

WEST'S
ENCYCLOPEDIA
of
AMERICAN
LAW

2ND EDITION

VOLUME 12



PRIMARY DOCUMENTS

WEST'S ENCYCLOPEDIA *of* AMERICAN LAW

2ND EDITION

VOLUME 12



PRIMARY DOCUMENTS

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GALE



West's Encyclopedia of American Law, 2nd Edition

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WEST'S
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LAW

2ND EDITION

DEDICATION

West's Encyclopedia of American Law
(WEAL) is dedicated to librarians
and library patrons throughout the
United States and beyond. Your
interest in the American legal sys-
tem helps to expand and fuel the
framework of our Republic.



PREFACE

The U.S. legal system is admired around the world for the freedoms it allows the individual and the fairness with which it attempts to treat all persons. On the surface, it may seem simple, yet those who have delved into it know that this system of federal and state constitutions, statutes, regulations, and common-law decisions is elaborate and complex. It derives from the English common law, but includes principles older than England, along with some principles from other lands. The U.S. legal system, like many others, has a language all its own, but too often it is an unfamiliar language: many concepts are still phrased in Latin. The second edition of *West's Encyclopedia of American Law* (WEAL) explains legal terms and concepts in everyday language, however. It covers a wide variety of persons, entities, and events that have shaped the U.S. legal system and influenced public perceptions of it.

MAIN FEATURES OF THIS SET

Entries

This encyclopedia contains nearly 5,000 entries devoted to terms, concepts, events, movements, cases, and persons significant to U.S. law. Entries on legal terms contain a definition of the term, followed by explanatory text if necessary. Entries are arranged alphabetically in standard encyclopedia format for ease of use. A wide variety of additional features, listed later in this preface, provide interesting background and supplemental information.

Definitions Every entry on a legal term is followed by a definition, which appears at the beginning of the entry and is italicized. The Dictionary and Indexes volume includes a glossary containing all the definitions from WEAL.

Further Readings To facilitate further research, a list of Further Readings is included at the end of a majority of the main entries.

Cross-References WEAL provides two types of cross-references, within and following entries. Within the entries, terms are set in small capital letters—for example, LIEN—to indicate that they have their own entry in the encyclopedia. At the end of the entries, related entries the reader may wish to explore are listed alphabetically by title.

Blind cross-reference entries are also included to direct the user to other entries throughout the set.

In Focus Essays

In Focus essays accompany related entries and provide additional facts, details, and arguments on particularly interesting, important, or controversial issues raised by those entries. The subjects covered include hotly contested issues, such as abortion, capital punishment, and gay rights; detailed processes, such as the Food and Drug Administration's approval process for new drugs; and important historical or social issues, such as debates over the formation of the U.S. Constitution.

Sidebars

Sidebars provide brief highlights of some interesting facet of accompanying entries. They complement regular entries and In Focus essays by adding informative details. Sidebar topics include the Million Man March and the branches of the U.S. armed services. Sidebars appear at the top of a text page and are set in a box.

Biographies

WEAL profiles a wide variety of interesting and influential people—including lawyers, judges, government and civic leaders, and historical and modern figures—who have played a part in creating or shaping U.S. law. Each biography includes a timeline, which shows important moments in the subject's life as well as important historical events of the period. Biographies appear alphabetically by the subject's last name.

ADDITIONAL FEATURES OF THIS SET

Enhancements Throughout *WEAL*, readers will find a broad array of photographs, charts, graphs, manuscripts, legal forms, and other visual aids enhancing the ideas presented in the text.

Indexes *WEAL* features a cases index and a cumulative general index in a separate volume.

Appendixes

Three appendix volumes are included with *WEAL*, containing hundreds of pages of docu-

ments, laws, manuscripts, and forms fundamental to and characteristic of U.S. law.

Milestone Cases in the Law

A special Appendix volume entitled *Milestones in the Law*, allows readers to take a close look at landmark cases in U.S. law. Readers can explore the reasoning of the judges and the arguments of the attorneys that produced major decisions on important legal and social issues. Included in each Milestone are the opinions of the lower courts; the briefs presented by the parties to the U.S. Supreme Court; and the decision of the Supreme Court, including the majority opinion and all concurring and dissenting opinions for each case.

Primary Documents

There is also an Appendix volume containing more than 60 primary documents, such as the English Bill of Rights, Martin Luther King Jr.'s Letter from Birmingham Jail, and several presidential speeches.

Citations

Wherever possible, *WEAL* entries include citations for cases and statutes mentioned in the text. These allow readers wishing to do additional research to find the opinions and statutes cited. Two sample citations, with explanations of common citation terms, can be seen below and opposite.

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966)

1 2 3 4 5 6 7

1. **Case title.** The title of the case is set in italics and indicates the names of the parties. The suit in this sample citation was between Ernesto A. Miranda and the state of Arizona.
2. **Reporter volume number.** The number preceding the reporter name indicates the reporter volume containing the case. (The volume number appears on the spine of the reporter, along with the reporter name.)
3. **Reporter name.** The reporter name is abbreviated. The suit in the sample citation is from the reporter, or series of books, called *U.S. Reports*, which contains cases from the U.S. Supreme Court. (Numerous reporters publish cases from the federal and state courts.)
4. **Reporter page.** The number following the reporter name indicates the reporter page on which the case begins.
5. **Additional reporter citation.** Many cases may be found in more than one reporter. The suit in the sample citation also appears in volume 86 of the *Supreme Court Reporter*, beginning on page 1602.
6. **Additional reporter citation.** The suit in the sample citation is also reported in volume 16 of the *Lawyer's Edition*, second series, beginning on page 694.
7. **Year of decision.** The year the court issued its decision in the case appears in parentheses at the end of the cite.

Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (18 U.S.C.A. §§ 921-925A)

1 2 3 4 5 6 7 8

1. *Statute title.*
2. *Public law number.* In the sample citation, the number 103 indicates that this law was passed by the 103d Congress, and the number 159 indicates that it was the 159th law passed by that Congress.
3. *Reporter volume number.* The number preceding the reporter name indicates the reporter volume containing the statute.
4. *Reporter name.* The reporter name is abbreviated. The statute in the sample citation is from *Statutes at Large*.
5. *Reporter page.* The number following the reporter name indicates the reporter page on which the statute begins.
6. *Title number.* Federal laws are divided into major sections with specific titles. The number preceding a reference to the *U.S. Code Annotated* is the title number. title 18 of the U.S. Code is Crimes and Criminal Procedure.
7. *Additional reporter.* The statute in the sample citation may also be found in the *U.S. Code Annotated*.
8. *Section number.* The section numbers following a reference to the *U.S. Code Annotated* indicate where the statute appears in that reporter.

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FOUNDATIONS OF U.S. LAW

ENGLISH LAW

THE COLONIAL PERIOD

CONFLICT AND RESOLUTION

ORIGINS OF U.S. GOVERNMENT

ENGLISH LAW

- MAGNA CHARTA
- ENGLISH BILL OF RIGHTS
- SECOND TREATISE ON GOVERNMENT

The development of U.S. law is rooted in English political and legal history. The colonial settlers of North America were primarily from England, and until the 1760s they viewed themselves as English rather than “American.” They brought with them the English COMMON LAW and the English constitutional tradition.

Unlike the United States, England has never had a written constitution. Instead, the English constitutional tradition is based on the substance and procedures of the common law, along with

key documents, such as Magna Charta and the English Bill of Rights. In the seventeenth and eighteenth centuries, political philosophers, especially JOHN LOCKE, challenged the absolute authority of the monarchy and introduced the democratic idea that the people have a right to a government that meets their needs. These documents and ideas assumed great importance as the American colonists moved toward independence in the 1770s. In this sense English ideas paved the way for the American Revolution and the writing of the U.S. Constitution.

ENGLISH LAW

MAGNA CHARTA

The document that has come to be known as Magna Charta (spelled variously as “char-ta” or “carta”), or Great Charter, is recognized as a fundamental part of the English constitutional tradition. Although it is not a constitution, it contains provisions on criminal law that were incorporated into the Bill of Rights of the U.S. Constitution.

In 1215 King John of England (1199–1216) fought more than forty English barons and their followers in a civil war. The king had angered the barons by extracting revenues based on their feudal obligations in order to fight a war in France. After John lost the war, the barons rebelled against the king.

The rebels first demanded that the king confirm the Charter of Henry I, a coronation charter from 1100 in which King Henry I had promised to abolish all evil customs that oppressed the realm. Additional grievances were added to the charter, which King John was forced to accept at Runnymede in June 1215, after the rebels occupied London.

Magna Charta contains sixty-three chapters. Many of the chapters defined the king’s feudal rights over his vassals, preventing the king from arbitrarily collecting revenue from the barons. Chapter 39 established the right to due process of law, and in chapter 40 the king promised that he would not sell, deny, or delay justice to anyone.

Magna Charta did not resolve the dispute between the barons and King John. Within months they were fighting again. In August 1215 the charter was annulled by Pope Innocent III, John’s feudal overlord, on the grounds that it

had been executed under duress. In 1216, however, after John’s death the charter was reissued with some modifications. At the conclusion of the civil war in 1217, it was reissued again with minor revisions. This version of Magna Charta became part of the English constitutional tradition; confirmed by later kings and interpreted by Parliament, it is still revered as a symbol of English liberties.



Magna Charta

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, count of Anjou, to all his archbishops, bishops, abbots, earls, barons, justiciars, foresters, sheriffs, stewards, servants, and all bailiffs and faithful men, health. Know that we by looking to God, and for the health of our soul, and of all our ancestors and heirs, to the honor of God, and the exaltation of his holy Church, and the rectifying of our realm by the counsel of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church; Henry, archbishop of Dublin; William of London, Peter of Winchester, Joscelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry and Benedict of Rochester, bishops; Master Pandulf, subdeacon of our lord pope and servant; brother Eymeric, master of the knights of the Temple in England; and of nobles, William Marshall, Earl of Pembroke; William, Earl of Salisbury; William, Earl Warrenne;

ENGLISH LAW

MAGNA CHARTA

William, Earl of Arundel; Alan of Galway, constable of Scotland; Warin, son of Gerold; Peter, son of Herbert; Hubert de Burg, seneschal of Poitou; Hugh de Neville; Matthew, son of Herbert; Thomas Basset; Alan Basset; Philip de Albini; Robert de Ropley; John Marshall; John, son of Hugh; and others our lieges.

CHAPTER 1

First, we grant to God, and by this our present charter we confirm, for us and our heirs forever, that the English church be free, and have its rights whole and its liberties unimpaired; *and so we will to be observed, which appears from the fact that we have of pure and free will, before difference arose between us and our barons, granted, and by our charter confirmed, freedom of elections, which is conceived greatest and most necessary for the English church, and have got it confirmed from our lord Pope Innocent III, which we will observe ourselves and will to be observed in good faith by our heirs forever.*¹ We have granted to all free men of our realm, for ourself and our heirs forever, all these underwritten liberties to have and to hold, for themselves and their heirs, from us and our heirs.

CHAPTER 2

If any of our earls or barons, or other tenant of us in chief by military service, die, and when he dies, his heir be of full age, and owe a relief, he shall have his inheritance by the old relief, to wit, the heir, or heirs of an earl, for the whole barony of an earl by P100; the heir or heirs of a baron, the whole barony by P100; the heir or heirs of a knight for a whole military fee by 100s. at most, and he who owes less should pay less according to the ancient custom of fees.

CHAPTER 3

If the heir of any of these be below age, and be in wardship, when he comes to full age he shall have his inheritance without relief or fine.

CHAPTER 4

The guardians of the land of any heir, who is below age, shall not take from the land of the heir more than reasonable exits [revenues], and reasonable customs, and reasonable services, and this without destruction and waste of men or property; and if we commit the wardship of any such land to the sheriff or any one else, who is to answer to us for the exits, and he made destruction or waste of his wardship, we will

take recompense of him, and the land shall be committed to two lawful and discreet men of that fee, who will answer to us of the exits, or to him to whom we have assigned them; and if we have given or sold to any one the wardship of any such land, and he does destruction or waste, he shall lose his wardship, and give it to two lawful and discreet men of that fee, who shall in like manner answer to us as is aforesaid.

CHAPTER 5

The guardian, as long as he have wardship of the land, shall keep up houses, parks, stews, pools, mills, and other things belonging to that land, from the exits of the same land, and restore to the heir, when he comes to full age, all that land stocked with teams, according to what the season of teams demands, and the exits of the land can reasonably sustain.²

CHAPTER 6

Heirs shall be married without disparagement, *so that before they contract matrimony it be communicated to the kinsmen in blood of the heir.*

CHAPTER 7

A widow after the death of her husband shall at once and without hindrance have her marriage and inheritance, nor give anything for her dower, or for her marriage, or for her inheritance, which inheritance she and her husband had on the day of her husband's death, and she shall remain in her husband's home for forty days after his death, within which her dower shall be assigned to her.³

CHAPTER 8

No widow shall be forced to marry as long as she wills to live without a husband, so that she

Source: Selections from *The Second Treatise on Government*, 5 J. Locke, WORKS (1823). The footnotes have been renumbered.

¹ The full text of the Charter of 1215 has been included here. Sections that were omitted in later versions of the charter are printed in italic type on this and subsequent pages. Unless otherwise indicated, the omissions were made in 1216. Important alterations and additions have been indicated in the notes.

² A clause added in 1216 stipulated that the chapter also applied to ecclesiastical properties except that those wardships should not be sold.

³ In 1217 a clause was added that guaranteed a widow one-third of her husband's lands unless a smaller dower had been assigned at the time of the marriage. In 1225 chapters 7 and 8 were combined into one.

give security that she will not marry without our assent, if she hold from us, or without the assent of the lord from whom she holds, if she holds from another.

CHAPTER 9

Neither we nor our bailiffs will seize any land or rent for any debt, as long as the chattels of the debtor suffice for paying the debt, nor shall the sureties of the debtor be distrained, as long as that debtor in chief suffices for the payment of the debt, and if the debtor in chief fail in paying the debt, not having whence to pay, the sureties shall answer for the debt, and if they will, shall have the land and rents of the debtor till they are satisfied of the debt which they paid for him, unless the debtor in chief show that he is quit thence against these sureties.

CHAPTER 10

If anyone borrows anything from the Jews, more or less, and dies before the debt is paid, the debt shall not bear usury as long as the heir is under age, from whoever he holds it, and if that debt fall into our hands we will take only the chattel contained in the deed.

CHAPTER 11

And if anyone die and owes a debt to the Jews, his wife shall have her dower and pay nothing of that debt, and if the children of the dead man are under age, necessities shall be provided for them according to the holding of the dead man, and the debt shall be paid from the residue, the service of the lords saved, and in the same way shall it be done with debts which are owed to other than Jews.

CHAPTER 12

No scutage or aid shall be laid on our realm except by the common counsel of our realm, unless for ransoming our person, and making our eldest son a knight, and marrying our eldest daughter once, and this must only be a reasonable aid, and so shall it be with the aids of the city of London.

CHAPTER 13

And the city of London shall have all its ancient liberties and its free customs, *both by land and by water*. Besides we will and grant that all other cities, and burghs [boroughs], and villis [towns], and ports shall have all their liberties and free customs.

CHAPTER 14

And to have a common counsel of our realm on assessing an aid other than in the three aforementioned cases, or assessing a scutage, we will cause to be summoned archbishops, bishops, abbots, earls, and greater barons, singly by our letters, and we will also cause to be summoned in general, by our sheriffs and bailiffs, all those who hold of us in chief, at a certain day, to wit, at least forty days after, and a certain place; and in all letters of summons we will express the cause of summons, and when summons is made the business assigned for the day shall proceed according to the council of those who are present, though not all who are summoned come.

CHAPTER 15

We will grant to no one in future that he take aid from his free men, except to ransom his person, to make his eldest son a knight, and to marry his eldest daughter once, and for this there shall only be a reasonable aid.

CHAPTER 16

No one shall be distrained to do a greater service for a knight's fee, or any other frank [free] tenement than is due from it.

CHAPTER 17

Common pleas shall not follow our court, but shall be held in some certain place.

CHAPTER 18

Recognizances of novel disseisin, mort d'ancestor, and darrein presentment shall not be taken except in their own counties and in this manner; we, or, if we be out of the realm, our chief justiciar, will send two justices to each county four times in the year, who, with four knights of each county, elected by the county, shall take in the county and day and place the aforementioned assises of the county.⁴

CHAPTER 19

And if the aforesaid assises of the county cannot be taken on that day, so many knights and free tenants shall remain of those who were at the county on that day, by whom judgments

⁴ In 1217 the text was changed to say that justices (number unspecified) would be sent through each county once a year to hold assises with knights of the county (number unspecified). A separate chapter was created that stipulated that assises involving darrein presentment should always be held before the justices of the bench.