further held that, because illegally seized evidence was to be excluded from both federal and state courts, the standards by which the question of legality was to be determined should be the same, regardless of whether the court in which the evidence was offered was state or federal.[440]

The Foundations of the Exclusionary Rule.—Important to determination of such questions as the application of the exclusionary rule to the states and the ability of Congress to abolish or to limit it is the fixing of the constitutional source and the basis of the rule. For some time, it was not clear whether the exclusionary rule was derived from the Fourth Amendment, from some union of the Fourth and Fifth Amendments, or from the Court's supervisory power over the lower federal courts. It will be recalled that in *Boyd*[441] the Court fused the search and seizure clause with the provision of the Fifth Amendment protecting against compelled self-incrimination. In *Weeks v. United States*,[442] though the Fifth Amendment was mentioned, the holding seemed clearly to be based on the Fourth Amendment. Nevertheless, in opinions following *Weeks* the Court clearly identified the basis for the exclusionary rule as the Self-Incrimination Clause of the Fifth Amendment.[443] Then, in *Mapp v. Ohio*,[444] the Court tied the rule strictly to the Fourth Amendment, finding exclusion of evidence seized in violation of the Amendment to be the "most important constitutional privilege" of the right to be free from unreasonable searches and seizures, finding that the rule was "an essential part of the right of privacy" protected by the Amendment.

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[440] Ker v. California, 374 U.S. 23 (1963).

[441] Boyd v. United States, 116 U.S. 616 (1886).

[442] 232 U.S. 383 (1914). Defendant's room had been searched and papers seized by officers acting without a warrant. "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, so far as those thus placed are concerned, might as well be stricken from the Constitution." Id. at 393.

[443] *E.g.*, Gouled v. United States, 255 U.S. 298, 306, 307 (1921); Amos v. United States, 255 U.S. 313, 316 (1921); Agnello v. United States, 269 U.S. 20, 33–34 (1925); McGuire v. United States, 273 U.S. 95, 99 (1927). In Olmstead v. United States, 277 U.S. 438, 462 (1928), Chief Justice Taft ascribed the rule both to the Fourth and the Fifth Amendments, while in dissent Justices Holmes and Brandeis took the view that the Fifth Amendment was violated by the admission of evidence seized in violation of the Fourth. Id. at 469, 478–79. Justice Black was the only modern proponent of this view. Mapp v. Ohio, 367 U.S. 643, 661 (1961) (concurring opinion); Coolidge v. New Hampshire, 403 U.S. 443, 493, 496–500 (1971) (dissenting opinion). *See*, however, Justice Clark's plurality opinion in Ker v. California, 374 U.S. 23, 30 (1963), in which he brought up the self-incrimination clause as a supplementary source of the rule, a position which he had discarded in *Mapp*.

[444] 367 U.S. 643, 656 (1961). Wolf v. Colorado, 338 U.S. 25, 28 (1949), also ascribed the rule to the Fourth Amendment exclusively.