Depth: The Quest for Legibility in American Culture* (New York: Oxford Univ. Press, 2003); Milette Shamir, *Inexpressible Privacy: The Interior Life of Antebellum American Literature* (Philadelphia: Univ. of Pennsylvania Press, 2005); and Stacey Margolis, *The Public Life of Privacy in Nineteenth-Century American Culture* (Durham, N.C.: Duke Univ. Press, 2005).

4 Tex. Penal Code Ann. §21.06(a) (Vernon 2003).

5 See, respectively, Arthur S. Leonard, "*Lawrence v. Texas* and the New Law of Gay Rights," *Ohio Northern University Law Review* 30, no. 2 (2004): 189–210; Cass R. Sunstein, "What Did Lawrence Hold? Of Autonomy, Desuetude, Sexuality, and Marriage," *Supreme Court Review* (2003): 27–74; and Jamal Greene, "Beyond Lawrence: Metaprivacy and Punishment," *Yale Law Journal* 115 (June 2006): 1862–928.

6 *Lawrence v. Texas*, 539 U.S. 558, 562 (2003).

7 Ibid., 578.

8 Ibid., 567.

9 W. A. Parent argues against "mistaking . . . privacy for a part of liberty" in "Privacy, Morality, and the Law," *Philosophy and Public Affairs* 12 (autumn 1983): 273. See also Grant B. Mindle, "Liberalism, Privacy, and Autonomy," *Journal of Politics* 51 (August 1989): 575–98.

10 On domestic space as a model for individual privacy, see Shamir, *Inexpressible Privacy*, 5, 20–55.

11 James Allon Garland argues that *Lawrence* elevates sex from conduct to expression. See "Sex as a Form of Gender and Expression after *Lawrence v. Texas*," *Columbia Journal of Gender and Law* (January 2006): 297–325.

12 Kennedy asserts that criminalizing the private conduct of the *Lawrence* petitioners "demean[s] their existence" (578). I agree with Greene that "[t]he crucial rhetorical move [in *Lawrence*] is the presumption that private sex acts are elemental to the status-definition of gays" ("Beyond Lawrence," 1873).

13 A U.S. district court subsequently dismissed the suit in April 2006. See *Cook v. Rumsfeld*, 429 F. Supp. 2d (D. Mass., 2006).

14 The privacy of heterosexuals is invaded, or so this argument goes, in situations where they might find themselves subjected to the gaze of homosexuals. Why such privacy is supposed to be preserved when both parties are presumed heterosexuals is more than a little perplexing. For a critique of this and other privacy rationales for DADT, see Aaron Belkin and Melissa Sheridan Embser-Herbert, "A Modest Proposal: Privacy as a Flawed Rationale for the Exclusion of Gays and Lesbians from the U.S. Military," *International Security* 27 (fall 2002): 178–97.

15 Kenji Yoshino notes that under DADT, "gays are effectively required to engage in a twenty-four-hour performance of heterosexuality" ("Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of 'Don't Ask, Don't Tell,'" *Yale Law Journal* 108 [December 1998]: 548).

16 "Policy Concerning Homosexuals in the Armed Forces," 10 USC 654 (2004), (a) (15). One effect of the policy's confused logic is that enforced secrecy only fosters scrutiny. See Samuel A. Marcosson, "A Price Too High: Enforcing the Ban on Gays and Lesbians in the Military and the Inevitability of Intrusiveness," *UMKC Law Review* 64 (fall 1995): 59–98. Likewise, for Gilmore, the public-private distinction "incites the very demand for knowing . . . that it is supposed to guard against" (*Surface and Depth*, 87). Nelson argues that the Cold War's "governing paradox" is that "in the interests of preserving the space of privacy, privacy would have to be penetrated" (*Pursuing Privacy*, xiii). We will see this pattern in *The Pioneers*.

17 The recent scandal involving Senator Larry Craig of Idaho nicely illustrates the point. Refuting charges that he solicited sex from a male officer in an airport restroom, Craig publicly proclaimed, "I am not gay; I never

have been gay" (Patti Murphy and David Stout, "Idaho Senator Says He Regrets Guilty Plea in Restroom Incident," *New York Times*, 29 August 2007, A19). But the question of whether Senator Craig claims for himself a homosexual identity is quite distinct from whether he tried to engage in sexual conduct with another man.

18 Much dispute over DADT centers on whether the policy is conduct based or status based. I am arguing that *Lawrence* largely collapses that distinction. See also Pamela Glazner, "Constitutional Law Doctrine Meets Reality: Don't Ask Don't Tell in Light of *Lawrence v. Texas*," *Santa Clara Law Review* 46 (2006): 635–75.

19 See Nelson, *Pursuing Privacy*, 1–27; Gilmore, *Surface and Depth*, 80; Shamir, *Inexpressible Privacy*, 2, 147–74; Margolis, *Public Life of Privacy*, 3–6; and Brook Thomas, *American Literary Realism and the Failed Promise of Contract* (Berkeley and Los Angeles: Univ. of California Press, 1997), 53–87.

20 Noah Webster, *An American Dictionary of the English Language* (New York: S. Converse, 1828), 361.

21 *Observer*, 28 May 1809, 109.

22 *Juvenile Port-Folio*, 4 March 1815, 34.

23 John Adams, diary entry, 20 August 1770, *Diary and Autobiography of John Adams*, 4 vols., ed. L. H. Butterfield (Cambridge: Belknap Press of Harvard Univ. Press, 1961), 1:363; quoted in David H. Flaherty, *Privacy in Colonial New England* (Charlottesville: Univ. Press of Virginia, 1972), 5.

24 In an 1831 case, a Pennsylvania court ruled that "no man has a right . . . to pry into your secrecy of your own house" ("The Offence of Eaves-dropping," *United States Intelligencer and Review* [June 1831]: 203). For a review of other early privacy cases, see James A. Garfield, "The Right to Privacy in Nineteenth-Century America," *Harvard Law Review* 94 (1981): 1892–910.

25 James Fenimore Cooper, *The American Democrat* (New York: Penguin, 1989), 208.

26 Louis Brandeis and Samuel Warren, "The Right to Privacy," *Harvard Law Review* 4 (15 December 1890): 195.

27 Ibid., 196, 196, 197.

28 The most important statement on tort privacy, after Warren and Brandeis, is William L. Prosser, "Privacy," *California Law Review* (August 1960): 383–423. On tort vs. constitutional privacy, see David W. Leebron, "The Right to Privacy's Place in the Intellectual History of Tort Law," *Case Western Reserve Law Review* 41 (1991): 769–809.

29 *Olmstead v. United States*, 277 U.S. 438, 478 (1927).

30 Ibid., 478.

31 *Griswold v. Connecticut*, 381 U.S. 479, 486, 483 (1965). On the political right in particular, the very notion of a constitutional right to privacy—owing to its association with *Roe v. Wade*—remains controversial.

Robert H. Bork's criticisms of *Griswold*, for instance, played a major role in derailing his nomination to the Supreme Court in 1987.

32 Michael Sandel, *Democracy's Discontent* (Cambridge: Belknap Press of Harvard Univ. Press, 1996), 96.

33 Nelson, *Pursuing Privacy*, 20.

34 *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992).

35 After *Olmstead*, Nelson notes, "[p]rivacy . . . became a right of the personality to set the terms of its own disclosure" (8).

36 Laurence Tribe, *American Constitutional Law* (Mineola, N.Y.: Foundation Press, 1978), 887–88.

37 Richard Posner, "The Right to Privacy," *Georgia Law Review* 12 (1978): 400.

38 John P. McWilliams and Kay Seymour House mention Natty's "right to privacy" offhandedly. See McWilliams, "Introduction," *Law and American Literature: A Collection of Essays*, ed. Carl S. Smith, John P. McWilliams Jr., and Maxwell Bloomfield (New York: Knopf, 1983), 63–64; and House, *Cooper's Americans* (Columbus: Ohio State Univ. Press, 1966), 271 n. 6. However, readers have had much more interest in property. See Brook Thomas, *Cross-Examinations of Law and Literature* (New York: Cambridge Univ. Press, 1987): 21–44; Eric Cheyfitz, "Savage Law: The Plot against American Indians in *Johnson and Graham's Lesse v. M'Intosh* and *The Pioneers*," in *Cultures of United States Imperialism*, ed. Amy Kaplan and Donald E. Pease (Durham, N.C.: Duke Univ. Press, 1993), 109–28; Susan Scheckel, "In the Land of His Fathers: Cooper, Land Rights, and the Legitimation of National Identity," in *James Fenimore Cooper: New Literary and Historical Contexts*, ed. W. M. Verhoeven (Amsterdam: Rodopi, 1993), 125–50; Richard Godden, "Pioneer Properties, or 'What's in a Hut?'" in *James Fenimore Cooper: New Critical Essays*, ed. Robert Clark (New York: Vision Press, 1985), 121–43; Nan Goodman, *Shifting the Blame: Literature, Law, and the Theory of Accidents in Nineteenth-Century America* (New York: Routledge, 2000), 15–34; and Janet E. Dean, "The Marriage Plot and National Myth in *The Pioneers*," *Arizona Quarterly* 52 (winter 1996): 1–29. For a notable alternative to this focus, see Charles Swann's excellent "Guns Mean Democracy: *The Pioneers* and the Game Laws," in *James Fenimore Cooper: New Critical Essays*, ed. Robert Clark (New York: Vision Press, 1985), 96–119.

39 See, for example, Godden, "Pioneer Properties," and James D. Wallace, who views secrecy in the novel as an element of Cooper's interest in "the problem of misreading" (*Early Cooper and His Audience* [New York: Columbia Univ. Press, 1986], 151).

40 Prosser defines tort privacy as a "complex" of four distinct kinds of interest. The third of these involves "[p]ublicity which places the plaintiff in a false light in the public eye" ("Privacy," 389).

41 Godden's response is droll: "Are we to suppose that Temple cannot add one Oliver to two Edwards?" ("Pioneer Properties," 135).

42 Eric Cheyfitz, "Literally White, Figuratively Red: The Frontier of Translation in *The Pioneers*," in *James Fenimore Cooper: New Critical Essays*, ed. Robert Clark (New York: Vision Press, 1985), 55–95.

43 See Mindle: "[A]utonomy as Tribe envisions it has little to do with anonymity. It is not that one wishes 'not to be known' as a user of drugs; what men crave is not anonymity, but publicity, a public reputation as one who does not use drugs" ("Liberalism, Privacy, and Autonomy," 592). Natty cultivates a public reputation as one who renounces the settlers' "wasty ways."

44 This contradiction applies also to Randy Weaver, who claimed to want nothing to do with modern civilization but nevertheless ran for Sheriff of Boundary County, Idaho. See Walter, *Every Knee Shall Bow*, 64–118.

45 Wallace argues that "the incongruities of the house mirror the incongruities of Judge Temple's character" (*Early Cooper*, 141).

46 For Charles Adams, Temple exemplifies those who "manipulate for gain the legal *personae* behind which they conceal their corruption" (*The Guardian of the Law: Authority and Identity in James Fenimore Cooper* [Philadelphia: Univ. of Pennsylvania Press, 1990], 64). Temple's shrewdness in this regard is prescient: as a public figure, he would receive less protection than a private citizen from the tort right to privacy. See Prosser, "Privacy," 411–15.

47 Donald Ringe, in his introduction to the Penguin edition of the novel, says that Temple "judges impartially" (James Fenimore Cooper, *The Pioneers* [New York: Penguin, 1988], xvii). John P. McWilliams and Brook Thomas also praise Temple's character. See McWilliams, *Political Justice in a Republic* (Berkeley and Los Angeles: Univ. of California Press, 1972), 121–23; and Thomas, *Cross-Examinations*, 30, 43. Among the judge's critics are Adams, *Guardian of the Law*; Godden, "Pioneer Properties"; Swann, "Guns Mean Democracy"; and Wayne Franklin, *The New World of James Fenimore Cooper* (Chicago: Univ. of Chicago Press, 1982).

48 Godden claims that in the trial "the law stands reality exactly on its head" ("Pioneer Properties," 133). Charles Adams is similarly critical (*Guardian of the Law*, 62–64).