Impact of the Fourth Amendment on Law Enforcement, Policy, and Regulations

Author

**Introduction**

The Fourth Amendment to the U.S. Constitution guarantees the every individual is free from unreasonable government seizures and searches and presents a quandary for the society. It embodies among other things, every person’s right to retreat into their own home and they be free from government’s unreasonable intrusion. The Fourth Amendment makes a reflection about use of excess police force. Perhaps even more than the any other provisions of the Bill of Rights, it makes it plain that the Constitution does not tolerate the tactics of a police state (Maclin, 1993). The protections that the Fourth Amendment enforces are unquestionably fundamental. For some, the Fourth Amendment handcuff the police in their never ending battles of bringing criminals to justice. Additionally, many people believe that because of the amendment, dangerous criminals are released because the police failed to follow its technical provisions.

**Impacts**

Therefore, the Fourth Amendment poses a significant dilemma. Questions that remain unanswered include how much power should the police have and how important is personal security and privacy. The doctrine of the Fourth Amendment requires courts to not only make empirical police judgments and how they interact with the citizens but also discern the moral, political, and historical demands of the constitutions, as well as to coming up with causal conclusions about the consequences of possible constitution rules (Harmon, 2011). The Supreme Court sets it straight that the courts which interpret the Fourth Amendment must understand the intrusion nature against a person, the extent of interest the government has on the intrusion and law enforcement consequences (Harmon, 2011). These interests must then be balanced against each other. To assess these considerations courts need to reach conclusions based on facts about matters beyond the case.

Not every analysis of the Fourth Amendment depends on consequences. It is up to the courts to determine the values of the Fourth Amendment is being protected, when the protected values are strongest, or when individual’s interests can be overweighed (Harmon, 2011).. All this is done in light of the moral principles and historic traditions which underlie the Fourth Amendment. The significance of moral considerations can be seen for instance in the conclusion by the Supreme Court that “it is not better that all felony suspects die than that they escape” (Maclin, 1993). The Court has been motivated by historical concerns when it did not need warrants of arrest for felons lawfully arrested in public areas.

In the jurisprudence of the Fourth Amendment however, even the decision making that is most principled is in the long run, made with regard to the consequences. Where the Court takes history into consideration, it must do analysis beyond it, since history is often disputable, equivocal and not sufficiently persuasive for many justices by itself. The cases of the Fourth Amendment inevitable involve a mix-up judgment about law enforcement, individuals and the decision’s future consequences..

The central meaning of the Fourth Amendment according to the Court lies on ‘reasonableness.’ What the court wants is for us to believe that the provision merely provisions that officers in law enforcement pursue reasonable goals and act rationally when they invade individuals and their possessions. The measure of being reasonable is generally determined by creating a balance of the interests at stake: the interest of the individual in personal security and privacy and the government’s interest in law enforcement. As a matter of fact, the Fourth Amendment seems to support a reasonableness test to determine the intrusions by the police, since it speaks of ‘unreasonable seizures and searches.’ The big question remains how the court decides what reasonable under the Fourth Amendment is. While the Court could define reasonableness as warrant requirement before invasion of an individual’s privacy or personal security unless it is impractical or impossible, it does not do so. Under the analytical model of the Court, law enforcement officers rarely must comply with the procedural safeguards of the amendment’s Warrant Clause. The Warrant Clause has safeguards which include judicial oversight of intrusions by police, probable cause and warrant which particularly describe the persons to be seized or the places to be searched.

The questions regarding the Fourth Amendment are instead resolved using a test which approximates the rational basis standard. This test decides the challenges of due process in economic and social legislation and equal protection. Under the analysis of the Court, the complaints regarding the Fourth Amendment are only upheld when the police acted irrationally. If the court can identify any plausible reason or goal which promotes the interests of the law enforcements, the challenged intrusion is considered reasonable.

Most Fourth Amendment questions get contested in state criminal cases, where both parties are not likely to have adequate incentives and resources for effective litigation of significant empirical questions. In many instances, even a civil plaintiff who seeks compensation for a violent arrest cannot litigate many matters cost-effectively. Most of the time, courts barely know enough about occupational norms, institutional structures, political influences, occupational norms and non-constitutional laws which shape the conduct of the police, and cannot ask the right questions to make judgements about the police. In the event that courts can come up with effective empirical analyses, the opportunity to adjust a doctrine as the facts surrounding the doctrine evolves is little. Therefore courts are profoundly unable to ensure that expected effects of a criminal procedure on police behavior is a reflection of the doctrines.

Currently courts do not pay much attention to the competence of officers, despite its reference. For example an officer stopped a driver he suspected was smuggling aliens in *United States v. Arvizu* (Richardson, 2012). The Court, in upholding the *Terry* stop determined that it was “quite reasonable that a driver’s slowing down, stiffening of posture, and failure to acknowledge a sighted law enforcement officer might well be unremarkable in one instance (such as a busy San Francisco highway) while quite unusual in another (such as a remote portion of rural southeastern Arizona)” (Taslitz, 2010). The suspicion of the officer were concluded to be reasonable and it was maintained that the officer was entitled to making an assessment of the situation given his familiarity and specialized training with the customs of those living in the area.

Focusing on the competence of the officer showed that the Court was on the right track. The knowledge and training of an officer may reflect the reasonableness of his inferences. However, if the court is without evidence of the officer’s proficiency in making such judgments, it cannot judge the weight to give the assessment of the officer (Richardson, 2012). Presently, as long as officers can come up with some objective facts which justify their suspicions, most often than not courts defer to their judgments (Taslitz, 2010). Courts seldom ask for information regarding the ability of an officer to make accurate judgments, even though from the perspective of institutional competence, some deference may be justifiable in appropriate circumstances.

Without substantial assistance from institutions designed for undertaking complex, ongoing empirical analysis and amassing context-specific expertized, courts do not have the institutional capacity to regulate the police (Richardson, 2012). Even in the event that courts could find a workaround to these barriers, they would still not be able to reach the major objective of police regulation. The legal problem of policing is only limited to constitutional violations if courts regulate the police. However, constitutional rights such as the Fourth Amendment are not structurally well suited to balancing individual freedom and the societal interest in law enforcement. Some policing, regardless of how community oriented, friendly or well-done they are, are harmful inevitably. Policing is embraced by the community precisely because they have interest in harming specific people for the greater good – by arresting criminals, searching people’s cars on the street, shooting those running away, or questioning suspects in custody (Richardson, 2012).

As pointed out by William Stuntz (1998), constitutional rights effectively tax some police practices and subsidize others. The Fourth Amendment law requires warrants for house searchers which makes it more expensive for the police than Terry stops and frisks which only require reasonable suspicion. Consequently Terry stops are more expensive for the police that consent searches, which do not require any suspicion at all. Therefore, the Fourth Amendment encourages the police to street encounters for house searches without giving regard to the total costs of either practice (Richardson, 2012). If the rules of the constitution encourages a large number of lesser intrusions, it may result into an aggregate harm which exceeds that caused by the total number of greater intrusions which the constitution protects against. Some constitutional regulations can therefore make policing to be overall less protective of the constitutional interests.

**Conclusion**

The Fourth Amendment has both the vice of ambiguity and the virtue of brevity. Nowhere in the amendment is the term ‘unreasonable’ defined or a clarification between the two parts made. The Supreme Court has exploited the historic and linguistic vacuum in the amendment to create its own analytical model for deciding on questions of search and seizure. Essentially, the basis of the rational model used by the Court rests on asking whether the law enforcement officers acted irrationally while intruding upon the Fourth Amendment rights of an individual. Rarely does the Court’s model require warrants to authorize searches, prefers the police procedures as the mode of constitutional decision making and disfavors rigorous judicial oversight of police searches.

The important questions scholars should be regarding the Fourth Amendment and policing should perhaps be the possibility of structuring police incentives differently. The Fourth Amendment as currently understood, is limited in its ability to correct the effects of implicit social cognitions. Its jurisprudence should be rethought and incentives for institution modifications created.

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