



## The Ruined Tenement

by Thomas Fleming

“Every child should be taught to respect the sanctity of his neighbor’s house, garden, fields, and all that is his.” When James Fenimore Cooper insisted upon the inviolability of property, his conviction was as much the fruit of personal experience as it was the expression of his old-fashioned reverence for law and order. Upon returning to his home in New York state, Cooper found that his property had been subjected to depredations from picnicking Yankees who had interpreted democracy as their right to help themselves to another man’s goods. The ensuing legal battle inspired his *Satanstoe* novels, which constitute a history of early America from the point of view of an estate, but his reverence for the inviolable household crops up in other parts of his work, particularly in the first of his novels devoted to the fortunes of Natty Bumppo.

When Cooper introduces Bumppo to his readers, the Deer-slayer is already an old man living in semiretirement and grumbling about the encroachment of settlers whose “wasty ways” are destroying the population of edible wildlife. Accused of taking a deer out of season, Bumppo refuses to allow a meddling peace-officer to enter his cabin, and when all else fails, threatens him with his gun. Before the agents of the law can return in force to search his place, Bumppo burns down his own house, and when they come to arrest him in the midst of the smoking cinders, the old hunter gives them a sermon:

You’ve driven God’s creators from the wilderness, where his providence had put them for his own pleasure, and you’ve brought in the troubles and divilties of the law, where no man was ever ever known to disturb another. You have driven me, that have lived forty long years of my appointed time in this very spot, from my home and the shelter of my head, lest you should put your wicked fire and wasty ways in my cabin.

At his trial, Natty pleads “not guilty with a clean conscience . . . for there’s no guilt in doing what’s right, and I’d rather died on the spot, than had him put foot in the hut at that moment.”

The inviolability of the household is of ancient lineage. When Aristotle put forward his theory of political evolution

from household to village to polis, he was outlining the facts of the case as they were known not just to the Greeks but to all ancient peoples that remembered their own history. House and land were passed down within the family from generation to generation without benefit of testament, and “it would also be taken for granted,” as Douglas MacDowell says, “that ownership implied the right to do what one liked with one’s own, so that on one’s own land one could build or demolish a house, cut down trees, and so on, without asking anyone’s permission.”

There were some limits, of course, even in ancient Athens, on the liberty of the freehold. To cut down a sacred olive tree was sacrilege, and a man guilty of serious crimes would presumably be arrested in his own home, but in most societies a man might feel secure from harassment once he entered the walls of his fortress. In most ancient cities of which we have knowledge, an intruder—a thief or an adulterer—was beaten or killed as if he were an enemy attacking a stronghold.

“A man’s home is his castle” is a proverb that meant something in the age when castles enabled a freeman to bid defiance to the world. By the end of the Middle Ages, the concept of the castle was extended to every house. Coke puts it plainly: “The house of every one is to him, his castle and fortress, as well for his defence against injury and violence as for his repose.” Felons were, of course, denied this sanctuary. As Blackstone observes: “No outward doors of a man’s house can in general be broken open to execute any civil process; though in criminal cases the public safety supersedes the private.” But the officers of the crown could not force their way in on some trivial pretext. A man might accumulate huge debts, but so long as he did not leave his house, his person was safe. How many 19th-century English novels include a bailiff-wracked debtor who cannot leave his own home?

The governors of this world have never been slow to find pretexts for the invasion of liberty. Despite the Common Law restrictions on the power of the king’s agents to enter a home without the owner’s permission, in England the habit of general warrants gradually developed, and by the early 18th century, the abuse was deeply ingrained in the English constitution. The numerous and various excise statutes, for example on

sugar and molasses, gave customs officials the right to search vessels and warehouses on mere suspicion, and the infamous Cider Act of 1763 permitted inspection even of private homes.

It may have been the Cider Act that inspired William Pitt's celebrated eulogy of the Englishman's home:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storms may enter, the rain may enter,—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement.

With a few lamentable exceptions, the elder Pitt opposed the Crown's invasions of privacy throughout his career, notably in the prosecution of John Wilkes—the dirty-minded scoundrel whose papers were seized without proper warrant. But it was during the Stamp Act crisis that Pitt became an American hero in repudiating Parliament's right to tax the colonies and applauding the Americans' determined resistance.

From a distance of more than two centuries the excise issues that led to the American Revolution may seem like paltry affairs, and even James Otis—the leading spirit of New England's tax rebellion—only reluctantly signed the protest against the Stamp Act. For Otis, the question was not Parliament's right to tax but the Common Law rights of Englishmen in the colonies. Otis became a rebel when he defended Boston merchants against the customs officials who had seized their property under general "writs of assistance." Arguing that no parliamentary action could overrule the Common Law, Otis declared the writs to be invalid, describing them in 1761 as "the worst instrument of arbitrary power, the most destructive of English liberty and fundamental principles of the constitution that ever was found in an English law book." John Adams, who was present when Otis made his case against renewing the writs, remembered the event all his life. In 1817 he wrote that "every man of a crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain."

It was the invasion of property as much as the taxes and confiscations themselves that annoyed the Americans and prepared them to resist the Stamp Act of 1765, in which Parliament for the first time reached into the colonies to tax their documents and journals. If enforced, the act would have empowered British agents to search property, seize unstamped documents, and try—without benefit of jury—offenders in an admiralty court. For one backwoods Southern lawyer, it was too much, and Patrick Henry, in his first speech in the Virginia assembly, outlined what would become the Virginia resolves. Working up to his peroration, Henry threatened, "Caesar had his Brutus, Charles I his Cromwell, George III . . ." At the mention of the king's name, the hall rang with cries of treason, and despite what you may have read in a textbook, Henry probably did go on to say—with some irony—"If this be treason, then make the most of it."

It was not, as Sam Johnson and George Grenville supposed, a question of stinginess or ingratitude. There had been disturbances even in England, when excise officers went snooping in cellars to find untaxed cider. If a man cannot be secure in his home, he cannot be comfortable in his mind, and it is out of such discomfort that treason and rebellion are hatched.

Arbitrary taxation and the invasion of private property were joined together, in the minds of the colonists, to form a monster that was no myth.

The memory of abuse was still fresh during the debates on the new Constitution. In a contribution to the press war, the sister of James Otis, Mercy Otis Warren, demanded a bill of rights "to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty revenue officer to enter our houses, search, insult, and seize at pleasure." Both New York and Virginia demanded inclusion of what would become the Fourth Amendment, guaranteeing "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

There are law-and-order conservatives who have grown to dislike the Fourth Amendment, because it has been used to shield criminals. But it is important to remember, first, that the amendment was never meant to apply to the states, and second, that it was primarily intended to protect property against the irruptions of tax collectors and other federal snoopers. It was never meant to interfere with policemen pursuing murderers, rapists, and robbers. It was not really even designed to protect persons. On the contrary, the main purpose was to bolster the security of the household against government agents wanting to look at your papers.

This ancient liberty of the castle is now sadly run down. Zoning laws everywhere restrict the homeowner, denying him the right to renovate or add on to his house and outbuildings as he sees fit. Similar requirements are attached to mortgages authorized through FHA or VA. Through the power of eminent domain, a man's ancestral property might be confiscated and not just for the purpose of national defense. Under the Tennessee Valley Authority, land was taken from families whose ancestors had settled there more than a century before, and for what? Cheap power for industrialists and resort lakes for tourists. The *reductio ad absurdum* was reached 30 years ago, when the working-class residents of Chavez Ravine—Mexican-Americans, if I remember right—were driven from their homes in order to build a stadium for the Los Angeles Dodgers. I remember my father—a minor-league baseball team owner and manager himself—remarking that we no longer lived in a free country if a man's home could be confiscated for a mere game.

Today, the moral equivalent of eminent domain is exercised by environmentalists, in and out of government, who can prevent an owner from building on his land and refuse to compensate him for his losses. In one notorious case, a man was forbidden to clean up a dump site, because that would mean eliminating a "wetland."

But far worse than these confiscations and quasi-confiscations are the flagrant violations of the Fourth Amendment that Americans have grown to tolerate—much as the English learned to tolerate general warrants. State troopers routinely set up roadblocks, not to search for felons when a crime has been committed, but merely to check out identity documents—"May I see your license and registration?" In a free country, the answer should be "What for?"

In legal areas where crime has been demonized, e.g., wife-beating, child abuse, drugs, and firearms, government agents proceed on the theory of guilty until proved innocent. Federal agents may search a home, automobile, or boat on the slightest pretext, and the owner may lose his property if the cor-

rect quantity of drugs is found—no matter if he can be implicated in the crime. Commercial fishermen have lost their livelihoods when agents found a deckhand with a stash, and one young lady lost her car when her brother, who had borrowed it, was convicted on drug charges. In one recent case in California, government agents inventoried a millionaire's property before breaking in late at night to search the premises for evidence of his wife's assumed drug use. They found nothing, but they did shoot and kill the householder.

I should be the last person to minimize the drug problem in the United States, and I would cheerfully advocate the death penalty for anyone over 21 peddling drugs to anyone under 18, but these cases of government regulators seizing property they have invaded in search of contraband sound all too much like those of the Boston merchants defended by James Otis in 1761.

The most serious attacks on American households have been directed against gunowners. Once again, privacy is invaded and property is seized on the claim that a regulation has been violated or that a form has not been filled out, a tax paid. In many cases, it turns out, the Bureau of Alcohol, Tobacco, and Firearms has made a mistake. In Colville, Washington, ATF agents, acting on the accusation of a certifiably insane informant, burst in upon a mother of a 21-month-old child she had been bathing and would not even allow her to rescue the child from the bathtub. But the perils of such wrongfully accused gunowners, though real, are nothing compared to the trials of Randy Weaver's wife and son and David Koresh's followers, all killed because of alleged infractions of firearms regulations. In both cases the ATF agents were acting on improper warrants; in both cases they shot first and reserved their questions until after the funerals.

Many Americans are unhappy with the violence that has

been perpetrated recently by federal agents, but because of ignorance or cowardice they cannot make the connection with the train of abuses that led to the independence of the United States. We have a Congress filled with members of two parties who prattle on merrily about our rights and liberties under democracy, and the President himself was blowing smoke just the other day, when "Lady Liberty" was restored to her place atop the Capitol. But America is no longer either the Land of the Free or the Home of the Brave. If it were, the federal government's outrages and usurpations would have provoked rebellion years ago. But Natty Bumppo is no longer a hero, and we would laugh at a man who burned down his own house, unless it was to get the insurance money. After all, in a democracy, we have the freedom to enslave our neighbors. Who could ask for more?

So long as we worship the gilded statue of democracy, we can never be free. As James Fenimore Cooper realized, democracies were more likely to repress individuality than monarchies. The danger lay in the temptation to see majority rule as the bastion of liberty: "Numbers, however, may oppress as well as one or a few, and when such oppression occurs, it is usually of the worst character. The habit of seeing the publick rule, is gradually accustoming the American mind to an interference with private rights that is slowly undermining the individuality of the American character."

The erosion of character on which Cooper remarked has gone so far as to make us incapable of individual liberty, but our servility has not bought us safety—it hardly ever does. Instead, we are ever more exposed, in our homes, our businesses, and our automobiles, to the "petty revenue officers" of an empire that seems all too willing to offer us Patrick Henry's choice of liberty or death.

<C

---

## Albae Meditatio

by Peter Russell

Already it's getting light and the first birds  
Are twittering in the walnut tree, and you  
Are hidden everywhere from my fallacious eye.  
Some of the pale green leaves at this hour  
Appear bright yellow, smooth grey of the walnut bark  
Jet like the young girl's cable braids swinging like bell ropes.

There is a mirror you cannot see and a rose in it.  
Sun is already up behind the trees,  
But the moon, lemon-coloured, lingers reluctant  
Like the windhover before he drops. Everywhere you,  
Body and spirit, screened by each ovate leaf. What should I  
say?  
Green leaves, running water, a beautiful face. It is permitted  
To love these things with a passion pure but intense?  
The young boy with his cap awry passes  
With his fishing-rod and his wicker basket.  
But what is it between my eye and the passing of Beauty?  
The prism of air and the sun's transparent light  
Bend in perpetual duel the living rods.  
Wherever Beauty is revealed, there out of necessity

Love must grow. Why should today  
Be an exception? Love is its own reality.  
A metaphor is a bridge to reality. Surely  
A single thought of that Beauty is a ladder  
To higher branches. I am a straw to Love's amber,  
And willing to be tossed to and fro on the wind  
Of whatever makes for cohesion in our mutable world.  
Running water, green leaves, reflections,  
A beautiful face. The weir and the waterfall.

Love is a medicine that makes pains into cures,  
But there are people who think that Love is a mere illusion,  
Like physicians and vendors of money and weapons  
And the learned in universities and the assessors of culture.  
Stone, if you wish, is bread, is living flesh,  
And the rough wine of the country is Love himself.  
There is no sweeter poison to drink than Love,  
No sickness more bracing than this sickness of Love.  
Love is the cat o' nine tails that strips off the skin,  
Implanting a coat of many colors where before  
There was only a grey epidemic of scale and scab.