

ENCYCLOPEDIA OF AMERICAN LAW

DAVID SCHULTZ

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For more information

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arson is a criminal offense, defined by the Model Penal Code as the intentional or deliberate starting of a fire or explosion, usually for the purpose of (a) destroying a building or occupied structure of another or (b) destroying any property, whether one's own or the property of another, for insurance proceeds. Although originally a common-law crime, the elements of arson have now been defined by statute, with most states following the Model Penal Code definition. Finding an intent to cause injury to others, or the intent to cause personal harm, is not a requirement, so the definition of arson also includes the act of starting a fire or explosion in a vacant or abandoned building. However, a related offense under the arson provision of the Model Penal Code, "Reckless Burning or Exploding," does include the element of placing another person in danger of bodily harm or death. To accommodate modern realities, "occupied structure" has been expanded—sometimes by implication and sometimes by express statutory language—to include any structure, such as automobiles or watercraft, used for overnight lodging or travel. The Model Penal Code also provides that for multiunit structures, such as apartment buildings, each unit not occupied by the person committing arson is considered as a separate structure.

Because the crime of arson does not require personal injury, some states have developed the offense of "aggravated arson," which includes all the traditional elements of arson but adds the additional element of harm to persons, either intended or actual. One example of this is *State v.*

Williams, 623 A.2d 800 (N.J. 1993). Other states have separated the basic crime of arson into one or more degrees, with the lowest degree being merely reckless starting of a fire, and the greatest involving harm to others. However, the criminal law varies from state to state on whether a person may lawfully burn his own property, if not in order to collect insurance proceeds.

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Articles of Confederation were adopted in 1781 as the first constitution for the United States after its independence from England.

The Articles of Confederation were drafted in stages from 1776 to 1777 but were not ratified until 1781; the Articles extended and revised the existing understanding of diffused authority and state autonomy. Richard Henry Lee, Samuel Adams, John Dickinson, and Roger Sherman, among others, assisted in the drafting of the document. Although regarded in 1781 as a reliable constitution, the accepted caricature of the Articles portrays the work as a dismal failure in all respects; the Articles could not provide for a system of popular rule or supply the young regime with the security measures that were needed to ensure its survival. Critics of the Articles usually cite the plan's inability to endow a national government with the power to levy taxes or regulate commerce, thereby discouraging all efforts at national cohesion. The Articles, in other words, embodied the political tensions within American politics during the period between the Declaration of Independence and the Philadelphia Convention.

The Articles possessed the means for affirming popular rule, diffusing political authority,

and allowing for a system of government. As in the case of the Declaration of Independence, the Articles perpetuated the original design for the territorial division of the country into independent and sovereign states, a "perpetual union." Article Two described the nature of the alliance: "Each state retains its sovereignty, freedom and independence, and every power, jurisdiction, and right, which is not by the Confederation expressly delegated to the United States, in Congress assembled." Articles Three and Four, antecedents of the Tenth Amendment, affirmed the nature of their "league of friendship" and provided for the extradition of fugitives. Article Five presented a system of representation for the states in Congress that allowed for each state to have no less than two and no more than seven delegates. Articles Six and Seven concerned limitations upon the states regarding the conducting of foreign affairs and national security. Article Eight detailed how the costs of war would be defrayed, and Article Nine outlined the powers of Congress, the only branch of government established by the document. The last four Articles discussed various aspects of the "perpetual" union.

The Articles confirmed the centrality of the states, thus maintaining the relationship between the governed and the government at the state level instead of the national level. The Articles also provided that the respective states, not the federal government, would protect citizens' privileges and immunities. As a genuine precursor to the Tenth Amendment, the Articles limited the power of the federal government and strengthened state prerogatives.

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assault and battery are two different legal concepts: assault is a threat of violence, and battery is an actual violent attack on another person. In the original common-law conception, assault was a threatened violent physical or verbal attack on another person. No actual physical contact was required. Battery was an unlawful touching or striking of another, either with his own person or by some instrumentality put in motion by the assailant, which touching had not been consented to by the victim and was done without privilege.

There are two kinds of assault and two kinds of battery, each dealing in terms of criminal and civil law. In U.S. law, the most commonly thought of type is criminal battery, often popularly called assault and battery. Many jurisdictions within the United States have combined the two concepts using one label or the other. There has been no consistency among the states as to which name is proper. For example, what Colorado statutes call sexual assault, Florida's call sexual battery, yet both describe the common-law crime of rape as well as other crimes in nearly identical terms.

Since assault as a demonstration of intent can be difficult to define within the common law, most state statutes define assault as the intent to cause bodily injury and include a present ability to do the harm. Aggravating circumstances may include a threat made with a deadly weapon. Some assaults include only a violent outburst, such as threatening to punch someone in the nose. Carrying out the threat then is the element of battery.

Defenses against prosecution for assault and battery are as varied as self-defense and defense

changed in major ways as *Mapp v. Ohio* (1961) disallowed the use of seized evidence illegally seized in violation of the Fourth Amendment; *Gideon v. Wainwright* (1963) mandated the appointment of lawyers for poor defendants under the Sixth Amendment; and *Miranda v. Arizona* (1966) required police officers to warn suspects of their Fifth Amendment right to remain silent prior to interrogation.

Earl Warren was not known as a great legal stylist or profound legal thinker, but his leadership abilities made him one of the most effective chief justices in the Supreme Court's history. In *Brown* and in all of his decisions, he displayed a result-orientation to judging based on common sense; an intuitive sense of justice, fairness, and equality; and a liberal theory of affirmative government. Thus, he departed from traditional modes of constitutional interpretation to ask what was the just outcome of a case, based on a theory of civics that held that the government existed for the benefit of its citizens. If so, federal and local governments had to bestow rights fairly and equally, even if the opposite result had been reached by the democratic process of legislation. The result, as one biographer explains, was a fusing of constitutional interpretation with a search for justice that harmonized the Constitution with current perceptions of what justice required.

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Webster, Daniel (1782–1852) was a 19th-century senator and statesman from Massa-

chusetts who argued several of the most important constitutional law cases in U.S. history before the United States Supreme Court.

Daniel Webster was born in 1782 in Salisbury, New Hampshire, in the hill country of the upper Merrimack River, to Ebenezer Webster and his second wife, Abigail Eastman. Daniel was the youngest son in a family of 10 children. While raised in a farming environment, the young Daniel preferred working in his father's tavern and conversing with the establishment's visitors. The integrity, devotion to political union, and political acumen of Ebenezer Webster would soon be evident in his son. As the boy became well known among the tavern patrons, he was given the nickname "Black Dan," owing to his dark hair and complexion.

Educated at local schools and through his voracious reading of great works, Webster attended Phillips Exeter Academy and Dartmouth College. At Dartmouth, Webster was an active student who was elected to Phi Beta Kappa. He proceeded to study law under Federalist teachers and to practice law in his native New Hampshire. After marrying Grace Fletcher in 1808, Webster became more interested in politics. After several unsuccessful campaigns, Webster was elected to the U.S. House of Representatives in 1812. Establishing himself as a critic of the Madison administration, he believed the country should practice self-restraint while maintaining national integrity. In approving the Hartford Convention's listing of complaints against the federal government, he did not endorse the secessionist elements within the gathering.

After moving to Boston and acquiring the reputation as an orator and defender of the nationalist tradition, Webster spent a great deal of time practicing law and presenting cases before the Supreme Court, including *McCulloch v. Maryland* and *Gibbons v. Ogden*. He was elected to the Senate in 1827. In 1828 he supported the prevailing tariff proposal, and this endorsement led to a famous debate with Senator Robert Y.

Hayne of South Carolina in 1830. In the course of the debate, Webster declared: "Liberty and Union, now and forever, one and inseparable!" These sentiments would embody his devotion to the importance of union for the remainder of his political career.

In 1836 and 1840 he would unsuccessfully attempt to obtain the Whig Party's presidential nomination; he would nevertheless serve as secretary of state under Presidents Harrison, Tyler, and Fillmore. He returned to the Senate from 1844 until 1850. He supported the Compromise of 1850, criticizing secessionists and abolitionists as not possessing enough devotion to the cause of union and as taking departures from the teachings of the fundamental law. He died in 1852.

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Weeks v. United States 232 U.S. 383 (1914) is the origin of the famous "exclusionary rule," the doctrine that evidence seized in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures normally cannot be used as testimony in a criminal trial against the person whose privacy has wrongfully been infringed.

Defendant Fremont Weeks was convicted in the U.S. District Court for the Western District of Missouri of using the U.S. mails to send lottery tickets in violation of federal law. A U.S. marshal, in a warrantless search of Weeks's room, took from a desk drawer some letters that referred to the lottery and showed the latter's guilt. Before the trial the defendant asked that the government return these and other papers to him, which it refused to do. At the trial they were

introduced into evidence over his objection. He was convicted and sent to jail. The trial judge admitted that the evidence had been illegally taken but permitted its use against Weeks since it was relevant to the charge against him.

The U.S. Supreme Court, in an opinion by Justice William R. Day, unanimously reversed Weeks's conviction. The Fourth Amendment, Day pointed out, was added to the Bill of Rights in reaction to searches during the colonial era under broadly worded warrants. The amendment enshrined in constitutional law the doctrine that every man's home is his castle. Applying these general principles to the case before him, Day said that if unreasonably seized letters could be used against a criminal suspect, the protection against unreasonable searches accorded by the Fourth Amendment would be valueless and might as well be stricken from the Constitution. Thus the letters should have been given back to the accused and not been used at the trial. (Since in 1914 the Fourth Amendment was not considered binding on the states, Day did not declare it improper for the trial court to have allowed into evidence lottery tickets wrongfully seized by local law enforcement officials.)

Despite its ringing libertarian tones, Day's opinion is thought by quite a few legal experts to be ambiguous on one crucial point: Is the doctrine that evidence illegally seized from a defendant cannot be used at her trial one required by the Fourth Amendment itself or is it simply a judicially created rule of evidence designed to safeguard the Fourth by discouraging the police from conducting fishing expeditions? If it is the latter, it can be discarded if it is shown to have no such deterrent effect. This alleged ambiguity was seized upon by Justice Felix Frankfurter in *Wolf v. Colorado*, 338 U.S. 25 (1949), declaring that though the Fourth was "incorporated," states did not have to adhere to the exclusionary rule. Nonetheless, Justice Tom Clark in *Mapp v. Ohio*, 367 U.S. 643 (1961), making the rule binding on the states as well as the federal government, asserted (p. 649) that "[T]he plain and