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Chapter 14: Should We Keep the Exclusionary Rule?

Chapter 15: The First Amendment as Criminal Procedure

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Chapter 14: Should We Keep the Exclusionary Rule?

The exclusionary rule



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- If trial evidence was acquired in an illegal way, it will not be present on the trial
- Meant to protect from Fourth Amendment violations
- Some privacy advocates want this rule to continue existing

Solove's arguments



- As a privacy advocate Solove used to be for the rule but is not any more

Pros:

- It prevents the government from benefitting from breaking rules
- Incentive for defendants to stand up for Fourth Amendment rights
- It's fair: you got illegal benefits, you must now give the benefits back

Cons:

- A mistake made during investigation will penalize the whole society (criminal goes free)
- Usually there will be plenty of legal evidence left, so only the sentence may be shortened – won't actually deter violations
- It encourages interpreting the Fourth Amendment in a narrow way, because judges don't like to exclude evidence

Solove's solutions



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- A combination of measures to replace the exclusionary rule
- Courts should order Fourth Amendment training programs for violators – *how often are training sessions held and will the violator be working while waiting?*
- An expert should investigate law enforcement organizations with high number of violations – *who is going to investigate the expert?*
- Fourth Amendment violations should be public – *this is a good idea*
- Reward law enforcement officials for compliance – *should we reward the vast majority of officers?*
- Fines for Fourth Amendment violations – *is this enough?*



Chapter 15: The First Amendment as Criminal Procedure

First Amendment



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- Freedom of speech, association, thought and belief
- Solove believes that infringing rights of privacy can prevent freedoms given by the First Amendment

Arguments



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- Government probing can prevent conversations from occurring
- Loss of anonymity can prevent some things from being said
- One may not want to buy a controversial book in fear of creating a record
- Secret terrorist watch lists that an individual does not know they are part of

Solove's conclusion



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- First Amendment should get a new role
- The First Amendment and Fourth Amendment should be used together in criminal cases

Personal thoughts of Ch. 15



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- Adding someone to a secret watch list should mean going through the same procedures as getting a warrant
- First Amendment does not guarantee privacy – that is just Solove's own logic and judges may think differently
- If the Fourth Amendment was made useless by court interpretation, what stops this from happening to the First Amendment?



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THE END

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