The “American” concept of privacy arrived with the original ships from Europe, although it is mostly derived from the common law of England the settlers brought with them. Privacy relies on the same theory of natural rights underlying the Constitution and Bill of Rights. In the late 19th Century Samuel D. Warren and Louis D. Brandeis were concerned about then-recent technological developments, such as photography, and sensationalist journalism. Warren and Brandeis declared that information which was previously hidden and private could now be "shouted from the rooftops." They decided more was needed to protect individuals. Defining privacy as the "right to be let alone" they proposed common law tort remedies for four defined categories of privacy intrusions:

1. Intrusion upon seclusion or solitude, or into private affairs;
2. Public disclosure of embarrassing private facts;
3. Publicity which places a person in a false light in the public eye; and
4. Appropriation of name or likeness.

Warren and Brandeis, "The Right To Privacy", 4 Harvard Law Review 193 (1890). The Texas Supreme Court has recognized the first and second types of invasion of privacy, indicated probable acceptance of the fourth, and expressly declined to recognize the third. See Cain v. Hearst Corp., 878 S.W.2d 577, 578 (Tex. 1994).

The essay begins by describing common law antecedents for protection of life and property. Originally, the common law “right to life” only provided a remedy for physical interference with life and property. But later, the scope of the “right to life” recognized the “legal value of sensations.” For example, the action of battery—a protection against actual bodily injury—gave rise to the action of assault—fear of actual bodily injury. Similarly, the concept of property expanded from protecting only tangible property to intangible property. The authors then propose that the common law should adapt to recent inventions and business methods, which at the time included primarily instantaneous photography and the widespread circulation of newspapers, which the authors believed threatened individual privacy.

Given its “natural rights” foundation, the Brandeis formulation was soon carried over into constitutional law, and in particular the 1st, 4th, 5th and 14th amendments. Brandeis applied it to electronic surveillance in his dissent to Olmstead v. United States, 277 U.S. 438 (1928), the first wiretapping case. Notably, in addition to his efforts to infuse privacy within the 4th amendment

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1 Available at http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html.

2 An interesting side-note is that the “telephone companies” supported the right to privacy as against wiretapping without a warrant:

...The function of a telephone system in our modern economy is, so far as reasonably practicable, to enable any two persons at a distance to converse privately with each other as they might do if both were personally present in the privacy of the home or office of either one. When the lines of two "parties" are connected at the central office, they are intended to be devoted to their exclusive use, and in that sense to be turned over to their exclusive possession. A third person who taps the lines violates the property rights of both persons then using the telephone, and of the telephone company as well. ... It is of the very nature of the telephone service that it shall be private. ... The wire tapper destroys this privacy. He invades the "person" of the citizen, and his "house," secretly and without warrant. Having regard to the substance of things, he would not do this more truly if he secreted himself in the home of the citizen. ... The telephone companies deplore the use of their facilities in furtherance of any criminal or wrongful enterprise. But it was not solicitude for law breakers that caused the people of the United States to ordain the Fourth and Fifth Amendments as part of the Constitution. Criminals will not escape detection and conviction merely because evidence obtained by tapping wires of a public telephone system is inadmissible, if it should be so held; but, in any event, it is better that a few criminals escape than that the
The future of privacy should be guided by the past. The proscription against unreasonable searches and seizures, Brandeis claimed a property interest, and in particular he articulated what the Supreme Court recently rediscovered in United States v. Jones, 132 S. Ct. 945 (2012): special property rights to the “curtelige” such that law enforcement committing trespass to place monitoring equipment is a property violation and thus “unreasonable” for purposes of the 4th amendment.

Brandeis’ position slowly began to creep into Supreme Court jurisprudence. The Court increasingly “found” privacy rights in various parts of the Constitution, often in some “penumbral” shadow of the specific words. Olmstead’s approval of warrantless wiretapping, however, survived for almost 40 years, but was finally overruled in Katz v. United States, 389 U.S. 347 (1967). Katz and relatively contemporaneous decisions dealing with wiretaps, trap and trace and pen registers are what ultimately caused Congress to pass what we now call the Electronic Communications Privacy Act, a conjunction of the Wiretap Act (18 U.S.C. Chapter 119), Pen Register/Trap and Trace Act (18 U.S.C. Chapter 206) and the Stored Communications Act (18 U.S.C. Chapter 121).

The Brandeis dissent from 85 years ago had this passage, which rings especially true given recent revelations:

Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding. Olmstead v. United States, 277 U.S. 438, 573 (1928), Brandeis dissenting.

We cannot continue to surrender privacy based on some notion it will provide better “security.” Our founders easily resolved that question long ago, and we forget their teaching at our peril:

They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.

February 17, 1775, as published in “Memoirs of the life and writings of Benjamin Franklin” (1818).

Texas is a bastion liberty state: our own founders came here for freedom and we have always treasured privacy and property. But these are really the same thing, because it all comes down to individual liberty. Our private information is our property. We will not suffer its confiscation and the resulting liberty erosion by those professing benign protective intent. We know the real purpose for the ongoing evolution to a surveillance state: it is necessary to support an all-encompassing centralized government controlling every aspect of our individual lives.

The future of privacy depends on preserving the past. Our Liberty is at stake.

privacies of life of all the people be exposed to the agents of the Government, who will act at their own discretion, the honest and the dishonest, unauthorized and unrestrained by the courts. Legislation making wire tapping a crime will not suffice if the courts nevertheless hold the evidence to be lawful. Writs of assistance might have been abolished by statute, but the people were wise to abolish them by the Bill of Rights.