
U.S. Judicial Principles

- The written Constitution is “the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void” *Marbury v Madison*, 5 US 137 (1803).
- Practical import: a court can strike down a law or regulation as unconstitutional
- As a practical matter, courts often need to interpret the wording of the Constitution (How much interpretation they can/should do is a very hot political issue!)
- The Court usually — but not always — follows its own precedents (*stare decisis*)
- Evidence gathered in violation of statutes or the Constitution is not admissible, nor is anything learned by pursuing leads learned from that evidence: “the fruit of the poisoned tree”.

Relevant Portions of the Bill of Rights

Amendment I Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V No person . . . shall be compelled in any criminal case to be a witness against himself, . . .

Amendment IX The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Today's Readings

- Supreme Court rulings on wiretaps and pen registers. What are the salient legal points? What is the difference in reasoning between the two decisions?
- Wiretap law (pen register law is at 18 USC 3121). How does it instantiate Katz v. United States? Go beyond it? (Optional reading on pen registers and the Internet: <http://www.cs.columbia.edu/~smb/talks/Wiretaps/index.htm>) Differences between real-time and stored conversations? Note the privacy impact of 18 USC 2702(c)(5).
- EU privacy regulations. How do they instantiate the fair information practices? What's missing?

18 USC 2702(c)(5)

Exceptions for Disclosure of Customer Records A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications . . .

(5) to any person other than a governmental entity.