

South Dakota v. Opperman: An Analysis of how
Inventory Searches are Unreasonable under the Fourth Amendment

“I feel myself distressed because the necessity of securing our personal rights seems not to have pervaded the minds of men; for many other valuable things are omitted:—for instance, general warrants, by which an officer may search suspected places, without evidence of the commission of a fact, or seize any person without evidence of his crime, ought to be prohibited.”¹

- Former Virginia Governor and delegate to the Constitutional Convention,
Patrick Henry

From the time of the ratification of the Constitution, the issue of unreasonable searches and seizures of property has been an important issue. With Britain’s use of general warrants being a contributing factor to the Revolutionary War, the Founding Fathers created the Fourth Amendment to ensure that all searches and seizures be either reasonable or approved through a warrant by a judge.² While the Fourth Amendment creates protections against unreasonable warrantless searches and seizures, the issue then becomes what constitutes an “unreasonable” search and seizure? Nearly 200 years of case law and common law have allowed justices to determine which searches are reasonable and which are not. Looking at common law and established standards of what is deemed reasonable, inventory searches should be considered to be unreasonable and a violation of the Fourth Amendment. This essay aims to analyze *South Dakota v. Opperman* 428 U.S. 364 (1976), and the reasonableness of inventory searches. More specifically, the reasonableness of inventory searches are drawn into question when looking at the Inherent Mobility Standard, the Rational Basis Test, the Application of Community Caretaking Functions, and the original understanding of the Fourth Amendment.

Analysis of the South Dakota v. Opperman Case

The Fourth Amendment states, “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.”³ Simply put, the Fourth Amendment does not outlaw all searches and seizures without a warrant, but only those searches and seizures that are deemed to be unreasonable by law. The United States Supreme Court (S.C.) has often held that a warrantless search is unreasonable under the Fourth Amendment unless it falls within one of the few, well-defined exceptions, which are: searches that are incident to a lawful arrest, when contraband is in plain view, when consent to search is given, when exigent circumstances are present, or for an inventory search. The two important factors that the S.C. has considered are, what is an “effect” and what is an “unreasonable” search under the Fourth Amendment. James Madison’s text of his proposed Fourth Amendment initially included the phrasing of “other property.” However, the House of Representatives revised Madison’s proposal to say “effect” in an effort to broaden the language to cover more forms of property.⁴ With the Framers intending to protect various forms of property, it is not hard to determine that a vehicle falls under the protection of an “effect” under the Fourth Amendment. *Cady* shows exactly that; a vehicle is considered an “effect” and is guaranteed the same protections of the Fourth Amendment as other forms of property.⁵ Since it has been established that a vehicle is an “effect,” the main question becomes whether these inventory searches are a reasonable or an unreasonable search.

Facts of the Case

South Dakota v. Opperman was originally argued in South Dakota’s Second Judicial District of Clay County. The defendant, Donald Opperman, was subsequently charged and convicted with possession of marijuana after the police conducted an inventory search of the Defendant’s vehicle. The City of Vermillion had various areas throughout the city marked as a restricted parking zone, in which it is illegal to park overnight. At approximately 3:00 a.m. on

December 10, 1973, Vermillion police officers observed the Defendant's car parked illegally in a restricted parking zone.⁶ A Vermillion police officer issued the Defendant a citation and placed the citation on the Defendant's windshield. A second officer issued the Defendant an additional ticket at 10:00 a.m., the same morning, after the Defendant had failed to remove the vehicle from the restricted parking zone. Both citations warned the Defendant that a vehicle may be towed if it was parked in the no-parking zone. The Defendant's vehicle was subsequently impounded later that day after the Defendant had still not moved the vehicle.⁷

Upon the car being towed to the city impound lot, officers observed several items of personal property laying in plain view inside the vehicle. Pursuant to the Vermillion Police Department's standard operating procedures, the officers entered the vehicle to retrieve the items and searched for any other valuables inside the vehicle to inventory the contents of the vehicle. However, while the officers were conducting the inventory search, a plastic bag of marijuana was found inside the vehicle's closed glovebox.

The Defendant filed a Motion to Suppress the marijuana evidence because the Defendant believed the inventory search was in violation of the Fourth Amendment and was therefore subject to the Exclusionary Rule.⁸ The trial court ultimately overruled the Defendant's Motion to Suppress and ruled that the marijuana was found in accordance with the law through a lawful inventory search. The Defendant was convicted and sentenced to a fine of one hundred dollars and fourteen days in the county jail. The Defendant appealed his conviction and asserted that the trial court should not have overruled the Defendant's Motion to Suppress. The South Dakota Supreme Court ruled in favor of the Defendant and reversed the conviction. They held that the search of a closed compartment during an inventory search was unreasonable without a warrant.⁹ The S.C. granted a writ of certiorari and agreed to hear the case. Upon consideration of the

appeal, the S.C. reversed the South Dakota Supreme Court's decision to expand upon the Community Caretaking Function doctrine to allow for an inventory search of a vehicle.

The S.C. noted that while it had already been established that automobiles fall within the protections of the Fourth Amendment and are thus protected against unreasonable searches and seizures, these protections are far less than those afforded to a person or a home due to a vehicle's mobility.¹⁰ The fact that a car can easily leave an area or even a jurisdiction creates an exigent circumstance for officers to conduct a warrantless search of the vehicle for contraband if there is probable cause to believe that the contraband is within the vehicle. In the present case, the S.C. relied heavily on a precedent created in *Carroll v. United States* (1925). In *Carroll*, the S.C. ruled that since a vehicle is mobile, it creates a circumstance of such exigency that obtaining a warrant to search a vehicle would be impractical.¹¹ *South Dakota v. Opperman*, also relied heavily on *Chambers v. Maroney*. In *Chambers*, officers searched a vehicle for contraband after the officers had already towed the vehicle to the police station.¹² The decision in *Chambers* drastically expanded upon *Carroll* to allow an officer to search a vehicle after it was in police custody and not presently mobile. *Chambers* argued that the automobile exception should apply to any vehicle for the fact that a vehicle is "inherently mobile."¹³ Under this analysis a vehicle is deemed to have fewer protections under the Fourth Amendment for the pure fact that a vehicle can be mobile, regardless of whether it is abandoned in a parking lot or driving on a road.

The S.C. additionally reasoned in *Opperman* that the owner of a vehicle has a lesser expectation of privacy. "One has a lesser expectation of privacy in a motor vehicle because its function is transportation, and it seldom serves as one's residence or as repository of personal effects...It travels public thoroughfares where both its occupants and its contents are in plain view."¹⁴ Since a vehicle is used for transportation and not as a residence, the S.C. reasoned that

there is a lesser expectation of privacy for any personal property within the vehicle. The S.C. goes on to later cite *Cardwell v. Lewis* and reasoned that since there is a lesser expectation of privacy, an inventory search would not be unreasonable and can be viewed as an expansion of the Community Caretaking Functions doctrine.¹⁵ While the S.C. held that an inventory search is reasonable under the Fourth Amendment in *Opperman*, the jurisprudence that was used is the largest factor in determining if it was reasonable or not.

Supreme Court Jurisprudence

The judicial jurisprudence that controls the S.C. at the time an issue is brought before them is the largest indicator of how a case will be decided. Jurisprudence is defined as “the science or philosophy of law”¹⁶ and refers to how constitutional law can be interpreted. Professor Cass Sunstein believed that jurisprudence can be broken down into six different types falling into conservative and liberal ideologies. Judicial restraint, conservative perfectionism, Burkean minimalism, and originalism are the four jurisprudences that Sunstein classifies as conservative, while liberal perfectionism and liberal minimalism are the two jurisprudences that Sunstein identifies as liberal in nature.¹⁷

A judicial restraintist believes that the S.C. should only strike down a law if it is unconstitutional beyond a doubt.¹⁸ Judicial restraintists typically believe that it is the place of the duly elected legislature to make laws, and that the judiciary should not intervene with democratically elected laws. Sunstein argues that conservative perfectionists take a moral and ethical approach to constitutional construction. These judges will take their own personal beliefs into account when interpreting the Constitution. Often to reach a holding that will be favorable to the morals of the conservative ideology. He teaches that Burkean minimalists are more likely to uphold *stare decisis*, the following of previous case law precedent, than other jurisprudences.

Judges that follow this jurisprudence also typically favor narrow decisions that address a specific topic, rather than broad rulings that could have large ramifications. The aim of Burkean minimalists is to effectuate change over a long period of time, rather than to have the Constitution be interpreted on a whim depending on the political ideals of the court.

Originalism is the last of the four jurisprudences that are often considered to be conservative in nature. Originalists look at the intended purpose of a section of the Constitution and decide a case based on the original understanding of that issue. Originalists believe that it is important to follow the law as it was intended, rather than to change the law to fit a new moral belief.

Sunstein identifies two jurisprudences to be liberal in nature, which he calls liberal perfectionism and liberal minimalism. Similar to conservative perfectionism, a liberal perfectionist rules on matters to align with their personal political beliefs. Liberal perfectionists likewise look at the Constitution and case law, to create a legal argument that supports a liberal agenda. Sunstein maintains that liberal minimalists favor steady and incremental change to constitutional interpretation. However, their rulings on issues typically favor progressive policies and are more open to granting the federal government more power.

In the *Opperman* case, the S.C. took a Burkean minimalist approach to the subject, citing case law precedent to allow the police to perform inventory searches of impounded vehicles. The S.C. relied upon *Carroll* and *Chambers* to support that the standard for a warrantless search of an automobile was less than that of a person or house. However, looking at the original understanding of the Fourth Amendment, inventory searches would have been considered unreasonable unless a warrant had been issued.

Understanding how Inventory Searches are Unreasonable

A search is considered to be per se unreasonable, unless there is a valid warrant that accompanies the search. However, the S.C. has allowed some searches to be performed without a warrant, but only for a few, well defined exceptions. While these exceptions have been deemed to be reasonable by the S.C. in the past, it is still important to scrutinize these exceptions to ensure that individual's property and privacy are being protected.

It is well accepted within the legal field that a vehicle's mobility creates an issue for law enforcement. An officer may have reason to believe that the driver or occupants of the vehicle have committed or will commit a crime. Yet originally, unless the officer had a warrant or the contraband was in plain view, an officer could not search the vehicle or seize any contraband. Since a car is mobile and can leave at any given time, it is impractical for an officer to have to obtain a warrant to search the vehicle, because the vehicle will have most likely left the area or jurisdiction by the time a warrant is secured. Therefore, as a result of this mobility, the S.C. has often held that a vehicle creates an exigent circumstance, which allows the officers more discretion and leniency on whether or not to search the vehicle.¹⁹

This creates a legal question of what factual circumstances are considered to fall under this automobile exception. Some, like Chief Justice Taft, in *Carroll v. United States*, reasoned that only a mobile vehicle can fall under the automobile exception.²⁰ While others, like the S.C. in *Chambers*, held that all vehicles, mobile or not, fall under the automobile exception since a vehicle is "inherently mobile."²¹ While there is a legitimate government interest in allowing some vehicles to be searched without a warrant, a blanket policy allowing officers to search any vehicle should be considered unreasonable. Justice Stewart wrote that "the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."²² The

mere fact that an automobile is not a citizen's primary place of residence does not change the fact that an automobile is still an "effect" that does have Fourth Amendment protections.²³ The automobile exception was created to allow officers to search a vehicle and seize contraband without a warrant when there is probable cause. However, the *Chambers* decision has expanded this exception to a point where it is hard to afford vehicles any Fourth Amendment protections at all.

In *Opperman*, the vehicle was left unattended for several hours and there was no driver or occupants. Parked vehicles with no driver are not mobile and should not fall under this exception, because a driver is needed in order for the vehicle to be mobile. In *Coolidge v. New Hampshire*, Justice Stewart wrote about the idea of inherent mobility under *Chambers* by saying "... the automobile was in a literal sense "mobile." We attach no constitutional significance to this sort of mobility..."²⁴ Justice Stewart stated that a vehicle that is mobile at the time of the offense is the only vehicle that should fall under the automobile exception.²⁵ Justice Stewart believed that a vehicle is still awarded Fourth Amendment protections and that a generic exception that encompasses all vehicles was an egregious overstep of a vehicle's constitutional rights. *Coolidge* was decided after *Chambers* but before the *Opperman* decision. Therefore, the *Coolidge* decision was the current precedent at the time of *Opperman* and the S.C. should have continued to build upon that precedent instead of overturning it. *Coolidge* had severely limited the expansions that *Chambers* had created in the automobile exception. The S.C. should have continued to follow *Coolidge* instead of returning to a precedent that had been recently overturned. By following *Coolidge*, the S.C. would have recognized a vehicle's Fourth Amendment protections and continued to only apply the automobile exception to vehicles that are presently mobile at the time of the alleged offense.

Justice Stewart wrote in *Coolidge* for Footnote 18, that

A good number of the containers that the police might discover on a person's property and want to search are equally movable, e.g., trunks, suitcases, boxes, briefcases, and bags. How are such objects to be distinguished from an unoccupied automobile-not then being used for any illegal purpose-sitting on the owner's property? It is true that the automobile has wheels and its own locomotive power. But given the virtually universal availability of automobiles in our society there is little difference between driving the container itself away and driving it away in a vehicle brought to the scene for that purpose.²⁶

Justice Stewart recognized that the mobility of the vehicle at the time of the offense is what creates an exigent circumstance which allows for a warrantless search. Many items that can be searched could be considered mobile, but if they are not presently mobile at the time of the offense, then they should not be considered to be moveable. It is rarely disputed within the legal field that the mobility of an automobile does create an exigent circumstance for a warrantless search; however, mobility is not an issue in inventory searches. Vehicles that are subject to an inventory search have already been confiscated from the driver and are in the custody of the police where they do not have the ability to leave the scene. When dealing with inventory searches, there is no issue of mobility that would create an exigent circumstance. The police would have ample time and opportunities to get a warrant to search the vehicle if they are concerned about contraband being within the vehicle. Vehicles are protected by the Fourth Amendment, and absent an exigent circumstance, they do not have a lessened protection against warrantless searches.

Many Supreme Court Justices, like Justice Stewart, have espoused the importance of maintaining the integrity of all constitutional rights. For, if a right is not protected from governmental infringement, then it becomes easier to justify the limiting of other constitutional rights. When asked about the precedent created in *Chambers* and how it affects other cases, one

scholar went as far as to say that an exception for warrantless searches that is based solely on inherent mobility was “so transparently flimsy, that it is hard to take seriously.”²⁷

When looking at *Opperman* in a modern sense, or even from the legal standpoint at the time of its ruling, the case failed to meet the standards that the S.C. created to judge governmental infringements on personal rights. Through various cases, the S.C. developed the standards of the Rational Basis Test. When dealing with a right that is not considered to be “fundamental” to humans, the S.C. judges the governmental actions on the Rational Basis Test.²⁸ Through this, the S.C. looks at whether or not the government had a legitimate interest in limiting a right. In *Opperman*, the S.C. reasoned there was a governmental interest to protect the individual’s personal property, as well as prevent liability on behalf of the police for any lost or damaged property that was confiscated.

The S.C. held that an inventory search was meant to help the vehicle owner by ensuring that their property is protected. However, in cases like *Opperman*, the vehicle owner was opposed to police conducting an inventory search of their vehicle. If the S.C. wanted to create a precedent that was meant to help the vehicle owner, then they would allow that vehicle owner to have an opinion in what happens with their property. It is not the place of the S.C. to decide what is in the best interest of an individual and to ignore the individual’s requests regarding how to handle their personal property. Instead, this precedent only allows police officers to avoid the requirement for a search warrant if they can justify a reason for impounding the vehicle.

Second, a vehicle owner typically takes into account that property left unattended in a vehicle can be stolen, with property of value or importance rarely being left in an unattended vehicle. Typically, rolling up the windows and locking the doors of the vehicle is enough to satisfy the owner. People generally will not leave property that they care about unattended unless

they know it is left in a safe space. In this instance, the government would not have a valid interest in searching a vehicle to protect property, since the vehicle owner already decided on how they wanted to protect their own property. Arguing that the safety of property is a legitimate interest should not be considered since the vehicle owner already made the determination on how they wanted to protect their own property. It is not the place of the government to determine what extra means of protection are needed for an individual's property after the vehicle had been impounded.

Third, the S.C. reasoned that these inventory searches can be deemed constitutional since they are meant to ensure the protection of an individual's personal property.²⁹ Yet, there would be nothing stopping an officer from stealing property of value from an impounded vehicle before it had been inventoried. Additionally, officers could intentionally leave something out of their inventory search if it were their intent to steal it. No matter what actions are taken, if an officer wanted to steal an individual's personal property, they would be able to find a way to do this. Therefore, it would be wrong to assume that this governmental infringement on a personal right is the only way to prevent theft. If the results of the action are not a legitimate remedy to the government's interest, then the Rational Basis Test shows that the governmental infringement of rights cannot be deemed constitutional.

Finally, there are other methods that the dissenting opinion in *Opperman* points out that could be used to secure the property inside the vehicle. The S.C. case, *United States v. Carolene Products Co.*, created the first classification for different types of legal scrutiny. *Carolene* established both the Rational Basis Test and the Strict Scrutiny Standard.³⁰ The Strict Scrutiny Standard looks at rights that are deemed to be "fundamental" to humans and can only be limited if there is a compelling state interest and the actions taken are the least intrusive means

necessary.³¹ While it is not a requirement of the Rational Basis test to also look at whether or not the action is the least intrusive means necessary, the idea can be taken into account when looking at the governmental interest. When looking at the issue of an inventory search, there are other means available that are less intrusive than the police can use. For example, Justice Marshall writes in the Dissenting Opinion of *Opperman* that the police could first try and contact the owner of the vehicle, or they could impound the car in a protected lot to prevent the theft of property.³²

Contacting the owner of the vehicle before any search is conducted should be the first action that the police take. In *Opperman*, the Defendant reported to the police station later that day to collect his vehicle. The police were also able to learn the identity of the vehicle's owner through vehicle registration and were able to cite a ticket to the Defendant. So, the police could have made a reasonable effort to contact the Defendant before they conducted any type of search. This right is afforded to individuals in every other legal area since consent is generally needed to search without a warrant or the search falls within a narrowly defined exception. Gaining consent from the vehicle's owner should also be applied to inventory searches, since the police need consent when searching a home or person without a warrant. Further, if police were to contact the owner first, the owner could retrieve any valuables from their vehicle or arrange for someone else to retrieve them. If it is truly the S.C.'s intention to merely protect personal property, then allowing the vehicle owner to gather their property on their own should be allowed. Additionally, if the vehicle is held in police custody for an extended period of time, there is ample opportunity for the police to gain a search warrant for the vehicle. Impounding a car should not classify as an exigent circumstance for a valid and reasonable search since the vehicle is no longer mobile and is no longer in the owner's possession.

Justice Marshall also pointed out the idea of having an impounded car be placed in a secure facility with police supervision to prevent any theft.³³ While it may cost money to create a facility, many police stations have a secure garage or even a gated parking lot. Securing a vehicle at a police station, along with any measures the vehicle owner took to secure their property, is enough to adequately protect personal property.

If the intention is to only protect property, then there are ways to accomplish this without immediately turning to the warrantless inventory search of a vehicle. The police can empower many different methods to adequately protect property, while also respecting the integrity of the Fourth Amendment protections that a vehicle possesses. If a search of the vehicle is not the most effective way to protect property, then the search would not be deemed as reasonable.

Chief Justice Burger wrote for the majority opinion that an inventory search is not a violation of privacy because the police are conducting “community caretaking functions.”³⁴ The S.C. held that there are three factors that allow inventory searches to be constitutional under the Community Caretaking Functions doctrine.³⁵ First, the police have an interest in protecting the owner’s property while it remains in police custody.³⁶ Second, the police have a responsibility in protecting themselves against claims or disputes over lost or stolen items.³⁷ Third, the police have a responsibility in protecting themselves from potential danger.³⁸ However, as previously discussed, there is not a legitimate interest that the government is trying to address. These Community Caretaking Functions do not benefit the vehicle owner and are often against their wishes. Additionally, there is little need to conduct these tasks to either protect the public or the officer. Justice Powell himself wrote in the Concurring Opinion that ordinarily, “there is little danger associated with impounding unsearched automobiles.”³⁹ If there is no danger associated with these vehicles, then why would the police need to search them for their own safety? A

possible danger to officers should not justify the blanket allowance of inventory searches for every vehicle. The S.C. held that these community caretaking functions are meant to protect the vehicle owner and protect officers. However, these actions are in direct contrast to the wishes of the vehicle owner and the Concurring Opinion openly admitted that there is not a serious danger to officers. This only allows for police officers to be able to search a vehicle without a warrant if there is a justification for impounding a vehicle.

The Concurring Opinion further argued that an inventory search can be classified as a Community Caretaking Function because the goal is not to discover evidence of a crime.⁴⁰ If this is the reasoning for the inventory search, then this is not a valid use of a legal search. A search is defined as “an exploratory investigation (as of an area or person) by a government agent that intrudes on an individual's reasonable expectation of privacy and is conducted usually for the purpose of finding evidence of unlawful activity or guilt or to locate a person.”⁴¹ The purpose of a search is for the police to find evidence or contraband. As said in *United States v. Ortiz*, “[a] search, even of an automobile, is a substantial invasion of privacy.”⁴² No matter the reason for a search, by mere nature a search is considered to be a serious invasion of privacy that should only be allowed in cases with a warrant or with exigent circumstances. The *Opperman* dissent continued to rely on *Ortiz* which further cements this idea by claiming that “the nature and substantiality of interest required to justify a search of private areas of an automobile is no less than that necessary to justify an intrusion of similar scope into a home or office.” Inventory searches are invasions of an individual’s privacy and rarely have any justification given for their search. These are the exact types of searchers that the Framers of the Constitution were afraid of and were the reason for the creation of the Fourth Amendment. A blanket allowance of inventory searches is no different than a general warrant that the British government would issue. In both

situations, officers need no suspicion of contraband and are granted full authority to search a premise regardless.

Vehicles are still “effects” under the Fourth Amendment and are protected as such. If an officer has enough probable cause to impound a vehicle, then they have enough probable cause to request a search warrant. Additionally, officers would have the opportunity to obtain a warrant since the vehicle is in police custody. *Terry* established that “in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which...reasonably warrant that intrusion.”⁴³ Certain, articulable facts are needed to establish probable cause to grant a search warrant. “The word ‘automobile’ is not a talisman in whose presence the Fourth Amendment fades away...”⁴⁴ The same articulable facts are needed in order to allow a vehicle to be searched. Without these articulable facts the search should be deemed as unreasonable and a violation of an individual’s constitutional rights.

In order for the government to infringe upon a personal right, there must be a reasonable justification for said infringement. In the case of inventory searches, there is not a valid or reasonable justification. Inventory searches do not benefit the owner since the searches are performed without their permission, they do not adequately protect personal property from loss or damage, and finally there is not a serious risk to the safety of the public or the police for impounding a vehicle without an inventory search. However, these inventory searches are not only irrational for the American legal system, but they are also unreasonable under the common law.

In order to understand what the Fourth Amendment means, its original intent and understanding must first be understood. The idea of protections against unreasonable searches and seizures has a long history, both in American law as well as in the British common law. One

of the most well-known common law cases to protect the right against unreasonable searches was *Entick v. Carrington* (1765). John Entick was one of the publishers of a weekly essay, *The Monitor*, which was viewed by the British government as creating messages of rebellion. The Earl of Halifax, George Montagu Dunk, issued a general warrant against Entick and *The Monitor* for “gross and scandalous reflections and invectives upon his majesty’s government, and upon both houses of parliament.”⁴⁵ Dunk directed the King’s messengers to deliver the general warrant to Entick and to effectuate the search. Upon arrival at Entick’s property, messengers executed the warrant at eleven o’clock in the morning by “force and arms.”⁴⁶ Entick brought a trespass suit on grounds that the general warrant had violated basic principles of English rights, arguing that an Englishman has the right to be secure in his own home without the threat of unreasonable government intrusion.⁴⁷ Chief Justice of the Common Pleas, Charles Pratt, ruled in favor of Entick, citing that general warrants violated an Englishman’s right to privacy in one’s home. Pratt stated that “the great end, for which men entered into society, was to secure their property”⁴⁸ and that “every invasion of private property, be it ever so minute, is a trespass.”⁴⁹ Pratt believed that the common law prevented the government from searching and seizing property unless a warrant had been issued and signed by a magistrate. “For Pratt, it was not the physical break-in or the rummaging in drawers that constituted the essence of the Crown’s misconduct, but rather the invasion of the indefeasible rights of personal security, liberty, and private property.”⁵⁰ Pratt was concerned about what would happen to a society that allowed for their government to invade one’s privacy with no standards of what searches were reasonable.

Pratt had ruled on a similar case just two years earlier in the case *Wilkes v. Wood* (1763). In *Wilkes*, John Wilkes, a prominent politician, was accused of publishing a seditious newspaper named *North Briton*. Here again, the Earl of Halifax, George Dunk, signed a general warrant

against Wilkes and against *North Briton*. Pratt ultimately ruled that Wilkes detention and seizure of property was unreasonable and violated Wilkes reasonable expectation to be secure in his own home.⁵¹ Even going as far as to give Wilkes monetary reparations for the damages caused by the search and seizure of his property.

The topic of general warrants and unreasonable searches was a topic that garnered attention from the British Parliament, as well as the courts. In 1765 the House of Commons debated the issue of general warrants, with members claiming that it was even worse for general warrants to be issued to search papers than to detain an individual.⁵² Stating that “papers, though often dearer to a man than his heart’s blood, and equally close, have neither eyes nor ears to perceive the injury done to them, nor tongue to complain of it, and of course, may be treated in a degree highly injurious to the owners.”⁵³ To say that searching individual’s papers and effects is worse than to detain an individual is a powerful statement to make. Regardless, it is evident that British politicians, as well as the British society, took the right to privacy as being one of the most fundamental rights of an individual.

At the time of the drafting of the Constitution, the accepted interpretation of “unreasonable” in common law came from Sir Edward Coke. Coke wrote in dicta of *Thomas Bonham v. College of Physicians* that a law should be void if it was “against common right and reason.”⁵⁴ In 1628, Coke testified before Parliament that the use of general warrants was “against reason” and that it violated the most basic principles of common law.⁵⁵ This same interpretation was accepted within the judiciary and would almost certainly be known to the Founding Fathers.

While common law never directly addressed the issue of inventory searches, many concepts that it did address can be related to inventory searches. Common law cases, as well as understandings of natural rights for Englishman, shows that there was a large emphasis on

protecting personal property, as well as protecting one's home or person from unreasonable searches. Vehicles fall within the scope of personal property and are considered as an "effect" under the Fourth Amendment and should have the same protections as other protected effects. Likewise, the Framers make a large point in showing that searches should only be allowed if they are signed by a magistrate and give specific details of the person or place to be searched. At the time of its creation, the Massachusetts Constitution stated that, "All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure."⁵⁶ The Framers of both the federal and many state constitutions made a specific effort to ensure that searches would not take place without a warrant, clearly articulating the persons or places to be searched. Mandating warrants was the only way that the Framers could ensure that the government did not infringe upon an individual's right to privacy, both in regards to their person and to their property.

In *Opperman*, the S.C.'s ruling allowed for police to conduct inventory searches without the need of a warrant, yet these searches are no different than a general warrant. In both instances, the government has allowed for private property to be searched with no suspicion needed or without any limitations upon what can be searched. While it is reasonable to search vehicles in some instances, the fact that any vehicle can be searched, without any probable cause, should be considered to be unreasonable. Searches of property are a serious invasion of an individual's privacy and the Framers only intended for these invasions to take place in select instances.

Additionally, inventory searches go against reason since there is little benefit to them. According to Coke, as well as other Framers, a law must have reason for it to be enforced. As Justice Powell even admits in the Concurring opinion, there is little to no danger associated with impounding a vehicle without searching it first. As well as the inventory searches serve no benefit to the individual whose vehicle is being searched. If both of these are true, then both the current understanding of the Fourth Amendment as well as an understanding of common law show that inventory searches should be deemed as an unreasonable search without a warrant. Even if a person does not live in their vehicle, the individual still deserves privacy when dealing with their own property. The issue of privacy was a serious issue for the Framers of the constitution and the Fourth Amendment was created to protect against general searches, like those of an inventory search.

Conclusion

Looking at common law and established standards of what is deemed reasonable, inventory searches should be considered to be unreasonable and a violation of the Fourth Amendment. This essay aimed at analyzing the *South Dakota v. Opperman* case, and then to understand why inventory searches are unreasonable. More specifically, the reasonableness of inventory searches is called into question when analyzing the Inherent Mobility Standard, the Rational Basis Test, the Application of Community Caretaking Functions, and the original understanding of the Fourth Amendment. While there is a legitimate reason to allow exceptions to the warrant requirement, not every issue should be granted an exception. Inventory searches are an exception that apply to a large number of cases without the need for probable cause of any crime. The United States was founded upon the belief that individuals have a right to be secure in their persons, houses, papers, and effects. Inventory searches are both an unreasonable invasion

of an individual's privacy, as well as practice that goes "against reason." Patrick Henry, and the other founders, were concerned about allowing the government to search property without reason or without a warrant, which would be a violation of an individual's most fundamental rights. As Patrick Henry said, "the Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government, lest it come to dominate our lives and interests."

ENDNOTES

¹ Elliot, Jonathan. *The Debates in the Several State Conventions*. 3. 2nd ed. Vol. 3. 5 vols., 1836.

² "Fourth Amendment: Historical Background." Cornell Law School. Cornell Law School. Accessed July 15, 2022. <https://www.law.cornell.edu/constitution-conan/amendment-4/fourth-amendment-historical-background>.

³ United States Constitution Amendment IV.

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