

TRANSNATIONAL LAW RELEVANT TO REGULATION OF THE POLICE

By:

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I. Why Teach It?

- A. Americans tend to be ethnocentrically myopic.
- B. Transnational law can provide interesting alternatives
- C. “He who knows only one country knows none.”

II. Types of transnational law that might be taught in a criminal procedure course focusing on the police (cf. Christopher Slobogin, *Criminal Procedure: Regulation of Police Investigation –Legal, Historical, Empirical and Comparative Materials*, Lexis Nexis, 3d. Ed. 2003).

A. Perspectives on Police Regulation

- 1. Centralization (most countries) v. decentralization (U.S.)
- 2. Codes (most countries) v. judicial review (U.S.)
- 3. Self-regulation (most countries) v. judicial regulation (U.S.)

B. Search and Seizure

- 1. Requiring written consent and barring nonconsensual searches in connection with minor crimes (France) v. Whren/Robinson/Belton (U.S.).
- 2. Third party observers of home searches (Europe, India) v. Layne/particularity requirement (U.S.)
- 3. Warrantless electronic surveillance prohibited unless both parties consent (Germany) v. White (U.S.).
- 4. Authority to detain for identity checks (France) v. Hiibel (U.S.)
- 5. Wide-ranging search incident authority (Europe) v. Chimel/Buie (U.S.)

6. Exclusion only when bad faith/shock the conscience (U.K., Canada, Japan) v. Mapp

C. Interrogation

- (U.S.)
1. Videotaping requirement (U.K) v. O (U.S.)
 2. Warnings when a suspect (U.K., Canada) v. warning when arrested
 3. Stationhouse solicitor (U.K., Canada, Italy, Spain) v. wait until arraignment (U.S.)
 4. Warnings must include precise charge (Europe) v. Spring (U.S.)
 5. Affirmative misrepresentations barred (U.K., Germany) v. Frazier, Mathiason, Burbine, etc. (U.S.)
 6. Formal charging does not change the rules (Europe) v. Massiah (U.S.)
 7. Silence may be used against defendant (U.K., Germany) v. Doyle (U.S.)
 8. Bad faith often required for exclusion (U.K., Germany) v. Miranda
- (U.S.)

III. Closing Observations

- A. Rules must be understood in cultural context
- B. Comparative perspective can provide interesting insights into our rules, as well as useful alternatives
- C. May also provide interesting insights into our culture