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# THE EXCLUSION OF UNCONSTITUTIONALLY OBTAINED EVIDENCE IN CIVIL PROCEEDINGS: A COMPARATIVE ANALYSIS BETWEEN THE USA AND SPAIN

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# THE EXCLUSION OF UNCONSTITUTIONALLY OBTAINED EVIDENCE IN CIVIL PROCEEDINGS: A COMPARATIVE ANALYSIS BETWEEN THE USA AND SPAIN

**Christa María MADRID BOQUÍN**[1]

**Abstract:**

*The Exclusionary Rule determines that evidence obtained in violation of constitutional rights cannot be used in trial. This theory was adopted in the United States of America in 1914 and has spread to other countries. The US Supreme Court expanded the Rule's scope through cases like Silverthorne and Mapp, but then limited it by creating various exceptions. In the United States the Rule has been applied mainly to criminal proceedings because its primary objective is considered to be police deterrence.Influenced by the American doctrines, Spanish courts have adopted not only the Exclusionary Rule, but also some of its exceptions. However, the Spanish Constitutional Court has defined a different rationale for the suppression of evidence. In Spain the Exclusionary Rule is viewed as a safeguard that derives implicitly from the system of fundamental rights. For this reason its scope is wider and it can also be implemented in non-criminal proceedings (civil, administrative and labor). Because the development of the Rule by the US Supreme Court has served as an example to other countries, like Spain, international scholars have continuously studied this topic. Nonetheless, the application of the Exclusionary Rule in the United States to civil proceedings has seldom been analyzed because it is less common and sometimes even thought of as impossible. This study shows that, as a matter of fact, the US Supreme Court has contemplated the possibility of applying the Rule to cases like One 1958 Plymouth Sedan, Janis and Lopez-Mendoza, which were forfeitures and deportation proceedings of civil nature. The study concludes that in the United States, exclusion of evidence in civil proceedings is exceptional and very limited when compared to the ampler application of the Exclusionary Rule that occurs in Spain, where it is effective in both criminal and non-criminal proceedings.*

**Keywords:**

*Exclusionary Rule - Unlawfully obtained evidence - Procedural fundamental rights -Fruit of the poisonous tree doctrine - Deterrent effect - Constitutional guarantees of*

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*evidence - Exclusion of evidence in civil proceedings - Suppression doctrine - Evidentiary prohibitions*

## Introduction

When government officials carry out a criminal investigation, it is imperative for them to observe various constitutional requirements. For instance, any limitation of the fundamental rights and liberties of the defendant must be authorized by a judge. Therefore, when evidence is procured through the violation of constitutional rights it cannot be used in trial. This Exclusionary Rule of Evidence has been adopted in different countries as an instrument that delimits governmental powers in criminal investigations when constitutional rights have to be intruded upon.

As a variation to this classical approach, the Spanish Constitutional Court has determined that the Exclusionary Rule should be applied to all kinds of proceedings, both criminal and non-criminal, whenever a fundamental right has been infringed, regardless of the governmental o private origin of the violation. This is a crucial distinction because it establishes a series of rules and standards that must be respected by official agents and private citizens when gathering evidence that will be presented in trial. The underlying question to be considered is whether fundamental rights are to be respected only by the government or also by private parties; more specifically, should the judiciary allow individuals to violate constitutional rights, obtain evidence at any cost, and benefit in trial from their illegal behavior?

Just like in criminal proceedings, in civil proceedings it is also common for fundamental guarantees to be violated, especially privacy rights. The Spanish Civil Procedure Act of 2000 establishes a specific measure for excluding unconstitutionally obtained evidence, in accordance to the Exclusionary Rule stated in the Organic Law on the Judiciary. Although Spanish courts have been applying the Rule to civil proceedings for the last decades, their perspective and doctrine is yet to be made known in Common Law countries.

The US Supreme Court has in fact examined the possibility of implementing the Exclusionary Rule in non-criminal proceedings. The cases discussed in this article are meant to introduce the reader to a theoretical and historical frame of how the Court has dealt with this issue. Nonetheless it must be observed that the doctrine of exclusion has evolved significantly during the last decades. The application of the Exclusionary Rule in cases of



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civil nature has not been discussed recently by the Supreme Court, however it is an ongoing topic in State and local courts.

This study analyzes the particular application of the Exclusionary Rule to non-criminal proceedings, comparing the doctrines of the United States Supreme Court and the Spanish Constitutional and Supreme Courts, and shows how the exclusionary doctrine could also be admitted, up to certain extent, in proceedings of civil nature in the United States.

## I. The Origins of Exclusion

When it comes to the suppression of unconstitutionally seized evidence, it has been recognized that, in the United States, such doctrine was created in 1914 through the case of *Weeks v. United States*.[2] The facts discussed referred to the illegal entry of federal authorities into the defendant's home and the search and the seizure of several incriminating documents. Before the trial took place, Weeks made an application to the court for the return of his documents, but the order was ultimately denied. When analyzing this case, the Supreme Court considered that "if letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment, declaring his right to be secure against such searches and seizures, is of no value, and… might as well be stricken from the Constitution."[3] The Court concluded "the efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land."[4] It was therefore established that if the evidence had been unconstitutionally seized, its suppression would be required.

While analyzing *Weeks*, the Supreme Court referred to a previous case in which evidence was obtained in violation of the Fourth Amendment rights. In *Boyd v. United States*,[5] the Court stated that the compulsory production of a man's private papers to establish a criminal charge against him –or to forfeit his property– is tantamount to "compelling him to be a witness against himself, within the meaning of the Fifth Amendment of the Constitution, and is the equivalent of a search and seizure… within the

[2] 232 U.S. 383 (1914).
[3] *Weeks,* 232 U.S. at 393.
[4] Id.
[5] 116 U.S. 616 (1886).



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meaning of the Fourth Amendment."[6] The Court held that the admission in evidence of such documents was erroneous and an unconstitutional proceeding. Interestingly, *Boyd* was not a criminal case, but a civil forfeiture.

The suppression doctrine was adopted in Spain 70 years after *Weeks,* in a non-criminal case.[7] The Spanish Constitutional Court determined that the exclusion of unconstitutionally obtained evidence was an implicit guarantee that derived from the system of fundamental rights and that was related to the right of due process.[8] Since there was no judicial doctrine or statutory law that regulated this aspect at that time, the Constitutional Court took into consideration the application of the Exclusionary Rule in other countries, especially in the United States of America. The Spanish judgment brought into attention "the doctrine established by the Supreme Court of the United States regarding evidence wrongfully obtained and the Exclusionary Rule, according to which, in general terms, evidence obtained in violation of the Fourth Amendment of the Constitution cannot be judicially admitted."[9] One year later, the Spanish Legislature incorporated the suppression doctrine into the Organic Law on the Judiciary, requiring from then on the application of the Exclusionary Rule in all kinds of proceedings, criminal and non-criminal. According to article 11.1 of this Law "evidence

[6] *Boyd,* 116 U.S. at 634-35.

[7] Judgment of the Spanish Constitutional Court (from now on JSCC) 114/1984 of November 29, that solved a case of Labor Law in which the recording of a private conversation was used as evidence against a journalist. In Spain, the *Supreme Court* is the head of the State's judicial system. It is divided into five chambers (civil, criminal, administrative, social and military). In addition, there is an independent *Constitutional Court* with jurisdiction in all of the country. The Constitutional Court is the supreme interpreter of the Spanish Constitution and it is regulated by the Organic Law 2/1979 of the Constitutional Court, of October 3, 1979; available at: http://www.tribunalconstitucional.es/en/tribunal/normasreguladoras/Lists/NormasRegPDF/LOTC-en.pdf.

[8] JSCC 114/1984 of November 29. For further comments on this judgment and the origins of the Exclusionary Rule in Spain, refer to JUAN LUIS GÓMEZ COLOMER, PRUEBA Y PROCESO PENAL. ANÁLISIS ESPECIAL DE LA PRUEBA PROHIBIDA EN EL SISTEMA ESPAÑOL Y EN EL DERECHO COMPARADO, (Tirant lo Blanch 2008); ANDREA PLANCHADELL GARGALLO, PRUEBA PROHIBIDA: EVOLUCIÓN JURISPRUDENCIAL. COMENTARIO A LAS SENTENCIAS QUE MARCAN EL CAMINO (Aranzadi 2014).

[9] JSCC 114/1984 of November 29.



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obtained, directly or indirectly, through the violation of fundamental rights or liberties will have no effect in trial." [10]

## II. The Evolution of the Exclusionary Rule

The understanding and application of the Exclusionary Rule in the United States has evolved dramatically during the last century. As stated in *Weeks*, the doctrine appeared to be simple and clear: federal courts must suppress any evidence that was unconstitutionally seized. Soon, the Rule expanded through the adoption of the Fruit of the Poisonous Tree Doctrine, which required the additional exclusion of secondary or derivative evidence.[11]

However, the exclusionary climax was reached in *Mapp v. Ohio*.[12] In this benchmark case, the Supreme Court established four essential guidelines. First, it made the Exclusionary Rule applicable to the States. Second, it reinforced the idea that the purpose of exclusion is to deter police misconduct. Third, it held that "the Exclusionary Rule is an essential part of both the Fourth and Fourteenth Amendments,"[13] therefore recognizing the constitutional nature of the suppression doctrine. Finally, the Supreme Court acknowledged the imperative of judicial integrity as a secondary rationale for evoking the Exclusionary Rule.[14]

Nonetheless, the broad application of the Rule suggested by *Mapp* did not last for long. Soon, the Court observed that the exclusion of reliable evidence led to the liberation of guilty defendants. The conflict between Criminal Law enforcement and the protection of constitutional rights became more obvious with each new case that raised the issue of exclusion. During the next years, the Supreme Court continued defining –that is, reducing– the scope of the Exclusionary Rule and, at one point, it began creating different exceptions to the suppression theory. The most important

[10] In its original version, the Law states: "No surtirán efecto las pruebas obtenidas, directa o indirectamente, violentando los derechos o libertades fundamentales" (artículo 11.1, Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial). The Organic Law on the Judiciary is available in English at:
http://iccdb.webfactional.com/documents/implementations/pdf/Spain_-_Organic_Law_6-1985.pdf

[11] Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

[12] 367 U.S. 643 (1961).

[13] *Mapp*, *supra,* at 657.

[14] *Id.* at 659.



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doctrines that have allowed unconstitutionally seized evidence to remain and be used in trial are the Attenuation Doctrine,[15] the Independent Source Doctrine,[16] the Inevitable Discovery Doctrine[17] and the Good Faith Exception.[18] This last theory has kept expanding during recent decades, reducing the exclusion of evidence to a minimum by limiting it to cases where police misconduct has been reckless, deliberate or a gross or recurring negligence.[19]

The Exclusionary Rule had a similar evolution in Spain. The total exclusion mandated by the Organic Law on the Judiciary, which also extended to secondary evidence (fruit of the poisonous tree), started being diminished a decade after its creation.

What we find so compelling is that both the Spanish Supreme Court and the Spanish Constitutional Court kept referring to the American doctrines throughout the years and, eventually, adopted most of the exceptions developed by the Supreme Court of the United States. As a consequence, exceptions to the Exclusionary Rule were introduced in Spain by case law, even when they openly contravened the legal disposition established in article 11.1 of the Organic Law on the Judiciary. This is a troublesome situation when it happens in a Civil Law country, where the courts are bound by the laws and are not free to create precedent that contradicts a valid law that is in force.[20]

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15 Wong Sun v. United States, 371 U.S. 471 (1963).

16 Murray v. United States, 487 U.S. 533 (1988).

17 Nix v. Williams, 467 U.S. 431 (1984).

18 United States v. Leon, 468 U.S. 897 (1984).

19 Herring v. United States, 555 U.S. 135 (2009).

20 It is unusual how Spain, which has a Civil Law system, has incorporated the exceptions to the Exclusionary Rule through case law. In Civil Law countries, written laws are the predominant source and courts must respect and apply such laws in their judgments. On the contrary, in Common Law systems, the primary source is case law and it is up to the courts to define legal issues through the establishment of precedent in their judgments. On this matter, Toni Fine, *Common Law and Civil Law Systems: Some Defining and Distinguishing Characteristics*, III ANUARIO JURÍDICO DE VILLANUEVA 143 (2009). Therefore, it would be expected that the Spanish courts would directly apply article 11.1 of the Organic Law on the Judiciary, but instead they have incorporated the exceptions through case law even when they are illegal. The reasons are probably related to criminal policies and social exigencies, but the situation is bizarre and has been criticized by Spanish scholars because it diminishes legal and constitutional procedural guarantees. For instance, Juan Luis Gómez Colomer, *La evolución de las teorías sobre la prueba prohibida aplicadas en el proceso penal español: del expansionismo sin límites al más puro reduccionismo. Una meditación sobre su desarrollo futuro inmediato,* in PRUEBA Y PROCESO PENAL. ANÁLISIS ESPECIAL DE LA PRUEBA PROHIBIDA EN EL SISTEMA ESPAÑOL Y EN EL DERECHO COMPARADO 107 (Juan Luis Gómez Colomer et al., Tirant lo Blanch 2008); and also José María Asencio



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In this way, the Spanish Supreme and Constitutional Courts adopted the Independent Source Doctrine,[21] the Inevitable Discovery Exception,[22] the Plain View Doctrine,[23] and the Good Faith Exception.[24] One of the theories that most affected exclusion in Spain was the so-called "conexión de antijuridicidad" (connection of unlawfulness), that does not have a direct precedent in the American doctrine, but is similar –not equivalent– to the but-for causality and attenuation analysis that the United States Supreme Court expressed in *Hudson v. Michigan*.[25]

Despite the adoption and creation of exceptions to the Exclusionary Rule, nowadays suppression applies more strongly in Spain than it does in the United States. This is because the Exclusionary Rule has a positive legal base (article 11.1 of the Organic Law on the Judiciary), but most of all because in Spain it still maintains its constitutional origin, nature and purpose, unlike in the United States. [26]

### III. The Nature of the Rule

According to the Supreme Court of the United States, "the Fourth Amendment contains no provision expressly precluding the use of evidence obtained in violation of its commands."[27] The Exclusionary Rule has therefore been viewed as "a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved".[28] These statements come to show that the Court has departed from the conception established in *Mapp* by which exclusion was an essential part of the Amendments and consequently of the Constitution. Currently, suppression of unlawfully

Mellado, *Prueba ilícita: Declaración y efectos,* 26 REVISTA GENERAL DE DERECHO PROCESAL 1 (2012).

[21] JSCC 86/1995 of June 6.

[22] Judgment of the Spanish Supreme Court (from now on JSSC) 974/1997 of July 4.

[23] JSSC 1313/2000 of July 21.

[24] JSCC 22/2003 of February 10.

[25] 547 U.S. 586 (2006).

[26] In Spain, the exceptions are usually not applied in civil proceedings. This probably occurs because the public interest of truth-finding is less strong when the process is strictly related to private matters. As a result, the need of protecting fundamental prevails and unlawful evidence is excluded by the trial courts or by the courts of appeals.

[27] Leon, supra, at 906.

[28] United States v. Calandra, 414 U.S. 338, 348 (1974).



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seized evidence is treated as a "last resort" remedy,[29] not as a constitutional requirement.

On the contrary, the Spanish Courts recognized since the beginning, and have maintained up to the date, that the exclusion of unconstitutionally seized evidence is "an objective guarantee implicit in the system of fundamental rights" and "derives from the preferent position of the fundamental rights in the legal system."[30] The implicit guarantee of exclusion was integrated by the Constitutional Court through article 24.2 of the Spanish Constitution, which states that everyone has the right to use pertinent evidence as a defense in trial.[31] To that end the Court established that "the concept of 'pertinent evidence' that appears in article 24.2 of the Constitution comes to incorporate, within its essentially technical-procedural contents, a reach that is also substantive, by merit of which evidence unconstitutionally obtained can never be considered 'pertinent'."[32] Furthermore, the guarantee of exclusion has also been related by the Constitutional Court to the right to a due process, the right to equal protection of the law (in procedural matters) and the presumption of innocence.[33]

### IV. The Purpose of Suppression

As originally stated by *Weeks*, the exclusion of unlawfully seized evidence was meant as a protection that would make the Fourth Amendment effective. The Exclusionary Rule was coupled with the purpose of the Amendment, which is "to put the courts of the United States and Federal officials in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers, and effects against all unreasonable searches and seizures under the guise of the law."[34] In addition, the Rule's protection was also extended to the Fifth and Sixth

[29] Hudson, supra, at 591.
[30] JSCC 114/1984 of November 29.
[31] In Spain, evidence is understood to be *pertinent* when it is related to the object of the trial. According to article 283 of the Spanish Civil Procedure Act, in order for evidence to be admissible in trial, other than pertinent and lawful it must also be useful (meaning that it has to be suitable for the purpose of demonstrating what the party contends). The translation to English of the Spanish Constitution is available at http://www.tribunalconstitucional.es/Lists/constPDF/ConstitucionINGLES.pdf.
[32] JSCC 114/1984 of November 29.
[33] *Id.* and JSCC 64/1986 of June 17.
[34] Weeks, supra, at 391-92.



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Amendment when evidence was obtained in violation of the privilege against self-incrimination and the right to counsel.

When *Mapp* was decided, the Court recognized that the purpose of exclusion was to deter police misconduct and "to compel respect for the constitutional guaranty in the only effectively available way."[35] The Rule's rationale was also extended to the preservation of judicial integrity, because "nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence."[36]

However, the Court's doctrine has changed during the years and the justification of the Exclusionary Rule has come to focus entirely on deterrence. The Supreme Court has made it clear in cases such as *Davis,* where it states that "exclusion is 'not a personal constitutional right,' nor is it designed to 'redress the injury' occasioned by an unconstitutional search…. The Rule's sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations…. Our cases have thus limited the Rule's operation to situations in which this purpose is 'thought more efficaciously served'…. Where suppression fails to yield 'appreciable deterrence', exclusion is 'clearly unwarranted'."[37] And yet, the existence of deterrence does not automatically provide for exclusion. In order for the Rule to apply, the benefits of deterrence must outweigh the social costs of exclusion (which mainly are the suppression of reliable evidence and the liberation of a guilty defendant).

In contrast, the protection of constitutional rights is the exclusionary rationale that has subsisted in Spain. The suppression of unlawfully obtained evidence serves as a way to protect the substantive and procedural fundamental rights that have been violated through the seizure of the evidentiary sources. The Exclusionary Rule also operates as a mechanism to preserve the integrity of the judicial processes (due process of law). Finally, the deterrence rationale has also been recognized in Spain,[38] but it is a secondary justification in comparison to the protection of fundamental rights.

[35] Mapp, supra, at 656.
[36] Mapp, supra, at 659.
[37] Davis v. United States, 131 S. Ct. 2419, 2426 (2011).
[38] JSCC 114/1984 of November 29 and JSCC 22/2003 of February 10.



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## V. The Exclusion of Unconstitutionally Obtained Evidence in Civil Proceedings

*A. The United States of America*

As a general assessment it can be stated that the Exclusionary Rule does not apply in the United States to civil proceedings. However, if further examined the issue is more complex than that. In most courts, unconstitutionally obtained evidence will not be suppressed from civil trials; nonetheless it is possible to find cases where the Exclusionary Rule has been applied in non-criminal proceedings.[39] For instance, the Supreme Court has come to consider several exclusionary cases related to non-criminal proceedings.

1. Boyd v. United States (1886)

This was a civil forfeiture proceeding concerning some cases of plate glass that were imported without payment of the customs duty. Pursuant to statute, the court required the claimants to produce some incriminating documents. They complied, but objected to the documents' reception on the grounds that compelling them to produce such evidence was unconstitutional.

When analyzing the case, the Supreme Court established that forfeiture, even when civil in form, had a quasi-criminal nature.[40] For this reason, the protections of the Fourth and Fifth Amendments were applicable as in a criminal procedure. To that end "a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure –and an unreasonable search and seizure– within the meaning of the Fourth Amendment. Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure…, it contains their substance and essence, and affects their substantial purpose."[41]

[39] Marjorie A. Shields, Admissibility, in Civil Proceeding, of Evidence Obtained through Unlawful Search and Seizure, 105 A.L.R.5th 1 (2003 and Supp. 2013); WAYNE R. LAFAVE, SEARCH AND SEIZURE. A TREATISE ON THE FOURTH AMMENDMENT, vol. 1 at 218-255 (Thomson West 4th ed. 2004 and 2012 Supp.); WILLIAM E. RINGEL, SEARCHES AND SEIZURES, ARRESTS AND CONFESSIONS (West 2013).

[40] Boyd, supra, at 634.

[41] Boyd, supra, at 635.



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As a result, the Supreme Court concluded that the law and the court order that required the compulsory production of the incriminating evidence in the forfeiture proceeding were unconstitutional and void. The admission in evidence of the invoice produced was also considered unconstitutional.

2. One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania (1965)

This case dealt with the civil forfeiture of a car whose owner was found to be transporting 31 cases of liquor for which he had not paid the corresponding taxes. Once the car and the liquor were seized, he was arrested and charged with violation of the Pennsylvania law. There had been no warrant or probable cause that justified the search and seizure performed by the officers of the Liquor Control Board.

Unlike *Boyd*, by the time *Plymouth Sedan* was solved, the Exclusionary Rule had already been created and had recently become of application to the States through *Mapp*. Nonetheless, the Court referred to *Boyd* because both cases dealt with a civil forfeiture that resulted from unconstitutionally obtained evidence. Once again, the Supreme Court reached the same conclusion.

On one hand, the Commonwealth of Pennsylvania could not establish an illegal use of the car if it was not for the evidence unlawfully seized. On the other, the analyzed forfeiture was quasi-criminal in nature. The Court stated "the forfeiture is clearly a penalty for the criminal offense and can result in even greater punishment than the criminal prosecution".[42] Therefore, based on the quasi-criminal nature of the forfeiture proceeding, the Court held that the Exclusionary Rule was applicable to the case.

3. United States v. Janis (1976)

On a search pursuant to a warrant, state police seized $4,940 and wagering records. Soon thereafter, one of the officers informed the Internal Revenue Service (IRS) that Janis had been arrested for bookmaking activity (illegal gambling). The IRS made the corresponding assessment and levied, as partial satisfaction, upon the money that had been seized by the police. In the criminal procedure, the search warrant was proven to be defective and was consequently quashed. The evidence obtained through the search was returned to Janis, but not the money. On this account, Janis filed a civil suit for the refund of his money. He also moved to suppress the evidence and

[42] One 1958 Plymouth Sedan v. Com. of Pa., 380 U.S. 693, 701 (1965).



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quash the assessment, given that the warrant had already been found defective. By the time this case got to the Supreme Court, the good faith exception had not yet been recognized, so that topic was not discussed.

In order to solve this case, the Court applied the balancing test developed in *United States v. Calandra.*[43] According to this test, it must be assessed if the deterrence obtained in the particular case by applying the Exclusionary Rule would be greater than the social costs of suppressing the evidence. The Court asserted that deterrence would be minimal in this case because the evidence was originally obtained by one sovereign for a particular use (state police wanting to use it in a criminal procedure), who would care little about the exclusion of the evidence granted in another procedure before a different sovereign (civil taxes before federal authorities). More simply said, excluding the evidence in the criminal procedure was enough "punishment" for the offending officer and further exclusion in a collateral civil proceeding would not fulfill any relevant additional deterrence. In the words of the Court, "the deterrent effect of the exclusion of relevant evidence is highly attenuated when the 'punishment' imposed upon the offending criminal enforcement officer is the removal of that evidence from a civil suit by or against a different sovereign…. The imposition of the Exclusionary Rule sought in this case is unlikely to provide significant, much less substantial, additional deterrence. It falls outside the offending officer's zone of primary interest."[44]

For this reason, the Supreme Court held that the Exclusionary Rule would not be extended to forbid the use in the civil procedure of one sovereign of evidence unconstitutionally seized by a criminal law enforcement agent of another sovereign (intersovereign approach).

However, the judgment leaves important questions unanswered. For instance, what would happen if the exclusion was required in a subsequent process held before the same sovereign that made the seizure (intrasovereign approach)? Or what if it was a case of intersovereign exclusion, like *Janis*, but the deterrent effect to be achieved was great and necessary?

Janis was decided by a 5 to 3 majority. The dissenters made strong arguments in favor of exclusion. It was said, for example, that the intersovereign approach resembled the silver platter doctrine that had been abolished with *Mapp.* [45] On the other hand, it is not uncommon for one

[43] Calandra, supra, at 348-52.

[44] United States v. Janis, 428 U.S. 433, 458 (1976).

[45] According to the silver platter doctrine, evidence obtained unlawfully by State officers could be used in federal trials, given that in the beginning the Exclusionary Rule applied



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sovereign to cooperate with another and therefore the Exclusionary Rule should apply when the civil proceeding serves as an adjunct to the enforcement of criminal law.

4. I.N.S. v. Lopez-Mendoza (1984)

The issue analyzed in this case was whether the Exclusionary Rule should be extended to civil deportation proceedings. The two respondents were Mexican citizens who, after being unlawfully arrested by officers of the Immigration and Naturalization Service (INS), admitted their illegal entry into the United States. Both the immigration judge and the Board of Immigration Appeals refused to exclude the evidence. However, the Court of Appeals vacated the deportation orders because of the Fourth Amendment violations that had occurred during the arrests.

The Supreme Court applied the balancing test used in *Calandra* and *Janis* to determine if deterrence would be greater than the social costs of exclusion. First, the Court stated that "a deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish an unlawful entry, though entering or remaining unlawfully in this country is itself a crime."[46] Because of this civil nature, several protections that apply in criminal trials cannot be applied in deportation proceedings.[47] Second, the Court established that the deterrent effect to be achieved by implementing the Exclusionary Rule in these proceedings would be minor in comparison to the great social costs that could be generated.[48]

On the deterrence side of the balance, it was said that several factors reduced the likely deterrent value of exclusion in deportation proceedings. For instance, the existence of additional independent evidence would allow the deportation to happen even if the unlawful evidence was excluded.[49] Also, since most illegal aliens agree to voluntary deportation, in is unlikely that an arrestee will challenge the lawfulness of his arrest in a formal deportation hearing.[50] On the other hand, the INS has its own comprehensive scheme for deterring Fourth Amendment violations and

only to federal agents. The State Police would obtain evidence through unconstitutional searches and seizures and then hand it over "in a silver platter" to federal authorities. The doctrine was stated in Byars v. United States, 273 U.S. 28 (1927), but was overruled in the 60's.

[46] INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984).

[47] Id.

[48] *Id.* at 1042-50.

[49] *Id.* at 1043.

[50] *Id.* at 1044.



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there are alternative remedies for INS practices that might violate constitutional rights.[51]

As for the social costs side of the balance, the Court considered that the application of the Exclusionary Rule to deportation proceedings would result in the release of persons who would resume their commission of a crime, that is, their illegal presence in the country. Furthermore, suppressing evidence would complicate the deliberately simple deportation system operated by the INS.[52]

This case was a controversial 5 to 4 decision of the Supreme Court. The dissenters once again repelled the majority's opinion with solid arguments. For example, they considered that civil deportation proceedings are analogous to criminal proceedings and that the Fourth Amendment protections should equally apply. The evidence unconstitutionally seized by INS agents falls within the offending officer's zone of primary interest and is used in the procedure for which it was obtained; therefore, the deterrent effect is as strong as in criminal proceedings. [53] Moreover, according to statutory and case law, the release of the immigrants would not necessarily mean they would continue the commission of a crime.[54] Besides, even if there are alternative remedies for Fourth Amendment violations, the person who has already been deported cannot file a civil suit against the offense.[55]

Even when Justice White continued to refute the majority's opinion with more than a dozen arguments, the Court's ultimate judgment is clear: Evidence derived from unlawful arrests need not be suppressed in an INS civil deportation hearing. However, the majority also stated that "our conclusions concerning the Exclusionary Rule's value might change, if there developed good reasons to believe that Fourth Amendment violations by INS officers were widespread" or if the contended case dealt with "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained."[56]

[51] *Id.* at 1044-45.
[52] *Id.* at 1046-50.
[53] *Id.* at 1053 (White, J., dissenting).
[54] *Id.* at 1056-58 (White, J., dissenting).
[55] *Id.* at 1055 (White, J., dissenting).
[56] *Id.* at 1050-51.



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5. Criteria Applied by the Supreme Court Regarding the Exclusion of Evidence in Non-Criminal Proceedings

The cases discussed above are the most significant ones that, resolved by the Supreme Court, deal with the issue of applying the Exclusionary Rule in civil proceedings. However, even when they do provide guidelines, the question has not been entirely solved. When deciding the exclusion of evidence in a non-criminal procedure, courts will have to contemplate the different recommendations provided by the Supreme Court and apply them to the particular circumstances of each case. The essential parameters to be considered are the following:

a) Judges must apply the *balancing test* used in decisions like *Calandra, Janis* and *Lopez-Mendoza*. Since there are many subjective components in the balancing test, it is finally up to each judge or court to decide if, in a particular case, deterrence is worth the cost of exclusion.
b) It is important to assess if the exclusion will take place in the same procedure for which the evidence was obtained or if it is to occur in a *collateral procedure,* and if the use of the evidence is *intrasovereign or intersovereign*. The judge must analyze if the exclusion affects the *offending officer's zone of primary interest*. These questions will help define the value of deterrence.
c) Also, the *nature of the violation* will be a factor that might determine if the Exclusionary Rule applies. As the Supreme Court stated in *Lopez-Mendoza*, recurring or egregious violations can eventually call for suppression.
d) Furthermore, the *nature of the proceeding* (purely civil or quasi-criminal) must also be taken into account when deciding the correct application of the Exclusionary Rule.

By applying these guidelines, state and federal courts have come up with different results regarding the exclusion of evidence in civil procedures. The issue has been raised throughout the country in relation to many kinds of actions: proceedings to suspend or revoke a professional or commercial license, actions for negligent or intentional infliction of emotional distress, civil rights proceedings, administrative disciplinary or discharge proceedings, unemployment compensation proceedings, eviction proceedings, civil tax proceedings, forfeiture proceedings, actions for environmental cleanup costs, defamation actions, guardianship or conservatorship proceedings, civil narcotics commitment proceedings, child custody or protective proceedings, customs or tariff proceedings, actions for administrative fees, divorce or other marital actions, personal injury or wrongful death actions, actions for



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an injunction or to abate a nuisance, actions on insurance policies, civil interpleader actions, actions for replevin, civil antitrust actions, breach of contract actions and actions for property damage.[57]

Finally, it is imperative to recall that the State Action Doctrine and the theory of Standing also apply to the suppression of evidence in civil proceedings. According to the former, the Exclusionary Rule can only be invoked when the government is involved in the unlawful seizure of the evidence. In other words, the evidence will not be excluded when a private party commits the constitutional violation without any participation of the government.[58] This is so because constitutional rights are only enforceable against the government[59] and because the primary purpose of exclusion (the deterrence of government officials) will not be accomplished when the perpetrator of the violation is a private actor.

Standing, on the other hand, requires that the party who moves for suppression must be the person whose constitutional rights were violated. Therefore, the Exclusionary Rule cannot be evoked when a third party's rights are infringed. In consequence, only the person who suffered the violation can benefit from excluding the evidence in trial.[60]

B. Spain

1. Regulation of the Exclusionary Rule in the Spanish Legal System

The Exclusionary Rule applies in both criminal and non-criminal procedures in Spain. This has been so since the Rule was first established by the Constitutional Court in its 1984 judgment. Because suppression is considered to be an implicit constitutional requirement, and because of the universality of the fundamental rights (they must be equally respected in all kinds of procedures) evidence has to be excluded whenever it was seized

[57] For an ample discussion on the topic and a list of recent cases, see Marjorie A. Shields, *Admissibility, in Civil Proceeding, of Evidence Obtained through Unlawful Search and Seizure*, 105 A.L.R.5th 1 (2003 and Supp. 2013). Also, on the application of the Exclusionary Rule to civil proceedings in the United States, Daniel W. Kaminski, *Conclude to Exclude: The Exclusionary Rule's Role in Civil Forfeiture Proceedings,* 6 SEVENTH CIRCUIT REV. 268 (2010), *available at* https://www.kentlaw.iit.edu/Documents/Academic%20Programs/7CR/v6-1/kaminski.pdf; Christine L. Andreoli, *Admissibility of Illegally Seized Evidence in Subsequent Civil Proceedings: Focusing on Motive to Determine Deterrence,* 51 FORDHAM L. REV. 1019 (1983), *available at* http://ir.lawnet.fordham.edu/flr/vol51/iss5/10/.

[58] Burdeau v. McDowell, 256 U.S. 465 (1921).

[59] As an exception to the State Action Doctrine, the Thirteenth Amendment's prohibition against slavery is the only constitutional guarantee enforceable against private actors.

[60] Jones v. United States, 362 U.S. 257, 261 (1960); Alderman v. United States, 394 U.S. 165, 174 (1969).



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through the violation of these rights. The Constitutional Court of Spain stated:

> "…from the preferent position that fundamental rights hold in our legal system and from their stated condition of being 'inviolable' (article 10.1 of the Constitution) derives the impossibility of admitting in a process [the use of] evidence that was obtained through the violation of a fundamental right or a fundamental liberty…. This guarantee derives, therefore, from the complete nullity of any act –public or, in any case, private– that violates the legal positions recognized in… the Constitution and from the institutional need of not corroborating… the contraventions of such fundamental rights…. We stand, therefore, before and objective guarantee of the order of liberty, articulated in the fundamental rights…."[61]

Furthermore, statutory laws mandate the evidentiary suppression. Article 11.1 of the Organic Law on the Judiciary, directly enunciates the rule of exclusion when it states that "evidence obtained, directly or indirectly, through the violation of fundamental rights or liberties will have no effect in trial." In addition, the Civil Procedure Act (CPA) also indicates that unconstitutionally obtained evidence must be excluded (articles 283.3 and 287).[62]

It is interesting how the CPA determines that, in certain cases, a civil judge can order the search and seizure of documents and objects during pretrial proceedings. As in criminal processes, the violation of privacy –or any other fundamental right– would require the exclusion of the evidence obtained through the unlawful search and seizure. During the preliminary proceedings, any of the parties (usually the claimant) can petition the court to summon from the other party the exhibition of documents or objects related to the future trial. If the summoned party does not comply or object,

[61] JSCC 114/1984 of November 29.

[62] On the application of the Exclusionary Rule to civil proceedings in Spain: Juan Ramón Medina Cepero, *La ilicitud de la prueba en el proceso civil,* 7 REPERTORIO DE JURISPRUDENCIA ARANZADI 187 (2002); Rafael Bellido Penadés, *La prueba ilícita y su control en el proceso civil,* 89 REVISTA ESPAÑOLA DE DERECHO CONSTITUCIONAL 77 (2010); Juan Varea Orbea, *El control judicial de la prueba ilícita en el proceso civil español,* in OBJETO Y CARGA DE LA PRUEBA (Xavier Abel Lluch et al., Bosch 2007); Joan Picó i Junoy, *La prueba ilícita y su control judicial en el proceso civil,* in EL TRIBUNAL SUPREMO, SU DOCTRINA LEGAL Y EL RECURSO DE CASACIÓN. ESTUDIOS EN HOMENAJE DEL PROFESOR ALMAGRO NOSETE (Vicente Gimeno Sendra et al., Iustel 2007).



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the Law authorizes the judge to issue a new order for the search and seizure of such effects. According to the CPA:[63]

> **Article 261. Refusal to carry out the proceedings.**
> If the party notified and summoned fails to comply with the request and does not file any objection, the court shall, to the proportionate extent, adopt the following measures by means of a court order, in which it shall set forth the reasons why the said measures are required:
> a) (…).
> b) If an application has been made for the exhibition of titles and documents and the court finds that there are sufficient indications that the said titles and documents may be at a specific place, it shall order the entry to and search of the said place and, if found, shall take possession of the documents and put them at the disposal of the applicant at the court premises.
>
> c) If it concerns the exhibition of an object and the place where the latter is located is known or can be reasonably presumed, the court shall proceed in a manner similar to that established in the preceding number and the object shall be presented to the applicant, who may request its deposit or the most appropriate means of guarantee for the preservation of the said object.

However, this is only one example of how unconstitutional evidence could be produced in a civil process. Spanish courts have solved numerous cases where the parties contended that evidence was obtained through the violation of fundamental rights.[64]

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[63] The complete translation to English of the Spanish Civil Procedure Act of 2000 is available at http://www.mjusticia.gob.es/cs/Satellite/es/1288774502225/TextoPublicaciones.html.

[64] Other examples of unlawful evidence in civil cases are:
*In Labor Law:* the evidence that results when the employer reads private emails of the employee, when the employer searches the employee's locker and when the employer uses secret video cameras to record the employee's activities without notifying him about it.
*In Family Law:* the husband introduces as evidence the personal diary of his wife, the wife steals private letters from her husband and uses them in trial against him, DNA tests are taken illegally in order to determine paternity or inheritance.
*In Real Estate cases:* an expert witness enters a house without consent of the owner.
*In commercial cases:* claimant enters defendant's office and removes documents and files from a computer, a party enters the factory of the other party pretending to be a potential client in order to obtain industrial information.



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Given that the main purpose of the Exclusionary Rule in Spain is to protect constitutional rights that apply in all kinds of proceedings, suppression has also been extended to cases where the evidence was seized by private actors. Unlike in the United States, exclusion of the evidence does not require the government to be involved in the violation of the right. [65] Moreover, the theory of Standing does not apply in Spain. Consequently, any party in the civil procedure (claimant or defendant) can object to the admission of evidence that was obtained through the violation of constitutional rights, whether they were his own rights or somebody else's.

The CPA establishes a specific mechanism for the exclusion of unconstitutionally obtained evidence. First, article 287 of the CPA states that the evidence can be objected by the parties or by the judge. It is also allows additional evidence to be presented in order to demonstrate that a fundamental right was actually violated. Finally, the CPA indicates unlawful evidence should be excluded in the early stages of the process, that is, before the objected evidence can be taken in the evidentiary hearing.

> **Article 287. Illegality of evidence.**
>
> 1. When one of the parties deems that fundamental rights have been infringed upon when obtaining evidence or in the origin of evidence, the party shall allege this immediately, and the other parties shall be notified of the fact, as the case may be.

*When private detectives obtain the evidence:* if they record private conversations, or take videos and pictures of people inside their homes.
Cases similar to these have been solved by the Supreme Court of Spain (Civil Chamber) through JSSC 169/2006 of February 23, JSSC 386/2007 of March 29, JSSC 175/2010 of April 8, JSSC 659/2010 of October 28, JSSC 109/2011 of March 2, JSSC 278/2011 of April 28.

[65] The American State Action Doctrine, according to which only the government can be responsible of the violation of constitutional rights, is not applied in Spain. Therefore, evidence obtained unconstitutionally by a private actor can be excluded by the courts. For instance, trial courts, courts of appeals and the Spanish Supreme Court can directly suppress unlawful evidence when the violation was solely caused by a private person. Nonetheless, for the Spanish Constitutional Court to review such cases, it is required that the violation was caused by the State (according to article 41.2 of the Organic Law of the Constitutional Court). In civil cases, when a private person initially violated a substantive fundamental right through the seizure of evidence, it can be contended before the Constitutional Court that a second violation (of the right to a due process) was produced by the courts –that is, the State's Judiciary– that did not exclude the unlawful evidence in previous stages of the process. Through this mechanism, the violations originally caused by private actors can also be presented to the Constitutional Court.



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> As regards this matter, which can also be requested *ex officio* by the court, it shall be resolved in the judgment, or, if the proceedings are oral, at the beginning of the hearing, before the taking of evidence. For this purpose, the parties shall be heard and, as appropriate, the pertinent and useful evidence proposed in the act on the specific point of the aforementioned illicitness shall be taken.
>
> 2. Against the resolution referred to in the preceding paragraph there is only an appeal for reversal, which shall be lodged, substantiated and decided in the trial or hearing, and the right of the parties to reproduce the challenge of the illicit evidence against the final judgment shall remain safeguarded.[66]

The Spanish Supreme Court, in the judgment of a civil issue, stated that "what article 287 of the Civil Procedure Act tries to prevent, like article 11.1 of the Organic Law on the Judiciary, is the possibility of seizing evidence through unlawful methods that violate fundamental rights, and that such evidence is used in trial. The proclaimed ineffectiveness of this evidence is legally determined by the fact that the evidence was obtained by the infringement of a fundamental right.…"[67]

2. Judgment of the Constitutional Court 114/1984 of November 29

This is the first case in Spain that dealt with the application of the Exclusionary Rule. The facts are quite simple: a journalist who worked for a newspaper was dismissed and the evidence presented against him was the recording of a conversation, made without his consent by the interlocutor. The journalist eventually appealed to the Constitutional Court on the grounds that his fundamental rights had been violated.[68]

The Court determined that the exclusion of evidence that was obtained through the violation of constitutional rights was not a fundamental right itself, but an implicit and objective guarantee that derived directly from the system of fundamental rights. These rights and liberties hold a preferent position in the legal system and the Constitution declares they are inviolable. Therefore, it was stated that any evidence obtained

[66] In a more concise way, article 283.3 of the CPA indicates that "any activity forbidden by law can never be admitted as evidence."

[67] JSSC 839/2009 of December 29.

[68] Because of the way in which the evidence was seized and then assessed by the trial court, he considered that his right to the secrecy of communications and his right to have a trial with full guarantees (articles 18.3 and 24.2 of the Spanish Constitution) had been infringed.



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through their infringement should be annulled and excluded from the proceedings.

The Constitutional Court indicated that cases regarding unlawfully obtained evidence always involve a conflict of interests and courts have to choose between the truth-finding process and the protection of the rights of the citizens. These rights must prevail when they have a constitutional basis. In the words of the Court, "…the problem of the admissibility of unlawfully obtained evidence is always outlined in a crossroads of interests, having to decide between the necessary search for the truth in the proceedings or the guaranty… of the legal positions of the citizens. These latter ones can perhaps yield to the first when their base is not constitutional, but not when referred to fundamental rights that are born directly and immediately from the primary norm of the legal system [the Constitution]. In such cases it can be said that it is a priority to attend their full efficiency, relegating to a second level the public interests associated to the evidentiary phase of the proceedings."

Furthermore, the Court specified that the Exclusionary Rule is closely related to other constitutional guarantees. "Once it has been confirmed that the evidence obtained through the violation of fundamental rights is inadmissible, its reception in the proceeding implies the ignorance of those 'guarantees' that are specific of a process (article 24.2 of the Constitution), implying also an unacceptable institutional confirmation of the lack of equality between the parties in the trial (article 14 of the Constitution)… procured unlawfully in favor of [the party] who acquired the evidentiary means with contempt for the fundamental rights of the other."

In the end, the Court determined that, given the way the facts occurred, the journalist's rights had not been violated and the evidence was not excluded. However, the doctrine of the Exclusionary Rule was formally introduced into the Spanish legal system.

3. Judgment of the Supreme Court, Civil Chamber, 169/2006 of February 23

In a process of legal separation, the husband offered the personal diaries of his wife in evidence. The Supreme Court discussed whether the public disclosure and use in trial of the diaries constituted a violation of the wife's right of privacy.

The Court considered that the case raised a question that was critical for a person's right of privacy because the diaries were obtained against the owner's will and without judicial authorization. The judgment established



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that "the premises needed to consider that a person's right of privacy has been attacked and violated are present [in this case]…. Writings that affect someone's privacy, such as personal diaries, have been divulged and have therefore been made known to third parties… [and this has] affected a person that carries out her activities in private."

Furthermore, it was directly stated that this was "a typical case of unconstitutionally obtained evidence… which is absolutely forbidden by article 287 of the Civil Procedure Act."

4. Judgment of the Supreme Court, Civil Chamber, 386/2007 of March 29

In this case, a company won a lawsuit against a commission agent. However, some of the evidence used in trial had been unlawfully obtained and the agent appealed to the Supreme Court.[69] According to the proven facts, after being let in by a guard, two of the company's managers introduced themselves into the commission agent's storage room and retrieved several products that seemed to belong to their company, as well as the agent's computer and some accounting documentation.

The Court considered that, given the way in which the documents were obtained, "it must be taken into account that article 11 of the Organic Law on the Judiciary contemplates evidence attained directly or indirectly [in violation of] fundamental rights or liberties, to deprive it of any effect…." This statutory rule of exclusion "corresponds with article 287 of the Civil Procedure Act [and] article 283 which declares that an activity that is forbidden by the law can never be admitted as evidence."

The judgment indicates that "in the present case the evidence presented by the company…which had been taken from the [agent's] premises, against his will… has an unlawful origin since it was seized by means that are not authorized by the law and it was used in trial effectively with the obvious intent of obtaining evidentiary advantages, given that it was assessed by the court."

Also, the Supreme Court recognizes that "the unlawfulness is not referred to the evidence itself, but to the way it was obtained, and when unlawful means are used, like in this case, the source of the evidence cannot

[69] In the Spanish system, this remedy is an appeal in cassation, currently regulated in articles 477 to 489 of the CPA. Its purpose is to review the application of the law used to decide on matters at issue in the proceedings. Appeals in cassation may be lodged against judgments issued in the second instance by the Provincial Courts when they fulfil certain requirements established in article 477 of the CPA.



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be assumed in the proceedings, therefore it must not be taken into account." As a result, the appeal was granted and the unconstitutionally obtained evidence was excluded.

**Conclusion**

Even when the Exclusionary Rule is mostly evoked in criminal proceedings, it does not necessarily stem from this kind of cases. In the United States, the Supreme Court first decided to suppress unconstitutionally obtained evidence in *Boyd*, which was a civil forfeiture proceeding. The Exclusionary Rule, however, was later established in *Weeks*. Similarly, the suppression of evidence was first applied in Spain in a non-criminal case concerning a labor proceeding. After those first cases, both American and Spanish courts have continued defining the scope and application of the Exclusionary Rule.

More than its historic origin, it is actually the nature and the purpose of the Rule that define its scope in judicial proceedings. These two factors will determine what kind of proceedings the Rule applies to, who provokes the violation that will cause exclusion, whose rights have to be violated for suppression to occur and which party can object to the admission of the resulting evidence.

In the United States, the Exclusionary Rule is now considered to be a remedy that was judicially created solely to deter governmental officials' misconduct. Because of this, the Rule applies primarily in criminal proceedings and when a government official was involved in the violation. Limitations of Standing have also been imposed by the Supreme Court. As a result, application of the Rule in non-criminal proceedings is an uncommon, but not unheard-of, situation.

I personally agree with the dissenting opinions of *Janis* and *Lopez-Mendoza* according to which the Exclusionary Rule would not be automatically extended to all civil proceedings, but could be applicable to them if deterrence was to be achieved by suppression. Respecting both the State Action Doctrine and the Standing requirements, courts should be able to apply the balancing test developed in *Calandra* to decide if the exclusion of evidence would produce deterrence. Of course, the Rule seeks not to deter a single blundering constable but to deter the systematic misconduct of governmental officials.



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Also, I disagree with the inter/intra sovereignty test because governmental agencies tend to cooperate with each other; therefore, defining the acting officer's zone of primary interest is more useful when calculating the possible deterrent effect in each case. The Rule should be extended to apply to quasi-criminal proceedings, such as deportation hearings and civil forfeitures, because the way agents act in them resembles criminal investigation and because the penalties inflicted by these proceedings call for the special protection of constitutional rights.

Unlike the United States, in Spain the Exclusionary Rule has been considered to be an implicit constitutional requirement that responds to the purpose of protecting substantive and procedural fundamental rights. Consequently, suppression of evidence is possible in all kinds of proceeding (both criminal and non-criminal), regardless of who violated the right (the government or a private actor), whose right was violated (the parties' or a third person's), or which party benefits from the exclusion (claimant or defendant).

In the Spanish legal system, the application of the Exclusionary Rule to civil procedures has been formally recognized by statutory laws as well as by the Constitutional Court and the Supreme Court. Even though it has been limited through exceptions, because of its constitutional foundation the Exclusionary Rule has a much wider scope in Spain than it does in the US. I believe that the application of the Rule, as structured in Spain, is more protective of the fundamental rights and liberties than it is in the US.

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**Web**

Judgment of the Spanish Constitutional Court (from now on JSCC) 114/1984 of November 29, that solved a case of Labor Law in which the recording of a private conversation was used as evidence against a journalist. In Spain, the *Supreme Court* is the head of the State's judicial system. It is divided into five chambers (civil, criminal, administrative, social and military). In addition, there is an



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independent *Constitutional Court* with jurisdiction in all of the country. The Constitutional Court is the supreme interpreter of the Spanish Constitution and it is regulated by the Organic Law 2/1979 of the Constitutional Court, of October 3, 1979; available at: http://www.tribunalconstitucional.es/en/tribunal/normasreguladoras/Lists/NormasRegPDF/LOTC-en.pdf.

English of the Spanish Civil Procedure Act of 2000 is available at http://www.mjusticia.gob.es/cs/Satellite/es/1288774502225/TextoPublicaciones.html.

In its original version, the Law states: "No surtirán efecto las pruebas obtenidas, directa o indirectamente, violentando los derechos o libertades fundamentales" (artículo 11.1, Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial). The Organic Law on the Judiciary is available in English at: http://iccdb.webfactional.com/documents/implementations/pdf/Spain_-_Organic_Law_6-1985.pdf

Daniel W. Kaminski, *Conclude to Exclude: The Exclusionary Rule's Role in Civil Forfeiture Proceedings,* 6 SEVENTH CIRCUIT REV. 268 (2010), *available at* https://www.kentlaw.iit.edu/Documents/Academic%20Programs/7CR/v6-1/kaminski.pdf;

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