Relating Values in a Series of Supreme Court Decisions

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Abstract. In recent years it has become quite usual to view legal decisions in terms of consideration of the values affected by deciding the case for or against a particular party. Often deciding for, say, the plaintiff will promote one value at the expense of another. Precedents are then supposed to guide the way in which this conflict is resolved. In this paper we will consider a series of cases exploring the so-called automobile exception to the requirement of the Fourth Amendment protecting against unreasonable search of persons, houses, papers, and effects. These cases highlight a conflict between the value of law enforcement and the value of privacy as protected by the Fourth Amendment, and will be used to illuminate questions about the treatment of value conflicts arising from previous work in AI and Law.

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1. Introduction

Building on the original insights of Berman and Hafner [5], which argued that case decisions could sometimes be explained in terms of the different purposes served by deciding for the plaintiff or defendant, work on reasoning with cases has come to regard the role of values as significant. The explanatory role of values was an integral part of the account of reasoning with case as theory construction in [4], and the relation of arguments to values was described in [2]. A key idea is that opposing sides in a case will base their arguments on different values, and that the decision can be explained in terms of a preference for one value over the over. Thus in the famous case of *Pierson v Post*, which since its discussion in [5] has featured regularly in AI and Law[1], the majority argued that Post did not have possession of the fox, while the dissent argued that he did. The majority argument, by Tomkins, was based on the idea that clarity was the important value and that it was unclear as to what counted as possession without bodily seizure. The dissent by Livingston argued that encouraging hunting was important since it destroyed vermin and so has economic benefits in protecting livestock. Since Pierson won, we can assume that clarity was to be preferred to economic benefits in that situation.

In the work cited above, resolution was by a simple preference between values, but often something more sophisticated is needed. In a series of cases it may well appear at some times one value is favoured and at others the other value is preferred. In the

[1] Post was hunting a fox with horse and hounds when Pierson interrupted the chase and killed the fox. Post claimed possession of the fox, and sued Pierson.

cases we will consider in this paper, some decisions appear to choose to promote law enforcement over privacy, while others seem to express the reverse preference. Thus a simple preference order may not be enough. Moreover, in [5], [4] and [2], promotion and demotion of a value is an all or nothing matter: degrees of promotion and demotion are not recognised.

Degrees of promotion were explored in [6] as input to a preference function, used to provide a metric to evaluate theories intended to explain a set of cases. In [3] instead of comparing values, each of the values is compared against a threshold, and the threshold requirements must be satisfied in order for the decision to be made. Applying this approach to *Pierson v Post*, we would conclude either that Tompkins did not consider that the economic benefits were sufficient, or that too much uncertainty in ascribing possession would result from a decision for Post, or both. More recently, Sartor [9] has argued that rather than a series of thresholds, the resolution should be seen in terms of a trade-off, so as to strike an appropriate and proportional balance between the values. Thus in *Pierson v Post* the question would be whether the economic benefits were sufficient to support the degree of unclarity that would be required to decide for Post. A similar effect could be produced in [3] if the threshold for one value were stated as a function of the threshold for the other. Most recently, rather than looking for a balance between two values, Grabmair and Ashley [7] have argued that what is required is a value judgement, that all the relevant values considered as a set are promoted to a greater extent that they are demoted. In [7], promotion is estimated qualitatively (*somewhat*, *greatly* and *overwhelmingly*) rather than quantitatively as in e.g. [6].

From this body of work we can draw out the following questions:

1. Is promotion and demotion of values to be regarded as boolean (either promoted or not) as in [4], ordinal (instances of promotion can be ordered), qualitative (instances of promotion can be placed into bands, as in [7], or quantitative (instances of promotion can be assigned specific numeric values) as in [6]?
2. Should we see promotion and demotion as relative to thresholds as in [3], or to be considered as trading-off against one another as in [9]?
3. Should values be considered separately as in [3], pairwise, as in [4], or collected together as in [7] and [6]?

To explore these questions we will look a series of decisions relating to search without a warrant and the Fourth Amendment, several of which have been discussed previously in AI and Law. Section 2 introduces the cases and Section 3 considers how they cast light of the above questions. Section 4 will offer some concluding remarks.

2. The Cases

We will discuss a line of cases all of which concern the automobile exception to the Fourth Amendment. The Fourth Amendment is designed to protect people against unreasonable searches and simply affirms the "*right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures*."

Of course, authorities such as the police, must be able to search for evidence of crimes, otherwise law enforcement would not be possible. The normal position is that if police officers want to make a search they must apply for a warrant which will be

granted if they can show that there is probable cause for the search - that they have good reason to believe that they will discover evidence pertinent to a crime. Sometimes, however, it is not practical to obtain a warrant. One such circumstance is where the police wish to search an automobile in transit. The precedent for this is *Carroll v United States*[2]. In that case, dating from the time of Prohibition, two people were suspected of transporting liquor in their car, and the car was stopped and searched. No warrant could be obtained as the car would simply have disappeared into the night and out of the relevant jurisdiction. The search was held to be reasonable. The decision was given by Taft CJ, who pointed to a a long line of statutes, dating back to 1789, allowing warrantless searches for contraband, and

> recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

This recognition that sometimes vehicles needed to be searched without a warrant, because their mobility meant that otherwise the evidence could not be obtained and law enforcement rendered impossible served as the key motivation for a number of decisions relating to what become known as the *automobile exception* to the Fourth Amendment. Taft's argument, however, was certainly based on reasoning about vehicles other than automobiles. He quotes the 1789 Act:

> That every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority, to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed, and therein to search for, seize, and secure any such goods, wares or merchandise.

Taft bases his decision on the need to enable the law to be enforced and the exigency of the search given the mobility of the automobile, but stresses the need for probable cause: it must be reasonable to expect a warrant to have been granted had it been possible to apply for one.

We will now move forward over forty years to consider *Chambers v Maroney*[3]. By this time it should be understood that the Carroll principle had become sufficiently well established as an exception to the Fourth Amendment that automobiles in transit were routinely stopped and made subject to a warrantless search. What made Chambers special was that the automobile was not at the roadside. After the robbery of a petrol station police stopped a a car answering the description of a car used in the robbery. On finding it contained men dressed similarly to the description of the robbers, they arrested the occupants of the car and moved the car to the police station. Some time later it was searched and evidence found. Clearly there was no exigency here: neither the car nor its occupants were going anywhere. Never the less, the search was declared reasonable. As Blackmun's opinion in *California v Acevedo* (the last of our cases) summarised it:

[2]Carroll v United States, 267 U.S. 132 (1925)
[3]Chambers v. Maroney 399 U.S. 42 (1970)

> The Court reasoned in Chambers that the police could search later whenever they could have searched earlier, had they so chosen.

The next case is *Cady v Dombrowski*[4], the central example of [7]. In this case, Dombrowski, a Chicago police officer was detained following a road accident while he was drunk. His car was towed to a garage. Because they believed that Chicago police officers carried guns at all times, and the car was not guarded at the garage, the car was searched for Dombrowski's gun. Instead evidence of a murder was discovered in the boot. Note that here neither exigency nor probable cause existed. None the less the search was held to be reasonable, because of the public safety interests, and because the police were, apparently, following standard procedures. Moreover the expectations of privacy were considered very low, since following the accident, Dombrovski had left the car on the public highway. This was a close decision (5-4), and Rhenquist, in giving the majority decsion was at pains to spell out the special nature of automobiles with regard to privacy:

> Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature.

This notion of the routine need to inspect vehicles leading to reduced expectations of privacy became part of the standard exposition of the automobile exception. In Burger CJ's opinion in *South Dakota v Opperman*[5] we find this statement of the exception:

> The reason for this well settled distinction is twofold. First, the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. ... But the Court has also upheld warrantless searches where no immediate danger was presented that the car would be removed from the jurisdiction. ... Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office ... Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.

In this case, which involved the discovery of marijuana in the glove compartment of a car impounded for multiple parking offences, the need to stress the lowered privacy element was important, since neither exigency nor due cause seemed applicable.

All of this looks like a steady progress towards a situation in which, because of the reduced expectations of privacy, automobiles could be searched without warrants under almost any circumstances. Some of the justices, notably Brennan and Marshall, had never agreed with these decisions, however, and in *Coolidge v New Hampshire*[6], a warrantless

[4] Cady v. Dombrowski, 413 U.S. 433 (1973)
[5] South Dakota v. Opperman, 428 U.S. 364 (1976)
[6] Coolidge v. New Hampshire, 403 U.S. 443 (1971)

search of an automobile had been held to be unreasonable (in this case the car had been parked in the suspect's driveway before being towed to the police station). The majority opinion, given by Stewart, made clear the dislike of the notion of a specific exception for automobiles.

> The word "automobile" is not a talisman in whose presence the Fourth Amendment fade away and disappears.

In Coolidge, however, the privacy argument did not apply since the car was not on the highway (and so subject to regulation) but on Coolidge's own land, and consequently with increased expectations of privacy. Another case resisting the automobile exception was *United States v Chadwick*[7], in which it was held that a locked item of luggage (a double-locked footlocker which the police has observed being placed in the boot of the car) did require a warrant. Burger CJ's opinion stated that

> The footlocker search was not justified under the"automobile exception" since a person's expectations of privacy in personal luggage are substantially greater than in an automobile. In this connection, the footlocker's mobility did not justify dispensing with a search warrant.

Note the explicit use of the phrase 'automobile exception' here, indicating that it has acquired the status of an established rule from which deviation requires justification. A similar judgement was also made in *Arkasas v Sanders*[8] in which marijuana was found in an (unlocked) suitcase which was seen to be placed in the boot of a car.

In contrast, the decreased expectations of privacy associated with automobiles would license the search of a container in the boot of a car in *United States v Ross*[9]:

> Where police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, that may conceal the object of the search.

Whereas in Chadwick and Sanders the probable cause applied only to the luggage (the police had waited until it was placed in the car boot, presumably because they believed that they would then benefit from the automobile exception), in Ross it was held that probable cause applied to the whole car, because the container had not been seen to be placed in the boot.

We should now consider *California v Carney* case[10], which has been the subject of AI and Law discussion in [8], [1] and [3]. This case involved not a standard car, but a mobile home parked in a parking lot in San Diego. The issue here seemed to be whether mobile homes, which presumably have greater expectations of privacy than ordinary cars, are subject to the automobile exception. Here it was found by the majority that they were so subject unless they were actually being used as a dwelling at the time. As argued by the majority, the test for this should be whether the location at the time of the search was one not normally used for residential purposes was a key element.

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[7] United States v Chadwick, 433 U. S. 1 (1977)
[8] Arkansas v. Sanders, 442 U.S. 753 (1979)
[9] United States v. Ross 456 US 798 (1982)
[10] California v. Carney, 471 US 386 (1985)

All of this had become rather confusing. There was a deliberate attempt to resolve this confusion in *California v Acevedo*[11]. Here Acevedo had been observed to place a bag in his car boot and drive away. He was stopped and the bag was observed to contain marihuna. Here the Court explicitly departed from Chadwick and Sanders and held the search to be justifiable, even though the probable cause arose from seeing the bag placed in the car. The decision, written by Blackmun, who had dissented in both Chadwick and Sanders, explicitly stated that it was not extending Carroll

> This holding neither extends the Carroll doctrine nor broadens the scope of permissible automobile searches. In the instant case, the probable cause the police had to believe that the bag in the car's trunk contained marijuana now allows a warrantless search of the bag, but the record reveals no probable cause to search the entire vehicle.

The departure from Chadwick-Sanders is justified in the syllabus:

> The Chadwick-Sanders rule affords minimal protection to privacy interests. ... The Chadwick-Sanders rule also is the antithesis of a clear and unequivocal guideline and, thus, has confused courts and police officers and impeded effective law enforcement.

It is perhaps worth mentioning that Acevedo, which was decided 6-3 was decided by a very different court from the one that tried Sanders. The majority contained Blackmun and Rhenquist, who had been in favour of allowing warrantless searches in all the above cases, O'Connor, who had agreed with them as part of the majority in Ross and three new justices, while the minority consisted of three justices (Marshall, Stevens and White) who had formed part of the majority in Sanders. Having unfolded the series of cases, we will now see how they illuminate the questions posed in Section 1.

3. Use of Values

First we should note Taft's decision in Carroll made no mention whatsoever of any reduced expectations of privacy. Taft regarded probable cause as essential, and concluded that since it was impossible to obtain a warrant, no warrant could be required if the law was to enforced. Recall too that his reasoning begins with the searching of ships. Ships in the eighteenth century were homes to their crew for months and even years at a time, and would contain private quarters full of personal effects. Such private quarters could not be exempt from search. There were many sophisticated hiding places built into ships[12] which would be quite unnecessary if the Captain's cabin could not be searched. Reduced expectations of privacy are mentioned in Chambers and Cady because in those cases there is no exigency at all. Public saftey is invoked as an additional value in Cady, but that is directed at the lack of probable cause, rather than providing extra weight to privacy. It is possible that the additional seriousness of the crimes (armed robbery and murder) had an influence here. None the less, that expectations of privacy in an ordinary car were low was was well established by the time of Opperman. Indeed, allowing warrantless search even when exigency is lacking seemed to suggest that automobiles might be regarded as

[11] California v. Acevedo, 500 U.S. 565 (1991

[12] see for example *The English Passengers*, a 2000 novel by Mathew Kneale for a particularly ingenious example.

not covered by the Fourth Amendment at all. Thus in these cases it seems to me that we are seeing thresholds (consider first if exigency is sufficient and if not whether privacy is sufficiently low) rather than any kind of balance: where exigency applies, privacy is not mentioned.

The next three cases, Coolidge, Chadwick and Sanders represented a rearguard action against the automatic exemption of automobiles from a warrant requirement. Coolidge was protected because the car was parked on a driveway, and so should enjoy the same expectations of privacy as anything else on a person's own land. The decision, delivered by Stevens however, relied primarily on the lack of exigency. In the Chadwick and Sanders cases the police, although they could have seized the luggage in question before it was placed in the car, chose not to do so. It seemed to the Court as if they believed that the contact with the car reduced the expectations of privacy associated with the luggage, and the Court was at pains to deny this, and to reassert the need to obtain a warrant when practical to do so. The majority decision was delivered by Powell

> Luggage is a common repository for one's personal effects, and therefore is inevitably associated with the expectation of privacy. Once police have seized a suitcase from an automobile, the extent of its mobility is in no way affected by the place from which it was taken; accordingly, as a general rule, there is no greater need for warrantless searches of luggage taken from automobiles than of luggage taken from other places. Similarly, a suitcase taken from an automobile stopped on the highway is not necessarily attended by any lesser expectation of privacy than is associated with luggage taken from other locations. Where – as in the present case – the police, without endangering themselves or risking loss of the evidence, lawfully have detained one suspected of criminal activity and secured his suitcase, they should delay the search thereof until after judicial approval has been obtained.

The situation so far is that it does seem that it is possible to order items in terms of their expectation in privacy, but there is no evidence of a trade off or balance. Privacy is invoked when there is no exigency, and exigency is generally taken as sufficient grounds for a warrantless search. The Carroll decision was based solely on mobility: so that if the exigency threshold is exceeded search is permissible; in the absence of exigency, privacy expectations must be insufficient to afford Fourth Amendment protection. All this supports the threshold rather than the balance view. A key consideration is what the police might have done: in both Chadwick and Sanders there was no need or reason to wait until the luggage was placed in the car. Burger said in Sanders

> Because the police officers had probable cause to believe that respondent's green suitcase contained marijuana before it was placed in the trunk of the taxicab, their duty to obtain a search warrant before opening it is clear.

. In Ross, on the other hand they never saw the container outside the car and so had probable cause to search the whole vehicle, including any containers it contained. Any suggestion that a distinction between worthy containers such as suitcases and unworthy ones such as paper bags was firmly rejected as making such a distinction would "imposes substantial burdens on law enforcement without vindicating any significant values of privacy". Note here the requirement that any distinction should be capable of practical application by a policeman in the specific situation, which will become an increasingly

prominent consideration, and that the language is used is of two independent thresholds, rather than a balance.

We now turn to Carney, which is the decision which offers most support for a balance being struck between privacy and exigency. Here probable cause was not an issue. There was, however, little actual exigency, as it did not look like departure was imminent. So the reduced expectations of privacy become essential to bring it into line with the statement of Opperman. Interestingly, the majority did not call to mind the fact that Carrol was originally based on the treatment of ocean going ships which were much more of a dwelling than a Dodge camper van ever was: but Carrol itself requires exigency. This is the point made by the minority opinion offered by Stevens. This opinion does refer to privacy, and supports the view that we can order situations in terms of expectations of privacy,

> It is perfectly obvious that the citizen has a much greater expectation of privacy concerning the interior of a mobile home than of a piece of luggage such as a footlocker.

but is firmly based on the lack of exigency:

> In this case, the motor home was parked in an off-the-street lot only a few blocks from the courthouse in downtown San Diego where dozens of magistrates were available to entertain a warrant application. The officers clearly had the element of surprise with them, and with curtains covering the windshield, the motor home offered no indication of any imminent departure. The officers plainly had probable cause to arrest the respondent and search the motor home, and, on this record, it is inexplicable why they eschewed the safe harbor of a warrant

For the minority, one suspects, the whole issue of reduced expectations of privacy is not really a consideration. There seems to be here, as in Chadwick and Sanders, a motivation from dislike of the police attempting to exploit the automobile exception rather than going to the trouble of obtaining a warrant when it would have been perfectly possible to do so.

The final case in our sequence was Acevedo. Here we have very much the facts of Chadwick and Sanders. Here the majority consciously and explicitly go against Chadwick and Sanders, in the interests of clarity and the value of law enforcement

> The Chadwick-Sanders rule also is the antithesis of a clear and unequivocal guideline and, thus, has confused courts and police officers and impeded effective law enforcement.

The claim is that they are doing nor more than following the original doctrine of Carrol:

> Our holding today neither extends the Carroll doctrine nor broadens the scope of the permissible automobile search delineated in Carroll, Chambers, and Ross. It remains a cardinal principle that ‘searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions.’ We held in Ross: ‘The exception recognized in Carroll is unquestionably one that is specifically established and well delineated’. We therefore interpret Carroll as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.

None the less, the justification has to be based on reduced expectations of privacy, not exigency: the extension may not be extended, nut the intension is different. The minority, however, does not seem to regard these reduced expectations of privacy as important at all. Stevens cites Burger's decision in Chadwick:

> Even though on this record the issuance of a warrant by a judicial officer was reasonably predictable, a line must be drawn. In our view, when no exigency is shown to support the need for an immediate search, the Warrant Clause places the line at the point where the property to be searched comes under the exclusive dominion of police authority.

This offers a different justification for the acceptable searches which lacked exigency: namely where the property is under the "exclusive dominion of the police authority". This is a clear exception, presumably intended to be different from the automobile exception, which requires exigency.

In Avecedo, it seems perhaps that the issue is whether the protection of privacy afforded by the Fourth Amendment is sufficient to justify the inconvenience to police officers. Powell for the majority contends in Avecedo that it does not: "by attempting to distinguish between a container for which the police are specifically searching and a container which they come across in a car, we have provided only minimal protection for privacy", denying that the Fourth Amendment applied to automobiles significantly promotes privacy and so saying that it can be ignored in the interests of clarity and convenience. Stevens, however, insists that the need to respect the Amendment is absolute:

> Even if the warrant requirement does inconvenience the police to some extent, that fact does not distinguish this constitutional requirement from any other procedural protection secured by the Bill of Rights. It is merely a part of the price that our society must pay in order to preserve its freedom.

4. Concluding Remarks

I can find no evidence of a balance between privacy and exigency. Some (e.g. Marshall) would not recognise any automobile exception, but permit warrantless searches only where there was probable cause and it was not *possible* to obtain a warrant: that is they apply an exigency threshold. All the opinions finding against a warrantless search argue that a warrant could have been obtained if the police had chosen to do so. Other justices (e.g Rhenquist) do recognise an automobile exception, justified on the grounds of reduced expectations of privacy for automobiles. They apply exception this even when there is no exigency. Privacy, however, is applied as a threshold, and used only when exigency has been shown to be not satisfied.

Items can be ordered on expectations of privacy: homes are greater than luggage which is greater than automobiles. Some would place mobile homes greater than luggage, others would position a mobile home according to its usage at the time, shown by its location. There is, however, no attempt to quantify the differences, even to the extent of [7] and the need for any test to be clear and readily applicable would suggest that this cannot be done. The difference is used when deciding against a search in case like Chadwick. Placing in bands, or assigning a number, seems inappropriate.

The need for clarity and applicability suggests that any fine balancing between degrees of exigency and expectations of privacy cannot be required. Any exceptions must be 'specifically established and well delineated'. Automobiles, and items under exclusive dominion of the police, represent clear exceptions.

As emerges in Avecedo, any balance that is made is not between privacy and law enforcement. The importance of law enforcement is sufficiently catered for by the exigency test in a specific case. Rather the issue is whether the degree of protection given by the Fourth Amendment merits the inconvenience to the police represented by obtaining a warrant. This is a general question, rather than one which involves drawing fine distinctions based on the specific facts, which is why Chadwick and Sanders were overruled. The court could consider a balance between these matters, but its judgement must be expressed as a clear test. Note, however, any notion of balance is rejected by the minority, who insist that warrants must be obtained whenever they can be.

Thus overall one must be wary of saying what the law is, or how such decisions should be made. Justices may make whatever arguments they choose, and have no need to work with a coherent theory of law. What can be said, I believe, is that consideration using thresholds, first for exigency and then for privacy if exigency fails, is enough to explain the above decisions. Ordering on privacy is needed for Chadwick and Sanders, to explain why these cases fall above the privacy threshold, but this can be dispensed with following Avecedo, which does effectively hold that automobiles and their contents in a public place have insufficient expectations of privacy to merit protection under the Fourth Amendment, and so form a clear and readily applicable exception. When modelling legal argumention careful consideration of specific arguments is needed to justify any general claims about what AI approach should be taken.

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