officer's finances may well make the judgment useless—for the municipality, of course, is not liable without its consent. Is it surprising that there is so little in the books concerning trespass actions for violation of the search and seizure clause? * * *

JUSTICE DOUGLAS, dissenting.

* * * I agree with Justice Murphy that * * * in absence of [an exclusionary] rule of evidence the Amendment would have no effective sanction. * * *

MAPP V. OHIO

367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

JUSTICE CLARK delivered the opinion of the Court. * * *

On May 23, 1957, three Cleveland police officers arrived at appellant's residence in that city pursuant to information that "a person [was] hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home." Miss Mapp and her daughter by a former marriage lived on the top floor of the two-family dwelling. Upon their arrival at that house, the officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant. * * *

The officers again sought entrance some three hours later when four or more additional officers arrived on the scene. When Miss Mapp did not come to the door immediately, at least one of the several doors to the house was forcibly opened and the policemen gained admittance. Meanwhile Miss Mapp's attorney arrived, but the officers, having secured their own entry, and continuing in their defiance of the law, would permit him neither to see Miss Mapp nor to enter the house. [When the officers broke into the hall, Miss Mapp] demanded to see the search warrant. A paper, claimed to be a warrant, was held up by one of the officers. She grabbed the "warrant" and placed it in her bosom. A struggle ensued in which the officers recovered the piece of paper and as a result of which they handcuffed appellant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. * * * Appellant, in handcuffs, was then forcibly taken upstairs to her bedroom where the officers searched a dresser, a chest of drawers, a closet and some suitcases. * * * The search spread to the rest of the second floor * * * . The basement of the building and a trunk found therein were also searched. The obscene materials for possession of which she was ultimately convicted were discovered in the course of that widespread search.

At the trial no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for. At best [as the Ohio Supreme Court, which affirmed the conviction, expressed it], "there is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's home." * * *

The State says that even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally

seized evidence at trial, citing *Wolf v. Colorado,* * * *. On this appeal, * * * it is urged once again that we review that holding. * * *

The Court in *Wolf* first stated that "[t]he contrariety of views of the States" on the adoption of the exclusionary rule of *Weeks* was "particularly impressive" * * *. While in 1949, prior to the *Wolf* case, almost two-thirds of the States were opposed to the use of the exclusionary rule, now, despite the *Wolf* case, more than half of those since passing upon it, by their own legislative or judicial decision, have wholly or partly adopted or adhered to the *Weeks* rule. * * * Significantly, among those now following the rule is California which, according to its highest court, was "compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions * * *." In connection with this California case, we note that the second basis elaborated in *Wolf* in support of its failure to enforce the exclusionary doctrine against the States was that "other means of protection" have been afforded "the right to privacy." The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States.

Likewise, time has set its face against what *Wolf* called the "weighty testimony" of *People v. Defore,* 1926, 242 N.Y. 13, 150 N.E. 585. There Justice (then Judge) Cardozo, rejecting adoption of the *Weeks* exclusionary rule in New York, had said that "[t]he Federal rule as it stands is either too strict or too lax." However the force of that reasoning has been largely vitiated by later decisions of this Court. These include the recent discarding of the "silver platter" doctrine, *Elkins v. United States,*[a] the relaxation of the formerly strict requirements as to standing to challenge the use of evidence thus seized, * * * and finally, the formulation of a method to prevent state use of evidence unconstitutionally seized by federal agents, *Rea v. United States.*[b] * * *

It, therefore, plainly appears that the factual considerations supporting the failure of the *Wolf* Court to include the *Weeks* exclusionary rule when it recognized the enforceability of the right to privacy against the States in 1949, while not basically relevant to the constitutional consideration, could not, in any analysis, now be deemed controlling.

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[a] 364 U.S. 206 (1960). Under the "silver platter" doctrine, evidence of a federal crime seized by state police in the course of an illegal search while investigating a state crime could be turned over to federal authorities and used in a federal prosecution so long as federal agents had not participated in the illegal search but had simply received the evidence on a "silver platter." In rejecting the doctrine, the Court pointed out that the determination in *Wolf* that Fourteenth Amendment Due Process prohibited illegal searches and seizures by state officers, marked the "removal of the doctrinal underpinning" for the admissibility of state-seized evidence in federal prosecutions.

[b] 350 U.S. 214 (1956), where the Court held that a federal law enforcement agent who seized evidence on the basis of an invalid search warrant should be enjoined from turning over such evidence to state authorities for use in a state prosecution and from giving testimony concerning the evidence: "The District Court is not asked to enjoin state officials nor in any way to interfere with state agencies in enforcement of state law. * * * The only relief asked is against a federal agent, who obtained the property as a result of the abuse of process issued by a United States Commissioner. * * * In this posture we have then a case that raises not a constitutional question but one concerning our supervisory powers over federal law enforcement agencies."

* * * Today we once again examine *Wolf's* constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.[c]

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise then just as without the *Weeks* rule the assurance against unreasonable federal searches and seizures would be "a form of words," valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in 'the concept of ordered liberty.' "

* * * [I]n extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right newly recognized by the *Wolf* case. In short, the admission of the new constitutional right by *Wolf* could not consistently tolerate denial of its most important constitutional

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[c] Although an illegal arrest or other unreasonable seizure of the person is itself a violation of the Fourth and Fourteenth Amendments, the *Mapp* exclusionary sanction comes into play only when the police have obtained evidence as a result of the unconstitutional seizure. Such is the case when, for example, the police make an illegal arrest and then conduct a fruitful search which is "incident to" that arrest and thus dependent upon the lawfulness of the arrest for its legality. Such may also be the case when the connection between the illegality and the evidence is less apparent, and even when the evidence is verbal, such as a confession obtained from a defendant some time after his illegal arrest. As explained in *Wong Sun v. United States,* 371 U.S. 471 (1963), not "all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality [the evidence] has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' " In making that judgment, the "temporal proximity of the arrest and the confession, the presence of intervening circumstances and, particularly, the purpose and flagrancy of the official misconduct, are all relevant. The voluntariness of the statement is a threshold requirement." *Brown v. Illinois,* 422 U.S. 590 (1975).

In *United States v. Crews,* 445 U.S. 463 (1980), the Court held that an illegally arrested defendant "is not himself a suppressible 'fruit' and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through the introduction of evidence wholly untainted by the police misconduct." Moreover, it is no defense to a state or federal criminal prosecution that the defendant was illegally arrested or forcibly brought within the jurisdiction of the court. The trial of such a defendant violates neither Fifth nor Fourteenth Amendment due process. As explained in *Frisbie v. Collins,* 342 U.S. 519 (1952), this rule rests "on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." The Court added that even if the conduct in obtaining defendant's presence violated the federal kidnapping statute the result would be the same, for Congress had not included a bar to prosecution as an available sanction under that law.

privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment. Only last year the Court itself recognized that the purpose of the exclusionary rule "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it."

Indeed, we are aware of no restraint, similar to that rejected today, conditioning the enforcement of any other basic constitutional right. The right to privacy, no less important than any other right carefully and particularly reserved to the people, would stand in marked contrast to all other rights declared as "basic to a free society." * * * [N]othing could be more certain than that when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to "the incidence of such conduct by the police," slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? We find that, as to the Federal Government the Fourth and Fifth Amendments and, as to the States, the freedom from unconscionable invasions of privacy and the freedom from convictions based upon coerced confessions do enjoy an "intimate relation" in their perpetuation of "principles of humanity and civil liberty * * *." They express "supplementing phases of the same constitutional purpose—to maintain inviolate large areas of personal privacy." The philosophy of each Amendment and of each freedom is complementary to, although not dependent upon, that of the other in its sphere of influence—the very least that together they assure in either sphere is that no man is to be convicted on unconstitutional evidence.

Moreover, our holding * * * is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. * * *

There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." *People v. Defore.* In some cases this will undoubtedly be the result. But, as was said in *Elkins,* "there is another consideration—the imperative of judicial integrity." The criminal goes free, if he must, but it is the law that sets him free. 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. As Mr. Justice Brandeis, dissenting, said in *Olmstead v. United States,* 277 U.S. 438 (1928): "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. * * * If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Nor can it lightly be assumed that, as a practical matter, adoption of the exclusionary rule fetters law enforcement. Only last year this Court expressly considered that contention and found that "pragmatic evidence of a sort" to the contrary was not wanting. * * *. The Court noted that:

"The federal courts themselves have operated under the exclusionary rule of *Weeks* for almost half a century; yet it has not been suggested either that the Federal Bureau of Investigation has thereby been rendered ineffective, or that the administration of criminal justice in the federal courts has thereby been disrupted. Moreover, the experience of the states is impressive * * * . The movement toward the rule of exclusion has been halting but seemingly inexorable."

The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice. * * *

Reversed and remanded.

JUSTICE BLACK, concurring. * * *

I am still not persuaded that the Fourth Amendment, standing alone, would be enough to bar the introduction into evidence against an accused of papers and effects seized from him in violation of its commands. For the Fourth Amendment does not itself contain any provision expressly precluding the use of such evidence, and I am extremely doubtful that such a provision could properly be inferred from nothing more than the basic command against unreasonable searches and seizures. Reflection on the problem, however, in the light of cases coming before the Court since *Wolf*, has led me to conclude that when the Fourth Amendment's ban against unreasonable searches and seizures is considered together with the Fifth Amendment's ban against compelled self-incrimination, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule. * * *

JUSTICE DOUGLAS, concurring.

* * * I believe that this is an appropriate case in which to put an end to the asymmetry which *Wolf* imported into the law. * * *

Memorandum of JUSTICE STEWART.

* * * I express no view as to the merits of the constitutional issue which the Court today decides. * * *

JUSTICE HARLAN, whom JUSTICE FRANKFURTER and JUSTICE WHITTAKER join, dissenting.

* * * I would not impose upon the States this federal exclusionary remedy. The reasons given by the majority for now suddenly turning its back on *Wolf* seem to me notably unconvincing.

First, it is said that "the factual grounds upon which *Wolf* was based" have since changed, in that more States now follow the *Weeks* exclusionary rule than was so at the time *Wolf* was decided. While that is true, a recent survey indicates that at present one half of the States still adhere to the common-law non-exclusionary rule, and one, Maryland, retains the rule as to felonies. * * * But in any case surely all this is beside the point, as the majority itself indeed seems to recognize. Our concern here, as it was in *Wolf*, is not with the desirability of that rule but only with the question whether the States are Constitutionally free to follow it or not as they may themselves determine, and the relevance of the disparity of views among the States on this point lies simply in the fact that the judgment involved is a debatable one. Moreover, the very fact on which the majority relies, instead of lending support to what is now being done, points away from the need of replacing voluntary state action with federal compulsion.

The preservation of a proper balance between state and federal responsibility in the administration of criminal justice demands patience on the part of those who might like to see things move faster among the States in this respect. Problems of criminal law enforcement vary widely from State to State. One State, in considering the totality of its legal picture, may conclude that the need for embracing the *Weeks* rule is pressing because other remedies are unavailable or inadequate to secure compliance with the substantive Constitutional principle involved. Another, though equally solicitous of Constitutional rights, may choose to pursue one purpose at a time, allowing all evidence relevant to guilt to be brought into a criminal trial, and dealing with Constitutional infractions by other means. Still another may consider the exclusionary rule too rough and ready a remedy, in that it reaches only unconstitutional intrusions which eventuate in criminal prosecution of the victims. Further, a State after experimenting with the *Weeks* rule for a time may, because of unsatisfactory experience with it, decide to revert to a non-exclusionary rule. And so on. * * * For us the question remains, as it has always been, one of state power, not one of passing judgment on the wisdom of one state course or another. In my view this Court should continue to forbear from fettering the States with an adamant rule which may embarrass them in coping with their own peculiar problems in criminal law enforcement. * * *

* * * Our role in promulgating the *Weeks* rule and its extensions * * * was quite a different one than it is here. There, in implementing the Fourth Amendment, we occupied the position of a tribunal having the ultimate responsibility for developing the standards and procedures of judicial administration within the judicial system over which it presides. Here we review State procedures whose measure is to be taken not against the specific substantive commands of the Fourth Amendment but under the flexible contours of the Due Process Clause. I do not believe that the Fourteenth Amendment empowers this Court to mould state remedies effectuating the right to freedom from "arbitrary intrusion by the police" to suit its own notions of how things should be done * * *.