

DS 593: Privacy in Practice

Privacy as a Civil Right

News?



Last time

- Modern Definitions of Privacy

Today

- Privacy as a Right

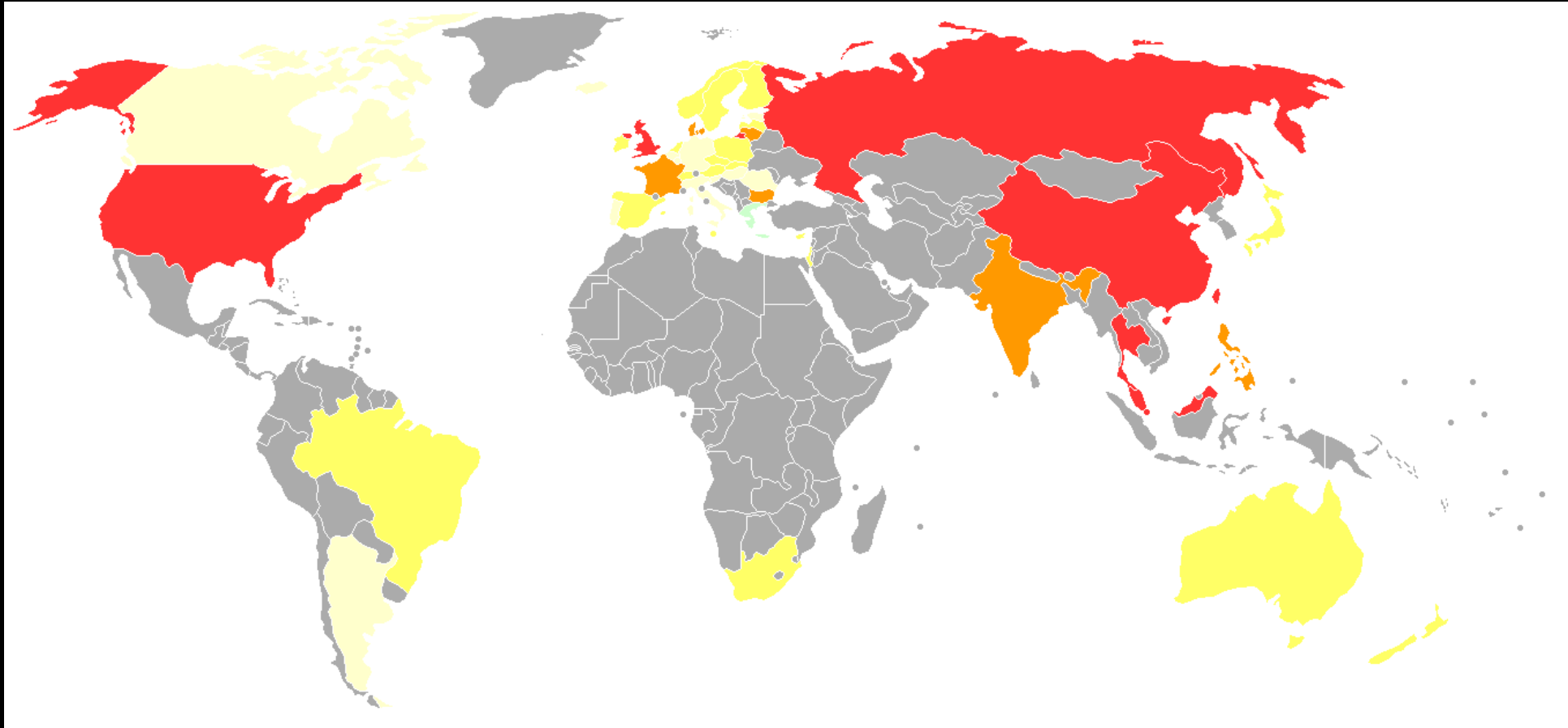
Project Overview

Recap of our Privacy Definitions

- Privacy is classically thought in terms of individual space and property
- Privacy captures many notions from personhood to safety to a collective good to defining relationships
- Modern notions of privacy focus on norms

How do we encode the notion of privacy into law?

Global Perspective



United States Context

- The US constitution does not explicitly mention "privacy" so where does the right come from?

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or 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.”

First Amendment

“No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.”

Third Amendment

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation..”

Fifth Amendment

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Fifth Amendment

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Fourteenth Amendment Section 1

“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.”

Fourth Amendment

The Penumbra

- Ninth Amendment: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”
- *Griswold V. Connecticut* affirmed the right to privacy based on this idea

“I just hate Fourth Amendment cases.” -Justice Anton Scalia
(2009)

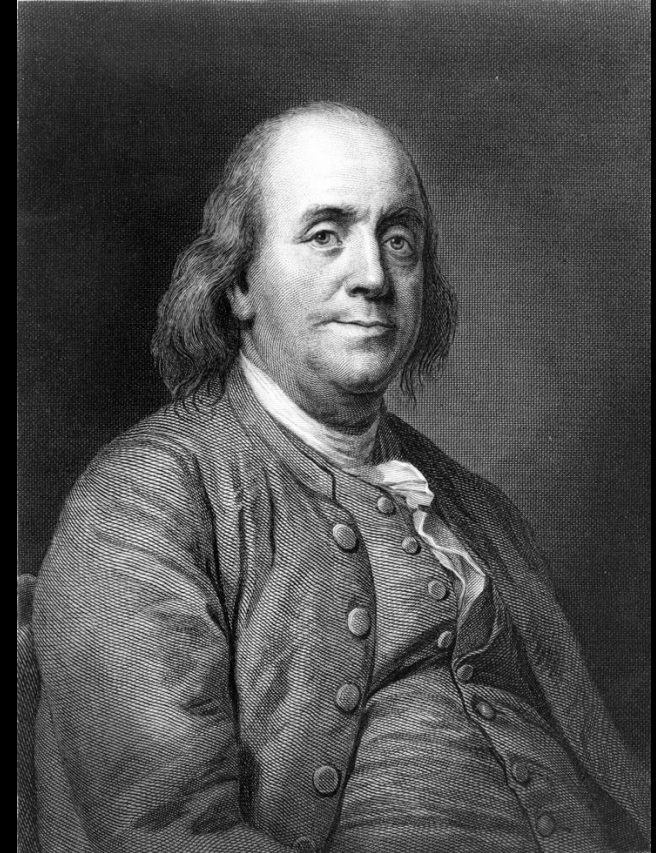
What is a warrant?

- “A judicial writ authorizing the search or seizure of property, arrest of a person, or the execution of a legal judgment.”
- Generally requires *probable cause*
- A reaction to colonial-era writs



Postal Service Act of 1792

- Established the US Postal Service
- Included a right to privacy for sent mail



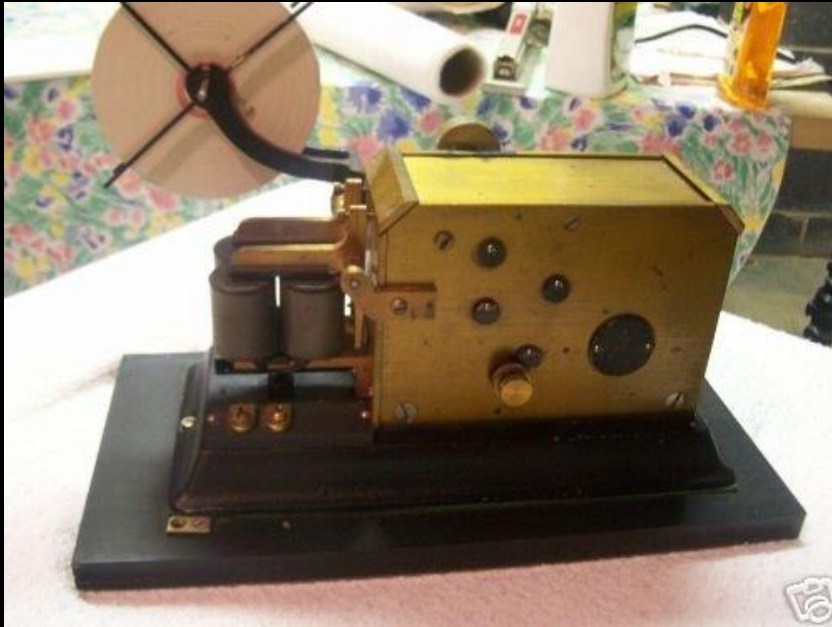
Katz v US



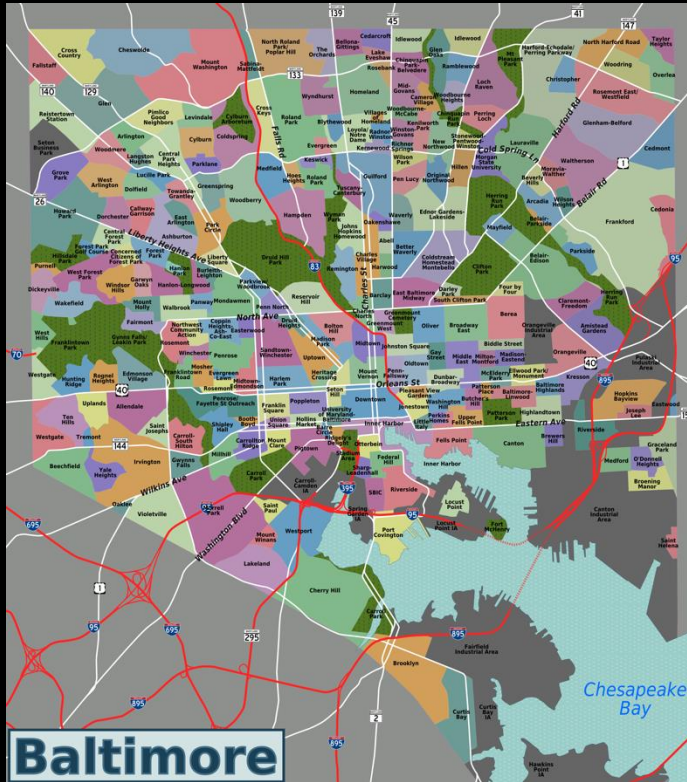
Reasonable Expectation of Privacy

- 4A test with two steps:
 - Did the person have an expectation of privacy in what they were doing?
 - Was this expectation something society at large would find reasonable?
- Privacy outside the home

New York Telephone



Smith v Maryland



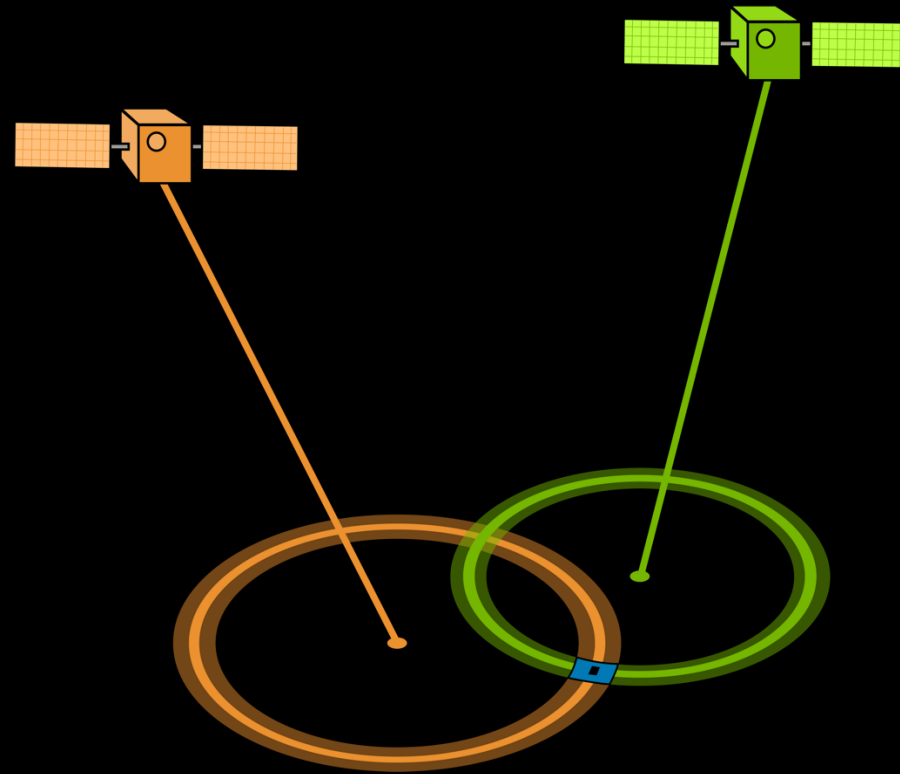
Third Party Doctrine

- No reasonable expectation of privacy when giving information to a third party
- Especially exposes metadata
- Was used to justify mass surveillance by the NSA

Kyllo v US



US v Jones



Mosaic Theory

- Extended surveillance is more than the sum of its parts
- If multiple public “non-searches” allow you to learn something that would be expected to be privacy, this is a 4A violation
- Often boils down to an economics argument

Carpenter v US



Next time

- Legal Basis for Privacy continued
- Privacy Regulation