

Mapp v. Ohio / Property and Privacy

Directions:

1. Read the **Historical Foundation** section below.
 2. Read the **Thinking Like a Framers** section and answer the **Question to Consider** (page 2).
 3. Complete the **Brainstorming, Part I** activity and answer the **Question to Consider** (page 3).
 4. Complete the **Brainstorming, Part II** activity and answer the **Questions to Consider** (page 4).
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Historical Foundation

During the colonial period, the British used **writs of assistance** and **general warrants** in the American colonies. These allowed British troops to search non-specific areas of the colonists' homes without having to specify what they were looking for. James Otis, a lawyer hired by Great Britain to defend the writs of assistance, quit his job to fight the writs and defend the colonists' freedom. In a trial defending these rights, Otis famously cried, "One of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege." These writs angered the colonists and were among the grievances against King George III and Parliament written in the Declaration of Independence. Many historical documents and court cases recognized an individual's right to privacy in different facets.

During the drafting of the Constitution, the Framers sought to define and protect individual rights by creating the Bill of Rights. Although many of these freedoms were protected in state constitutions, the Framers felt it was necessary to constrain the federal government's power and protect fundamental liberties. The Bill of Rights includes the Fourth Amendment, which protects citizens from unreasonable searches and seizures from the government.

The Framers were heavily influenced by John Locke, an English Enlightenment philosopher, who believed that the purpose of government was to protect life, liberty, and property. To better understand the Fourth Amendment, it is imperative to examine its origins from an economic lens.

Thinking Like A Framers: What is Property?

“... that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.” ... it embraces everything to which a man may attach a value and have a right; and which leaves to everyone else the like advantage. In the former sense, a man’s land, or merchandize, or money is called his property. In the latter sense, a man has property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. He has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.”

— *James Madison*

Question to Consider

1. According to James Madison’s definition of property, how could the government trespass onto your property?

Brainstorming, Part I

The Framers sought to protect a fundamental liberty from unwarranted intrusion—or the right to property. George Mason, author of the Virginia Bill of Rights, believed that the enjoyment of life and freedom comes with the ability to possess property. According to founders like Madison and Mason, if the government is unable to trespass unto personal property without cause, citizens have a sense of *privacy* in their possessions.

If a person believes an action or object is private, and a reasonable person in society would agree, they are said to have a **reasonable expectation of privacy**. When people have a reasonable expectation of privacy, law enforcement must obtain a warrant to conduct a search or seizure.

Using the space that follows, record as many actions or things as you can think of that you consider to be private. The more private that you consider the possession or area, the larger you should write your word. Your finished collection of words should resemble a word cloud.



Question to Consider

2. What is the connection between property and privacy?

Brainstorming, Part II

Using the list of private places and things that you created in Part I, sort your list of private items into the following graphics. If the item you listed as private existed in 1776, list in the parchment graphic. If the item you listed as private did not exist in 1776, record in the smartphone graphic. If the existed during both periods, list inside both the parchment and smartphone.

What is Private? (1776)



What is Private? (present day)



Questions to Consider

3. How has the notion of privacy evolved from the time of the framing of the Constitution to present?

